SCOMM

#23:11

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

NAME	SENT TO:	DATE:
Packet #1:	NOTE: Glenn Svendsen	
Resolution #39	has since gotten copies	17 Sep
Article :		
Summary AG's opns		
Proposed agenda		
Ltr. City St. Mary's		
Ltr. Teschke Sugg		
Ltr. Sharp Sugg	Policy Group	
Total 29		
'80 Bills Packet		
Minutes of Mtg	Wkg Grp. Policy Grp	11 Sep
w/Attachments	Ex Officio, Svendsen & others	
Packet #3	Policy Group	
Draft bill: St. Assessor	Wkg Group	
w/ ltr FBX Boro, Assessor	Ex. O Group	
Ket. Boro	Glenn Svendsen	
Memo C&RA (Dye)		
Ltr. City of Valdez		
Memo. Dept Env. Con		
Ket. Boro Ltr	Wkg Grp (mailed w/	16 Sep 80
for Revenue Coll.	index (Ken) & sugg. summ.	
	carried to policy mtg	
	29 & 30 Sep. Svendsen.	
	mailed 17 Sep	
Agenda Sugg	wkg grp & Ex. Off	23 Sep 80

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

October 22, 1980

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

Dear Ms. Scott:

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

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

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

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

cc: Title 29 Policy Advisory Group

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

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

Dear Tam:

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

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

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

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

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

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

October 17, 1980

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

October 17, 1980

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

Dear David:

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

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

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

xc: Tam Cook, Title 29 Revision Committee

APR 25 1979

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

CITY OF KODIAK,

Plaintiff,

vs.

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

Defendants.

Case No. 3KO-78-120 Civ

MEMORANDUM OF DECISION

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

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

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

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

> The establishment of the Service District in unlawful under AS 29.63.090(d) and unconstitutional under Section 5, Article X, Alaska Constitution in that the roads, sewer and water service function and power can be provided by the City of Kodiak through annexation to the City, without any necessity for the creation of the Service District. Complaint, paragraph 15, p. 3.[1]

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

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

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

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

AS 29.63.090(d) provides in pertinent part:

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

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

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

A. Constitutional Framers' Intent

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

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

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

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

(2) Framers' Intent as Revealed in Constitutional Minutes

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

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

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

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

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

Proposal No. 6/a[3] was the first draft actually considered and voted upon by the Constitutional Convention. Proposal No. 6/a was the subject of extensive debate at the Convention (see e.g. pages 2610-2730 of Constitutional Minutes). It was this proposal that was voted upon by the Convention, adopted and enrolled.

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

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

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

[4]Rule 16(c) provides in pertinent part:

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

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

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

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

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

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[5]Article X, Section 5 provides in part:

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

AS 29.63.090(b) provides:

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

[6]See, e.g., comments of Delegate Taylor, Constitutional Minutes pp. 2699-2700.
Also see Constitutional Minutes, p. 2630.

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

CONCLUSION

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

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

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

J. JUSTIN RIPLEY
SUPERIOR COURT JUDGE

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

Scarlett O. Watts
Scarlett O. Watts

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

TRANSCRIPT OF COMMENTS MADE BY

STEPHANIE K. SCOTT, HAINES BOROUGH,

SEPTEMBER 29, TITLE 29 REVISION

COMMITTEE, ANCHORAGE, ALASKA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCOTT: Thank you.

(907) 465-4750

September 4, 1980

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

Dear Mayor Halliwill:

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

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

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

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

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

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

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

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

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

Sincerely,

M
Marie Matsuno
Deputy Commissioner

Attachment

GF: City of Haines

bcc: Palmer McCarter
Richard Spitler

MM:RS:td

File: Land Management
Powers of a Third Class Bor

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

DATE : January 6, 1977

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

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

By: Rodger W. Pegues
Assistant Attorney General

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

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

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

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

RWP:cdm

OF COUNSEL
R. E. ROBERTSON

R. E. ROBERTSON (1885-1961)
F. G. EASTAUGH
J. B. BRADLEY
WILLIAM G. RUDDY
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MICHAEL T. THOMAS
JAMES F. CLARK
PAUL M. HOFFMAN
J. P. TANGEN
DEBORAH A. HOLBROOK
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April 9, 1979

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

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

Dear Mr. Tengs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

By: L.B. Jacobson
L.B. Jacobson

LBJ:ss

Enclosure

HAINES BOROUGH
P.O. BOX H
HAINES, ALASKA 99827

17

February 15, 1979

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

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

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

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

RCF

HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827

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

January 24, 1979

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

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

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

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

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

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

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

xc: Dan Bockhorst, City Administrator
Merrill Palmer

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

[redacted]

323 E. 4TH AVENUE
ANCHORAGE, ALASKA 99501

March 10, 1980

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

Dear Stephanie:

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

1. It appears that a third class borough does have the authority to dispose of land, and to subdivide it pursuant to the disposal. AS 29.48.010(9), in the Chapter titled "Powers Applicable to All Municipalities", establishes the general power "to acquire, manage, control, use and dispose of real and personal property for the purpose authorized under this title...". If Municipal land were sold to provide revenue for educational purposes, it would appear to be within the authority of any municipality. This is further supported by the footnotes in Title 29 that cites court cases which establish a broad, liberal construction of powers to municipalities. The platting, planning, and zoning powers, are powers to regulate land subdivision; though your borough could not regulate the subdivision of land by use of the police power, it certainly would not prohibit your borough from subdividing land.

2. The answer to your second question is answered by the above response: There appears to be no problem expending funds from the sale of land for a valid purpose, such as education. The 1979 amendment to AS 29.48.010(9) is permissive only, and creates no prohibition or limitation on a municipality. A municipality would not be prevented from expending moneys otherwise that is allowed under the amendment.

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

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

Sincerely,

Geo. K. Hollis

for Theodore G. Smith
Director

XC: City of Haines 8/26/80

10J18LH

MEMORANDUM

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

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

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

Enclosed are the recommendations which evolved from that meeting.

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

enc:

cc: Glenn Mckee
Dave Braden
Robert Howe
Steve VanSant
John W. Arney
Don Thomas
Edward Haney
Charles Hopson

Article 1. Municipal Property Tax.

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

Taxation of personal property of resident located outside city. — See Town of Fairbanks v. Independent Meat Mkt., 4 Alaska 147 (1910).

The North Slope Borough is a viable legal entity with powers to tax as provided to boroughs by this section. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-256 and C.A. Nos. 73-294 to 73-306 (1973).

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

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

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

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

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

(5) money on deposit;

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

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

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

---

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

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

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

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

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

29.53.020.(a)(2)
Delete: "...not exceeding $500 in value;"
(see also 29.53.025(b)(2)(A)

4 Groups, a lot

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

& classroom space

[illegible] by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 — 44.62.570.

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

29.53.020.(f)
Following the words "No exemption may be granted . . .".
Insert: "under (e) of this section."

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

(h) Except as provided in (g) of this section, nothing in (e)—(f) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in § 25 of this chapter.

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

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

History of section. — See City of Anchorage v. Cnugach Elec. Ass'n, 17 Alaska 481, 282 F.2d 412 (9th Cir. 1960).

This section was enacted pursuant to Alaska Const., art. IX, § 6. Harmon v. North Par. Union Conference Ass'n of Seventh Day Adventists, Sup. Ct. Op. No. 581 (File No. 1030), 462 P.2d 422 (1969).

Intent of constitutional convention. —The constitutional convention intended that only so much of the property used for religious purposes as was being used to produce income should be taxable, that such other parts should be exempt, and that a proration between taxable and nontaxable parts should be made. 1962 Op. Att'y Gen., No. 15.

Purpose.—The purpose of this section is to encourage the establishment of privately supported nonprofit educational institutions; the motivation for their establishment is largely irrelevant. McKee v. Evans, Sup. Ct. Op. No. 743 (File No. 1382), 490 P.2d 1224 (1971).

Effect of amendments. — The 1975 amendment deleted "whose gross annual income totals less than $10,000" preceding "is exempt" in the first sentence of subsection (e), deleted the language beginning "however" from the end of the present second sentence of that subsection, and deleted the language following "exemption claimed under this section" from the end of the fourth sentence of subsection (f).

The 1975 amendment, effective May 16, 1975, in subsection (f), divided the former second sentence into the present second and third sentences by substituting "The claimant" for "and" at the beginning of the present third sentence, added the language beginning "but during the same year" to the end of the second sentence, and added the present fifth sentence.

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

The second 1976 amendment, in subsection (e), deleted "After January 1, 1973" from the beginning of the first sentence, added the language beginning "up to and including an assessed value limit" to the end of that sentence, and added the former second sentence.

The third 1976 amendment, effective June 28, 1976, added the second sentence of subsection (g), added "Except as provided in (g) of this section," to the beginning of subsection (h), and deleted the former second sentence of subsection (h), which read "However, under (e) — (i) of this section only the amount of revenue lost to the municipality by reason of the exemption authorized in those provisions may be reimbursed to the municipality by the state."

The 1977 amendment, effective June 18, 1977, and retroactive to January 1, 1977, in subsection (e), deleted "up to and including an assessed value limit determined no later than January 15 of each year by the commissioner of the Department of Community and Regional Affairs" from the end of the first sentence and deleted the former second sentence, which read "The assessed value [illegible] that qualify [illegible] distribution of [illegible] 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. 12, 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. 1290 (File No. 2446), 553 P.2d 467 (1976).

Burden of showing eligibility for exemption. — A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2446), 553 P.2d 467 (1976).

Exclusive use for nonprofit religious, etc., purposes must be shown. In order to qualify for an exemption, the taxpayer must show not benefits, but exclusive use for nonprofit religious, charitable, cemetery, hospital or educational purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2446), 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. 1290 (File No. 2446), 553 P.2d 467 (1976).

Actual use rather than owner's use should be analyzed in determining eligibility for an exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2446), 553 P.2d 467 (1976).

Office space rented to doctors engaged in private practice. — Office space in a building partially used exclusively for nonprofit hospital purposes, rented to doctors engaged in the private practice of medicine by a nonprofit charitable and religious corporation, was not exempt from taxation. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2446), 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. 1290 (File No. 2446), 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 $3 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

~~(A) the household furniture over $500 in value and the effects of the head of a family or a householder; and~~

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

(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

P. 9 Sec.! All Boroughs + Cities exempt already all Household furnishings — so! want to just take out optional.

[illegible] mining claim. The assessed value of an unpatented unpatented mining claim which is not producing and a non-producing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or obsolescence, is [illegible] the assessed value of similar claims. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value. (§ 2 ch 118 SLA 1972)

29.53.030. Delete all.

Add: "Exempt" Property see Rest.

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.

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

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

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

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

The 1976 amendment, effective June 21, 1976, and retroactive to January 1, 1975, in subsection (a), substituted "uses incompatible with farm use" for "other than farm use purposes," "a use incompatible with farm use" for "nonfarm use" and "eight per cent" for "five per cent" in the third sentence, inserted "at the current mill levy" in that sentence, and added "for the preceding seven years" at the end of the fourth sentence.

The 1978 amendment substituted "May 15" for "February 1" in the first sentence of subsection (b).

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

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.56. (§ 2 ch 118 SLA 1972; am § 4 ch 1 FSSLA 1973; am § 5 ch 159 SLA 1975)

I wan'(1500)

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

— Per Jerry Earley
— Is required By Some other statute.
Steve Vanson
465-4730

§ 29.53.045 (New)

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

The 1975 amendment, effective June 26, 1975, in subsection (b), inserted "(1)," "upon values which," and "exceed" in both the first and second sentences, deleted "either (1)" preceding "$1,000" in those sentences, and added the fourth sentence.

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

Limitation on taxing power relates to use of revenue for ordinary municipal purposes.—The provisions of this section limiting the taxing power of the town to three per cent of the assessed valuation upon all property relate to the use of revenues for ordinary municipal purposes. Lund v. Town of Petersburg, 293 F. 893 (9th Cir. 1923).

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

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

The 1977 amendment, effective June 3, 1977, and retroactive to January 1, 1976, added "regardless of whether the bonds are in default or in danger of default" to the end of the section.

This section, literally read, does not render AS 29.53.045 and 29.53.050 meaningless. This section applies only to debt financing. The limitations of AS 29.53.045 and 29.53.050 apply to operating revenues. Merely because they do not also curb taxes to pay for bonds does not render them nugatory. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3441, 3442, 3450), 585 P.2d 534 (1978).

Conflicting legislative history of this section. — See North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3060, 3112, 3620), 585 P.2d 534 (1978).

Chapter 94, SLA 1977, relating to both state and local taxation does not violate Alaska Const., art. II, § 13, which requires every bill to be confined to one subject. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3060, 3112, 3620), 585 P.2d 534 (1978).

Authority to pay for municipal bonds. — This section and AS 29.53.045(a) authorize taxes to pay for municipal bonds, independent of the limitations of AS 29.53.045 or 29.53.050, and regardless of whether the bonds are in default or default is pending. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3060, 3112, 3620), 585 P.2d 534 (1978).

Alaska Statute 29.53.045 permits taxation of AS 43.56 property. — The last sentence of this section able to comprehend any limitations imposed by AS 29.53.045 but not the language which authorizes taxation of AS 43.56 property. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3060, 3112, 3620), 585 P.2d 534 (1978).

The second sentence of this section does contain independent authorizing language, "[t]axes . . . may be levied," but may not be construed as a grant to tax AS 43.56 property independent of the authority of AS 29.53.045(a) (as distinct from its limitations) because AS 43.56.010 and 43.56.010(b) provide that municipalities may tax AS 43.56 property only under AS 29.53.045. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3060, 3112, 3620), 585 P.2d 534 (1978).

value

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

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

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

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.
(am § 45 ch 53 SLA 1973; am § 1 ch 46 SLA 1974)

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

The 1974 amendment added subsection (c).

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

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

Legislative committee report. — For report on ch. 53, SLA 1973 (CSHB 842), see 1973 House Journal, pp. 783, 684.

Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

The borough assessor had the power to grant earthquake decrements. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1211), 473 P.2d 630 (1970).

Property was not entitled to an earthquake decrement for tax assessment purposes since there was an absence of evidence indicating that its market value was reduced. Hoblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Valuation of boats and vessels on the basis of registered or certified tonnage rather than full and true value does not limit the application of the full and true value as to boats and vessels. 1962 Op. Att'y Gen., No. 16.

Determining portion of property devoted to purposes of organization. — Determination of what portion of property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 372 (Sept., 1970).

Sec. 29.53.110. Assessment notice. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing. (§ 2 ch 118 SLA 1972)

Mandatory provisions of section not complied with. — Mandatory provisions of AS 29.53.110 and this section relating to assessment procedures were not complied with by the North Slope Borough. Such non-compliance is in violation of the rights of plaintiffs to due process in the levy of tax against them. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

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

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board. (§ 2 ch 118 SLA 1972)

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

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

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

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

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city. (§ 2 ch 118 SLA 1972)

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

Determining portion of property devoted to purposes of organization. — Determination of what portion of property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1978).

Applied in Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Quoted in Whaggenbar v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2-461, 534 P.2d 941 (1975).

