SCOMM

#23:13

Sen. Mulcahy
486-3561

Kodiak

information

Mary Jo Simmons
486-4881

Kodiak
legislative
information

Mulcahy
out fishing

Per call 7/1 —
S. Mulcahy is out fishing
& not reachable by radio —
Will be out all of July
but messages can be gotten
to him by radio with
several days notice.

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3101

DEPARTMENT Legislative Council

ATTENTION Tamara Brandt Cook

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☒ Your Information

Remarks:

FROM:
MAIL STATION NUMBER 3101

DEPARTMENT Legislative Finance

BY [signature] DATE 5-16-97

02-002 (REV.10/73)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF LOCAL GOVERNMENT ASSISTANCE

POUCH B
JUNEAU, ALASKA 99811

January 13, 1981

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

Dear Stephanie:

RE: TITLE 29 REVISION REGARDING ELECTION OF SCHOOL BOARD MEMBERS

It appears as if the Title 29 Technical Advisory Group has addressed the concern you raised in your January 6, 1981 letter regarding the language of AS 29.33.310. You were concerned that the language, as written, for the election of school board members would not allow for the election of Haines Borough Assembly members on a district basis.

The latest draft of AS 29.33.310 is now numbered 29.24.420 and it has been revised along the same lines as you suggested in your January 6, 1981 letter. The new sections reads as follows:

> Sec. 29.24.420. SCHOOL BOARDS. (a) Each municipal school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large unless a different method of election has been approved by the voters in a regular election.
>
> (b) Notwithstanding (a) of this section, assembly members in a third class borough serve as the school board and the mayor is president of the school board.

I interpret this to mean that subsection (a) of this section does not apply to third class boroughs and that you can continue to elect assembly/school board members by election district. This, of course, is only a proposed change and it could be amended again before it is passed as part of the Title 29 revision package. I will keep you posted if this section is altered to significantly change its intent.

If you have any additional questions or comments please write me.

Sincerely,

Palmer

Palmer McCarter
Director

cc: Tamara Brandt Cook,
Legislative Affairs Agency

21-P3LH

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

January 5, 1980

Tamara Cook
Legislative Affairs
Pouch Y
Juneau, Alaska 99811

RE: Title 29 Revisions with respect to a third class borough

Dear Tam:

Now that the Commission has agreed to "grandfather" the Haines Borough we need to look at the statutes and revisions to the statutes which are a problem for the third class borough and which, in some cases, just forget the third class borough.

First of all, we suggest that you simplify 29.41.020 Assembly to Serve as School Board by striking the sentence "Where applicable weighted voting shall apply to board decisions." This sentence is profoundly misleading because weighted voting is prohibited by AS 29.23.021(c).

In order to assert the applicability of 29.48.010 General Powers to the third class borough, we suggest that a sub-section (e) be added to 29.41.010 stating that the general powers conferred by 29.48.010 apply to the third class borough. This would clarify the question posed by Marie Matsuno in her letter of 9/4/80 to Jon Halliwill, Mayor, City of Haines, as to whether the general powers are applicable to the third class borough area-wide or only on a specifically granted service area basis. We believe that our intrepretation of 29.48.010 as applicable to the third class borough carte blance is in line with the interpretation provided in Femmer v. City of Juneau 9 Alaska 175(1937) as foot noted in the present Title 29.

During the revision process I noticed that the third class borough seems to be at odds with 29.33.310 (new section 29.23.420) School Boards.This section states that all board members are elected at large. As you know, the third class borough assembly is the school board. The assembly may elect to be composed other than at large as outlined in 29.23.023 Composition and Form of Representation. It seems that neither the existing 29.23.310 nor the revised version recognize the special relationship between the third class borough assembly and the school board. Does the statement in 29.41.020 that the third class borough assembly is the school board supercede 29.23.310 which mandates an at large election

of school board members or is it necessary to write a clarifying subsection to 29.23.310 indicating that the members of the third class borough school board are the members of the assembly and are elected and composed in accordance with 29.23.023 for assemblies. I would appreciate it if you would take a look at this situation.

For ease of use, new section 29.24.240 Veto should contain a subsection (e) stating that the mayor of a third class borough has no veto power. The mayor is denied the veto power in 29.41.020 (old section number).

Similarly, in new section 29.24.150 Procedures of Legislative Bodies the first sentence should read

> ...except that in a borough which has adopted the manager form of government under AS 29.25.550, or in the third class borough, the mayor serves as presiding officer.

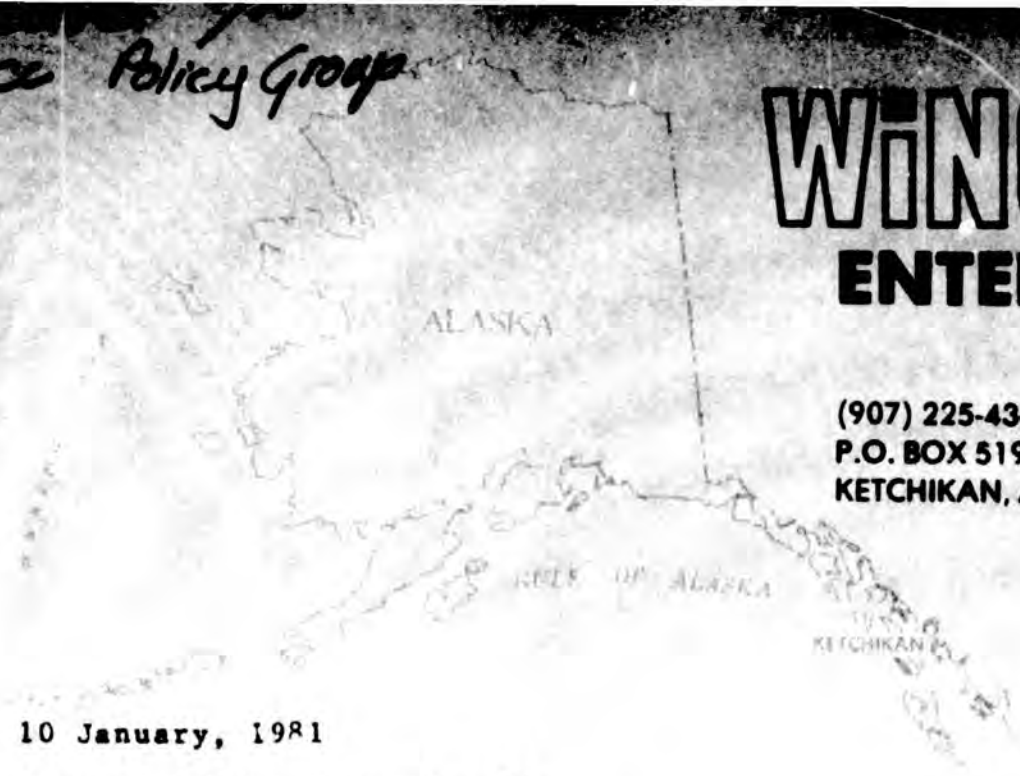
Thank you for looking at these four items. See you in Juneau on the 17th.

Sincerely yours,

Stephanie

Stephanie K. Scott
Administrative Secretary

cc Policy Group



WINGREN
ENTERPRISES

(907) 225-4365
P.O. BOX 5197
KETCHIKAN, ALASKA 99901

10 January, 1981

Senator Arliss Sturgulewski
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Sturgulewski

I quote Alaska Statute 29.53.025. It reads, in part as follows:
(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 certified 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;

The City of Ketchikan and the Ketchikan Gateway Borough has chosen to listen to the hue and cry from boat owners that if their taxes are increased, they will take their boats and their business elsewhere. I, along with numerous other taxpayers feel that boats should be taxed on assessed valuation, the same as other real property, including airplanes. It is very unlikely that our local government will change to assessed valuation, as long as they have another option. It is also very unlikely that our local state legislators will ever push to amend the state law to make taxation on assessed valuation mandatory. I therefore appeal to you, whom I understand has given this matter some study, to introduce such legislation.

Very truly yours

Paul J. Wingren

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS
DIVISION OF LOCAL GOVERNMENT ASSISTANCE

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4707

July 15, 1980

Haines Borough Assembly
Box H
Haines, Alaska 99827

Dear Assembly Members:

Title 29, which contains the Alaska Statutes on municipal government, specifies that the mayor of a third class borough must be elected at-large for that position. An assemblyman cannot assume the position of mayor since the assemblyman was elected as a voting member of the borough's governing body and the mayor cannot vote. Each assembly member elected to that position has an obligation to vote.

As the mayor of a third class borough cannot vote or exercise the veto power, the assembly need not be concerned about affecting the present borough apportionment by the election of a mayor in addition to the assembly members. There would be no change to the present apportionment.

These comments are offered for your consideration as the Haines Borough prepares for its regular election this fall.

Sincerely,

Palmer McCarter
Director

PMc:MF:jh

cc: Stephanie Scott, Haines Borough
Thomas Blanton, Borough Attorney

Received 7/17/80 SKS

21-P3LH

MEMORANDUM

FROM: FOLTA & ASPER, Borough Attorneys

TO: HAINES BOROUGH ASSEMBLY

RE: Voting By Borough Mayor

DATE: September 18, 1973

A question has come up under the new municipal code regarding the vote of the Borough Mayor in a Third-class Borough. Third-class Borough questions are difficult to resolve because Chapter 41 of Title 29, which refers to them, only briefly indicates what they can and cannot do. For questions not answered in Chapter 41 we assume that provisions governing First and Second class boroughs apply. The fact that Haines is the only Third class Borough in the state means that no guidance can be had on these questions from the experience of other municipalities in Alaska.

At the present time the assembly has chosen a mayor from among its members and the mayor is following section 29.23.160 which says that the mayor shall participate in assembly decisions but may not vote. Since Mr. Olerud, the present mayor, is a representative of the city of Haines he carries a weighted vote which is lost to city voters by his seeming inability to use it. Although to date the Mayors' non-voting has not affected the outcome of borough consideration on any matter, it is quite possible that this could happen in the future.

After reading the statutes it seems apparant that the problem lies in the fact that the mayor is also a member of the assembly. We have concluded, and our conclusion is agreed on by attorneys in the Local Affairs Agency, that the new municipal code

requires that there be a borough mayor, even in Third-class Boroughs, but that the mayor be a separately elected official, who is not a member of the assembly (Section 29.23.130). This official would be elected at large in the Borough and would be the chief administrator for the Borough, but would not vote. In a first or second class Borough the Mayor has a veto power to overrule the assembly, but this power is specifically denied the mayor in a third class Borough. (Section 29.41.020) The Assembly would continue in its present form but would choose a presiding officer to manage assembly meetings. (Section 29.23. 060 (b))

Our recommendation at this time is that a Borough Mayor be elected in the Haines Borough whenever possible and in the meantime that Mr. Olerud resume voting with the understanding that his office is really that of Presiding Officer of the Assembly rather than the Borough Mayor as contemplated by the municipal code.

We would point out that the Borough Mayor scheme was primarily written into the municipal code for the use of the larger First and Second class Boroughs and may be too much government for this Third Class Borough, which is operating in good order now without a separately elected mayor. If the Borough must elect a mayor, as the statute seems to require then perhaps this presents a good opportunity to once again consider alternate forms of government for this area. The third class Borough has some very good points but this question and others indicate that it is a sort of Legislative afterthought which will continue to present problems which were never considered by the lawmakers when they enacted the municipal code.

City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

January 13, 1981

Mr. Steve Van Sant, President
Alaska Assoc. of Assessing Officers
c/o Matanuska-Susitna Borough
Box B
Palmer, Alaska 99645

Re: Chapter 45
Municipal Taxation

Dear Steve:

I have reviewed the above draft and had our Municipal Attorney review it also. The following comments are submitted for your review and pass through to the legislative committee.

P. 119 - Line 13 - "Exclusive for classroom space" - Amongst the various exempted uses, the above single use of any space appears unworkable.

P. 129 - Line 29-30 - Assessor seek production of records? What records?

P. 132 - Line 17 - "Which are consistant with general rules of administrative procedure." It appears to us that this ambiguous wording opens the door to suit by claim of "rules", This section should be specific.