Sec. 29.53.135. Board of equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, or it may delegate this authority to a board appointed by it for that purpose. The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business. The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance adopt rules for the membership and conduct of the board. (§ 2 ch 118 SLA 1972)

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

[illegible] assembly as administrative body. — When the borough assembly functions as a board of equalization or adjustment, it acts as an administrative, not a legislative, body. 1968 Op. Att'y Gen., No. 2.

When the borough assembly acts as an administrative body, whether as a board of equalization or adjustment, the weighted vote may not be used. 1968 Op. Att'y Gen., No. 2.

Board of equalization is administrative agency within meaning of Appellate Rule 6. — See Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 641 (1975).

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

(b) The appellant bears the burden of proof.

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

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

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

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

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

Clerical "AND"

Except as to Supplementary Assessments.

Scope of review. — The superior court will not substitute its judgment for the judgment of those upon whom the law confers the authority and duty to assess and levy taxes. The superior court is concerned with nothing less than fraud or the clear adoption of a fundamentally wrong principle of evaluation. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 1, p. 272 (Sept., 1970); Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 783 (1961).

When valuation or assessment violates due process.—The valuation and assessment of property for taxes does not contravene the due process clause of the 14th amendment unless it is plainly demonstrated that there is involved, not the exercise of the taxing power, but the exertion of a different and forbidden power, such as the confiscation of property. Such a demonstration is not made simply by showing overvaluation; there must be something which, in legal effect, is equivalent to an intention or fraudulent purpose to place an excessive valuation on property, and thus violate fundamental principles that safeguard the taxpayer's property rights. Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 783 (1961).

Broad reading of subsection (c) held unconstitutional. — A broad reading of subsection (c) to implicitly permit the jury to set the valuation of property by finding that the valuation set by the assessor is "excessive" or "improper" is violative of the doctrine of separation of powers, while a more limited reading of subsection (c) is constitutionally permissible. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 641 (1975).

Subsection (f) delegates to a jury the power previously held exclusively by the borough assembly. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 641 (1975).

There is no constitutional right to a trial by jury to determine proper tax assessments. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 641 (1975).

Proceedings to levy and collect taxes are

**Delete or PROVIDE NO JURY TRIAL - Table
"Extraordinary Writ. Rule" only.

PROVIDE

[illegible] Anchorage Area Borough, Sup. Ct. Op. No. [illegible] (File No. 2046, [illegible] P.2d [illegible] (1975).

Rights confirmed by subsection (d) are not preempted within the meaning of Appellate Rule 61. Wiregardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2046), 534 P.2d 541 (1975).

Taxes, powers reserved by Alaska Const., art. IV, §§ 1 and 16 not encroached on. — The right to jury review of municipal tax assessments does not encroach upon the judicial power reserved to the courts by Alaska Const., art. IV, §§ 1 and 16. Wiregardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2046), 534 P.2d 541 (1975).

Subsection (f) does not violate the constitutional principle of separation of powers. Wiregardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2046), 534 P.2d 541 (1975).

Proceeding on appeal is not new proceeding. — Subsection (f) speaks of an "appeal to the superior court" and gives an indication that this proceeding, even though authorized as de novo and by jury, constitutes a new proceeding. Wiregardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2046), 534 P.2d 541 (1975).

Though review resembles original proceeding. — De novo jury trial does expand judicial review beyond the limited scope associated with a classic appeal and features under subsection (f) the jury may disregard some of the findings of a board [illegible] proceeding, the review resembles an appeal pursuant to Wiregardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2046), 534 P.2d 541 (1975).

No right to fresh assessment of taxes on appeal. — Subsection (f) creates a taxpayer's right to have the judgment of a jury substituted for that of the borough assembly sitting as an over board of equalization. The right, however, is not to a fresh assessment of taxes of the property. Wiregardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2046), 534 P.2d 541 (1975).

But section (f) does not purport to authorize judicial formulation of general tax policies. It vests the courts to endorse, with the aid of a jury, only the traditional judicial task in the case of determining in particular instances whether policy to be followed in the assessment of taxes has been accurately applied. Wiregardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2046), 534 P.2d 541 (1975).

Contention that board cannot be administrative agency because its decisions are subject to judicial review under subsection (f) held without merit. — See Wiregardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2046), 534 P.2d 541 (1975).

Cited in Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-356 and C.A. Nos. 73-354 to 73-364 (1973).

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

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

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

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

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

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

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law. (§ 2 ch 118 SLA 1972)

Editor's note. — This section is based on former AS 29.10.397.

This section applies only to the tax year during which a disaster takes place. Rebish v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 686 (File No. 2146), 473 P.2d 689 (1970).

29.53.150.
Add the following sentence to this section:
"Any supplementary roll must be finalized and certified on or before September 1 of the assessment year."

29.53.155.
Insert new section:

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

Re. State assessor, he made final figures & Rev. Sharing and data matter By Oct. 1 - See would get supplemental Rolls in

* Need clarification

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

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

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

Effect of amendment. — The 1977 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted "At least" for "Not earlier than" at the beginning of the first sentence, substituted the language beginning "which a judgment of foreclosure has been taken and" for "whom a judgment of foreclosure has been taken" at the end of the fifth sentence, and inserted "and to the holder of a mortgage or recorded lien" in the seventh sentence. The amendment also added subsection (b).

Sec. 29.53.360. Deed to borough or city. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

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

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

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

Upon foreclosure, municipality receives new title to property, free from encumbrances. — The general rule in Alaska and the great majority of jurisdictions is that once a municipality forecloses on property for failure to pay taxes, it receives a new title to the property free from all encumbrances. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 843 (File No. 1438), 503 P.2d 1396 (1972).

And a buyer of the property at a subsequent tax sale receives a new, independent title and not that of the former owner. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 843 (File No. 1438), 503 P.2d 1396 (1972).

As a general rule the purchaser of property at a tax sale receives a new title free from all encumbrances. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 843 (File No. 1438), 503 P.2d 1396 (1972).

Unless the buyer is the owner. — An owner of property may not perfect his own title to property by failing to pay his taxes and either directly or indirectly repurchasing the property at a tax sale. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 843 (File No. 1438), 503 P.2d 1396 (1972).

It is the general rule that when the owner of record redeems or repurchases his property, his purchase merely operates as a payment of the taxes and he receives the same title he held before the municipality's foreclosure. He can not evade the purpose of this exception by allowing the property to be sold to a third person and then buying from him, or by any other arrangement which would directly or indirectly defeat the operation of the rule. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 843 (File No. 1438), 503 P.2d 1396 (1972).

[illegible] Jackson v. White.

Sec. 29.53.375. Proceeds of tax sale. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under § 350(a) of this chapter. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred. (§ 2 ch 118 SLA 1972; am § 7 ch 48 SLA 1977)

Sec. 29.53.385. Payment of taxes upon public utilization. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure. (§ 2 ch 118 SLA 1972)

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

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

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

Article 3. City Property Tax.

Sec. 29.53.400. Power of levy. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in § 170(a) of this chapter and is subject to §§ 10—25, 60—85 and 310—350 of this chapter. The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city. (§ 2 ch 118 SLA 1972; am § 5 ch 147 SLA 1972)

Effect of amendment. — The 1972 amendment, effective September 10, 1972, in the second sentence, inserted "shall be levied in the manner provided for borough levies in § 170(a) of this chapter and," inserted "10—25," and inserted "85."

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

SUMMARY OF COMMENTS BY
C. DEMING COWLES, DEPUTY COMMISSIONER
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
September 26, 1980

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

ACTIVITIES

The following activities are suitable for local assumption:

1. On-lot Inspections

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

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

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

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

2. Subdivision Review

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

3. Environmental Sanitation

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

4. Small Oil Spills

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

5. Surface Oiling and Oily Waste Burn Permits

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

6. Litter Control

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

7. Vehicular Emissions

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

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

ASSISTANCE

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

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

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

In the meantime, the following are already available:

1. Grants

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

2. Revenue Sharing

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

3. Technical Assistance

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

MEMORANDUM October 16, 1980

SUBJECT: A.F.N. Meeting

TO: Policy Advisory Group
Technical Committee
Title 29 Revision

FROM: Tamara Brandt Cook
Legislative Counsel

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

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

TBC:ljb

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

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

Note:

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

Tamara Brandt Cook

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

May 6, 1980

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

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

Dear Mr. Walleri:

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

CSLH

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

1. A mutual understanding of the definition of Indian country which reflects the federal law on the subject;

2. A cross-deputization agreement respecting tribal and state officials, including magistrates, constabulary and prosecutors;

3. An agreement respecting the regulatory authority of the State in Native villages, including planning, platting, zoning, taxing and other home-rule regulatory authority; and

4. Duration of such agreements.

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

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

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

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

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

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

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

> A license to trade is not required in Alaska. The Act of June 30, 1834, was not extended ex proprio vigore to the Territory upon its cession to the United States.
>
> The court, in United States v. Seveloff, in 1872, decided that this new possession was not Indian country, as defined and limited by the Trade and Intercourse Act. After this decision, on March 3, 1873, Congress extended to Alaska the provisions of Sections 21 and 22 of this statute relating principally to the interdiction of liquor traffic. The presumption seems clear that by singling out, mentioning, and extending two sections only, the intention of Congress was to withhold or exclude from the Territory all other sections of the Act. Apparently Alaska was intended to be considered "Indian country," in connection with Indian trade only to the extent of that specifically prohibited traffic. p. 350.

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

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

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

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

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

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

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

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

> property, without establishing any permanent racially defined institution, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States government and the State of Alaska;
>
> * * *
>
> [Emphasis supplied]

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

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

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

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

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

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

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

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Thomas E. Meacham
Assistant Attorney General

cc: Wilson Condon
Deputy Attorney General
AGO - Juneau

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3634

May 12, 1980

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

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

Dear Ms. Ulmer and Mr. Gilman:

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

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

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

The answer to both questions is a qualified yes.

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

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

I. Regulation of Oil and Gas Activities Conducted Pursuant to State Leases.

Home rule municipalities have broad constitutional authority to "exercise all legislative powers not prohibited by law or charter." Alaska Constitution, Article X, section 11. This authority is to be liberally construed. Alaska Constitution, Article X, section 1. The contours of this constitutional limitation have been addressed in a line of decisions of the Alaska Supreme Court. 2/ Those cases stand for the proposition that mere inconsistency with a state statute is not sufficient to invalidate a municipal ordinance as unconstitutional. In Jefferson v. State, 527 P.2d 37 (Alaska 1974), the court explained:

> The test we derive from Alaska's Constitutional provisions is one of prohibition, rather than traditional tests such as statewide versus local concerns. A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of authority has been prohibited

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2/ See, e.g., Wright v. Municipality of Anchorage, 590 P.2d 425 (Alaska 1979); City of Kodiak v. Jackson, 584 P.2d 1130 (Alaska 1978); DeHusson v. City of Anchorage, 583 P.2d 791 (Alaska 1978); Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978); Cremer v. Anchorage, 575 P.2d 306 (Alaska 1978); Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024 (Alaska 1976); State v. City of Petersburg, 538 P.2d 263 (Alaska 1975); Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970).

> to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantial effect if the other is to be accorded the weight of law.

527 P.2d at 43 (footnotes omitted). 3/ Jefferson plainly rejects a quantitive standard of conflict, which would look only to the actual terms of allegedly conflicting statutes and ordinances, in favor of a qualitative standard, which examines the impact of each upon the other's operation and purposes.

This approach was recently affirmed in Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978), which held that constitutional conflict exists "only where an ordinance substantially interferes with the effective functioning of a state statute or regulation or its underlying purpose." 584 P.2d at 1122. The exercise of local regulatory authority over hydrocarbon and mineral exploration and development must therefore be measured against all existing state statutes and regulations concerning that use. 4/ Where an express or implied prohibition is found, under Jefferson, or a substantial interference is found, under Liberati, the local ordinance must fall. If, on the other hand, there exists

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3/ Accord, DeHusson v. City of Anchorage, 583 P.2d 791 (Alaska 1978); Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024 (Alaska 1976).

4/ There is no prohibition against this regulation in the North Slope Borough charter. Each municipal charter will have to be examined for any prohibiting language.

neither prohibition, express or implied, nor a substantial interference, the local government ordinance may stand.

The first statute which must be scrutinized for a potential conflict with municipal oil and gas regulation is the Alaska Coastal Management Act (the act), AS 46.40.-010-.210, and its implementing regulations. It is this act which is the foundation for the enactment of local coastal management plans which, when approved by the Coastal Policy Council (Council) become part of the Alaska Coastal Management Program (ACMP). AS 46.40.010(c)(1). 5/ The act expressly prohibits council approval of a local coastal management plan which "arbitrarily restricts or excludes a use of state concern." AS 46.40.060(a). "Uses of state concern" include:

> (A) Use of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;
>
> (B) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal resource

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5/ A recent Attorney General Opinion concluded that State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980) has rendered void the legislative approval requirements for amendments to the ACMP, including local district programs, contained in AS 46.40.080. Op. Atty. Gen. April 29, 1980.

district;

(C) the siting of major energy facilities, activities pursuant to a state oil and gas lease, or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;

(D) facilities serving statewide or interregional transportation and communication needs; and

(E) uses in areas established as state parks or recreational areas under AS 41.20 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20. (am § 3 ch 129 SLA 1978.)

AS 46.40.210(6). 6/

6/ This section of the Alaska Coastal Management Act sets out priorites for consideration in each local plan but it does not establish a hierarchy among these priorities. If, for instance, a particular coastal management plan embraces a geographical area rich in fishery resources but is also proposed as the site of a coastal dependant energy facility likely to present issues of more than local significance, there is created a tension between two uses of state concern having equal stature.

The notion that Congress sought through the federal Coastal Zone Management Act, 16 U.S.C. § 1451 et seq. (CZMA) to require the states to give preference to energy facilities has been emphatically discarded in the recent Ninth Circuit decision in American Petroleum Institute v. Knecht, 609 F.2d 1307 (9th Cir. 1979). There, in a per curiam opinion, the court of appeals rejected a claim by the appellants that it was the intent of congress to induce the states to adopt coastal management plans which would include "explicit commitments" to energy facilities. Rather, the court concluded that the federal requirement that "adequate consideration" be

However, AS 46.40.070(c) provides that the council "shall approve a restriction or exclusion of state concern" if it finds that it is based upon (1) consultation with, and consideration of the views of, state, federal and regional agencies, (2) the availability of reasonable alternative sites, and (3) a showing that the proposed use of state concern is incompatible with the proposed site. Assuming that a municipality can demonstrate that any given restriction is not arbitrary by satisfaction of these three criteria, its local coastal program may properly restrict a use of state concern. To return to the example previously offered, 7/ a municipality exercising jurisdiction over an area for coastal management purposes may decide that preservation of a rich fishery is of paramount concern in its coastal management plan. In order to protect the fishery, the municipality adopts a coastal management plan which limits oil and gas exploration and development activities pursuant to a state lease. Under the Coastal Management Act, the council must

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6/ (continued)

given to energy facilities of national interest, 16 U.S.C. section 1455(c)(8), was designed to achieve "equitable balance", involving "consideration of the (federal) act's broader finding of a national interest in the . . . beneficial use, protection and development of the coastal zone . . . including the requirement of subsection 302(g) of the Act that "high priority" be given to the protection of natural systems." Id. at 1314. The ACMP, in tacit recognition of that principle requires adequate consideration of, rather than unilateral commitment to, any given use of state concern.

7/ See n. 6

approve such a plan, even though it restricts a use of state concern, as long as that restriction is not arbitrary. In order to demonstrate the reasonableness of the restriction, the municipality must show that it considered the views of appropriate federal, state and local agencies on the matter, that there are reasonably available alternative sites for exploration and development activities, and that the lease activities are incompatible with the maintenance of the fishery. This restriction is neither impliedly or expressly prohibited by the act, nor does it substantially interfere with the act. The act not only contemplates, but mandates, approval of such a local district program. AS 46.40.070(c).

To summarize, a municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c).

A similar analysis applies with reference to the Alaska Lands Act, AS 38.05.005-.370, which, inter alia, provides for the leasing of state lands for mineral extraction and concomitant uses, such as pipeline rights-of-way.

The leasing of lands in the coastal zone for exploration and development of oil and gas resources must, as with other state agencies actions, be accomplished in a manner which is harmonious with the ACMP.

State agencies may not authorize a use or activity in the coastal zone unless "the agency finds that the use or activity is consistent with the applicable district program and the standards [of the ACMP]." 6 AAC 80.010(b). 8/ Indeed, the legislative directive of the Alaska Lands Act to lease lands only after a finding that the "interests of the state will best be served," 9/ AS 38.05.35(a)(14), compliments the balancing of demands on coastal resources which is a linchpin of the ACMP. See AS 46.40.020. Statutes relating to the same subject matter should be read together as a whole in order that a total scheme emerges which preserves the integrity of each. This is particularly true where both can be harmonized to further a specific legislative policy: balanced use of natur-

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8/ Once land is leased and exploration for oil and gas commences, each lessee must secure a permit to drill any well. 11 AAC 22.005. The grant of such a permit is state agency action with the meaning of 6 AAC 80.010(b) and must therefore be conditioned upon compliance with the ACMP.

9/ AS 38.05.180(a) provides in pertinent part:

> (2) It is in the best interests of the state to encourage an assessment of its oil and gas resources and to allow the maximum flexibility

(continued)

al resources. Hafling v. Inland Boatmen's Union of Pacific, 585 P.2d 870, 878-79 (Alaska 1978).

Any local coastal management plan approved by the council is by definition based upon a balancing of all demands on land and water in the coastal zone. Therefore, properly drawn coastal management plan would not be in conflict with the Alaska Lands Act.

Finally, for the reasons stated above, the Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the ACMP. Conservation of these valuable resources is one of the objectives of the ACMP ("the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles", AS 46.40.020(3)), to be

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9/ (continued)

in the methods of issuing leases to:

> (a) recognize the many varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;
>
> (B) minimize the adverse impact of exploration, development, production, and transport activity.

balanced with other objectives of the act. As long as a local coastal plan achieves this balancing in a reasonable manner, no implied or express prohibition or substantial interference will exist between a local coastal management plan and the Oil and Gas Conservation Act.

To sum up, a local coastal management plan which does not arbitarily or unreasonably restrict or exclude oil and gas exploration and development is a constitutionally permissible exercise of municipal authority. The test for reasonableness of any restriction or exclusion is set forth in AS 46.40.070(c). If a local plan survives scrutiny under that test, it must be approved by the coastal policy council. Approved plans become part of the ACMP, AS 46.40.010(c)(1), and have equal dignity with other state statutes which will read in harmony with it. State, Dept. of Highways, v. Green, 586 P.2d 595 (Alaska 1978); Hafling v. Inland Boatmen's Union of Pacific, supra.

There is a very large caveat which accompanies this analysis. The state constitution mandates "the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people." Alaska Const., art. VIII, § 2. The determination of what constitutes this maximum benefit necessarily involves questions of basic policy formulation for the state. Swindel v. Kelly, 499 P.2d 291 (Alaska 1972); Kelly v. Zamarello, 486 P.2d 906

(Alaska 1971); Pan American Petroleum Corp. v. Shell Oil Co., 455 P.2d 12 (Alaska 1969). Reading AS 46.40.070(b) as vesting local officals with complete control over the basic policy formulation would probably render the act unconstitutional. Accordingly, it may not be read as authorizing a local permit system which would have the effect of overruling the state's basic policy formulation as to what use of its resources will provide the maximum benefit for all of the state's people.

B. Regulation of Oil and Gas Activities Conducted Pursuant to Federal Leases in the Coastal Zone.

The question of municipal authority to regulate exploration and development of oil and gas by federal lessees requires a somewhat different analysis. On-shore lands which are subject solely to the discretion of the federal government are excluded from the coastal zone as defined, section 304(1) of the federal act. 10/ In spite of the fact that the regulations implementing the federal act suggest that certain impacts from activities conducted on excluded federal lands may be regulated as part of a local

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10/ Sec. 304 reads:

(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes

(continued)

coastal management program, 11/ municipal regulation of federal lessees may be prohibited under the recent opinion in Ventura County v. Gulf Oil, 601 F.2d 1080 (9th Cir. 1979) summarily aff'd _____ U.S. _____, 48 USLW 3622 (April 1, 1980). There, the court of appeals concluded that in light of extensive federal regulation of the field, federal lessees could not be required to obtain a local zoning permit in order to drill a well.

The leases in question were granted under the Mineral Lands Leasing Act of 1920 which the court found to pre-empt local regulation "standing as an obstacle to the

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10/ (continued)

islands transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

11/ 15 CFR section 923.33(c) states:

> (c) Comment. The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that significantly affect coastal zone areas, uses or resources within the purview of a State's management program.

accomplishment and execution of the full purposes and objectives of Congress." 607 F. 2d at 1086. 12/ Apparently, the facts of that case did not call into question the effect of the federal CZMA, and, on that basis, it appears to be distinguishable.

Exploration, development and production plans for off-shore federal lands leased under the Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. Section 1331 et seq., are treated differently. They require state consistency determinations under the federal CZMA, section 307(c)(3)(B). That is, all federal license and permit activities described in detail in OCS plans and which affect the coastal zone must be conducted in a manner which is consistent with the Alaska Coastal Management program. See, 15 CFR 930.70. (The consistency determination is made by the Division of Policy, Development and Planning, within the Office of the Governor.)

12/ The State of Alaska joined in an amicus brief in the Supreme Court urging reversal of the Ninth Circuit's decision, protesting that "the decision below radically curtails traditional state power to secure the public interest, just at the time when burgeoning private development of public land resources is giving new urgency to that long established state and local role." Brief Amicus Curiae of the Western Governor's Policy Office (WESTPO) at 3.

It would therefore appear that reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the ACMP, would be enforceable against off-shore federal lessees. The doctrine of federal pre-emption, derived from the supremacy clause of the United State Constitution, Article VI, clause 2, would not apply to state regulation of OCS activities in the coastal zone. This appears from both the language of section 307(c)(3) of the federal CZMA and the legislative history of that act. 13/

In conclusion, municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal pre-emption may prohibit local coastal zone ordinances from affecting any measure

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13/ The senate committee report in support of the federal act expressly states that Congress did not intend to pre-empt state authority:

> There is no attempt to diminish state authority through federal pre-emption. The intent of this legislation is to enhance state authority by encouraging and assisting the states to assure planning and regulatory powers over their coastal zones.

S. Rep. No. 753, 92nd Cong., 2d Sess., reprinted in [1972] U.S. Code Cong. & Adm. News 4776.

of control. In the case of the latter, local coastal management programs which are approved by the council and thus part of the ACMP will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the CZMA. Of course, under the federal act, the Secretary of Commerce has the authority to override a state consistency determination on the basis of national security or a finding that the proposed activity is consistent with the federal act, section 307(c)(3)(B)(iii). A local permit system which seriously interfered with oil or gas production might be overridden.

II

A lease confers a property interest 14/ the diminution of which warrants protection under constitutional requirements of due process and equal protection, Nichols v. Eckert, 504 P.2d 1359 (Alaska 1973). A local district program which reasonably restricts oil and gas development may be administered through a permitting system as long as that system is itself reasonably drawn to achieve its legitimate ends. Kelly v. Zamarello, 486 P.2d 906 (Alaska

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14/ See, e.g., Union Oil Co. v. Morton, 512 F.2d 743 (9th Cir. 1975).

1974). The plan must be sufficiently specific to give notice of what it prohibits or conditions upon a permit, Herscher v. State, Dept. of Commerce 568 P.2d 996 (Alaska 1977), and sufficiently definite so that it does not confer unbridled discretion upon its administrator, Brown v. Municipality of Anchorage, 584 P.2d 35 (Alaska 1978). Any classification system established in the plan must be reasonable and not arbitrary: that is, it must rest upon some ground of difference which has a fair and substantial relationship to the object of the plan so that all applicants for permits who are similarly situated will be treated alike. Herscher v. State, supra.

In short, any permitting system to be valid must comport with fundamental constitutional requirements of due process and equal protection. In the absence of any existing plan to test against these principles, it can only be said that such scrutiny must await the submission of a specific permitting plan to the council.

AVRUM M. GROSS
ATTORNEY GENERAL

By: Madeleine R. Levy
Madeleine R. Levy
Assistant Attorney General

MRL/jb

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

420 "L" STREET, SUITE 100
ANCHORAGE, ALASKA 99501

May 21, 1980

The Honorable Ted Stevens
United States Senate
260 Russell Building
Washington, D.C. 20510

Re: State of Alaska's Objection
to Provisions of S. 1181
(Tribal-State Compact Bill)

Dear Senator Stevens:

On behalf of the Attorney General for the State of Alaska, I wish to register the strong objection of the State to certain provisions of S. 1181, which I have today learned is on the Senate's unanimous consent calendar. For the reasons which I will outline in this letter, we strongly urge that you seek to have this bill removed from the unanimous consent calendar and held over until the objections stated in this letter have been resolved.

The State of Alaska is certainly not opposed to the laudable objectives set forth in S. 1181 regarding jurisdictional agreements between states and Indian tribes. However, the state opposes the inclusion of Alaska Native vilaeges in the statutory definition of an "Indian tribe",

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and the implicit assumption in the bill that these village "tribes" are situated in "Indian country" within the State of Alaska. These concerns have been previously expressed by the state regarding pending congressional legislation, as the attachment to this letter demonstrates. I will briefly outline the state's position in the remainder of this letter.

With the exception of the Metlakatla Indian Reservation on Annette Island, Alaska has never been "Indian country", as that term is defined in 18 U.S.C. § 1151 (regarding criminal jurisdiction) or 28 U.S.C. § 1360 (with regard to civil actions). Thus, on its face, S. 1181, which is limited to agreements regarding civil or criminal jurisdiction over Indians "within Indian country" (Section 101 of the bill), would apply in Alaska only to the Metlakatla Indian Reservation on Annette Island. References to "Alaska Native villages" in the definition of an "Indian tribe" in Section 3(a) of the bill would achieve no legal purpose, because the Metalakatla Indian community was specifically excluded from coverage of the Alaska Native Claims Settlement Act by Section 19(a) of that Act (43 U.S.C. § 1618(a)); thus it is not an "Alaska Native village" mentioned in Section 3(c) of ANCSA (43 U.S.C. § 1602(c)) and defined therein as a "Native village". Therefore, on its face the bill's applicability only to "Indian country" and the definition of an "Indian tribe" as

including "Alaska Native villages" creates an inherent inconsistency, since the only "Indian country" in Alaska is not one of the Alaska Native villages defined in Section 3(c) of ANCSA or listed in Section 11 or 16 of ANCSA.

This inconsistency in the bill if allowed to remain, might in the future be interpreted as an instance of legislative misinformation or oversight, in which case the inconsistency might optimistically be termed "harmless". However, since judicial or administrative interpretations of congressional action as being mistaken or misinformed are strongly disfavored, it is the state's concern that, if S. 1181 remains in its present proposed form, unwarranted interpretations may be made that Congress, by this bill, has broadened the definition of "Indian country" with respect to Alaska, or has elevated Alaska Native villages named in ANCSA to "tribal" status, or both. Such interpretations, the state feels, are diametrically opposed to the purposes and structure of the Alaska Native Claims Settlement Act, and would thwart its successful implementation.

The Alaska Native Claims Settlement Act ("ANCSA") represents a congressional approach to the final settlement of Native claims of aboriginal title which is strikingly different from settlements (by treaty, allotments, reservations, etc.) in the remainder of the United States. Section 2(b) of ANCSA (43 U.S.C. § 1601(b)) states:

> Congress finds and declares that --
>
> * * *
>
> (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States government and the State of Alaska;

[Emphasis supplied]. Thus ANCSA specifically rejected the usual approach of creating "permanent racially-defined institutions, rights, privileges, or obligations," and furthermore rejected the implication of "creating a reservation system or lengthy wardship or trusteeship." The remainder of ANCSA consistently implements this congressional declaration of policy. For example, existing executive order or statutory reservations in Alaska, with the sole exception of the Metlakatla community, were specifically revoked by Section 19(a) of ANCSA (43 U.S.C. § 1618(a)), and the village corporations for the villages located within these former reservations were given the option of either obtaining title in fee to the former reservation lands, or selecting lands withdrawn under the formula applicable to all other Native village selections under Section 11(a) of ANCSA (43 U.S.C. § 1610).

Section 3(c) of ANSCA (43 U.S.C. § 1602(c)), defines a "Native village" for purposes of ANCSA as follows:

> "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in Sections 11 and 16 of this Act, or which meets the requirements of this Act, in which the Secretary determines was, on the 1970 census enumeration date . . . composed of twenty-five or more Natives;

ANCSA did not establish any "Native village" as a recognized "tribe, band, nation, or other group formally organized as such. Nor did ANCSA establish or attribute any powers of self-government to those Native villages defined in ANCSA and listed in Sections 11 and 16 (43 U.S.C. §§ 1610, 1615). The only criteria required to fit within the definition of "Native village" in ANCSA were that there be 25 or more persons, that they in fact be identifiable as a distinct group, and that they be Natives.

Certainly, some of the Native villages listed in Sections 11 and 16 of ANCSA had organized, prior to ANCSA, as IRA village councils under the Indian Reorganization Act (Wheeler-Howard Act, 25 U.S.C. § 473a). Such organization, if it had occurred, had no relationship to the later passage of ANCSA, and any councils so organized do not owe their identity to the definition of a "Native village" in Section 3 of ANCSA or their listing in Sections 11 or 16 of that

Act. If such councils do in fact possess powers of self-government today, they would fit within the definition of an "Indian tribe" in S. 1181 without regard to ANCSA.

The majority of the villages listed in Sections 11 and 16 of ANCSA did not possess any IRA council structure prior to ANCSA, and none has been created since (nor, the state would argue, could it lawfully be created after ANCSA). Even with regard to the villages which possessed some type of recognized IRA council prior to ANCSA, they did not possess tribal court and law enforcement powers, nor, after the revocation of reservations by Section 19 of ANCSA, do any remaining IRA village councils have defined jurisdictional boundaries or any "Indian country".