P. 134 - Line 18 - 20%
Line 26 - 10% Should these not be the same?

P. 141 - Line 23 - "His assigns". We have had problems with this one where a person pays $1.00 or $2 for releases from old, old property foreclosed against then claims the property for only $80 - $60 back taxes. We feel this will specifically create problems unless a definite time period placed in this section. It has happened to us in Sitka. It could certainly happen elsewhere! Perhaps the way to handle it would be to add a paragraph "c" between lines 6 & 7 on page 142, to read;

(c) the right of the former owner and his assigns to repurchase the property ceases 10 years after the end of the redemption period.

Page 143 - Line 21 - 15% interest. Paragraph (b) states if a remittance is made by a taxpayer even through error, the Borough must refund at 15% interest. Doesn't this open the door to allow deliberate overpayment to get 15% - that's better than any bank, time C.D., etc. Maybe I'm getting paranoid, but that seems like opening Pandora's Box. We need some sort of limitation clause.

Page 145 - Lines 4-7. Should also include a late filing penalty the same as real/personal property taxes.

Page 145 - Line 10 - Should include a statement--on that or any other property or item owned by the same person. This would make it clear a lien would not be just on specific property taxes not paid on, but could hamper other property. We have had instances where persons specifically attempt to apply taxes to only partial holdings rather than the total obligations.

Thank you for the opportunity to comment.

Sincerely,

Michael Schmidt
Planning Director/Assessor

cc: Fermin Gutierrez
Peter Hallgren
Earley - State Assessor
Tom Cook, Leg. Affairs
mike worley

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

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.

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.

MEMORANDUM State of Alaska

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS

TO: Tamara Brandt Cook
Legislative Counsel
Legislative Affairs Agency

DATE: September 10, 1980

FILE NO:

TELEPHONE NO:

FROM: Palmer McCarter
Director
Local Government Assistance Division

SUBJECT: Title 29 Revision Committee

Attached are five memos or letters which we have received making suggestions for changes in Title 29 or, in the case of Commissioner Mueller's memo, perhaps to the definition section of Title 46.

You may have already received some of these suggestions already, but on the chance you have not, I enclose all for your use.

Deputy Director Pat Poland and I will both plan to monitor the next meeting of the technical review committee in Anchorage on September 18. Since I will be out of town during the second meeting of the T29 Policy committee (scheduled for September 29-30 in Anchorage), I shall have Pat Poland attend on my behalf.

PMc:jh

cc: Commissioner Ernest Mueller

Attachments:
1) August 14, 1980 memo from Commissioner Mueller to Commissioner McAnerney
2) Packet of 4 draft bills amending sections of Title 29 relating to property taxation submitted by State Assessor.
3) August 5, 1980 letter to State Assessor from Fairbanks North Star Borough
4) August 20, 1980 memo from Division of Community Planning to Commissioner McAnerney
5) September 3, 1980 letter from City of Valdez concerning Sr. Citizen Property Tax exemption.

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,

determined by dividing the amount of the payment in place of 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.

3A

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.

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

August 5, 1980

Terry L. Earley
State 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 Wammack
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.

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,

Mike

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. 29.53.020. 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 the pastor, priest, rabbi, minister or religious order of a recognized religious organization;

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

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

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

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

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

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

(Housekeeping)

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

(Housekeeping)

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

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

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

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

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

under (e) of this section

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).

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. Valencine 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. 2[illegible] (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 [illegible] 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. Sohi 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).

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

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

MEMORANDUM State of Alaska

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
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.688) 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

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

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.

29.23.040. 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
City Manager

cc: Mayor & City Council

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.

Issue Paper for Title 29 Meeting

Frederick McGinnis, Deputy Commissioner Dept. Health and Social Services

For some time, the DHSS has been decentralizing and regionalizing the administration of health and social services programs. The general thrust of this has been that each program action should be taken at the lowest level of the departmental organizational structure that has staff with the requisite knowledge to effectively accomplish it. It would be a logical evolutionary extension of that concept if authority were statutorily delegated to recognized political subdivisions of the State to allow them to administer those health and social services programs which they possess, or could develop, the capability to handle.

In general, if those DHSS programs which receive Federal financial participation were statutorily delegated to political subdivisons, they would be Federally mandated to comply with the same program administration standards and regulations as DHSS does. The DHSS would still be held fully accountable by the Federal government for each of its Federally supported programs. The DHSS would have to continue as the "single State agency" authorized to receive Federal funds and would disburse them, along with State matching funds, to political subdivisions to cover the costs of the programs they administer. The DHSS would be required to supervise and conduct formal audits of the Federally supported programs administered by political subdivisions. In turn, the DHSS would continue to be subject to monitoring and formal audit by the Federal government with respect to its Federally supported programs.

At the present time, eighteen States have delegated to political subdivisions the Administration of their AFDC and Medicaid programs. In the parlance of Federal regulations, these States have State supervised, locally administered, AFDC/Medicaid programs. The States in this category are: Alabama, California, Colorado, Georgia, Indiana, Maryland, Minnesota, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, South Carolina, Virginia, Wisconsin and Wyoming.

Of the remining thirty-two States, twenty-one, including Alaska, directly administer their AFDC/Medicaid programs through regionally located offices staffed by State employees. Eleven of the thirty-two States directly administer their AFDC/Medicaid programs through direct State/Federal funding and line supervision of the programs and staffs of separately identifable public assistance staffs in political subdivisions. States in the latter category are Illinois, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Mexico, Oklahoma, Pennsylvania, Tennessee and West Virgina. Under the Federal regulations, all thirty-two of these States, including Alaska, have what are termed "State administered" AFDC/Medicaid programs.

DHSS monitorhip and audit of fully State funded health and social services programs and projects administered by political subdivisions is currently practiced as a sound public administration measure. It would seem to be a logical presumption that DHSS supervision and audit would be continued statutorily in any delegation by the Legislature of health and social services programs to political subdivisions. From the standpoint of efficiency and to avoid any confusion, it would be practical if the Legislature were to require similar supervisory and audit requirements by DHSS over both Federally supported and fully State funded programs that are delegated to political subdivisions.

Perhaps needless to say to this knowledgeable group, there are substantial legal ramifications that must be fully taken into account with respect to delegation of powers to administer Federally financed DHSS programs to political subdivisions. Failure to legislate the delegation within the parameters of Federal law and regulations could jeopardize Federal funding and result in the loss of substantial amounts of Federal funds. The DHSS leadership is hopeful that if the proposed amendments to the municipal code are to include any delegation of health and social services programs to political subdivisions that there will be full coordination between the Alaska Legislative Concil, attorneys of the Department of Law who work with DHSS legal matters, and DHSS program directors.

AFDC/Medicaid Programs

	State Supervised/ Local Government Agency Administered		State Administered
Alabama	X		
Alaska			X
Arizona		(No Medicaid program)	X
Arkansas			X
California	X		
Colorado	X		
Connecticut			X
Delaware			X
District of Columbia			X
Florida			X
Georgia	X		
Hawaii			X
Idaho			X
Illinois		(Counties operate as local welfare offices for State)	X
Indiana	X		
Iowa			X
Kansas			X
Kentucky		(Counties operate as local welfare offices for State)	X
Louisiana		(Parishes operate as local welfare offices for State)	X
Maine			X
Maryland	X		
Massachusetts			X
Michigan		(Counties operate as local welfare offices for State)	X

	State Supervised/ Local Government Agency Administered	State Administered
Minnesota	X	
Mississippi	(Counties operate as local welfare offices for State)	X
Missouri	(Counties operate as local welfare offices for State)	X
Montana	X	
Nebraska	X	
Nevada		X
New Hampshire		X
New Jersey	X	
New Mexico	(Counties operate as local welfare offices for State)	X
New York	X	
North Carolina	X	
North Dakota	X	
Ohio	X	
Oklahoma	(Counties operate as local welfare offices for State)	X
Oregon		X
Pennsylvania	(Counties operate as local welfare offices for State)	X
Rhode Island		X
South Carolina	X	
South Dakota		X
Tennessee	(Counties operate as local welfare offices for State)	X
Texas		X
Utah		X
Vermont		X
Virginia	X	

	State Supervised/ Local Government Agency Administered	State Administered
Washington		X
West Virginia	(Counties operate as local welfare offices for State)	X
Wisconsin	X	
Wyoming	X	

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

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

January 6, 1980

Palmer McCarter
Director, Division of Local Government Assistance
Community and Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Palmer:

During the course of the revision of Title 29 I have noticed that the third class borough seems to be at odds with 29.33.310 Elections (for School Boards). This section states that all board members are elected at large. The provision that school zones may be established in accordance with section 100 of chapter 33 was repealed in 1972. As you know, in a third class borough, the borough assembly is the school board and the borough assembly may legitimately be composed of members elected by and from established districts. This is the case in the Haines Borough. Hence, school board members are not elected at large.

It occurs to me that perhaps the statement in 29.41.020 that the assembly in a third class borough is the school board actually supercedes 29.33.310. However, if this is a possible intrepretation I still believe the status of the third class borough school board members ought to be recognized in 23.33.310.

The Title 29 Revision Commission is recommending that 29.33.310 be re-worded as:

> School Boards. Each borough and city school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large.

I believe that the statute would be more complete if the phrase "except those members who are also members of the third class borough assembly" were added to the last sentence.

I would appreciate your thoughts on this subject.

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

xc: Tam Cook, Legislative Affairs

SUMMARY OF

SUGGESTIONS - TITLE 29 REVISION

AS 29.18.180
(Gerald L. Sharp)
Organizational grants under this section appear to be inadequate.

AS 29.18.330
(Gerald L. Sharp)
The resident training and hire preference should be examined for constitutionality.

AS 29.23.025(e)(9)
(Marjorie Gorsuch)
Clarify what happens to the reapportionment order if a reapportionment ordinance has not been approved by the voters.

AS 29.23.029
(Marjorie Gorsuch)
There should be additional provisions for judicial review and relief.

AS 29.23.031
(Marjorie Gorsuch)
There should be additional provisions for judicial review and relief.

AS 29.23.040
(Gerald L. Sharp)
(et.seq.) The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualificiations of officers as these relate to the mayor, council, and assembly members should be uniform as between a city and a borough.

AS 29.23.050
(Allan E. Tesche)
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.

AS 29.23.060(a)
(Gerald L. Sharp)
This section implies that there may be no special meetings if <u>any</u> member is not notified.

AS 29.23.060(d)
(Gerald L. Sharp)
Some consideration should be give 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.

SUGGESTIONS - TITLE 29 REVISION

AS 29.23.060(d)
(Allan E. Tesche)
Circumstances, other than financial interests, which allow a member to abstain should be better defined.

AS 29.23.070
(Gerald L. Sharp)
This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

AS 29.23.070 &
(City of St. Mary's)
(& 29.43.040) 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.

AS 29.23.080
(Gerald L. Sharp)
This section should be checked to determine whether it tracks with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23.080
(Allan E. Tesche)
The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

AS 29.23.130(B)
(Allan E. Tesche)
Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

AS 29.23.150
(Allan E. Tesche)
(& 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.

AS 29.23.170
(Allan E. Tesche)
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.

AS 29.23.170(cont'd)
(Allan E. Tesche)
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?

AS 29.23.200
(Allan E. Tesche)
The three year residency requirement here is also probably invalid.

AS 29.23.210
(Gerald L. Sharp)
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 29.23.210
(Allan E. Tesche)
As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

AS 29.23.250
(Allan E. Tesche)
Another probably invalid three year residency requirement.

AS 29.23.270
(Allan E. Tesche)
This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

AS 29.23.310
(Gerald L. Sharp)
Reference within this section to repeal Section 100 should be corrected.

AS 29.23.340(d)
(Gerald L. Sharp)
Perhaps this section should be clarified to permit the board to set rates.

AS 29.23.360
(Gerald L. Sharp)
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.

SUGGESTIONS - TITLE 29 REVISION

AS 29.23.370
(Gerald L. Sharp)
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 service two different masters, the legislative body, and the chief administrator.

AS 29.23.395
(Gerald L. Sharp)
(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
(Gerald L. Sharp)
I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480
(Gerald L. Sharp)
I suggest that the adoption of an ordinance at the very next meeting after the repeal of 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
(Gerald L. Sharp)
The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school board's budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. Also, it appears that this section would permit a person working in the grants section of the Department of C&RA to serve on an assembly or a council.

AS 29.23.555
(Allan E. Tesche)
This section has been superceded by AS 39.50.

AS 29.23.570
(City of St. Mary's)
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.