ANCSA left unclear what role, if any, former village IRA councils would have after implementation of the land and monetary grants made by the Settlement Act. It is clear, however, that no "Indian reservations" were created by ANCSA. The land conveyed to Native corporations is conveyed in fee, with no continuing trust responsibility or oversight by the United States. The Act does not restrict the village corporations' ability to sell that land, and it may be conveyed to third parties immediately upon its receipt from the United States. The land conveyed to Native village corporations will become fully taxable by state and local governments 20 years after the enactment of ANCSA.

Section 21(d) of ANCSA (43 U.S.C. § 1620(d)). In order to receive land and monetary benefits under ANCSA, each "Native village", as defined in Section 3(c) of ANCSA, was required to incorporate as a "Village corporation" pursuant to Section 3(j) of ANCSA (43 U.S.C. § 1602(j)). Each of the Native villages listed in the Act has in fact incorporated as a profit-making corporation under the laws of the State of Alaska. This status under state law does not carry with it any inherent powers of community self-government, such as taxation, law-enforcement, fish and game management, or other police powers attributable to representative government at the local or municipal level. In short, the Native village corporations receiving land and monetary benefits under ANCSA are private, profit-making corporations, and are neither recognized units of municipal government under state law, nor sovereign "tribes" or "nations" under federal law.

Therefore, the state strongly urges that the definition of "Indian tribe" set forth in Section 3(a) of S. 1181 be amended to delete the phrase "including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688-689)." If so amended, the bill will still apply to the single recognized Indian community in Alaska (Metlakatla) which is located

within "Indian country" and which has retained statutorily-recognized powers of self-government after enactment of ANCSA. It will also include any other Indian community (if indeed there are any) similarly situated. As amended, it would exclude those Alaska Native villages which, after passage of ANCSA, do not have recognized powers of self-government and are not located within "Indian country", and would avoid any implicit elevation of these villages and their village corporations to the status of 'Indian tribes", a result certainly disfavored by ANCSA.

For your information, I am enclosing a copy of a letter written by our office to Representative Don Young on September 12, 1978 discussing the implications of S. 2502, then pending in the House, with regard to the same subjects I have discussed in this letter. If I may be of further asssistance to you, please contact me at your convenience. My telephone number in Anchorage is (907) 276-3550. Thank you for your assistance in this matter.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:

Thomas E. Meacham
Assistant Attorney General

cc: Senator Gravel
Representative Young
Governor Hammond

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / FOURTH FLOOR - STATE CAPITOL

September 12, 1978

Honorable Donald E. Young
House of Representatives
1210 Longworth House Office Bldg.
Washington, D.C. 20515

Re: S. 2502 defining Alaska Native Villages as tribes.

Dear Representative Young:

I am writing to express the state's concern with a phrase in the definition section of S. 2502, "A bill to authorize States and Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country". I have discussed this concern with Lynn Ager of your staff several times over the last two weeks.

On its face, this bill appears to have little effect on Alaska since we have only one true "tribe" and very little "Indian country" in the state (i.e. Metlakatla). The bill is apparently offered primarily as a solution to recent problems concerning jurisdiction over management of fish and game on reservations in such states as Washington and Montana and in response to recent court decisions which have very little impact on Alaska.

Nonetheless, § 3(a) of the most recent committee print (dated July 24, 1978) contains the following definition:

> Sec. 3. For purposes of this Act:
> (a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community exercising powers of self-government which is recognized as eligible for services provided by the United States to Indians because of their status as Indians, [including any Alaska Native villages included in the Alaska Native Claims Settlement Act] (85 Stat. 688,697). (Emphasis added.)

This definition is nearly identical to the definition of

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the recent Indian Child Welfare Act of 1978, Pub. L. 95-1386. The appropriateness of those definitions is, of course, not at issue now. The state's present concern is that defining Indian tribes to include Alaska Native villages included in the Settlement Act, in this bill, is entirely inappropriate.

This bill is directed at tribes which have their own civil, criminal and regulatory laws as well as their own tribal court (Sec. 101 (a)(1)-(3)). The bill would authorize compacts between such tribes and states respecting jurisdiction and governmental operations in Indian country. The only such tribe in Alaska, is the Metlakatla Indian Community which occupies the only Indian country in the state.

Therefore, the state urges that every effort be made to delete the last phrase in the definition which refers to Settlement Act villages. Ironically, that phrase would seem to exclude the Metlakatla Indians, the only tribe in Alaska which could actually properly enter into a compact with the State of the type envisioned by the bill.

Even though the bill would not require the state to enter compacts with other village entities, the retention of the objectionable phrase in the definition would only serve to further confuse the status of the approximately 210 Alaska Native village corporations and the approxmiately 155 village councils (including approximately 90 "traditional" councils and approximately 65 "IRA" councils, under the Indian Reorganization Act, 48 Stat. 985). According to our Department of Community and Regional Affairs and the Tribal Operations Division of the Bureau of Indian Affairs Office in Juneau, Metlakatla is the only IRA council with a charter authorizing any true law making and enforcement powers. All the other councils essentially function only as providers of social services and administrators or conduits for welfare oriented programs and funds. Likewise, village corporations under the Settlement clearly have no "powers of self government".

The definition of "Indian tribe" in the bill, as written, would have serious implications for the implementation of the Settlement Act, and for the creation and subsequent authority of municipal governments under Alaska law in each of the villages eligible for benefits under that Act. In its broadest context, the bill would raise serious questions regarding the ability of the State of Alaska to exercise all of its tax and police powers, including law enforcement, fish and wildlife management, water and resource allocation, property and income taxation, licensing, and other functions inherent in the division of governmental power between the federal and state governments. This

[illegible] by virtue of 28 U.S.C. § 1360, et seq.

The bill, with the objectionable inclusion of Alaska Native villages, appears dangerously close to a de facto amendment of the Settlement Act to vest Alaska village corporations and/or councils with implicit federally established powers of self-government and federally "imposed immunity from the full range of inherent state government powers which apply uninformily to all other citizens, corporations, municipalities and communities. Indeed, a logical, though admittedly extreme, extension of the bill as written would be the establishment of 40 million acres of "Indian country" in Alaska.

We urge you to help prevent all these undesirably implications and confusion by making every effort to amend the bill by simply deleting the last phrase in Section 3(a). This minor change, while solving the state's problems with the bill, would not affect the accomplishment of its intent and purpose on reservations in the rest of the country and on Annette Island. It seems that curative action is easiest and most appropriate now, before the bill reaches the house floor.

Please contact me in Juneau (465-3684) or Douglas Riggs in Washington D.C. (624-5858) if we can provide any further information or assistance on this bill.

Thank you for your help and cooperation.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Peter B. Froehlich
Peter B. Froehlich
Assistant Attorney General

cc: Senator Gravel
Senator Stevens
Governor Hammond

PBF:ams

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

NOTICE OF MEETING
October 6, 1980

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

Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
Ron Larson, Mayor, Matanuska Susitna Borough
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Senator Bob Mulcahy, Kodiak
Senator Arliss Sturgulewski, Anchorage

The third meeting of the Policy Advisory Group is scheduled for 10 and 11 November 1980. The meeting will begin at 9:00 a.m. in the Chena Room of the Traveler's Inn, Fairbanks, Alaska. The proposed agenda for this meeting is:

November 10th:

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

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

3. Old Business:
   a. Report by Palmer McCarter on material prepared for newsletters.
   b. Report by Bob Lohr or Phil Smith on special problems of rural communities.
   c. Presentation of proposed drafts by the Technical Committee.
   d. Other old business.

4. New Business:
   a. Presentation of proposed items for consideration by members of the Policy Advisory Group.
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November 11th:

1. Introduction of guests and members of the public attending.
2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.
3. Other new business.
4. Setting of future meeting dates for the Policy Advisory Committee.

It is the intention of the Policy Advisory Group to undertake a thorough review of Title 29. To make this possible, the Policy Group requests that any questions about Title 29 be forwarded to them. Comments on Title 29 may be sent to:

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

As the review of Title 29 must be completed before the next legislative session, it is important that any suggestions for revision be mailed as soon as possible. It is hoped that all areas of Title 29 needing revision can be identified before this meeting.

Thank you for your interest in the revision of Title 29. Again, any comments on areas of Title 29 that, in your opinion, need review will be helpful to the Policy Advisory Group.

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Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

As the review of Title 29 must be completed before the next legislative session, it is important that any suggestions for revision be mailed as soon as possible. It is hoped that all areas of Title 29 needing revision can be identified before this meeting.

Thank you for your interest in the revision of Title 29. Again, any comments on areas of Title 29 that, in your opinion, need review will be helpful to the Policy Advisory Group.

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

Suggestions
received by
Leg. Affairs

9/17/80

9/17/80
JES:jes

SUGGESTED REVISIONS - TITLE 29

Sec. 29.28.140. Grounds (for recall)

This section differs from AS 15.45.510 which provides grounds for recall of State officials; there could be an argument made for consistency between the two:

Municipal grounds for recall AS 29.28.140	State grounds for recall AS 15.45.510
1) misconduct in office	1) lack of fitness
2) incompetence	2) incompetence
3) failure to perform prescribed duties	3) neglect of duties
	4) corruption

Sec. 29.28.150. Petition (for recall)

Should be rewritten to include a requirement of the name and office of the person (singular) to be recalled and a clarification that if more than one official is considered for recall a petition for each individual must be circulated.

Sec. 29.28.190. Submission (of recall petition)

The present wording is too vague with the use of the word "immediately" and should specify a specific time frame, i.e. 10 days

Sec. 29.48.035 (14). Regulatory powers (of municipalities)

"building, housing and related codes, which may be provided by cities within cities. . ." needs rewording (cities within its own boundaries?)

Sec. 29.48.037. Extraterritorial jurisdiction (of municipalities)

(b) states that a city can protect its watersheds and enforce such protection outside its boundaries ONLY upon the approval, by ordinance, of the municipality where the watersheds are located. This poses a problem when a city tries to exercise the protection of its water supply which lies outside the city limits but within the organized borough and where the borough is not actively involved in any such protection but refuses to allow the city to exercise such. If a borough has, in effect, veto power over the city's action in this regard, the borough government should be required to be actively involved in the exercise of such protected activity itself.

AS 29.33.070(b)

If a first class or home city is located more than 25 miles from the boundary of the borough seat, the planning, platting and zoning responsibilities within the city may be exercised by the city after a city ordinance providing for the exercise thereof is approved by a majority of the electors within the city voting on the question at a regular or special election.

or by Council ordinance

9/19/82

AS 29.48.050(d)

For purposes of AS 29.48.050 - .070 a public utility which is not regulated as to rates and services by the Alaska Public Utilities Commission shall not be considered as regulated by AS 42.05.

CITY OF UNALASKA
P.O. BOX 89
UNALASKA, ALASKA 99685
581-1251
"Capital of the Aleutians"

September 22, 1980

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Ms. Cook:

There are two aspects of Title 29 revision which I wish to comment upon.

First, I urge consideration be given to the American Law Institute's (1975) Model Land Development Code which represents a major improvement over the Hoover-era model upon which the present provisions of Title 29 governing the conduct of local planning are based. I particularly urge that the Code's recommendations concerning the division of responsibility between State and local planning responsibilities be considered.

Second, there are other statutes which can be interpreted to impose duties upon general purpose units of local government which are not specifically tied to Title 29. I have in mind, in particular, Chapter 35 of Title 46, the Alaska Coastal Management Program. This program and any similar program enacted in the attempt to attain consistency should be accompanied by a definitive tie to Title 29 which establishes an affirmative obligation on the part of local governments to exercise their substantive powers if this is the intent of the Legislature. Otherwise, Title 29 should indicate that it is the complete statement of the substantive duties and powers of municipalities.

Sincerely,

CITY OF UNALASKA PLANNING DEPARTMENT

/s/ Richard Careaga

Richard Careaga, AICP
Director

CITY OF NOME

P.O. BOX 281 - NOME, ALASKA 99762
TELEPHONE (907) 443-5242

September 22, 1980

Tamara Brandt Cook
Div. of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

Dear Ms. Cook:

RE: TITLE 29 Review

I have had one general problem with Title 29. As City Manager in Dillingham, Kodiak and now Nome, it seems obvious that Title 29 has been organized and written for governments who have an attorney that interprets each provision.

Many times one refers to Title 29 and needs an attorneys interpretation to understand what it means. This is not practical in a smaller city because of the cost and the amount of time it takes to get an opinion.

More specifically, I am referring to references to boroughs that apply to first class cities. This is very confusing because it's hard to understand when borough statutes apply. First class cities should be set out specifically to end the confusion.

There are a number of specific problems I'd like to bring to the Policy Advisory Groups attention.

29.28.040. Majority elections. The 40 per cent runoff election should be thoroughly considered if allowed to remain in the Statutes.

Article 3. Recall. These provisions should also be researched and grounds 29.28.140 should be made more clear.

Chapter 33. Areawide Borough Powers & Duties. 29.33.010 Scope. From this point on, Boroughs are given too much power. To be more specific, the fact that a borough plans for a city is a disaster in my experience. How can a city possibly exist as a city and not have control over its destiny? In Kodiak, while I was the manager, the Borough continually attempted to manage the City through its planning powers. This caused creation of service areas (another issue) and confusion where the City was to extend its services. City planning must be a responsibility of the government that

is going to implement the projects planned for. In the case of Kodiak, I personally had to attend each planning commission and assembly meeting to make certain the City's interests were considered. Since the City Council had no real influence over the assembly or the planning commission, it became an unbelievable political struggle that wound up in Court. In this case, the City's taxpayers footed the bill for both attorneys since the majority of the tax base was inside the City.

The conflict with the Borough and the City regarding Borough powers adjacent to a City is a similar issue. In the case of Kodiak, the Borough wanted to establish a water, sewer and road service area that would utilize the City's water and sewer system and possibly contract for road service. This was their attempt to stop the City from annexing an area immediately adjacent to the City that needed to do something about those services. The competing aspects of this caused undue hardship and strains on the political as well as the social systems on the island. As far as I was concerned, the whole problem was the result of Chapter 38. Borough Powers and Duties in the Area Outside Cities. This chapter actually allowed the establishment of another taxing entity that was going to increase the cost of services to the users in the service area. It also made it more difficult for the city to plan for use and expansion of its facilities and equipment.

The conflicts described above are in direct conflict with Article X, Local Government of the Constitution of the State of Alaska.

> Section 1. Purpose & Construction. The purpose of this article is to provide maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions.

If the system of using Boroughs is to continue and expand into the Unorganized Borough, then the items I have mentioned, plus others will have to be straightened out.

I believe that 29.48.150. Ordinance. Procedure should be redone to clarify the number of times an ordinance should be voted upon. The question has come up a number of times.

Thank you for the opportunity to make suggestions regarding the Title 29 revisions. I am quite interested in these items as well as what others are suggesting and would like to be kept fully informed as to the Groups deliberations.

Sincerely,

Ivan L. Widom

Ivan L. Widom
City Manager

cc: Mayor & City Council

For an Act entitled: "An Act relating to senior citizen exemption from motor vehicle property tax; and providing for an effective date."