SUGGESTIONS - TITLE 29 REVISION

AS 29.25.110
(Richard W. Garnett, III)(Allan E. Tesche)
Clarify application of public records law to municipality.

AS 29.28.
(Bruce Aronson)
Once a sufficient petition has been accepted, members of the council should not be able to resign and be re-appointed to the council.

AS 29.28.
(Bruce Aronson)
Statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition.

AS 29.28.
(Bruce Aronson)
A transition period should be provided by statute to allow a person recalled to service for a while after the recall election has been certified to allow a government to continue to operate.

AS 29.28.015
(Gerald L. Sharp)
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
(Gerald L. Sharp)
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 29.28.040
(Richard W. Garnett, III)
More specificity as to whether recall may be based on "political" factors.

AS 29.28.070(b)
(Richard W. Garnett, III)
Service area initiatives are potential problems; could lead to "Balkanization" of municipalities.

SUGGESTIONS - TITLE 29 REVISION

AS 29.28.070(b)
(Richard W. Garnett, III)(Allan Tesche)
Standardize use of "general" and "regular" as to elections to avoid uncertainty as to required number of signatures.

AS 29.28.080(a)
(Gerald L. Sharp)
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

AS 29.28.080(a)(cont'd)
(Gerald L. Sharp)
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 29.28.090(b)
(Richard W. Garnett, III)
Not specifically provided that assembly may not immediately repeal ordinance enacted under threat of initiative.

AS 29.28.110
(Gerald L. Sharp)
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
(Bruce Aronson)(Lee Sharp)
Change provision so that all officials would be subject to recall after six months in office. The six month grace period would not apply if a person is re-elected to the same office.

AS 29.28.130
(Allan E. Tesche)
(Et. seq.) Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28.070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

AS 29.28.140
(Bruce Aronson)
Grounds for recall are too narrow.

SUGGESTIONS - TITLE 29 REVISION

AS 29.28.140
(Gerald L. Sharp)
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.

AS 29.28.140(cont'd)
(Gerald L. Sharp)
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
(Bruce Aronson) (Lee Sharp)
A recall petition should be required to contain the mailing address of each person who signs it and a separate petition should be filed for each person sought to be recalled. Statement of grounds should be limited to 200 words.

AS 29.28.160
(Gerald L. Sharp)
Either the clerk of 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
(Gerald L. Sharp)
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 give an additional ten days for their sloppiness or inadequate performance.

AS 29.28.180
(Bruce Aronson)
A new petition should not be filed sooner than six months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

SUGGESTIONS - TITLE 29 REVISION

AS 29.28.190
(Elsie O'Brien)
Add a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.

AS 29.28.200(c)
(Gerald L. Sharp)
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
(Gerald L. Sharp)
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
(Jack Chenoweth)
Include a provision somewhere by which a state officer has authority to appoint municipal voters to fill elected city or borough offices when the number of members drops below the number required to produce a quorum.

AS 29.28.250
(Gerald L. Sharp)
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.
(Allan E. Tesche)
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 restructive and should be revised to allow more innovative forms of land use regulation by boroughs and municipalities.

AS 29.33.
(Allan E. Tesche)
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?)

SUGGESTIONS - TITLE 29 REVISION

AS 29.33.010
(Gerald L. Sharp)
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 it's Lafayette decision.

AS 29.33.050
(Gerald L. Sharp)
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 29.33.070
(Allan E. Tesche)
It is unclear whether platting powers can be delegated to a second class borough or a city within the borough under this section.

AS 29.33.070
(Allan E. Tesche)
(Through 29.33.245) 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.

AS 29.33.080(e)
(Gerald L. Sharp)
Consideration should also be give 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)
(Gerald L. Sharp)
The requirement that the commission present new recommendations on a comprehensive plane very 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 soes 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.

AS 29.33.085(b)(cont'd)
(Gerald L. Sharp)
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)
(Gerald L. Sharp)
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.

AS 29.33.110(b)(1)(cont'd)
(Gerald L. Sharp)
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)
(Gerald L. Sharp)
It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance", or "requests...".

AS 29.33.120
(Gerald L. Sharp)
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)
(Gerald L. Sharp)
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
(Gerald L. Sharp)
It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

SUGGESTIONS - TITLE 29 REVISION

AS 29.33.150(b)
(Gerald L. Sharp)
(& 29.33.169(c)) These sections need to be revised out of the code.

AS 29.33.170(a)(1)
(Gerald L. Sharp)
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 29.33.190
This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.

AS 29.33.190
(Allan E. Tesche)
This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which hs 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

AS 29.33.190(cont'd)
(Allan E. Tesche)
though that person may be the owner of record by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands to obtain release for portions of lots or tracts originally subdivided even though such lands were illegally subdivided in violation of AS 29.33.190.

AS 29.33.200
(Gerald L. Sharp)
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
(Gerald L. Sharp)
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 vests in a municipality upon vacation.

SUGGESTIONS - TITLE 29 REVISION

AS 29.33.250
(Allan E. Tesche)
Presumably the transfer required is one from all cities exercising the power rather than from a city.

AS 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?)

AS 29.41.
(Bruce Aronson) (Lee Sharp)
Eliminate third class boroughs. Re-examine idea.

AS 29.48.
(Richard W. Garnett, III)
Consider need for APUC regulation of municipality owned utilities.

AS 29.48.010
(Gerald L. Sharp)
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.

AS 29.48.010(cont'd)
Gerald L. Sharp
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
(Bruce Aronson)
There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what type of enforcement services a city must provide.

AS 29.48.030
(Palmer McCarter)
Clarify whether "health and hospital power" is one or two separate local powers.

AS 29.48.030(b)
(Allan E. Tesche)
(& 29.48.035(b)&(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 least confusing and perhaps unnecessary.

AS 29.48.030(b)(cont'd)
(Allan E. Tesche)
(& 29.48.035(b)&(c)) Reference to powers granted to second class boroughs to construct and maintain Local Service Road 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.

AS 29.48.030(a)(12)
(Allan E. Tesche)
The term transportation "system" used in this section should be defined.

AS 29.48.033
(Gerald L. Sharp)
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
(Gerald L. Sharp)
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
(Gerald L. Sharp)
(& 29.48.080 & 48.090) 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 adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)
(Gerald L. Sharp)
Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

AS 29.48.110
(Gerald L. Sharp)
AS 29.48.110 should be changed to make it clear that a municipality may establish more than a single historic district.

AS 29.48.130(5)
(Richard W. Garnett, III)
No need to require ordinance for routine fund transfers.

AS 29.48.150(a)
(Richard W. Garnett, III)
Majority required to set ordinance for hearing. Should be less.

AS 29.48.160(b)
(Gerald L. Sharp)
If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.170
(Richard W. Garnett, III)
Need some procedure for enacting municipal regulations.

AS 29.48.190(b)
(Gerald L. Sharp)
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 before a capitol improvement.

AS 29.48.190
(City of St. Mary's)
Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except through lengthy procedures to amend the budget.

AS 29.48.190 (cont'd)
(City of St. Mary's)
The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or $10,000 whichever is less of the original appropriation.

AS 29.48.200
(Gerald L. Sharp)
The fine limitation and 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
(Gerald L. Sharp)
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 bases.

AS 29.48.220
(City of St. Mary's)
The audit requrement 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.

AS 29.48.220(cont'd)
(City of St. Mary's)
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.

AS 29.48.250
(Gerald L. Sharp)
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
(Richard W. Garnett, III)
Vote on sale of property over $25,000 is unduly burdensome.

AS 29.48.260
(Gerald L. Sharp)
I believe the exemption which is set forth in (d) should be expanded to encompass any land which the municipality disposes of.

AS 29.48.260
(City of St. Mary's)
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.

AS 29.48.260(cont'd)
(City of 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.

AS 29.48.260(cont'd)
(City of St. Mary's)
The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities shou'i have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

AS 29.48.260
(Allan E. Tesche)
Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover, the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

AS 29.48.270(b)(c)
(Gerald L. Sharp)
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
(Gerald L. Sharp)
(& 29.48.320, & 330) Although these 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.
(Allan E. Tesche)
Should be ameded 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.

AS 29.53.(cont'd)
(Allan E. Tesche)
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.

AS 29.53.010
(Richard W. Garnett, III)
Permit exemption of all personalty or of various classes.

AS 29.53.010
(Gerald L. Sharp)
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 bases.

AS 29.53.020
(Clara M. Eccles)
Extend property tax exemption to include disabled veterans of any age.

AS 29.53.020(a)(1)
(Gerald L. Sharp)
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)
(Gerald L. Sharp)
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. Aslo, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt;

AS 29.53.020(a)(3) (cont'd)
(Gerald L. Sharp)
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 29.53.025(b)(1)
(Richard W. Garnett, III)
Clarify "delegation" of powers to service areas.

AS 29.53.030
(Gerald L. Sharp)
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
(Gerald L. Sharp)
Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.

AS 29.53.080
(Ribert H. Ziegler, Sr.)
Assessors should not be allowed to have access to sale price of property by requesting this information from buyers or sellers.

AS 29.53.135
(Gerald L. Sharp)
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 exempt use.

AS 29.53.135
(Allan E. Tesche)
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.

AS 29.53.150
(Gerald L. Sharp)
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
(Gerald L. Sharp)
This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.415
(Gerald L. Sharp)
(& 29.53.440) Something needs to be added to these sections to take care of 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 29.58.
(Ben T. Delahay
A new section should be added authorizing that an ordinance for refunding bonds be passed on one hearing, at either a regular or special meeting, and with only the normal majority vote.

AS 29.63.
(Ben T. Delahay)
The chapter on service areas should be clarified; there is too much authority in the assembly to handle decisions in the service area which should be made by the people paying the taxes in the area.

AS 29.63.
(Bruce Aronson)
Community councils should be advisory only by statute and money from the state for service areas ought to be appropriated for the city, not the local council.

AS 29.63.090(e)
(Richard W. Garnett, III)
Clarify "delegation" of powers to service areas.

AS 29.63.090
(Elsie O'Brien)
Loans by borough to service area should be subject to prior approval by voters within the service area.

AS 29.63.090
(Allan E. Tesche)
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.

AS 29.68.
((Bruce Aronson)
Statutes should be changed so that cities are not able to annex territory without providing services to the annexed area and so that people living outside cities who are receiving services pay for them.

AS 29.68.010(cont'd)
(City of St. Mary's)
The delay in time between the decision of the Local Boundary commission 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.

AS 29.68.010
(City of St. Mary's)
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 section has begun.

AS 29.73.020
(Gerald L. Sharp)
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.

AS 29.78.101(16)
(Richard W. Garnett, III)
Definition of "subdivision"; consider application to division for leasing, as by holders of oil leases.

General Revision Suggestions - Title 29

AS 29
(Tanana Chiefs Conference, Inc.)
Do not create new forms of local government in the unorganized borough, but rather recognize the traditional governments currently operating.

(Tanana Chiefs Conference, Inc.)
Allow local government to contract for the providing of state services, so that programs can be administered locally.

(Tanana Chiefs Conference, Inc.)
Coordinated regional planning should be done by existing local governments on a voluntary basis through the formation of consortiums of existing governments. These would be allowed to jointly exercise authority outside of their local boundaries.

(Tanana Chiefs Conference, Inc.)
Reduce municipal liability by raising the standard of municipal tort liability for only those official acts involving, "wanton and willful" conduct rather than mere negligence. Municipal ordinances and regulations should be assimilated into state law to allow state prosecution of local violations.

(Tanana Chiefs Conference, Inc.)
Alternatives for fuller local participation in the unorganized borough in state action:

1. A community or consortium must agree to agency actions/plans affecting the community. In the absence of consent, the agency would have to show, in a locally neutral administrative hearing, that the best interest of the state requires the action/plan.

2. Communities or consortiums produce regional plans with which state agencies must comply or get a waiver from the community or proceed through a local neutral hearing.

3. Agencies could be required to have local plans/actions approved after a local hearing by a local hearing officer.

SUGGESTED CHANGES TO TITLE 29

From Ben T. Delahay (City Attorney, Kenai)

1. I would note that when I was with the Borough several million dollars were saved the Borough by issuance of refunding bonds, but this was complicated because in order to take advantage of differentiation of interest rates, the banks had to have a prompt response. This is hardly the type of thing that I consider appropriate under an emergency ordinance (AS 29.48.160), and it really should not be as difficult to pass as an emergency ordinance. The indebtedness has already been approved by the voters and incurred, and the only question is refunding at a proper time to take advantage of market conditions to lower cost to the taxpayer. I would suggest a new section in AS 29.58 authorizing that an ordinance for refunding bonds be passed on one hearing, at either a regular or special meeting, and with only the normal majority vote.