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

* Section 1. AS 29.53.020(h) is amended to read:

(h) Except as provided in (g) of this section, nothing in (e) - <u>(1)</u> [(i)] of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

* Sec. 2. AS 29.53.020 is amended by adding new subsections to read:

(j) One motor vehicle owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax established under AS 28.10.431(b).

(k) The state shall pay a borough or city for tax revenues lost to it under (j) of this section. The payment shall be an amount equal to the tax levied under AS 28.10.431(b) for each vehicle for which a senior citizen exempt affidavit form, as prescribed by the Department of Public Safety, Division of Motor Vehicles, is submitted.

(l) The Department of Community and Regional Affairs shall adopt regulations to implement the provisions of (g), (j), and (k) of this section.

* Sec. 3. AS 29.10.411(d) is repealed.

* Sec. 4. This Act is retroactive to January 1, 1980.

Note: This replaces a suggestion already submitted to the policy group.

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

New Sec. #	Old Sec. #	Heading
29.03.000		CHAPTER 03. THE UNORGANIZED BOROUGH
29.03.010	29.03.010	ESTABLISHMENT
29.03.020	20.03.020	SERVICE AREAS
29.06.000		CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES
29.06.010	29.08.010	HOME RULE (80)
29.06.020	29.08.020	GENERAL LAW
29.06.030	29.08.030	CLASSES OF GENERAL LAW
29.06.040	29.08.040	RECLASSIFICATION
29.06.050	29.08.050	TRANSITION
29.09.000		CHAPTER 09. INCORPORATION
29.09.005		ARTICLE 1. REQUIREMENTS
29.09.010	29.18.011	INCORPORATION OF CITIES
29.09.020	29.18.021	LIMITATIONS ON INCORPORATION OF CITIES
29.09.030	29.18.030	ORGANIZED BOROUGHS
29.09.035		ARTICLE 2. PROCEDURES
29.09.060	29.18.050	PETITION (80S)
29.09.070	29.18.060	REVIEW
29.09.080	29.18.070	INVESTIGATION
29.09.090	29.18.080	REPORT AND HEARING
29.09.100	29.18.090	DECISION ON MUNICIPAL INCORPORATION
29.09.110	29.18.110	INCORPORATION ELECTION
29.09.120	29.18.120	ELECTION OF INITIAL OFFICERS
29.09.130	29.18.130	INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS
29.09.140	29.18.140	TRANSITION
29.09.150	29.18.150	CHALLENGE OF LEGALITY
29.09.155		ARTICLE 3. TRANSITIONAL ASSISTANCE

29.09.180	**29.18.180**	**ORGANIZATION GRANTS**
29.12.000		**CHAPTER 12. ALTERATION OF MUNICIPALITIES**
29.12.005		**ARTICLE NEW. CHANGE OF MUNICIPAL NAME**
29.12.010	29.73.050	CHANGE OF MUNICIPAL NAME
29.12.015		ARTICLE 2. ANNEXATION AND EXCLUSION
29.12.040	29.68.010	LOCAL BOUNDARY COMMISSION
29.12.050	29.68.020	ANNEXATION OF MILITARY RESERVATIONS
29.12.055		ARTICLE 3. MERGER AND CONSOLDIATION
29.12.080	29.68.030	METHODS OF MERGER OR CONSOLDIATION
29.12.090	29.68.040	PETITION
29.12.100	29.68.050	REVIEW
29.12.110	29.68.060	INVESTIGATION
29.12.120	29.68.070	REPORT AND HEARING
29.12.130	29.68.080	DECISION
29.12.140	29.68.090	ELECTION
29.12.150	29.68.100	ASSETS AND LIABILITIES
29.12.160	29.68.110	ORDINANCES
29.12.165		ARTICLE 4. UNIFICATION OF LOCAL GOVERNMENTS
29.12.190	29.68.240	UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED
29.12.200	29.68.250	UNIFICATION TO BE PROPOSED BY PETITION
29.12.210	29.68.260	PETITION REQUIREMENTS
29.12.220	29.68.270	REVIEW OF PETITION
29.12.230	29.68.280	CALL FOR CHARTER COMMISSSION NOMINATIONS
29.12.240	29.68.290	NOMINATION OF CHARTER COMMISSION CANDIDATES
29.12.250	29.68.300	QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES
29.12.260	29.68.310	COMPOSITION OF CHARTER COMMISSION

29.24.060	29.23.021	ASSEMBLY COMPOSITION AND APPORTIONMENT (80S)
29.24.070	29.23.023	COMPOSITION AND FORM OF REPRESENTATION (80)
29.24.080	29.23.025	ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT (80S)
29.24.090	29.23.027	APPORTIONMENT APPEALS (80)
29.24.100	29.23.029	APPORTIONMENT APPEALS (80)
29.24.110	29.23.031	EFFECTIVE DATE OF APPORTIONMENT (80)
29.24.120	29.23.033	APPLICABILITY OF APPORTIONMENT PROVISIONS (80)
29.24.130	29.23.040	REGULAR TERM OF OFFICE
29.24.140	29.23.050	QUALIFICATIONS
29.24.150	29.24.060	PROCEDURE (80)
29.24.160	29.23.70	DEPARTMENTS
29.24.170	29.23.080	ASSEMBLY VACANCIES
29.24.175		ARTICLE 3. BOROUGH EXECUTIVE AND ADMINISTRATOR
29.24.200	29.23.130	POWER GENERALLY (80S)
29.24.210	29.23.140	POWERS AND DUTIES OF BOROUGH ADMINISTRATOR
29.24.220	29.23.150	EXECUTIVE ABSENCE
29.24.230	29.23.160	ASSEMBLY PARTICIPATION
29.24.240	29.23.170	VETO
29.24.250	29.23.180	FILLING A VACANCY
29.24.255		ARTICLE 4. CITY COUNCIL
29.24.280	29.23.200	COMPOSITION, ELIGIBILITY, ELECTION & TERM
29.24.290	29.23.210	PROCEDURE (80S)
29.24.300	29.23.220	FILLING A VACANCY
29.24.305		ARTICLE 5. CITY EXECUTIVE AND ADMINISTRATOR
29.24.330	29.23.240	MAYOR
29.24.340	29.23.250	ELECTION AND TERM OF MAYOR

29.24.660	29.23.520	BONDING
29.24.670	29.23.530	SALARIES OF ELECTED OFFICERS
29.24.680	29.23.540	PROHIBITIONS
29.24.690	29.23.550	PERSONNEL SYSTEM
29.24.700	29.23.560	REPORTS (8CS)
29.24.710	29.23.570	VACANCIES
29.27.000		CHAPTER 27. MUNICIPAL ENACTMENTS
29.27.010	29.48.130	ACTS REQUIRED TO BE BY ORDINANCE
29.27.020	29.48.140	FORM OF ORDINANCES
29.27.030	29.48.150	ORDINANCE PROCEDURE
29.27.040	29.48.160	EMERGENCY ORDINANCES
29.27.050	29.48.170	CODES OF REGULATION
29.27.060	29.48.180	CODIFICATION
29.27.070	29.48.185	RESOLUTIONS
29.27.080	29.48.200	PENALTIES
29.30.000		CHAPTER 30. ELECTIONS
29.30.005		ARTICLE 1. REGULAR AND SPECIAL ELECTIONS
29.30.010	29.28.010	ADMINISTRATION
29.30.020	29.28.015	NOMINATIONS
29.30.030	29.28.020	ELECTION DATES
29.30.040	29.28.030	VOTER QUALIFICATION
29.30.050	29.28.040	MAJORITY ELECTIONS
29.30.060	29.28.050	ELECTION CONTEST AND APPEAL (80)
29.30.065		ARTICLE 2. INITIATIVE AND REFERENDUM
29.30.090	29.28.060	RESERVATION OF POWERS
29.30.100	29.28.062	PETITION
29.30.110	29.28.065	CONTENTS OF PETITION

29.30.120	29.28.070	REQUIRED SIGNATURES
29.30.130	29.28.073	SUFFICIENCY OF PETITION
29.30.140	29.28.075	PROTEST
29.30.150	29.28.077	NEW PETITION
29.30.160	29.28.080	PRESENTATION OF INITIATIVE
29.30.170	29.28.090	PRESENTATION OF REFERENDUM
29.30.180	29.28.110	EFFECT
29.30.185		ARTICLE 3. RECALL
29.30.210	29.28.130	RECALL
29.30.220	29.28.140	GROUNDS
29.30.230	29.28.150	PETITION
29.30.240	29.28.160	EXAMINATION FOR SUFFICIENCY
29.30.250	29.28.170	SUPPLEMENTAL PETITION
29.30.260	29.28.180	NEW PETITION
29.30.270	29.28.190	SUBMISSION
29.30.280	29.28.200	ELECTION
29.30.290	29.28.210	FORM OF RECALL BALLOTS
29.30.300	29.28.220	ELECTION PROCEDURE
29.30.310	29.28.230	MAJORITY REQUIRED
29.30.320	29.28.240	EFFECT
29.30.330	29.28.250	ELECTION OF SUCCESSOR
29.33.000		CHAPTER 33. POWERS AND DUTIES APPLICABLE TO HOME RULE AND GENERAL LAW MUNICIPALITIES
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29.33.040	29.48.270	EMERGENCY DISASTER POWERS
29.33.045		ARTICLE 2. FACILITIES SERVICES AND REGULATION
29.33.070	29.48.030	MUNICIPAL FACILITIES AND SERVICES
29.33.080	29.48.033	GARBAGE AND SOLID WASTE SERVICES
29.33.090	29.48.035	REGULATORY POWERS
29.33.100	29.48.040	MUNICIPALLY-OWNED UTILTIES
29.33.110	29.48.050	FRANCHISES AND PERMITS
29.33.120	29.33.280	INVESTIGATION
29.33.130	29.48.070	HEARING FOR REGULATION OF UTILITIES RATES
29.33.140	29.48.080	RIGHT TO PARTICIPATE AND COMPEL TESTIMONY
29.33.150	29.48.090	FURTHER PROCEEDINGS
29.33.160	29.48.100	APPLICATION
29.33.165		ARTICLE 3. FISCAL POWERS AND DUTIES
29.33.190	29.48.250	CENTRALIZED PURCHASING
29.33.200	29.48.260	MUNICIPAL PROPERTIES
29.33.210	29.48.190	BUDGET AND CAPITAL PROGRAM
29.33.220	29.48.210	EXPENDITURE OF BOROUGH REVENUE
29.33.230	29.48.220	POST AUDIT
29.33.235		ARTICLE 4. CONSTRUCTION OF POWERS
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29.36.000		CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES
29.36.005		ARTICLE 1. SCOPE
29.36.010	29.33.010	SCOPE OF AREAWIDE POWERS

29.36.015		ARTICLE 2. MANDATORY AREAWIDE POWERS AND DUTIES
29.36.040	29.33.050	EDUCATION
29.36.050	29.33.030	ASSESSMENT AND COLLECTION OF TAXES
29.36.060	NEW	PLANNING, PLATTING, AND ZONING
29.36.065		ARTICLE 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS
29.36.090	29.33.250	ADDITIONAL AREAWIDE POWERS
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29.36.130	29.33.290	ELECTION
29.36.135		ARTICLE 4. BOROUGH POWERS & DUTIES IN THE AREA OUTSIDE CITIES
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29.36.170	29.48.020	SECOND CLASS BOROUGH POWERS OUTSIDE CITIES
29.36.180	29.38.030	ADDITIONAL POWERS
29.36.190	29.38.040	INVESTIGATION
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29.36.205		ARTICLE 5. POWERS OF THIRD CLASS BOROUGHS
29.36.230	29.41.010	POWERS OF THIRD CLASS BOROUGHS
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29.36.245		ARTICLE 6. SERVICE AREAS
29.36.270	29.63.090	SERVICE AREAS
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29.39.020	29.43.020	ASSESSMENT AND TAX COLLECTION
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29.39.040	29.43.030	EDUCATION

29.45.020	29.73.070	TAXPAYER NOTICE (80)
29.45.030	29.53.020	REQUIRED EXEMPTIONS (80S)
29.45.040	29.73.060	PROPERTY TAX EQUIVALENCY PAYMENTS (80S)
29.45.050	29.53.025	OPTIONAL EXEMPTIONS AND EXCLUSIONS
29.45.060	29.53.030	MINING CLAIMS
29.45.070	29.53.035	FARM OR AGRICULTURAL LANDS
29.45.080	29.53.040	MOBILE HOMES
29.45.090	29.53.045	TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY
29.45.100	29.53.050	TAX LIMITATION
29.45.100	29.63.070	REASSESSMENT
29.45.110	29.53.055	NO LIMITATION ON TAXES TO PAY BONDS
29.45.120	29.53.060	FULL AND TRUE VALUE
29.45.130	29.53.070	RETURNS
29.45.140	29.53.080	INDEPENDENT INVESTIGATION
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29.45.160	29.53.095	REEVALUATION
29.45.170	29.53.100	ASSESSMENT ROLL
29.45.180	29.53.110	ASSESSMENT NOTICE
29.45.190	29.53.120	CORRECTIONS
29.45.200	29.53.130	APPEAL
29.45.210	29.53.135	BOARD OF EQUALIZATION
29.45.220	29.53.140	HEARING
29.45.230	29.53.150	SUPPLEMENTARY ASSESSMENT ROLLS
29.45.240	29.53.160	TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER
29.45.250	29.53.170	TAX LEVY AND RATE
29.45.260	29.53.180	RATES OF PENALTY AND INTEREST

29.45.265		ARTICLE 2. ENFORCEMENT OF TAX LIENS
29.45.290	29.53.200	VALIDITY
29.45.300	29.53.210	TAX LIABILITY
29.45.310	29.53.220	ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE
29.45.320	29.53.230	REAL PROPERTY TAX COLLECTION
29.45.330	29.53.240	FORECLOSURE LIST
29.45.340	29.53.250	CLEARING DELINQUENCIES
29.45.350	29.53.260	LIST TO LIENHOLDER
29.45.360	29.53.270	GENERAL FORECLOSURE
29.45.370	29.53.280	ANSWER AND OBJECTION
29.45.380	39.53.290	JUDGMENT
29.45.390	29.53.300	TRANSFER AND APPEAL
29.45.400	29.53.310	REDEMPTION PERIOD
29.45.410	29.53.320	EFFECT
29.45.420	29.53.330	ADDITIONAL LIENS
29.45.430	29.45.340	POSSESSION DURING REDEMPTION PERIOD
29.45.440	29.53.350	EXPIRATION
29.45.450	29.53.460	DEED TO BOROUGH OR CITY
29.45.460	29.53.370	DISPOSITION AND SALE OF FORECLOSED PROPERTIES
29.45.470	29.53.375	REPURCHASE BY RECORD OWNER
29.45.480	29.53.380	PROCEEDS OF TAX SALE
29.45.490	29.53.385	PAYMENT OF TAXES UPON PURLIC UTILIZATION
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29.45.505		ARTICLE 3. CITY PROPERTY TAX
29.45.530	29.53.400	POWER OF LEVY
29.45.540	29.53.410	LIMITED PROFERTY TAXING POWER FOR SECOND CLASS CITIES

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29.45.570	29.53.415	SALES AND USE TAX
29.45.580	29.53.420	REFERENDUM, ADOPTION, AND MODIFICATION
29.45.585		ARTICLE 5. CITY SALES AND USE TAXES
29.45.610	29.53.440	POWER OF LEVY
29.45.620	29.53.450	POWER OF LEVY AND COLLECTION
29.45.630	29.45.460	COMBINING SALES TAX WITH INCORPORATION
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29.48.020	29.63.015	PROCEDURE
29.48.030	29.63.020	DECISION AND NOTICE
29.48.040	29.63.025	RECORD OWNER
29.48.050	29.63.030	OBJECTIONS AND REVISION
29.48.060	29.63.040	ASSESSMENT ROLL
29.48.070	29.63.050	HEARING AND SETTLEMENT
29.48.080	29.63.060	PAYMENT
29.48.090	29.63.065	EXEMPTION
29.48.110	29.63.080	OBJECTION AND APPEAL
29.48.120	29.63.085	SPECIAL ASSESSMENT BONDS
29.51.000		CHAPTER 51. MUNICIPAL DEBT
29.51.005		ARTICLE 1. REVENUE ANTICIPATION NOTES
29.51.010	29.58.010	BORROWING IN ANTICIPATION OF REVENUE
29.51.020	29.58.020	ISSUANCE NOTES
29.51.030	29.58.040	ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS
29.51.040	29.58.050	PRIORITY OF REPAYMENT

29.51.050	29.58.060	SALE OF NOTES
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29.65.130	29.18.213	DEFINITIONS
29.68.000		CHAPTER 68. MUNICIPAL PROGRAMS

29.68.005		ARTICLE 1. INVOLVEMENT OF YOUNG PEOPLE IN LOCAL GOVERNMENT
29.68.010	29.23.395	INTENT OF AS 23.397-.401
29.68.020	29.23.397	COMMISSION
29.68.030	29.23.399	INTERNS
29.68.035		ARTICLE 2. HISTORICAL DISTRICTS
29.68.060	29.48.108	CREATION OF HISTORICAL DISTRICT COMMISSIONS
29.68.070	29.48.110	ESTABLISHMENT OF HISTORICAL DISTRICTS
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29.71.010	29.73.030	ADVERSE POSSESSION
29.71.020	29.73.040	TAXATION OF MUNICIPALITIES
29.71.030	29.78.010	DEFINITIONS

Agenda Sugge[illegible]tems
from the Title 29 [illegible]rking Group
to the Title 29 Policy Group

1. **Are unified municipalities home rule or general law? This needs to be clarified.**

2. **We recommend that AS 29.08.050 Transition be repealed as out of date.**

3. We recommend that the statute concerning REAAs be expanded to include procedures for integrating REAAs into newly organized boroughs.

4. AS 29.18.180. Organization Grants. The dollar amounts of the organizational grants are inadequate. We recommend the amount be tripled.

5. AS 29.68.290 Nomination of charter commission candidates. Should a legislative body be authorized to make appointements to the charter commission in case of vacancies on the commission because of a failure to elect enough people?

6. AS 29.68.440. Powers of a unified municipality. What is a unified municipality?

7. Should the percentage requirements for signatures on petitions be lowered?

8. AS 29.68.500 Methods of dissolution. The section regarding the methods of dissolution are confusing, in that the two methods outlined involve substantially the same processes.

9. AS 29.13.050 Initiative and Referendum. This section should be clarified so that Home Rule municipalities are not bound by the procedures set out in the statute.

10. We need a more precise way of dealing with inconsistencies between Home Rule and state enactments.

11. AS 29.13.100 Limitation of home rule powers. This "laundry list" of limitations on Home Rule needs to be reviewed. Should there be cross-referencing to the home rule provisions in other statutes?

12. Chapter 18. Development cities. The chapter on development cities should either be reviewed and improved or deleted.

13. Chapter 23. Municipal Officers and Employees. This chapter should have provisions for dealing with the public records of municipalities. Municipalities should have a public records policy such as "except as provided by ordinance, all records shall be public."

14. Should municipalities be allowed to set residency requirements for voters? Should the three year residency requirement for elected officials which municipalities are permitted to set be lowered to one year in view of Castner v. City of Homer, specifically upholding one year requirements?

15. We feel there should be alternate methods for majority requirements of the votes of municipal assemblies.

16. AS 29.23.021 Assembly composition and apportionment. We feel there should be a greater delineation between composition and reapportionment.

17. There should be provisions for emergency situations arising when there is a lack of a quorum.

18. AS 29.48.130 (a) This should be amended to make possible budget transfers and supplemental appropriations by resolution instead ordinance.

19. What should mayoral veto powers encompass?

20. How are planning responsibilities to be divided between cities and boroughs?

21. We recommend that the sections of chapter 23 dealing with the involvement of young people in local government be repealed.

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney

THRU: Marvin Yoder, 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.

A BILL

For an Act entitled: "An act providing for determination of full and and true value by the Department of Community and Regional Affairs; and providing for an effective date."

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

* Section 1. AS 29.53 is amended by adding a new section to read:

AS 29.53.190. Determination of full and true value by Department of Community and Regional Affairs. (a) The Department of Community and Regional Affairs, in consultation with the assessor for each district, shall determine the full value of the taxable real and personal property in each district. If there is no local assessor or current local assessment for a district, then the Department of Community and Regional Affairs shall make the determination of full value from information available. In making the determination, the Department of Community and Regional Affairs shall be guided by AS 29.53.060. The determination of full value shall be made before October 1. The Department shall notify all municipalities for which a determination is done of that determination by October 1. The governing body of the borough or city which is the district may obtain judicial review of the determination by filing a motion in the superior

court of the judicial district in which the district is located within 30 days after receipt of the determination. The superior court may modify the determination of the Department of Community and Regional Affairs only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

(b) Motor vehicles subject to the motor vehicle registration tax under AS 28.10.255 shall be treated as taxable property for purposes of (a) of this section.

(c) To determine the debt-to-valuation ratio to be applied to the determination of state aid for school construction under AS 43.18.105-43.18.135, the Department of Community and Regional Affairs, in consultation with the responsible financial officer of each municipality which is a school district, shall annually determine the debt of the municipality and report the determination to the mayor of the municipality and the commissioner of the Department of Education. The determination shall be made by October 1 of each year and shall report the outstanding debt as of July 1 each year.

* Sec. 2. AS 29.88.020(d) is amended to read:

(d) The full and true assessed property value shall be determined by the department in the manner provided under AS 29.53.190 [AS 14.17.140]. When the determination of locally generated revenue includes revenue of a utility received under AS 29.88.010(c)(1)(E), the full and true assessed property value shall include the computed assessed value of the utility,

taxes made by the utility by the millage rate which would apply to the utility if the utility were subject to levy and collection of taxes under AS 29.53.

* Sec. 3. AS 14.17.140 is repealed.

* Sec. 4. This Act takes effect January 1, 1982.

A BILL

For an Act entitled: "An Act requiring disclosure on a real estate conveyance".

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

* Section 1. AS 34.15.345 is amended to read:

AS 34.15.345. Disclosure of address of record purchaser and consideration. (a) A conveyance may not be accepted for recording unless the instrument shows the mailing address of the buyer.

(b) No instrument evidencing a sale of real property shall be accepted for recording unless the face of the instrument shows the selling price paid for the transfer.

* Sec. 2. AS 34.15.350 is amended by adding a new subsection to read:

(b) "Selling price" means the consideration, in money or any other thing of value, paid, delivered or contracted to be paid or delivered, in return for the transfer of real property, including but not limited to the amount of a lien, mortgage, contract, indebtedness or other encumbrance against the property.

A BILL

For an Act entitled: "An Act relating to assessments and exemptions from property taxation; and providing for an effective date."

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

* Section 1. AS 29.53.020(h) is amended to read:

(h) Except as provided in (g) of this section, nothing in (e) - (1) [(i)] of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

* Sec. 2. AS 29.53.020 is amended by adding new subsections to read:

(j) One motor vehicle owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax established under AS 28.10.431(b).

(k) The state shall reimburse a borough or city for tax revenues lost to it under (j) of this section.

(l) The Department of Community and Regional Affairs shall adopt regulations to implement the provisions of (g), (j), and (k) of this section.

* Sec. 3. AS 28.10.411(d) is repealed.

* Sec. 4. This Act is retroactive to January 1, 1981.

A BILL

For an Act entitled: "An Act relating to determination of full and true assessed value for municipalities."

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

*** Section 1. AS 29.88.020(e)(3) is amended to read:**

(3) all other second class cities, by comparision, on an individual city basis, with the most comparable cities [DETERMINING THE AVERAGE FULL AND TRUE ASSESSED PROPERTY VALUE OF ALL CITIES HAVING A POPULATION OF LESS THAN 750 PERSONS IN WHICH AN ASSESSMENT HAS BEEN COMPLETED BY A MUNICIPALITY OR] **for which a determination is [NOT] made** under (1) or (2) of this subsection. The department shall establish which cities are most comparable for purposes of the determination.

public funds aimed at economic development [illegible] burdening the public purse, or at the very least, merely transferring income burdens from one public agency (welfare) to another, rather than obtaining private means for achieving reductions in unemployment. Public investment in designated economic development projects should be directed primarily toward stimulating private investment, since the costs to society are lessened. Except for manpower training, transferring income burdens from a welfare agency to a social program budget generally results in zero benefits and non-zero costs. The net result is an additional and needless cost to society. Most of the key investment guidelines that are appropriate for publicly-supported commercial and industrial projects can be derived from this simple observation. ALNA's project appraisal criteria and process translates these guidelines into a workable and systematic format. The advantages of this appraisal process are that (1) it provides decision-makers the information needed to adequately assess differences between private and social returns to capital; (2) it provides the decision-maker with a common analytical framework so that valid comparisons among projects can be made; and (3) it provides for a common language among the actors in the economic development field. (This common language is no small matter. Decision-making will be less than adequate as long as decision-makers attribute different meanings to the words used among them).

PROJECT APPRAISAL AS AN INSTRUMENT OF ECONOMIC DEVELOPMENT POLICY

ALNA views the project as the basic unit of analysis of commercial and industrial development. Each project should pass nine feasibility tests in a specific order. Projects failing to pass a test in the designated sequences would not proceed to the next test. For example, under the alternative sequence below, a project which is not technically feasible would not be expected to be financially feasible. A project which is not financially and economically feasible would not be expected to impact on poverty, etc. Ordering the feasibility tests in this manner achieves the following: (1) it clearly distinguishes the trade-offs between the main elements of a project; (2) it assures a project being financially and economically feasible before consideration of its poverty impact; and (3) it saves time for the analyst or the decision-maker. The nine feasibility tests for judging the worth of any project are:

Technical Feasibility

The test of technical justification is passed if the project is physically capable of performing its intended function. The key components to technical justification are appropriate engineering design, appropriate market, appropriate management, appropriate location, and appropriate comparative advantage. A technical analysis would involve the types of analyses listed below:

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

August 5, 1980

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

Re: Senate C. R. 66

Dear Terry:

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

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

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

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

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

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

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

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

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

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

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

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

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

I guess that about covers it for now.

Very truly yours,

Dave

Dave Braden
Borough Assessor

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

DB/dg

Documentary Fee on Conveyances of Real Property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Any sheriff's deed;

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

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

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

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

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

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

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

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

(n) Any mineral deed or royalty deed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDINANCE NO. 80-35

AN ORDINANCE LIMITING PROPERTY TAXES TO FIVE MILLS

BE IT ORDAINED BY the Fairbanks North Star Borough Assembly that:

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

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

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

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

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

Harry Kleinman
Presiding Officer

ATTEST:

Clerk of the Assembly

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

August 15, 1980

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

Re: TITLE 29 REVISIONS

Dear Terry:

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

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

Sincerely,

Michael W. Worley
Director of Assessments
Ketchikan Gateway Borough

MWW/jfs

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

MEMORANDUM

TO: Russell W. Walker, Municipal Attorney

THRU: Judi Slajer, Borough Manager

FROM: Michael W. Worley, Director of Assessments

RE: Revisions to Title 29

DATE: August 14, 1980

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

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

Sec. 29.53.029. Required exemptions. (a) The following property is exempt from general taxation:

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

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

(Housekeeping)

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

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

(5) money on deposit;

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

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

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

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

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

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

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

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

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

(Housekeeping)

(e) After January 1, 1973 the real property owned and occupied as a permanent place of abode by a resident 65 years of age or over whose gross annual income totals less than $10,000 is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption; however, in the case of more than one party eligible for an exemption with

respect to the same property, the total combined gross annual income of the parties may not exceed $10,000. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560—44.62.570.

(f) No exemption may be granted except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought and must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section, and in that respect may as one form of proof require authorization from the taxpayer to verify gross income level by reference to gross income shown in the latest state income tax return available for all or part of the assessment year for which an exemption is sought.

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

(h) Nothing in (e)—(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in § 25 of this chapter. However, under (e)—(i) of this section only the amount of revenue lost to the municipality by reason of the exemption authorized in those provisions may be reimbursed to the municipality by the state.

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

History of section. — See City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

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

Intent of constitutional convention. —The constitutional convention intended that only so much of the property used for religious purposes as was being used to produce income should be taxable, that such other parts should be exempt, and that a proration between taxable and nontaxable parts should be made. 1962 Op. Att'y Gen., No. 15.

Purpose.—The purpose of this section is to encourage the establishment of privately supported nonprofit educational institutions; the motivation for their establishment is largely irrelevant. McKee v. Evans, Sup. Ct. Op. No. 740 (File No. 1382), 490 P.2d 1226 (1971).

under (e) of this section

tioned in this section, is not subject to valuation by first class cities for the purposes of AS 14.17.010 et seq., to the extent that it is exempt from taxation. 1962 Op. Att'y Gen., No. 18.

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

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

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

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

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

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

Sec. 29.53.025. Optional exemptions and exclusions. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) the household furniture over $500 in value and the effects of the head of a family or a householder; and

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

See § 29.53.020.(a)(2)

(Housekeeping)

(C) historic sites, buildings and monuments.

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

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

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

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

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

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

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

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

Sec. 29.53.030. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is fixed at $200 for each 20 acres or fraction of 20 acres. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value. (§ 2 ch 118 SLA 1972)

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

Sec. 29.53.110. Assessment notice. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing. (§ 2 ch 118 SLA 1972)

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

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board. (§ 2 ch 118 SLA 1972)

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

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

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

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

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city. (§ 2 ch 118 SLA 1972)

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

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

within 30 days of the effective date of the notice.

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

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

Sec. 29.53.135. Board of equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, or it may delegate this authority to a board appointed by it for that purpose. The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business. The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance adopt rules for the membership and conduct of the board. (§ 2 ch 118 SLA 1972)

not fewer than three members.

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

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

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

(b) The appellant bears the burden of proof.

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

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

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

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

Scope of review. — The superior court will not substitute its judgment for the judgment of those upon whom the law confers the authority and duty to assess and levy taxes. The superior court is concerned with nothing less than fraud or the clear adoption of a fundamentally wrong principle of evaluation. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970); Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 783 (1961).