2. I believe the chapter on service areas, (AS 29.63) could also stand a lot of clarification. My experience in this Borough would indicate that section has many unwise provisions that should be modified - there is too much authority in the Assembly to handle the decisions in the service area which should be made by those in the service area paying the taxes.

From Richard W. Garnett III (Attorney, Anchorage)

1. 29.28.070(b) - Service area initiatives are potential problems; could lead to"Balkanization" of municipalities.

2. Same - Standardize use of "general" and "regular" as to elections to avoid uncertainty as to required number of signatures.

3. 29.28.090(b) - Not specifically provided that assembly may not immediately repeal ordinance enacted under threat of initiative.

4. 29.28.040 - More specificity as to whether recall may be based on "political" factors.

5. 29.48.130(5) - No need to require ordinance for routine fund transfers.

6. 29.48.150(a) - Majority required to set ordinance for hearing. Should be less to give minority a chance to make it's case.

7. 29.48.170 - Maybe need some procedure for enacting municipal regulations.

8. 29.48.260 - Vote on sale of all property over $25,000 may be unduly burdensome.

9. 29.53.010 - Why not permit exemption of all personalty or various classes.

10. 29.53.025(b)(1) - Special treatment for boats.

11. 29.63.090(e) - Reference to "delegation" of powers to service areas needs clarification.

12. 29.78.101(16) - Definition of "subdivision"; consider application to division for leasing, as by holders of oil leases.

13. Public Records - Clarify application of public records law, section 09.25.110 to municipality.

14. Home Rule - More clear criteria for application of non-title 29 provisions to home rule. (Maybe require inclusion in AS 29.13.10 laundry list).

15. APUC - Consider need for APUC regulation of municipality owned utilities.

16. 29.18 - Clarify rights to VUU land vis a vis state classification under AS 38.

17. 29.41 - Consider need for third class borough.

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

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) - (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 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.

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 <u>plans</u> 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

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

Richard Careaga, AICP
Director

Agenda Suggestions
from the Title 29 Working 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.

9/19/80

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.

Drafted by Johnna Shanley

AS 29.33.070(b)

If a first class or home city is located more than 25 miles from the boundary of the b_ough 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

9/19/8

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.

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

SUGGESTED CHANGES TO TITLE 29

From Elsie O'Brien (Houston City Clerk)

1. **AS 29.28.190, recall provisions:**
   Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.

2. **AS 29.63.090, service areas within boroughs:**
   The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.

3. **General observation: would like greater information within the text of the volume. (This may not be possible because of the strict format relating to what may be annotated. However, perhaps CRA should receive an amount so that each year for small cities a loose-leaf form of Title 29 may be prepared to update which carries changes in law, applicable commentary, case decisions, AG opinions, etc., supplied by the Dept. on a quarterly basis.)**

From Senator Robert H. Ziegler, Sr.

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

From Jack Chenoweth (Staff Counsel, Legislative Affairs)

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

From Marjorie Gorsuch (House Committee on Community & Regional Affairs)

1. **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?**

2. **In Section 29.23.029 and Section 29.23.031 there should be additional statutory references providing for judicial review and relief in all applicable instances and referencing all applicable voter approved ordinances and reapportionment orders under Sec. 031.**

From Clara M. Eccles (Anchorage)

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

From Bruce Aronson (Ombudsman's Office)

1. AS 29.28.130 is unclear as to whether an official may be subject to recall within 6 months of being re-elected. It would seem that the original intent of this section was to protect rookies rather than encumbants. Recommendation: all officials may be recalled after 6 months have been served in office. The 6 month grace period would not apply if a person is re-elected to the same office.

2. The grounds for recall listed in AS 29.28.140 are too narrow in scope. Since the grounds stated in recall petitions need not be proven, people are forced to name one of the three listed grounds even when the real reason behind the petition bears little relation to it.

3. AS 29.28.150 should be changed so that it is clear that a recall petition can seek to recall only one named official. A separate petition should be filed for each offical sought to be recalled. A petition should be required to contain the mailing address of each person who signs it.

4. AS 29.28.180 should be changed so that a new petition may not be filed sooner than 6 months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

5. There has been a fear that once a sufficient petition has been submitted and accepted, members of the council could resign and be re-appointed to the council. The statutes should preclude this possibility.

6. The statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition, not on the state election.

7. It is unclear whether a person recalled is removed from his office at once after the election has been certified, without any transition period. Some sort of transition period should be provided by statute to allow a government to continue to operate when a majority has been recalled from office.

8. Eliminate third class boroughs. There is no need for them now that REAAs have been established. If a borough is organized, it should assume minimal responsibilities, such as land use planning.

9. There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what types of enforcement services a city must provide. This will never be done voluntarily on a local level because the state currently provides free police services. A statute should identify the types of local problems which the state troopers will not pursue, such as dog control.

10. There is a problem with local control of service areas. Community councils are getting direct support form the state and this creates mini-municipalities within the municipality which sets up the service area. The resulting overlapping jurisdiction causes confusion as to policy and citizens cannot determine who to deal with regarding particular problems. The councils should be advisory only by statute and money from the state ought to be appropriated for the city, not the council.

11. Statutes should be clarified and strengthened regarding the annexation process. Cities ought not to be able to annex territory without providing services to the annexed area and people living outside cities who are receiving services ought to help pay for them.

From Palmer McCarter (C & RA)

1. Clarify whether "health and hospital power" is one or two separate local powers.

2. Adopt uniform definitions of "municipality," "borough," and use the terms consistently throughout the title.

3. Clarify the use of the terms "general" and "regular" election. Use the term "general" election to refer to state, not local elections.

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AS 29: Revisions Needed

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.

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

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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 appointmet 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.

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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?

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The three year residency requirement here is also probably invalid.

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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.

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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.

29.33.070-245

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.

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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 only by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands to obtain release for portions of lots or tracts originally subdivided even though such lands were illegally subdivided in violation of AS 29.33.190.

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

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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 .035, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very least confusing and perhaps unnecessary.

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

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Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover, the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

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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.

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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.

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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.

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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.

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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.

MEMORANDUM

State of Alaska

TO: Debbie Behr, Special Assistant
Office of the Commissioner

DATE: August 15, 1980

FILE NO:

TELEPHONE NO: 465-3082

SUBJECT: Comments on Amendments to State Statutes re: Local Government

FROM: V. L. Iverson, Director
Division of Administrative Services

The subject of local control by political subdivisions over selected DHSS programs does appear to be proper for consideration by the special legislative committee on revision of the State Municipal Code.

I'm sure you are aware that it is essential to distinctly separate statutorily delegated local government control of DHSS programs from contractual arrangements with private, non-profit entities to implement DHSS programs. The latter system presents numerous legal problems with respect to at least those programs that are partially Federally funded. As we all know, on the other hand, many States for many years have successfully operated their health and social services programs through statutory delegation of powers to local political subdivisions.

per call Debbie Behr

would like issue raised of giving local control of health programs to local govt by allowing DESS to have statutory authority to delegate implementation of programs to the local govt

Alan Korhonen
7-9-80

Ben Iverson

02-001A(Rev.10/79)

Matanuska-Susitna Borough

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

BOROUGH ATTORNEY'S OFFICE

July 30, 1980

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

Dear Commissioner McAnerney:

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

Cordially,

Allan E. Tesche

Allan E. Tesche
Borough Attorney

er

Enclosure

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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.

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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.

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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

DILLINGHAM, ALASKA 99576
HOME PHONE 842-5302

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

CITY OF MC GRATH

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

August 26, 1980

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

Dear Senator Sturgulewski,

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

Well, it seems that those of us living in the "bush" know more about what happens in Juneau than some of the state employees living and working there. For example, the Dept. of Health & Social Services just unveiled a plan whereby the communities of Holy Cross, Anvik, 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

Jan Cooke — Please copy AS 29 personnel committee until et- Office + Dept H SS + Fran Ulmer

8/29/80 Admiral Bob Leaned having to committee →

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
P. O. BOX 7300
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

September 11, 1980

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

Attn: Tamara Brundt Cook
Legislative Counsel

Re: Title 29 Review

Dear Tamara:

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

Your courtesy and cooperation are very much appreciated.

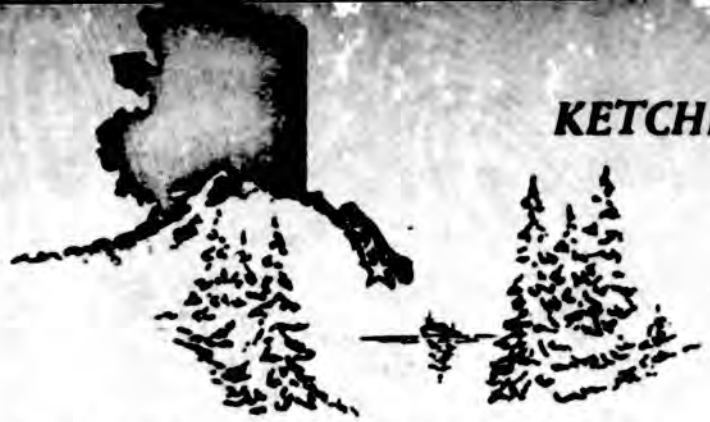
Yours very truly,

Russell W. Walker

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure



KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney

THRU: Marvin Yoder, Interim Borough Manager

FROM: M. Westfall, Revenue Collector

RE: Title 29 Review

DATE: September 2, 1980

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

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

1. Sec. 29.53.025 the classification of boats for purposes of taxation by tonnage should be changed to more realistic amounts.

2. Sec. 29.53.060 include the words having a situs within the taxing district after the word property. Many property owners believe that property not within the taxing district on January 1 of the taxing year is free of tax. Boats and airplanes are commonly removed from the taxing district during the first month of the year to avoid taxation.

3. Sec. 29.53.320 change person to receive redemption monies from clerk to tax collector who has in his/her possession the records of assessment and taxation, applied penalties, interest & costs.

On the Title 29 revision --

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

JC

AREAS OF AS 29 (MUNICIPAL CODE) REQUIRING ATTENTION

DICTATED 7/29/80 BUT NOT READ

BY GERALD L. SHARP

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

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

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

AS 29.08.020

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

AS 29.13.100

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

AS 29.18.130

We should probably address REAA's under this section.

AS 29.18.140(a)(b)

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

AS 29.18.180

Organizational grants under this section appear to be inadequate.

AS 29.18.330

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

AS 29.23.060(a)

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

AS 29.23.060(d)

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

AS 29.23.070

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

AS 29.23.080

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

AS 29.23.040 et. seq.

The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualifications of officers as these relate to the mayor, council, and assembly 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.

More grist for the Title 29 mill:

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

(1) AS 29.28.190, recall provisions --

Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain

(2) AS 29.63.090 -- service areas within boroughs

The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.

General observation with respect to Title 29 -- would like greater information within the text of the volume. (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

June 3, 1980

Clara M. Eccles
3005 Willow Street
Anchorage, Alaska 99503

Dear Mrs. Eccles:

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

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

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

Kindest personal regards,

Arliss Sturgulewski
Senator, District 10-H

Enclosure

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

Arliss Sturgulewski
Pouch V
Juneau, Ak. 99502

Dear Mrs. Sturgulewski:

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

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

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

Thanks for your interest.

Sincerely,

Clara M. Eccles

Clara M. Eccles

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.

Eliminate 3rd class
boroughs -

Aronson -

Call Bruce Aronson
about recall sec.
title 29 - Ombudsmans
Office - 4971 —

Jack Chenoweth

Bruce Aronson per call 8/9/80

1) Eliminate 3rd class boroughs. No need for them now that we have REAAs. Should assume minimal responsibilities, such as land use planning if borough is established

2) Should be a clear statutory statement as to when city rather than state and local must provides local police services. This will never be [illegible] locally because state will [illegible] do it [illegible] [illegible] to local [illegible] [illegible] state troopers will not [illegible].