When valuation or assessment violates due process.—The valuation and assessment of property for taxes does not contravene the due process clause of the 14th amendment unless it is plainly demonstrated that there is involved, not the exercise of the taxing power, but the exertion of a different and forbidden power, such as the confiscation of property. Such a demonstration is not made simply by showing overvaluation; there must be something which, in legal effect, is equivalent to an intention or fraudulent purpose to place an excessive valuation on property, and thus violate fundamental principles that safeguard the taxpayer's property rights. Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 783 (1961).

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

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

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

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

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

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

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

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law. (§ 2 ch 118 SLA 1972)

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

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

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

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

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

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

Sec. 29.53.380. Proceeds of tax sale. Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure. (§ 2 ch 118 SLA 1972)

Sec. 29.53.385. Payment of taxes upon public utilization. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure. (§ 2 ch 118 SLA 1972)

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

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

, or if in the absence of suit, the borough assembly determines that judgment for the recovery of the taxes would be obtained if legal proceedings were brought, the amount of the taxes shall be paid to the taxpayer

Article 3. City Property Tax.

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

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

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

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

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

The 1975 amendment, effective June 26, 1975, in subsection (b), inserted "(1)," "upon values which," and "exceed" in both the first and second sentences, deleted "either (1)" preceding "$1,000" in those sentences, and added the fourth sentence.

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

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

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

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

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Lee McAnerney
Commissioner

DATE: August 20, 1980

FILE NO:

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

TELEPHONE NO: 465-4750

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

SUBJECT: Title 29 Revisions

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

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

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

General Consideration

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

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

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

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

Chapter 18, Article 4-Development Cities

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

> The Development City law has been a failure. As of this date, this statute has been applied to only one area, notorious Lost River, and that project fizzled and then went "dud". A stunning indication of the value of the Development City law is found in the fact that it was substantially instigated, according to an Anchorage Times editorial (January 31, 1975), by the very group sponsoring its most egregious failure, Lost River.
>
> Once a petition is offered for development city, a great deal of State authority is set in motion, but no development city petitions other than Lost River have or will be forthcoming because development cities are usually undesirable or impractical public and private investments. Let me elaborate on this point.
>
> Building a community from scratch--and that is what a development city is essentially--is a very costly proposition to the public purse. The more costly it becomes, the more controversial and the less willing the State and public are to commit public funds to

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

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

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

The development city will not only be fiscally infeasible from the State's point of view, but also as a functioning municipality. Lost River, which should fairly well exemplify any new city built from the ground up in the hinterlands, was hardly an attractive prospect in the municipal bond market. Its assessed valuation was extremely low while required bonded indebtedness was astronomically high. Not
a good bond investment. Projected municipal expenditure for community development in Lost River was reported as extremely high due to the high construction and maintenance cost characteristic of bush Alaska. On the other hand, expected revenue was extremely

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

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

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

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

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

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

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

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

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

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

Chapter 33, Article 4-Planning, Platting and Zoning

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

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

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

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

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

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

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

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

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

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

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

> Section 29.33. . The assembly or council may adopt regulations and procedures for the summary approval of short plats and short subdivisions or revisions thereof. Such regulations shall be adopted by ordinance and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filling of the short plat for record in the office of the recorder: provided, that regulations shall contain a requirement that land in short subdivisions may not be further divided in any manner [within a period of five years] without filing of a final plat.
>
> Section 29.33. . Definitions 1) "Short subdivision" is the division of land into four or less lots, tracts, parcels, sites, or subdivisions for the purpose of sale or lease. 2) "Short plat" is the map or representation of a short subdivision.

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

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

Chapter 41-Powers of Third Class Boroughs

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

The last sentance of paragraph (a) of Section 29.41.010 states that: "Area wide excerise of powers other than education and tax assessments and collection is not authorized." Paragraph (b) states that a third class borough may, under certain circumstances, excerise any power excerised by a third class borough but only on a service area basis. Are third class boroughs prohibited, except on a service area basis, from:

aquiring, using, and disposing of real property; the power to sue and be sued; or the power to expend funds for the good of the municipality? The literal application of section 29.41.010 would seem to limit the excerise of these and other general municipal powers to service areas created especially for the purpose.

Chapter 48 Article I-General Powers

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

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

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

Chapter 48 Article 4-Miscellaneous Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 78 General Provisions

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

Index

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

cc: Veronica Clark

OFFICE OF ADMINISTRATION
September 3, 1980

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

Dear Mr. Earley:

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

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

Thank you for your consideration.

Sincerely,

CITY OF VALDEZ, ALASKA

Mark Lewis
City Manager

P. O. BOX 307 . . . VALDEZ, ALASKA 99686 . . . TELEPHONE (907) 835-4313

TITLE 29 REVISION COMMITTEE
Policy Advisory Group Meeting

Minutes of August 27 & 28 1980

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

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

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

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

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

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

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

1. The first section to be general provisions applying to all local government.
2. The second section to be delineation of procedures and additional limits on specific forms of government.
3. The third section to be directory provisions to be used unless the local government adopts ordinances of their own.

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

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

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

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

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

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

The meeting recessed at 4:00 pm.

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

Ted Berns gave a recap of the first days meeting.

Terry Cook was appointed repository of ridiculous laws.

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

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

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

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

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

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

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

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

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

The meeting was adjourned at 12:00 pm.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse

P.O. BOX 87 MCGRATH, 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, Shageluk and Grayling which are all in the Iditarod Area School District, REAA 11, will now receive there 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
City Administrator

8/29/80 Admiral Bob Leonard hand to committee → Jan Cooke – Please copy AS 29 Remain. committee will et- + Dept H SS + Fran Ulmer

HOME PHONE [illegible]

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 sporatic 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

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

DATE: August 14, 1980

FILE NO:

TELEPHONE NO:

FROM: Ernst W. Mueller
Commissioner
Department of Environmental
Conservation

SUBJECT: Designation of "Village"

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

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

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

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

cc: Tim Bergin

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney

THRU: Judith Slajer, Borough Manager*

FROM: Kathryn Carssow, Planning Director

DATE: August 14, 1980

RE: A.S. 29.63.090, Service Area

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

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

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

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

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

*(Judi: Please note your comments.)

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

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

July 31, 1980

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

Re: Title 29 Review

Dear Ginny:

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

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

Yours very truly,

Russell W. Walker

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure

cc: Borough Manager
City Manager

1. AS 29.40.037 - Extraterritorial Jurisdiction:

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

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

2. AS 29.53.135 - Board of Equalization:

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

3. Interest Rate:

The legal rate of interest now provided for in various tax enforcement provisions is eight (8%) percent.[1] Consideration should be given as to whether this rate should be increased. Also, interest rate on special assessments [AS 29.63.060(a)] is linked to the interest on real property taxes.

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

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

---

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

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

7. Implementation of Grants:

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

6. AS 29.33 - Planning, Platting and Zoning:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. AS 29.53 - Corrections, Cancellations, Refunds and Transfers of Taxes. Add sections to provide procedures for correction of tax roll, refund or cancellation of taxes after confirmation and certification of final tax roll when required to correct clerical or mathematical errors, assessment of non-existent property, errors in legal description, or other administrative problems. AS 29.53.-390 does not accommodate the foregoing.

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

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Judith Slajer, Borough Manager

FROM: Kathryn Carssow, Planning Director

DATE: July 22, 1980

RE: Title 29 Revisions

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

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

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

2. Section 29.33.090. Zoning. We intend to do additional research on this section. Our concern is that performance zoning may not be allowed under this section.
   AS 29.33.090 states in part "The assembly shall regulate... use of land...by districts or contract zoning." Contract zoning being a hybrid of a district (Euclidean) type zoning. Many performance systems do not employ districting as a control element. Therefore present state law may not include enabling language for other than land use controls based on traditional Euclidean zoning.

3. Section 29.33.150. Platting jurisdiction and power. (b)...the platting board (may not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat) must approve the subdivision plat if the plat meets all local platting regulations other than those requiring the construction of roads or capital improvements on state land included in the subdivision plat. Subdivision plats of undeveloped state land for disposal shall be accompanied by engineering plans for all improvements required by local regulations applicable to the subdivision of private land.

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

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

   This section needs language to distinguish plat alterations from subdivisions.

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

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

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

   (1) each tract or parcel of land will be located on or have (adequate access to a) developed road access to a public highway or street;...

   (3) the conveyance is not made for the purpose of, or in connection with, a present (or projected) subdivision development;

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

wr

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Judith Slajer, Borough Manager

THRU: Kathryn Carssow, Planning Director

FROM: Jim Rapp, Zoning Administrator

DATE: January 15, 1980

RE: Feasibility of Shortened Plat Procedure

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

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

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

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

wr

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

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

Attachment: Site Plan

TO: Kathy Carrsow, Planning Director

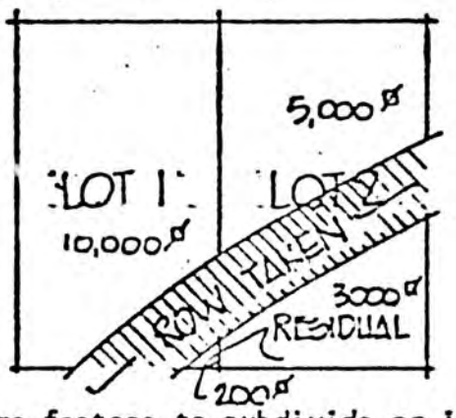
FROM: Bill Jones, Associate Planner

DATE: July 17, 1980

RE: Title 29

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

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



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

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

Can I sell it to someone else ?

Just what can I do with it ?

Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

June 12, 1980

TO: Mr. Billy Barrier
FROM: Marjorie Gorsuch mg
RE: FCCSHB947

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

Section 9 AS 29.23.025 (e) outlines the procedures to be followed if a reapportionment ordinance has not been approved by the voters after the assembly has determined that reapportionment is necessary. The law does not address what happens to the order--is it voted on by the people? Can the order be appealed? Is administrative or judicial review provided for?

In Section 29.23.029 and Section 29.23.031 there should be additional statutory references providing for judicial review and relief in all applicable instances and referencing all applicable voter approved ordinances and reapportionment orders under Sec. 031.

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

More grist for the Title 29 mill:

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

(1) AS 29.28.190, recall provisions --

Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain

(2) AS 29.63.090 -- service areas within boroughs

The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.

General observation with respect to Title 29 -- would like greater information within the text of the ~~statute~~ volume. (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.)

8/7 JC

Tanana Chiefs Conference, Inc.

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

August 1, 1980

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

Dear Commissioner McAnerney:

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

RECOGNITION OF TRADITIONAL GOVERNMENTS

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

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

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

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

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

DECENTRALIZATION OF STATE SERVICES

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

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

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

LOCAL GOVERNMENT CONSORTIUMS

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

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

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

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

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

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

STATE SUPPORT OF LOCAL AUTHORITY

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

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

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

IMPLEMENTATION OF LOCAL INPUT

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

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

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

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

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

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. Williams

William C. "Spud" Williams
President

WCW/4877m
113a11

AREAS OF AS 29 (MUNICIPAL CODE) REQUIRING ATTENTION

DICTATED 7/29/80 BUT NOT READ

BY GERALD L. SHARP

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

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

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

AS 29.08.020

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

AS 29.13.100

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

AS 29.18.130

We should probably address REAA's under this section.

AS 29.18.140(a)(b)

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

AS 29.18.180

Organizational grants under this section appear to be inadequate.

AS 29.18.330

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

AS 29.23.060(a)

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

AS 29.23.060(d)

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

AS 29.23.070

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

AS 29.23.080

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

AS 29.23.040 et. seq.

The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualifications of officers as these relate to the mayor, council, and assembly memebers 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 incompass any land which the municipality disposes of.

AS 29.48.270(b)(c)

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

AS 29.48.310, 320, and 330

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

AS 29.53.010

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

AS 29.53.020(a)(1)

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

AS 29.53.020(a)(3)

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

AS 29.53.030

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

AS 29.53.060

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

AS 29.53.135

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

AS 29.53.150

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

AS 29.53.180

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

AS 29.53.415 and .440

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

AS 29.73.020

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

Matanuska-Susitna Borough
BOX B, PALMER, ALASKA 99645 • PHONE 745-3246
BOROUGH ATTORNEY'S OFFICE

July 30, 1980

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

Dear Commissioner McAnerney:

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

Cordially,

Allan E. Tesche
Borough Attorney

er

Enclosure

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 vetos 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 [illegible] though such lands were illegally subdivided in violation of AS [illegible].

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, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very lease 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 lanc 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 99658

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 though lengthy procedures to ammend 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 orignial 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

Proposed Agenda

The proposed agenda for the meeting is:

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

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

1. AS 29.03.210 - .240 - (M) July 3, 1979
Vacation of a state easement across state-owned land does not constitute "disposal of an interest in land" and strict statutory requirements of notice for disposals of state land are not required. Notice required by due process are fulfilled by the notice procedures set when the state is acting as a platting authority in the unorganized borough and in third class boroughs under AS 40.15.075.

2. AS 29.13.010, 29.53.055 - (O) August 29, 1978
A strict tax-limit ordinance conflicts with state law and is void. An ordinance which, without exception, limits property tax rates would impair the obligation of contracts.

3. AS 29.13.100 - (M) July 10, 1978
Home rule boroughs are not precluded from establishing their own postsecondary educational institution which is independent of the University of Alaska.

4. AS 29.13.100, 29.48.037 - (O) May 5, 1977
Because AS 29.48.037 is identified by AS 29.13.100 as among those provisions which a home rule municipality may not provide to the contrary, it is exclusive and no additional services may be provided or jurisdiction exercised extraterritorially by any municipality. Only the matters provided for in AS 29.48.037 are within a municipality's power and it may not levy an extraterritorial tax. Insofar as revenue sharing is available for providing a serive or facility identified in AS 29.48.037, a municipality providing the service or facility extraterritorially should qualify. Ownership of the situs of the facility should have no effect except insofar as a provision on revenue sharing may contemplate ownership as a condition of eligibility. If a municipality operates a park, it makes no difference that it is on federally owned land.

5. AS 29.13.100, 29.53.035 - (O) May 19, 1972
Farm lands must be assessed at their value for farm use only.

6. AS 29.18 - (M) July 27, 1979
The Department of Natural Resources may not grant municiapl and ANCSA selections of state land within the capital site at Willow.

7. AS 29.18.180, 29.18.200-.460 - (M) February 22, 1978
Development cities are not entitled to an organization grant, only to land (AS 29.18.420) and to shared revenue (AS 29.18.440).

8. AS 29.18.190 - (M) February 14, 1974
Lands leased for oil and gas are not vacant for municipal selection. Lands classified "resource management" are appropriated and removed from municipal selection.

9. AS 29.18.201 et seq. - (M) May 22, 1979
The Department of Natural Resources should not put land selected by municipalities or by Cook Inlet Regional Corp. into the land disposal bank even though there is insufficient state land available to meet the acreage limits suggested by the letter of intent accompanying the provision creating the land disposal bank.