3) [illegible] of service [illegible] — [illegible] direct support from state, which [illegible] non-municipalities [illegible] municipalities [illegible] [illegible] policy [illegible] who is [illegible]. [illegible] should be advisory only by statute. [illegible] from [illegible]

4) [illegible] Statute [illegible], so that [illegible]
— [illegible]

MEMORANDUM State of Alaska
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Palmer McCarter
Director

DATE: November 6, 1980

FILE NO:

TELEPHONE NO:

FROM: Terry Earley
State Assessor

SUBJECT: School Bond Guarantee Fund

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

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

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

Attachment

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

Thanks
PJM

Ck Blasburg - Municipal Attorney - 101-55 1212

772-4425

02-001A(Rev.10/79)

MEMORANDUM State of Alaska

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: The Honorable Jay S. Hammond
Governor

DATE: November 17, 1980

FILE NO:

TELEPHONE NO:

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

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

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

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

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

- Frank Heintzleman
Assessor - Ruppert Brier
in Juneau

- Paul Dillon -

ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554

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

USING TITLE 29 WORK DRAFT COPY:

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

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

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

page 66-line29; insert or between ", as"

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

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

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

page 71-line16; add(;)if taxes are assessed or levied;

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

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

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

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

page 76-line 8; the limits should be raised

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

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

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

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

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

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

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

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

*Denotes a question

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554

Recommended changes, wording, and questions:

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

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

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

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

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

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

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

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

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

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

TO: Technical Group

FROM: Melissa Aber Fouse
Secretary, Title 29 Commission MAF

SUBJECT: SB 582

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

LAA 15

Original sponsor: Rules Committee by request

Offered: 5/12/80
Referred: Finance

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 582

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

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

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

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

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

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

the Department of Revenue may enter an aircraft as necessary for the investigation during reasonable hours and may examine appropriate records. When requested by an employee or agent of the Department of Revenue, the owner of the aircraft shall furnish to the employee or agent reasonable assistance required for the investigation. If refused entry, the Department of Revenue may seek a court order to compel entry. For the purpose of the investigation, the owner of the aircraft or his representative may be required to present himself for examination under oath by the Department of Revenue.

(d) The Department of Revenue shall prepare annually the assessment roll for taxation of transient aircraft by municipalities. The assessment roll shall contain

(1) a description of all aircraft assessed under this section;

(2) the assessed value of the aircraft;

(3) the names and addresses of persons owning aircraft assessed under this section.

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

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

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

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

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

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

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

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

(m) The State Assessment Review Board shall certify its determination of an appeal to the Department of Revenue within seven days of the hearing.

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

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

shall certify the final assessment roll.

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

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

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

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

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

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

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

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

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

(2) multiplying the value determined under (1) of this subsection by the ratio of the number of landings of transient aircraft owned by the taxpayer in the municipality levying the tax during the year preceding the assessment year to the total number of landings of all transient aircraft owned by the taxpayer.

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

of a property tax under this section.

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

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

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

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

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

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

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

* Sec. 7. Sections 4 - 7 of this Act take effect immediately in accordance with AS 01.10.070(c).

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

distribution of previous year assessed values in the state."

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

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

Strict construction.

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

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

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

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

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

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

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

Sec. 29.53.025. Optional exemptions and exclusions. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

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

(2) classify and exempt from taxation

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

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

(C) historic sites, buildings and monuments;

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

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

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

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

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

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

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

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

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

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

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

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

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

The second 1976 amendment, effective June 25, 1976, added paragraph (28D) of subsection (b).

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

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

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

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

November 18, 1980

TO: TITLE 29 TECHNICAL AND POLICY COMMITTEES

FROM: ALASKA ASSOCIATION OF MUNICIPAL CLERKS JoAnne Shanley V. P.

SUBJECT: TITLE 29 REVISIONS

We respectfully submit the following comments:

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

> "(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of and registered in the precinct, district, or service area in which he votes."
>
> Explanation: Those voting on the issue are residents of the specific area and thus will have to live with the outcome of the election; requiring registration in the precinct, district or service area will hopefully eliminate some of the problems and the time demanded in trying to prove residency; such a procedure will give the Canvass Board clearer direction.

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

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

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

RESOLUTION NO:

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

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

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED by:

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

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

MUTUAL AND COOPERATIVE AGREEMENTS OVER JURISDICTIONAL AND GOVERNMENTAL MATTERS WITH THE STATE OF ALASKA WILL PROMOTE THE EFFICIENT AND APPROPRIATE DEVELOPMENT OF THE STATE RESOURCES AFTER A SHORT DURATION OF NON-RENEWABLE RESOURCE ECONOMIC ACTIVITY.

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

RESOLUTION NO:

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

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

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED by:

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

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RESOLUTION NO:

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

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

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

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

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

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

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

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

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

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

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

Mailed 2 Oct 80

CITY OF MC GRATH

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

Jan - Please copy Policy members Mike W. Technical Com + Hanke Cabin

October 1, 1980

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

Dear Senator Sturgulewski,

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

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

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

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

Finally, I would ask the committee to look at the relationship of the small second class cities to the executive branch of the State. Article X, Section 6 makes the legislature responsible for providing services to the unorganized borough through a maximum of local participation and responsibility. In fact, it is the executive branch which provides the services but withouth any local input. The recommendations developed by the C&RA Committees especially the development of service areas along REAA boundaries would simplify things greatly. However, there needs to exist both a means of making local concerns know to the executive branch and a means of recourse for local concerns which are impacted upon by executive branch executive decisions.

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

Sincerely,

Robert S. Juettner
City Administrator

Sent
29 OCT 80
MAF

October 21, 1980

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

Dear Senator Sturgulewski:

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

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

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

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

Respectfully yours,

CITY OF KODIAK

Gordon W. Ryan

GORDON W. RYAN
City Manager

GWR/yb

Enclosures

cc: Palmer McCarter, Local Government Assistance

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

Recd 10/20/

October 17, 1980

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

Dear Gordon,

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

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

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

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

Looking forward to seeing you soon, I remain,

Sincerely,

William E. Curtis
City Manager
City of Palmer

WEC/car

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

NANA DEVELOPMENT CORPORATION, INC.
4706 HARDING DRIVE. ANCHORAGE. ALASKA 99503
TELEPHONE (907) 248-3030

November 11, 1980

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

Dear Palmer:

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

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

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

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

Best regards.

Sincerely,

Don Argetsinger
Vice President

DA/mt

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

CITY OF KENAI
"Oil Capital of Alaska"
P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

November 10, 1980

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

Re: Title 29 Provision

Dear Marilyn:

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

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

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

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

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

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

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

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

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

Sincerely,

Ben

Ben T. Delahay
City Attorney

BTD/md

Enclosures

cc: Ted Berns
Anchorage Municipality Attorney

Russ Walker
Attorney for City of Ketchikan
and Ketchikan Gateway Borough

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

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

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

Article 2. Assessment and Collection of Taxes.

Section
30. Assessment and collection

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

Article 3. Education.

Section
50. Education

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

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

And such authority is not diminished by delegating certain educational functions to local boards.—That the legislature has seen fit to delegate certain educational functions to local boards in order that Alaska schools might be adapted to meet the varying conditions of different localities does not diminish constitutionally mandated state control over education under Alaska Const., art. VII, § 1. Macauley v. Hildebrand, Sup. Ct. Op. No. 741 (File No. 1550), 491 P.2d 120 (1971).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Applied in Arco Pipe Line Co. v. North Slope Borough, Superior Court, 3th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

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

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

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

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

Chapter 09. Transportation of Pupils.

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

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

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

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

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

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

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

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

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

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

Borough was not acting as an agent of the state in furnishing transportation of pupils. Kenai Peninsula Borough v. State, Sup. Ct. Op. No. 1124 (File No. 2092), 532 P.2d 1019 (1975).

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

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

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

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

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

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

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

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

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

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

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

2. 414 U.S. at 146, 94 S.Ct. at 400, 38 L.Ed.2d at 373.

3. 521 P.2d 486, 491 (Alaska 1974).

4. 457 P.2d 622, 632 (Alaska 1967).

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

KENAI PENINSULA BOROUGH and the Home Insurance Company, Appellants,

v.

STATE of Alaska, Appellee.

No. 2092.

Supreme Court of Alaska.

March 12, 1975.

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

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

Affirmed.

1. Municipal Corporations ⇐54

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

2. Municipal Corporations ⇐54

Although state supervised transportation of students insofar as it related to the funding provided by state and state also had certain regulations in effect pertaining to the overall safety of the transportation system, borough in transporting students was not acting as agent for the state in either a compelled or voluntary capacity and state was not required to indemnify borough for settlement made with persons injured in collision with school bus. AS 14.09.010, 29.33.050; Const. art. 7, § 1.

3. Principal and Agent ⇐8

One may become a compelled agent or servant of another.

4. Indemnity ⇐15(7)
Principal and Agent ⇐23(3)

Fact that department of education regulations in effect at time of collision involving school bus provided that the commissioner "shall" direct school board to enter into contracts for transportation of pupils, whereas subsequent regulations specified that commissioner "may in his discretion" establish contracts did not establish that at time of accident the borough was a compelled agent of the state and that state was liable to indemnify borough. AS 14.09.010, 29.33.050; Const. art. 7, § 1.

Kenneth P. Jacobus, Anchorage, for appellants.

Sanford Gibbs, Anchorage, for appellee.

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

OPINION

BOOCHEVER, Justice.

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

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

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

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

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

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

The Alaska Constitution provides that "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State."[2] The legislature has specified that "[e]ach borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an area-wide basis . . . ."[3] The borough admits that in the gene.,[1] operation of the school system, it is exercising a delegated authority from the legislature, so that in the absence of facts not here involved, the state would not incur liability for personal injuries. With reference to the transportation function, however, it is the borough's contention that it was acting as a compelled agent of the state so as to entitle the borough to indemnity for any liability incurred.[4]

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

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

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

. . . . . .

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

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

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

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

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

2. Alaska Const. art. VII, § 1.

3. AS 29.33.050.

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

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

5. 225 App.Div. 426, 8 N.Y.S.2d 103, 105 (1938).

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

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

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

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

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

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

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

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

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

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

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

[1] We have had no case cited to us where liability was imposed upon the state for actions of a political subdivision such as a municipality or a school district.[11] Political subdivisions of a state are creatures of the legislature which prescribes and curtails their authority. They may be subjected to detailed requirements in the exercise of their statutory functions. Yet such legislative regulation has not been held to make the subdivision an agent of the state so as to impose liability. Nevertheless, we can envision situations which might arise where it is clear that the subdivision is acting on behalf of the state as its agent and under its control to such an extent as to impose liability. Where political subdivisions are involved, however, we shall apply a much stricter test than when other forms of entities are utilized as to the type of control required to create liability on the part of the state.[12] To apply such a test, we shall now review the factual context which confronts us in this appeal.

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

8. Gonzales v. State, 29 Cal.App.3d 585, 105 Cal.Rptr. 801 (1972); Pantess v. Saratoga Springs Authority, 225 App.Div. 426, 8 N.Y.S.2d 103, 105-06 (1938); *see* D. R. Smalley & Sons, Inc. v. United States, 372 F.2d 505, 178 Ct.Cl. 593 (1967), and Elen Memorial Park Assoc. v. United States, 300 F.2d 432 (9th Cir. 1962), which hold that a state is not an agent of the United States in performing functions under the Federal-Aid Highways Act, 23 U.S.C. § 101 et seq. (1958).

9. *See* Paige v. State, 269 N.Y. 352, 199 N.E. 617 (1936) (state use of a private institution as a reformatory). *see generally* State v. Abbott, 498 P.2d 712 (Alaska 1972); Johnson v. State, 69 Cal.2d 782, 447 P.2d 352 (1968).

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

11. The borough cites Maltby v. Westchester County, 267 N.Y. 375, 196 N.E. 295 (1935), but in that case, the question was whether the Westchester County Park Commission was acting as an agent of the state or the county in entering into road contracts. It was not a case of the county itself acting on behalf of the state.

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

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

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

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

The principal, superintendent or teacher in charge of the school unit for which transportation service was provided was designated as the agent of the borough (not the state) for determining arrival or departure time of vehicles, general bus schedules and routing and giving general supervision to the conduct of the transportation operation. The borough had an employee designated as director of transportation who was to take care of the school district transportation and refer to the state Department of Education only matters requiring interpretation as to what was fundable. The state had nothing to do with the establishment of the bus routes and the times for student pickup. It merely reviewed the designated routes to assure that there was no duplicated mileage. The borough could provide for extended routes at its own expense. The school board would determine which of the proposals submitted for transportation services would be selected and would submit its recommendation to the state's Department for concurrence or rejection. Moreover, the borough had the option of furnishing the transportation by means of its own drivers and vehicles or entering into contracts for that purpose.

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

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

14. 4 A.A.C., ch. 1, subch. 1, § 88.100 of (Register 24, July 1967).

15. 372 F.2d 505, 178 Ct.Cl. 503 (1967), cert. denied, 389 U.S. 835, 88 S.Ct. 45, 19 L.Ed.2d 97 (1967).

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

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

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

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

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

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

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

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

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

16. 372 F.2d at 507.

17. *Id.* (citations omitted).

18. 300 F.2d 432, 439 (9th Cir. 1962).

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

20. AS 29.33.070. Macauley v. Hildebrand, 491 P.2d 120, 122 (Alaska 1971).

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

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

> . . . Grace Erickson, at the times mentioned in the complaint and for the previous 19 years, was employed by the District as a bus driver; she was not employed by the State and did not drive or operate a bus owned or controlled by the State, at any time; . . . .
>
> . . . . . .
>
> State agencies, even though exercising a portion of the state's powers of government, are not the state or a part of the state; and may not act on behalf of the state unless authorized to do so by statute. . . . There is no statute conferring authority upon school boards, expressly or by implication, to employ an individual on behalf of the state.
>
> The fact the authority of a school district to operate buses, and the incidental authority to employ bus drivers, is derived from the State through its Legislature, does not support the conclusion a bus driver employed by the District is an employee of the State.[22]

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

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

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

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

23. The *Gonzales* case was modified by an uncontradicted declaration in support of the state's motion for summary judgment that the school district owned, operated and controlled the buses used to transport its students and the state did not own, operate or control any of the buses at any time. 29 Cal.App.3d 585, 105 Cal.Rptr. at 806. We have discussed *supra* the more difficult question of control involved in the instant case.

24. 4 AAC ch. 1, subch. 10 § 10.1 (Register 14, February 1965).

25. 4 AAC 27.050 (Register 38, July 1971).

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

Affirmed.

James O. ADKINS, Appellant,

v.

Michael LESTER et al., Appellees.

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

v.

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

Nos. 2078, 2113.

Supreme Court of Alaska.

Feb. 3, 1975.

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

Petition denied.

Rabinowitz, C. J., did not participate.

Appeal and Error ⇨1056.1(5)

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

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

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

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

Before CONNOR, ERWIN, BOOCHEVER and FITZGERALD, JJ.

OPINION ON REHEARING

CONNOR, Justice.

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

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

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MICHAEL W. SHARON
ROGER M. BEATY
EDGAR B. LOEBS

MICHAEL ROBBINS
WES W. SHEA
C. WALTER EBELL
SPENCER C. SHEED
MELVIN M. STEPHENS, II
ROBERT E. BRINK

OF COUNSEL:
G. KENT EDWARDS

KODIAK OFFICE:
202 CENTER AVE. BOX 507
KODIAK, ALASKA 99615
(907) 486-3143
C. WALTER EBELL
MELVIN M. STEPHENS, II

November 10, 1980

REPLY TO:
Anchorage

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

Re: Proposed Legislative Changes
Our File 844-10

Dear Mr. Ryan:

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

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

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

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

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

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

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

Add a new section 29.28.145 to read:

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

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

Section 29.28.150 should be modified to provide as follows:

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

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

(2) the date each voter signed the petition.

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

Modify Section 29.28.160 to provide:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Kindest regards.

Very truly yours,

HARTIG, RHODES,
NORMAN & MAHONEY

Robert J. Mahoney

Robert J. Mahoney

RJM:bad

CITY OF FAIRBANKS
ALASKA
99701

CHARLES M. GIBSON
CITY ATTORNEY

BRETT M. WOOD
DEPUTY CITY ATTORNEY

HERBERT P. KUSS
DEPUTY CITY ATTORNEY

MICHAEL P. McCONAHY
ASSISTANT CITY ATTORNEY

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

passed out to Policy Group Nov. 11, 1980

August 5, 1980

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

New 29.42.150

Dear Ginny:

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

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

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

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

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

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

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

I would appreciate it very much if you would transmit these suggestions to the committee.

With kindest personal regards, I am

Sincerely yours,

Mac Gibson

Charles M. Gibson
City Attorney

CMG:bc

NATIVE VILLAGE OF TYONEK, ALASKA
INCORPORATED
TYONEK, ALASKA 99682
MANAGEMENT OFFICE
1675 "C" STREET — ROOM 246
ANCHORAGE, ALASKA 99501

October 29, 1980

Mr. Bob Lohr
Rural Alaska Community
Action Program
P.O. Box 3-3908
Anchorage, Alaska 99501

Dear Bob:

I have just learned that you needed some input, from small communities, concerning the problems they are experencing, from Villages to Municapalities, We the people of Tyonek, are governed by the I.R.A. Council, we offer Municipal type services.

1. Road Maintance, with a Grant from Bureau of Indian Affairs.

2. Water System, from Public Health Services.

3. Waste Disposal, from Kenai Borough Etc.

Before, we got these Grants, we payed for our own services, What the problem.? We have governed our own people, since we were Incorporated in 1936. under the Indian Reorganization Act. then ANSCA came along, and everyone forgot about the I.R.A., something has to be done, because we are still active, but no land base to govern. We aren't considered as a municipilty, but yet in fact we are, I would recommend very highly that we could be reconized as a municipal government. yet we have the problems of Non-Natives, Historically we have excluded Non-Natives, based on what is called Rule No. 4. We do not discriminate, but we like to live by this rule, simply because it prevents outsiders from coming on our land to sell illegal things, and also because of this rule, we do not have any Bar's, or any controlling interests, we must remain under the I.R.A. Council, in order for us to survive. To become a Public Municipality would mean death to our Culture, and eventually to our land. We would like to share the States money, but we would'nt sell our people out for money.

Sincerely,

Donald Standifer, President
of The Native Village of Tyonek.

cc: Enclosure

TO WHOM IT MAY CONCERN:

We, are not yet ready to form a Municipal Government for reason's that there isn't enought Industry to create enought job's, to pay Taxe's. Light Bill's, Water Sewer, and Waste.

We, have a lot of elderly people and, some disable that would'nt be able to live on what little Welfare they get.

The problem's we have today, are mostly that, we are tied to a Borough of which we don't have any ties. All our Business are in Anchorage, Alaska. our mail, Grocie's, Hospital, all comes thru Anchorage, the only ties we have with Kenai, is the School.

We, cannot get any Grant's out of Community and Regional Affair's without going thru, the Kenai Borough, which mekes it hard for us as there is, so much Red Tape, and being a Small Village, we are always left out of Grants. Before Grants are approved to the Borough, its Citys already have their Grants written, they already know that certain Grants are being approved, as we dont know until, the monies are all spent. We are not kept up to date on any Grants, that comes to the Borough.

In 1978, a Grant of $100,000.00 was approved by the State Legislature to upgrade our Airstrip, we had to turn this grant down, because it had so much strings attached, Such as opening the Airstrip to the Public. To the Public is ok, if they would pay Fee's Etc. but everyone feels that since, they are Tax Payers they should have excess to the Airstrip, since they pay their taxes. It cost us thousands of dollars to maintain the Airstrip, Up grading, Light, and Power, Snow Removal, of which we use our own Equipment and Fuel, Pay our own men to do the necessary work. We recently used some funds from R.D.A. Rural Development Administration, and charged landing fees, although we spent all our monies as stated above, we had to argue with Aircraft Owners over landing fees, and we were accused of trying to shoot people Etc. Its not fair to us to spend all this money to keep up the Airport and not be able to charge landing, and Parking fees, we pay taxes to.

We get grants from the Bureau of Indian Affairs, such as Jonson O'Malley, Self-Determination Act, Title 4 Bilingual, and Cultural. All these Grants, are below living costs, and at times are supplemented by our own funds, just to get someone to work. These Grants are a lot of Red Tape, and takes time to get, making it difficult to get people interested. C.E.D.A. Programs are so Red Taped that one almost have to be living in Poverty, before they qualify. If this is a Training Program it should be just that not a Welfare Program.

I, feel that we should be left alone, and let us decide our own destiny, and if we want to go into Municiple Type Government, we should be able to do it, at our own pace. There is this big problem of Non-Indians coming in, and taking over something that, we have worked for all of our lives, an those before us. We have kept our Traditional and Culture, which is so important to us, all these years and are not about to throw that out for someone else to benefit by. Kenai, Alaska was a nice and beautiful Village once, but they made a mistake by letting the Whites in, today all are staying outside of the Municipal City.

TO WHOM IT MAY CONCERN:

This Village is the only one on the Cook Inlet with all Natives, and must be kept that way, if this Village loses then the State of Alaska loses one of its last Historic Area not only that, but the True Indian way of life. Millions of Dollars was spent to keep it, that Millions of our own money, and times we must not let it go.

On the other hand, in time with control, we can form a Municipal type of Government, but only with local control, all the Grants and Monies would be worth nothing, if we lost control, and outsiders took over our Village.

Sincerely,

Emil McCord

Emil McCord,
Village Administrator

November 7, 1980

Timothy E. Troll
City Manager
City of St. Mary's
P.O. Box 163
St. Mary's, Alaska 99658

Dear Mr. Troll:

I have submitted copies of your letter to members of the Title 29 Policy Advisory Group so that they will be aware of your concern over AS 29.48.260. Your other comments which were originally sent to the Department of Community and Regional Affairs have been made available to the Title 29 Policy Advisory Group as well. Please send any additional comments which you have to me and I will see that members of the Policy Group receive copies.

I talked by phone with Mr. James N. Reeves on November 5, 1980. He indicated that he would like to address the Policy Group at the next meeting they hold in Anchorage. I will inform him of the meeting time and place as soon as it is set. Time is made available during meetings of the Policy Group to any person who wishes to address the group, so perhaps you would like to attend a meeting as well. I expect that the Policy Group will decide to meet again early in December and I will inform the group of your desire that the meeting be held in Anchorage.

Sincerely,

Tamara Brandt Cook

Tamara Brandt Cook
Legislative Counsel

TBC:maf

cc: Title 29 Policy Advisory Group
James N. Reeves

City of St. Mary's

P.O. Box 163
ST. MARY'S, ALASKA 99658

October 23, 1980

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

Dear Ms. Cook:

I would like to request that discussion of A.S. 29.48.260 be placed on the agenda for the first meeting of the Title 29 Policy Advisory Group in December and that myself and James N. Reeves be permitted to make a presentation on this provision. Presently Mr. Reeves and I are working on legal problems related to property in St. Mary's under a Community Legal Assistance Grant from The Department of Community and Regional Affairs. The first project we have undertaken under the grant is an analysis of 29.48.260 and changes that should be made for the benefit of rural communities. 29.48.260 is a very unmanageable statute for this and I suspect most other rural communities. I would consider the work of the Policy Advisory Group successful if it can effect a workable change in this provision.

Hopefully, the meeting will be held in either Anchorage or Bethel as the City cannot afford to send me much further.

Sincerely,

CITY OF ST. MARY'S

Timothy E. Troll
City Manager

cc. James N. Reeves
FAULKNER, BANFIELD, DOOGAN & HOLMES
Suite 510, 425 G. St.
Anchorage, Alaska 99501

P.S. I have also sent along copies of my other comments which I sent to Community & Regional Affairs. I never received acknowledgement of their receipt by the Committee

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 amend the budget. The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or $10,000 whichever is less of the original appropriation.

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

29.48.260 MUNICIPAL PROPERTIES I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's. First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak english from participating in auctions. The words "if any" in subsection (c)(8) 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 Commission 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 encouraged 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 C. Troll
City Manager

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

November 4, 1980

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

Attn: Tamara Cook

Re: Title 29 Review - Inclusion of Harbors and Marinas under Extraterritorial Jurisdiction

Dear Tamara:

Please find enclosed a proposed amendment to existing Section 29.48.037 [Extraterritorial Jurisdiction] (new 29.33.020) to clarify the authority of municipalities to provide harbors and marinas outside their boundaries.