10. AS 29.18.201 et seq. (M) May 18, 1979
The Department of Natural Resources is obligated to approve and convey leased land which has been selected by a unified municipality prior to July1, 1979, the effective date of the act changing this obligation.

11. AS 29.18.202 - (M) October 19, 1978
The director of the Division of Lands may use AS 38.053.315 to do substantial equity for municipalities which do not contain "vacant, unappropriated, unreserved general grant land" for purposes of municipal selection. Mental health lands are not "general grant lands" for purposes of municipal selection.

12. AS 29.18.205(e) - (M) December 15, 1978
A nomination of land for selection by a municipality segregates it from homestead appropriation. (Interpretation of the Alaska Homestead Act.)

13. AS 29.28.030 - (M) December 15, 1978
Re-registration in a new municipality is not required before a person may vote in the municipal elections. The statute requires only 30 days residency and registration to vote in state elections.

14. AS 29.18.213(12) - (M) June 20, 1979
Kodiak Borough selections of land classified as timber land on Shutak Island should not be approved. Timber land is not "vacant, unappropriated, unreserved land" unless classified in accordance with an agreement between a municipality and the state providing for state management of municipal land.

15. AS 29.18.340, 29.23.555 - (O) September 27, 1972
A conflict of interest would arise in the event that a state employee who serves as a member of a Development City Council should also have a stock interest in the major development company.

16. AS 29.18.360, .460, 29.33.010(b), .050, .070 - (M) April 6, 1978
A development city, during its development stage, could take over planning and zoning under AS 29.33.080 from the borough, though it need not do so. An organized borough retains full authority over any schools. It is the borough, and not the development city, which must develop and adopt the district coastal management program, however, the development city's plan must be considered by the borough when it develops and adopts the coastal management program.

17. AS 29.23.020 - (M) November 6, 1978
Re-apportionment must occur when the existing apportionment does not meet equal protection (one-man, one-vote) standards. Redistribution of voting power among the existing membership (weighted voting) does not meet re-apportionment requirements for borough assemblies.

18. AS 29.23.020 - (O) February 25, 1974
The municipal code, not AS 14.12.030(a), governs the size of assembly-school boards in third class boroughs. Localities were intended to have broad latitute in determining the composition of their assemblies and the narrow restrictions on size of school boards ought not to be applied where the assembly also serves as school board.

19. **AS 29.23.020(a) - (O) February 9, 1973**
Inclusion of non-resident military personnel and dependents in the population base for purposes of apportioning representation on a borough assembly is not constitutionally required.

20. **AS 29.23.021 - (M) March 21, 1980**
Apportionment plan may provide for district-at-large representation absent an attempt to underrepresent a racial or political minority.

21. **AS 29.23.021 - (M) March 20, 1980**
Weighted or fractional voting is not a constitutionally valid method of reapportionment.

22. AS 29.23.100 - (O) October 31, 1974
School boards must be elected at large rather than from zones. (Incorrect - see (O) Aug. 29, 1977)

23. AS 29.23.170(a) - (O) May 2, 1977
The mayor may veto the "local source" resolution but he may not exercise an item veto upon it (or the subdequent appropriation) to strike or to reduce any of its items. The item veto is to be used solely on appropriations and my not be used on school budget "items." The "local source" resolution (setting the total amount of local money to be used to finance schools) is not itself an appropriation but rather sets the limit and advises school officials of it. A subsequent enactment makes the appropriation.

24. AS 29.23.310 - (O) August 29, 1977
Borough school board members may be elected from zones, but they must be elected only at-large from zones (while they represent the zone in which they reside, they are responsible to the entire borough electorate).

25. AS 29.28 - (O) June 6, 1977
Inaccuracy of recall petition's allegations is not concern of election officials or the courts and is irrelevant. The only question to be decided is whether or not the charges are sufficiently specific to allege incompetence or misfeasance if they were in fact true.

26. AS 29.28.140, .150(a) - (O) April 12, 1977
Recall petitions must allege specific instance of misconduct, incompetence, or failure to perform prescribed duties. Voters alone determine merits of recall petitions.

26. AS 29,23.010(b), 29.58.340 - (M) January 24, 1980
A power becomes areawide with respect to a borough and any city within it upon the duly authorized transfer of the power from the city to the borough. With respect to a city in the borough which did not transfer the same power, it is not areawide. A city which has transferred a power is not prohibited from exercising that power if the borough failed to do so.

27. AS 29.33.150 - (O) March 24, 1980
State subdivision legislation does not pre-empt local zoning of post-sale private development. A municipality may not disapprove a state subdivision plat, or prevent the sale of lots in that subdivision, based upon the fact that the land is not residentially zoned by the municipality. In the platting process, the municipality may attach

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

28. AS 29.33.150 - (M) January 21, 1980
A borough cannot require the state to do the following work in relation to a subdivision of state land: 1. define transportation corridors to be utilized for access to subdivisions; 2. analyze defined transportation corridors as to grade and soils to insure the feasibility of borough standard road contruction; 3. in all areas in the subdivision proposal where existing grades indicate potential problems, submit proposed road plans and profiles to the satisfaction of the engineering department.

29. AS 29.33.250 - .290, 29.38.020 - .030 - (M) July 26, 1979
While a first class or home rule borough can acquire additional areawide powers merely by transfer from the city, a second class borough can do so only with respect to powers which it has already acquired to be exercised in the area outside cities. That requires an election in most instances.

30. AS 29.33.010(b), .260(b), .290(c) - (M) January 24, 1980
The borough is under a duty to exercise the powers which are transferred to it when it approved the transfer. City ordinances become borough ordinances and the borough has a duty to enforce them until they are repealed or amended by the borough assembly. A city may no longer exercise power transferred to the borough, except that a city may exercise a power which is not being exercised by the borough.

31. AS 29.33.290, .360, .550 - (M) April 20, 1979
A general law municipality may not provide by ordinance for the powers to confirm appointments, suspensions, and discharges of municipal officers and employees to be extended to include more than is prescribed by the Municipal Code.

32. AS 29.33.290, 29.48.030 - (M) February 6, 1979
No authority exists for a borough to divest itself of an areawide power and thereby restoreit to a city from which it was previously transferred. Cities may presumably act as agents or contractors of the borough for carrying out its exercise of the power.

33. AS 29.33.290(c) - (O) - March 5, 1973
North Star Borough succeeds to Fairbank's interest in Alaska land notwithstanding statutory conditions on forgiving the loan by the State Bond Committee

34. AS 29.41 - (M) January 6, 1977
Third class boroughs are nothing more than school districts.

35. AS 29.43.020, 29.48.010(7), 29.53.415(a), .440, .450 - (M) January 9, 1980
The limitation placed on a borough's sales tax is three percent. A bed tax on hotel occupants should be considered a sales tax subject to the limitation.

36. AS 29.48.010, .440 - (O) August 14, 1979
A city of any class has the power to levy and collect sales taxes. Sale of utility services is a sale for sales tax purposes. Public utility cooperatives are exempt from all local sales and use taxes however. No local tax upon a utility company can be passed on to utility subscribers outside the local unit of government.

37. AS 29.48.010 - .035, 29.68.440 - (M) September 30, 1976
The Municipality of Anchorage has the power to contract to maintain local roads and trails.

38. AS 29.48.010(4) - July 16, 1975
Powers and functions may be conferred on municipalities by statutes not contained in the Municipal Code. AS 44.47.180-.230 constitute effective law and second class boroughs need not acquire additional powers under AS 29 in order to authorize expenditures of administrative costs required by those sections.

39. AS 29.48.010(11), .210 - (M) May 12, 1975
Boroughs may advance monies from their general funds to their service areas even in the absence of specific statutory authority.

40. AS 29.48.130(a)(5) - (M) October 21, 1977
Implementation of a CETA regulation regarding retirement benefits may require action by Anchorage to fund retirement contributions. Under state law, municipal funds may be used to fund these benefits only if the municipal assembly or council enacts an ordinance to that effect.

41. AS 29.48.200 - (M) July 24, 1979
Municipalities can precribe mandatory sentencing for OMVI. The maximum for violating any local ordinance is $500 and 30 days.

42. AS 29.48.260 - (M) August 22, 1979
For the limited purpose of providing certain facilities in rural areas, Regional Housing Authorities may be considered political subdivisions of the state. A municipality may dispose of its property to a political subdivision, so a racially exclusive regional association can receive municipal property for public housing programs.

43. AS 29.53.020, .045 - (M) November 9, 1977
A city may prohibit hunting as a safety measure within city limits, but not for wildlife management purposes.

44. AS 29.53.020(a) - (M) March 7, 1979
No amendment to AS 29.53.020 could modify the definition of taxable property for purposes of the general statewide property tax. The "business inventories" exemption form municipal property taxation will not affect total state revenue.

45. AS 29.53.020(a)(3), .020(c) - (M) April 5, 1973
To remain tax exempt, property may generate income solely for the statutorily expressed purposes. The income derived from property must be from only its use as classroom space under this section.

46. AS 29.53.020(e) - (M) August 17, 1979
By interpretive regulation, a property tax exemption can be limited to comport with legislative intent. The Department of Community and Regional Affairs may define "permanent place of abode" as being

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

47. AS 29.53.020(e) - (g), .025 (M) September 17, 1975
State must reimburse municipalities for senior citizen exemptions even though the local tax code also exempts the property from taxation, but the Department of Community and Regional Affairs could adopt interpretive regulations stipulating that payments will be made to a municipality for revenue lost to it for claims only to the extent that senior citizens' exemption exceeds an exemption the senior citizens are eligible for under municipal ordinance.

48. AS 29.53.045, .045(e), .050 -.(O) May 16, 1978
The military population should be included in the total when calculating the average per capita assessed valuation in the state.

49. AS 29.53.045, . 050 - (M) May 2, 1978
AS 29.53.045(a) gives a municipality a choice as to the methods of taxation, but both methods are subject to the 30 mill limit.

50. AS 29.53.135 - (M) February 10, 1978
The phrase "at least ... over and above the number required for a quorum" means at least one more than a quorum. Since the statute does not set a maximum number, it may be set by ordinance. The phrase "number of members of" refers to the number required for a quorum and does not require an appointed board's membership to include assembly members. (Suggests that this statute be rewritten.)

51. AS 29.53.180(b), .390(b) - (M) December 21, 1979
Municipalities must pay interest on excess tax penalties they have levied. A municipality may initiate refunds on its own motion.

52. AS 29.53.405 - (M) February 1, 1980
Differential tax zones within cities are authorized. Changes in differential tax zones may be made by ordinance without voter approval.

53. AS 29.53.415 - (M) October 6, 1976
A city may impose a tax upon retail sales and limit it to intoxicating liquor, or apply a higher rate to the sale of alcoholic beverages than the sales of other commodities.

53. AS 29.53.415, .440, .450 - (M) August 21, 1973
A municipality may impose a sales tax on the sale of intoxicating liquor.

54. AS 29.63.010, 29.53.010-.020 - (M) April 23, 1974
State property is subject to special assessments by units of local government for improvements which benefit the property.

55. AS 29.63.065 (M) October 24, 1975
The state must reimburse a municipality for special assessments which persons 65 years of age or older are exempt from paying in full at its initial levy, not in installments as allowed in AS 29.63.060.

56. AS 29.63.090 - (O) January 14, 1974
Depending upon circumstances, a service area can embrace one or more cities as well as unincorporated areas.

57. AS 29.68.010(b)(3), 29.78.010 - (M) August 24, 1979
The state and the United States need not be considered "property owners" for purposes of obtaining consent to annexation by ordinance. This way property-owner consent is not lost when state or federal holders of rights of way, easements, railroads, streambeds and the like do not consent to annexation.

58. AS 29.68.010(b)(3) - (M) April 17, 1979
The Bureau of Land Management's townsite trustee is a "property owner" for purposes of the requirement of obtaining consent to annexation.

59. AS 29.68.020 - (O) April 29, 1975
The repeal of the provision which excluded military reservations from mandatory boroughs did not thereby cause their inclusion. The borough must annex military reservations.

60. AS 29.68.240, .410 - (O) February 18, 1976
A unified municipality can issue general obligation bonds approved by the voters of its predecessor units of government.

61. AS 29.68.500 - (O) October 5, 1973
Including an existing city within a new city does not, in itself, dissolve it. (This is probably wrong, i.e., the lesser is probably swallowed by the greater.)

62. (M) August 21, 1973
There is no state law which prohibits boroughs and municipalities from levying user charges and industrial cost recovery assessments for waste treatment facilities which have been federally funded.

ARTICLE X

LOCAL GOVERNMENT

Purpose and Construction

SECTION 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Local Government Powers

SECTION 2. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Boroughs

SECTION 3. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Assembly

SECTION 4. The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.

(The amendment to this section was approved by the voters of the State August 22, 1972 and became effective October 14, 1972. It deleted the second and third sentences which specified city and non-city representation on the borough assembly.)

Service Areas

SECTION 5. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

Unorganized Boroughs

SECTION 6. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Cities

SECTION 7. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

Council

SECTION 8. The governing body of a city shall be the council.

Charters

SECTION 9. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

Extended Home Rule

SECTION 10. The legislature may extend home rule to other boroughs and cities.

Home Rule Powers

SECTION 11. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Boundaries

SECTION 12. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Agreements: Transfer of Powers

SECTION 13. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

Local Government Agency

SECTION 14. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities; collect and publish local government information, and perform other duties prescribed by law.

Special Service Districts

SECTION 15. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

STATE OF ALASKA

THE LEGISLATURE

1980

Source	Legislative Resolve No.
CSSCR 66	39

Directing the Alaska Legislative Council to revise AS 29 (Municipal Government).

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

WHEREAS Alaska has a system of local government that differs uniquely in constitutional concept and in law from traditional local government; and

WHEREAS the law governing municipalities in Alaska was last reviewed completely in 1972 at which time significant elements of the local government structures were still in a formative stage; and

WHEREAS numerous amendments to the municipal code have been made since its adoption which have not been fully integrated into the code; and

WHEREAS much experience in the Alaska system of local government has been gained since adoption of the municipal code; and

WHEREAS there is a need for a comprehensive revision of the municipal code which will consider the 1972 code, amendments to it, and the experience gained since its adoption;

BE IT RESOLVED by the Alaska State Legislature that under the provisions of AS 24.20.090 and Uniform Rule 48(c) the Alaska Legislative Council is directed to prepare a revision of Title 29 of the Alaska Statutes (Municipal Government) by directing the legal services division of the Legislative Affairs Agency to prepare the revision with the assistance of a policy advisory group representative of the concerned public from all areas of the state and persons experienced in the application of AS 29, and soliciting the advice of the Alaska Code Revision Commission; and be it

FURTHER RESOLVED that the policy advisory group consist of two members of each house of the legislature appointed by the presiding officer of each house; public members of the policy advisory group shall be selected by the presiding officer of each house from persons recommended by legislative members, by the Department of Community and Regional Affairs, the Alaska Municipal League, the Rural Alaska Community Action Program, Inc., the Department of Law, and by the legal services division; and be it

FURTHER RESOLVED that a proposed revision of AS 29 be presented to the legislature during the first 30 days of the First Session of the Twelfth Legislature.