As we have mentioned, the City of Ketchikan has for many years leased from the State of Alaska, and operates and regulates, several small but important boat harbors and marinas outside the boundaries of the City.

Yours very truly,

Russell W. Walker

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure

cc: City Manager
Ted Berns, Esq.
Lee Sharp, Esq.
Allen Tesche, Esq.
Jim Nordale, Esq.
Ginny Chitwood

Sec. 29.33.020. Extraterritorial jurisdiction.

(a) A municipality may provide parks, roads, trails, playgrounds, cemeteries, harbors, marinas, and airports outside its boundaries, subject to AS 29.33.010, and may regulate their use and operation. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Formerly: As 29.48.037

Comments: Expands existing law to include harbors and marinas as facilities a municipality may acquire, operate and regulate outside its boundaries.

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. "Spud" Williams
President

WCW/4877m
113a11

HAINES BOROUGH

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

December 31, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

RE: Correction to December Title 29 Commission Minutes

Dear Senator Sturgulewski:

On page 3 of the minutes of the December 15, 16 and 17th Title 29 Revision Commission meeting it is stated that the technical committee was directed to bring back wording to allow the transition from any class of city to home rule. I am under the impression that the technical committee was directed to bring back language that would allow the transition from any class of borough or city or unincorporated area to home rule. Discussing the motion to eliminate third class boroughs and to grandfather the Haines Borough, Terry Cook emphasized his desire to see legislation developed which would allow transition from any class of borough or city to home rule. The direction to the technical committee followed this discussion and I do think it included transition of any class of boroughs as well as cities to home rule. Perhaps a double check of the tape would clarify this issue.

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

xc: Tamara Cook
Legislative Affairs

Millisa Fawset

CITY OF BARROW

"native owned incorporated city"
BOX 629
BARROW, ALASKA 99723
PHONE (907) 852-5211

December 10, 1980

Senator Arliss Sturgulewski
Assembly Bldg.
Room 100
Juneau, Alaska 99811

Re: Title 29 Revisions

Dear Arliss:

I would like to submit the following comments for your consideration, regarding Title 29 of Alaska Statutes and its revisions.

It appears to me, that we here on the North Slope have our own unique situation, in that we are within a home rule Borough and are a first class City operating within that Borough. The Borough seat is headquartered in our City. The City has minimal powers left and does not have a property tax.

Many times, in attempting to provide new, or upgrade existing services and/or facilities, we have been hindered or stopped by lack of co-operation by the Borough. When we turn to Title 29 and cite the appropriate authorizations to undertake a particular venture we are stopped time and time again by the Borough explanation that Title 29 doesn't relate to them except as noted in Section 29.13.100. To help aleviate this problem, I would like to seem Home Rule Boroughs bound by the Sections in Title 29, unless otherwise so noted in a particular section. Home Rule Boroughs would be allowed to carry on their municipal functions beyond that in Title 29, but they would be bound by all sections of Title 29. This approach is directly opposite than the one currently ruling the conduct of Home Rule Boroughs. Cities would still be limited as to what they could do ---specifically, that which was authorized in Title 29.

In reviewing Title 29, I would like to bring to your attention some of the sections that we have dealt with that have caused us some difficulties or confusion.

Section 29.23.270 Veto (a) The mayor of a first class city may veto any ordinance, resolution, motion, or other action of the council and by veto, strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for school budget items. He shall submit to the council at its next regular meeting a written statement advising of his veto and giving his reasons. A veto is overridden by the vote of two-thirds of the authorized membership of the council.

The part about "he shall submit to the council at its next regular meeting a written statement advising of his veto and giving his reasons." leaves it unclear when a veto is made, is it a verbal veto at a meeting where the action takes place

or is it the written veto at the next meeting that puts a veto in effect. If so, does the council action stand until the written veto is presented at the next meeting. Again, if that is the case, what happens when the mayor wants to veto an action but the course of action sought by the council will have all ready taken place before the veto can be placed before the council at their next meeting.

29.23.570 Vacancies. An elected municipal office is vacated under the following conditions and upon the declaration of vacancy by the assembly or council. The assembly or council shall declare an elective office vacant when the person elected

(6) misses three consecutive regular meetings unless excused;

I think that some guidelines should be mentioned as to what is excused or unexcused, i.e. failure to notify the city office that they will be unable to attend, off on a campaign tour for another elected office.

Initiatives and referendums: There should be a submittal deadline for invitations and referendums that wish to be considered on an upcoming general election 15 days, 30 days, 45 days, 60 days prior to the eldction. If all the procedures, protests and appeal time lines were allowed for it might look something like this:

Absolute deadline if an initiative or referendum is to be placed on the Ballot (to allow for printing)			15 days
Section 29.28.073	(a)	City Clerk has 10 days to certify petition	10 days
	(b)	Petitioners have 10 days to correct insufficient petition	10 days
	(c)	Clerk has 10 days to certify corrected petition	10 days
Section 29.28.075		Petitions have 7 days to file protest with Council	7 days
		Council to decide appeal at next meeting (14 days for Council 30 days for Assembly; for sake of uniformity use 30 day Assembly timeframe)	30 days
		Total days required for process	82 days

In the current Title 29, the initiative/referendum section doesn't apply to Home Rule Municipalities and the North Slope Borough has no provisions for initiatives or referendums in their Code of Ordinances. The North Slope Borough charter outlines the basic initiative/referendum requirements. However, the charter goes on to say the initiative/referendum procedures must be established by Ordinance, of which there is none.

It would make life much simpler if the requirements, format, and timelines for all petitions were standardized.

Section 29.33.030 Assessment and Collection. Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to Chapter 53 of this Title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

This Section doesn't apply to Home Rule Boroughs so technically speaking, a Home Rule Borough could tell any of the cities in its jurisdiction that it will no longer collect the cities taxes. In our area this would place an undue and perhaps backbreaking burden on some of our communities.

Section 29.33.110 Board of Adjustment. (a) The assembly is the board of adjustment for areas outside cities. The City Council is the board of adjustment for the area within the City boundaries but may delegate by resolution or ordinance part or all of its functions to the borough, subject to & 70 (b) (1) of this chapter, in addition to making delegations as provided for an assembly under & 245 of this chapter. Meetings of the borough board are held at the call of the presiding officer and of the city board by the Mayor. The presiding officer or Mayor may administer oaths and compel attendance of witnesses. Meetings and hearings of the board shall be open to the public and the board shall keep minutes of its proceedings as a public record.

The rational behind this escapes me, but again it doesn't apply to Home Rule Boroughs. It would be very interesting if our City Council could act as the Board of Adjustment within our City, instead of the Borough Assembly.

Section 29.48.030 Municipal Facilities & Services. (a) A municipality may exercise the powers necessary to provide the following public facilities and services:

We have had several problems with this and Section 29.48.035 Regulatory Powers.

> The question has arisen about whether or not when you transfer a power under 29.48.030 you also transfer any regulatory powers that might be associated with the power transfered, especially if the regulatory power is mentioned in 29.48.035.

Where we have run into our biggest problem is when we transfer a power under 29.48.030, such as police powers, where we transfer a power complete with enforcement ordinances, and the Borough refuses to exercise the enforcement ordinances. Furthermore, the Borough sees no need in enacting ordinances of their own. To us, this seems like we receive a lower level of service than we had before. We have presented this problem to the State and their opinion is that City ordinances transfer with the power until amended, repealed, or a new Borough

Ordinance supercedes the transfered City ordinance. The Borough says they don't quite see it that way. However, they will enforce the City's ordinances, as their priorities allow, and we will have to prosecute in Court. This is the same procedure they use with the State. They will enforce State Statutes and the State is responsible for prosecuting in Court. Since the Borough doesn't have any ordinances to enforce, they don't have to worry about prosecuting costs for the Borough. A cost that is prohibitive to the City. From our standpoint, we would like to see it made manditory, that when a power is transfered, so is the responsibility for accepting and enforcing any associated ordinances until such time as the Borough amends or implements new ordinances.

I'm sure that it would have to be explored in greater detail, but, perhaps a mechanism should be developed through which a City could have a power returned to it by a Borough.

Section 29.48.150 Ordinance Procedure. (a) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the assembly or council or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance and its amendments is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The assembly or council shall hear all interested persons wishing to be heard. After the hearing, the assembly or council shall consider the ordinance and may adopt it with or without amendment. The assembly or council shall print and make available copies of adopted ordinances.

We would like to see a better definition of published, as called for in this section. Perhaps in rural areas, publishing could be accomplished by posting around town, often times it is unrealistic for a remote rural area to publish a notice in a Fairbanks or Anchorage paper. Especially since the newspaper might not reach the village until after the meeting has been held.

The publishing requirement should remain the same for Boroughs, as their level of sophistication and operations are on a much higher plane.

Section 29.48.260 Municipal Properties. (c) The assembly or council shall by ordinance establish a formal procedure for the sale, lease or disposition of real property or interest in real property. The ordinance shall require (1) an estimated value of the property by a qualified appraiser or the assessor; (2) a notice of sale published in a newspaper of general circulation distributed within the municipality at least 30 days before the date of the sale, lease, or disposition, or posted within that time in at least three public places in the municipality; (3) public auction or opening of sealed bids, if any; and (4) other terms and conditions fixed by the assembly or council. However, no ordinance for the sale, lease, or disposition of real property or interest in real property valued at $25,000. or more is valid unless ratified by a majority of the qualified voters

voting at a regular or special election at which the question of the ratification of the ordinance is submitted. Thirty days notice shall be given of the election and during that period the assembly or council shall have published at least once a week in a newspaper of general circulation distributed within the municipality a notice stating the time of the election and the place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the sale and the consideration, if any, and stating the title and date of passage of the ordinance. Notice shall be given by posting a copy of it in at least three public places in the municipality at least 30 days before the election. If no newspaper of general circulation is distributed within the municipality, the ntoice given by posting is sufficient for the purposes of this section.

The rational behind this is somewhat understandable, but the reason for the $25,000. figure is hard to visualize. Again, in our area $25,000. is a lot of money, but at the same time it isn't. If we had to go to a special election every time we wanted to lease some property in excess of $25,000. we would begin to incur additional expenses and waste a lot of time. Especially when you consider we probably wouldn't get a voter turn out of over 150 people.

Section 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.

We have approached the Borough on this and their response is, that since the City has no property tax, we have no interests in any such property and therefore, this Section doesn't apply to us. Furthermore, the North Slope Borough isn't bound by this section anyway.

Section 29.68.240 Unification of Local Governments. An organized Borough and all cities within the Borough may untie to form a single unit of Home Rule local government by complying with this chapter. This section doesn't apply to Home Rule Boroughs. Therefore, a Home Rule Borough couldn't legally unify with it's cities. Or could it, as there is nothing in Title 29 saying that it can't. However, the cities would have to follow the provision in 29.68.240. So any provisions a Home Rule Borough would want to incorporate into their unification procedures would have to include the provisions in 29.68.240 so it would be just as easy to make Home Rule Boroughs subject to 29.68.240 and avoid a lot of confusion.

At the AFN Convention I picked up a copy of some of the proposed changes for Title 29. Unfortunately, I have misplaced these and it wouldn't surprise me too much if some of my comments have already been addressed. The revision of Title 29 is long overdue and I appreciate the opportunity to be able to provide some input into the program. If I can be of further service, please don't hesitate to contact my office.

Sincerely yours,

Bryan MacLean
City Manager

December 10, 1980

Ms. Cook,

Lee indicated that you may be making multiple copies of his letters to Senator Sturgulewski. Our copy machine does not make good copies for reproduction, so I have made you an additional original copy with Lee's signature typed in and you may wish to use that copy for reproduction.

Joyce Rutschman
Secretary

Copies = to Policy = Group. =

M. Expect to prepare handout packages like these ones last time.

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

December 9, 1980

The Honorable Arliss Sturgulewski
Senator, State of Alaska
Chairman, Title 29 Revision Policy
Committee
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

FILE: Title 29 Revisions

SUBJECT: Initiative and Recall

Dear Senator Sturgulewski:

In reviewing the changes which the Policy Committee made to the proposed initiative and referendum proceedings, I note that a municipality will now be required to hold special elections for initiatives. Present law requires that initiatives be filed within 90 days of the next regular muncipal election. This requirement eliminates the need lor the muncipality to ever have to hold a special election on an initiative. However, there seems to be little reason not to allow petitioners to file an initiative at any time they please so long as the municipality is not required to undergo the expense of special elections. It was this approach which the Technical Committee suggested.

The Legislature has seen fit to provide an initiative procedure at the state level which does not permit the filing of an initiative petition to generate the requirement for a special election. Further, an initiative petition could be filed with the State and not be placed on the ballot for almost two years. Municipalities have elections each year. If they are required to place initiatives on the next occuring regular or special election, initiatives at the local level will be voted on, in all cases, much more quickly than at the State level. If the State cannot be put to the expense of a special election for an initiative, it seems inappropriate to force municipalities to undergo the expense of special elections for initiatives.

I also believe that if a referendum is filed, no special election should be held unless the referendum has been filed in such a

manner that the effect of the measure to be referred is suspended.

For the foregoing reasons, I strongly suggest that the Committee consider changing the election requirements for initiative and referendum to provide that initiatives are placed on the first regular or special municipal election held not sooner than 75 or 90 (or some other reasonable time) days after the initiative is submitted to the Legislative body. I would suggest that a referendum be treated in the same manner unless the filing of the referendum operates to effect a suspension of the matter to be referred. In such cases, a special election should be held if required.

Sincerely,

/s/ Lee Sharp

Gerald L. Sharp
City-Borough Attorney

GLS:phl

cc: Tam Cook, Esq.
Legislative Affairs

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

December 9, 1980

The Honorable Arliss Sturgulewski, Senator
Chairman, Title 29 Revision Policy Committee
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

File: Title 29 Revisions

Subject: Recall

Dear Senator Sturgulewski:

At the meeting held by your committee in Fairbanks just before the Alaska Municipal League meeting, a great deal of debate focused on the question of whether the grounds for the recall of a local official should be narrowly or broadly drawn. Mayor Larson requested from me a defense of narrowly drawn grounds and other procedures designed to provide the elected official with some measure of protection. Please consider this letter as that defense.

Many features of our democratic system of government are accepted as basic and necessary to the system. These ascertions are seldom examined critically as it is unpopular and distasteful for any one to seriously undertake criticism of what is popularly perceived to be the underpinnings of our democratic form of government. Recall is one such uncritically examined element of our democratic system of government.

First, we should note that our system of government is not a pure democracy but it is rather a democratic republic. Article IV, Section 4 of the U.S. Constitution guarantees to each state a republican form of government, not a democracy. That Constitution provides for neither an initiative or recall. Throughout the history of the United States, the states themselves have not universally provided for recall.

The upsurge of recall provisions came about during the government reform movement. While recall may be viewed as a procedure which strengthens democratic principles, it clearly accentuates one of the greatest weaknesses of the democratic system - its vulnerability to popular but ill-conceived whims of the public and its manipulation by a minority.

The Greek philosopher who first categorized the various forms which government could take, and who gave democracy its name, rated

democracy rather low as a form of government which would best serve the needs of its subjects. Being subject to the whims of a relatively uninformed populace made a democracy ill suited to consistently serve the needs of the public. The Federalist Papers and the U. S. Constitution clearly show that the thoughtful leaders of our country who drafted our Constitution had severe reservations about the democratic form of government and sought to overcome those perceived deficiencies. They provided us with an electoral college which, they hoped, would have the collective wisdom necessary to select a statesman worthy and capable of discharging the duties of President of the United States. They did not provide for his direct election by the populace as would have been the more "democratic" method. They provided us with two houses of Congress, one of which would be based upon population and which might reflect popular sentiment and a second house which would provide equal representation to all the states. This second house, it was hoped, would provide the mechanism for preventing the enactment of popular but ill-conceived measures. A further check upon both of these houses was given to the President who could veto measures he believed were inappropriate. The drafters of our Constitution believed that these and other checks, along with the probability that various interest groups would form different coalitions on different measures, would combine to overcome one of the more serious defects of the democratic form of government. They apparently did not feel that recall was either necessary or desirable. In fact, I suggest that the "open season" type of recall which has been proposed for Title 29 is contrary to the very principles which are reflected in our Constitution and the philosophy of those who drafted it.

Under our republican form of government, an elected official does not serve as a mere extension or agent of those who elected him. The elected official is expected to exercise his informed and considered judgment in providing for the public good. If it were reasonable to believe that the public could become adequately informed on all the public issues which face a legislative body, then it might also be reasonable to assume that the general public could also function in the manner of a town meeting and decide all public issues. Because few of us are able to devote the time necessary to become so informed, we delegate to our elected officials the responsibility to become adequately informed and to make decisions as to the public needs. If the public is dissatisfied with a policy decision made by public officials, the initiative and referendum may be used to correct what are perceived to be errors of decision making. When recall is used in such cases, it is not corrective in nature, it is vindictive and punitive.

As already noted, recall was a concept which became popular during the reform era. It was aimed not at governmental bodies which had

made decisions which were unpopular with various segments of populace but was aimed at corrupt individuals. The public good demands that persons be removed from office who are corrupt or dishonest in office, who fail to perform prescribed duties of the office or who are physically unable to perform the duties of the office. If there is no administrative or judicial procedure for removing such persons from office, it would be appropriate to provide a method for the electorate to effect such a removal. However, any such system should be strictly limited to removals for corruption, dishonesty affecting the public good, and inability or refusal to perform the duties of the office. It would be an abuse of the recall mechanism to permit recall of an elected official merely because the official had participated in making a decision which was unpopular with a large segment of the public. Any controversial matter is likely to be unpopular with a large segment of the public and public officials should not have the threat of recall hanging over their heads whenever their honestly held convictions compel them to vote in a certain manner. Unfortunately, a review of recall efforts will reveal that most, if not all recall efforts, are actually based upon an action taken by the entire body and have little or nothing to do with any of the legitimate grounds for recall. To make matters worse, the proponents of the recall often resort to slander or grossly exaggerated accusations in their recall petition.

It cannot be denied that there is currently a movement in the direction of single issue politics. When there are groups about which openly flaunt their "hit list," it behooves us to examine the elements of our political system in light of this new phenomenon. A recall provision which requires merely that someone be dissatisfied with an elected official's performance amounts to a declaration of open season on all elected officials. If the recall mechanism can be called into play for essentially no reason at all, the quality of persons who will run for public office will suffer as will the basic decision making process itself. At the municipal level, once a recall petition has been placed in circulation, and even more so after it has been filed, the proponents of the recall often become very forceful and vocal in airing their belief that the governing body should cease making important decisions until after the recall matter has been settled. As local elected officials are not insensitive to public demands, such demands do have an impact on the elected body. Unnecessary delay in decision making coupled with an overemphasis on the recall petitioners' position on matters before the body may combine to produce results which are not in the best interest of the public. The tension and turmoil which a recall petition creates within the elected body and the community is an undesirable but, nevertheless unavoidable, effect of a recall attempt. Therefore, every effort should be made to minimize the unnecessary exposure of a municipality to these effects. The "open season" type of recall will serve to maximize the number of occasions upon

which the local government will experience these effects. These negative effects can be minimized without destroying the right of recall if the grounds for recall are narrowly drawn to limit them to matters such as corruption in office and inability or refusal to perform the functions of the office. Not only does this narrow the grounds to those which are truely relavent to the purpose of recall but it also would reduce the ease with which a recall effort could be mounted against several members of a governing body based upon the way the body had voted.

Not only must the grounds be drawn narrowly to insure that the recall mechanism is not abused but the recall system should clearly provide for judicial review of the grounds stated. Failure to provide a clear right of judicial review renders the requirement for clear and narrow grounds a nullity.

Before any group should be permitted to force the public to undergo the expense of an election, there should be a very substantial showing that the public is indeed interested in voting on the proposed issue. Therefore, there should be a substantial signature requirement. Under state law, those seeking a recall petition for a state official must first submit an application containing the signatures of at least 10% of those who voted in the last election in the relevant district. If the Lieutenant Governor determines that the application is sufficient, a petition is issued and the petitioners must then obtain signatures equal to at least 25% of those who voted in the last general election in the relevant district. Thus, at the state level the legislature has provided for a recall system which places a significant burden upon the petitioners and thus may well filter out most of those recall efforts which would be unsuccessful. In addition, the grounds for recall (lack of fitness, incompetence, neglect of duties, and corruption) are all narrow enough that the political philosophy or the way a person voted would not be a sufficient basis for a recall. Further, the legislature has clearly provided for a mechanism for judicial review of a determination by the Lieutenant Governor.

Recall is not a matter to be taken lightly and is not one which should be easily initiated or carried out. A political system which provides for the relatively easy recall of an elected official for reason of the way that official voted on a particular matter is a system which has lost one of the essential characteristics of our republican form of government. We should not cater to the fickleness of the electorate if to do so would tend to reduce the effectiveness of local government without some significant, compensating good. Our system of government will function most smoothly, most effectively and for the benefit of the general good if we provide for a recall system with narrowly drawn grounds and with other mechanisms which are designed to prevent the abuse of the recall system. The "open season" system brings with it disruptions

which serve no legitimate or public purpose. The "open season" approach should be abandoned.

Very truly yours,

/s/ Lee Sharp

Gerald L. Sharp
City-Borough Attorney

GLS:jr

cc: Mayor Ron Larson
Mat-Su Borough

Tam Cook, Esq.
Legislative Affairs

OFFICE OF THE MUNICIPAL ATTORNEY
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334 FRONT STREET
P. O. BOX 7300
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

MEMORANDUM

TO: All members of Title 29 Technical Committee;
Tamara Cook;
Palmer McCarter

FROM Russell W. Walker
Ketchikan Municipal Attorney

RE: Title 29 Review; Inventory of other statutes, requirements and provisions applicable to Municipalities

DATE: November 4, 1980

As you will recall, several members of the policy committee and also the technical committee have expressed an interest in inventorying other statutes and provisions applicable to the activities of municipalities and referencing or at least footnoting these provisions in the revised Title 29 to assist managers, clerks, attorneys and other public officials in complying with the requirements of the code, particularly in the more remote areas.

In furtherance of the above, we have prepared and enclose herewith a preliminary list of such provisions and would appreciate your noting any additional references to provisions applicable to municipalities of which you are aware to assure the compilation is as complete as possible.

RWW:sf

Enclosure

INVENTORY OF OTHER STATUTES, REQUIREMENTS AND PROVISIONS APPLICABLE TO MUNICIPALITIES:

(1) 09.55.275: Eminent Domain. Municipalities and the State must submit a preliminary plat of a proposed acquisition resulting in a change of boundaries to the municipal platting authority for approval; final approval of replat must also be obtained.

(2) 34.60.010, et seq.: State Relocation and Real Property Acquisition Practices Act Term "state agency" required to comply with procedures includes political subdivisions of State [AS 34.60.150(6)].

(3) 35.15.080: Local Control of State Public Works Projects. General law or home rule city or organized borough may request assumption of planning and construction of public works project of State under section 35.15.080, and may make agreements with State for these purposes "irrespective of restrictions of other provisions of law on the acquisition and exercise of borough powers." (section confers power); "municipality" includes general law or home rule city or organized borough [35.15.120]).

(4) 35.30.010: Local approval of State Plans. Requires review and approval of D.O.T. plans and project by local planning authorities subject to certain exceptions and waiver.

(5) 35.30.020: State Compliance with Local Planning and Zoning Ordinances. Requires certain departments of State to comply with local planning and zoning ordinances and other regulations in the same manner and to same extent as other land owners.

(6) 36.05.070: Minimum Wage. Required inclusion of minimum wage in advertised specifications for contract for public works and submittal of information to Department of Labor.

(7) 36.10.010: Employment Preference. (questionable validity after Hicklin v. Orbeck, 437 U.S. 578, 98 S.Ct. 2482 (1977).

(8) 36.15.010-.015: Local Forest Products Clause. Clause required in certain projects and contracts using forest products financed with State money.

(9) 36.25.010: Contractor's Bonds. Requires specified performance and payment bonds be obtained and verified by political subdivisions regarding contract for public buildings or works (AS 36.95.010(6) [includes boroughs and cities]).

(10) 37.10.085: Prohibition of Extension of Credit. Neither State nor political subdivision of State may lend its credit or borrow money for the use of a corporation.

(11) 37.10.090: Action to Recover Illegal Expenditure or Disposition of Funds or Property. Money, funds or property of a city, school district, or municipal government illegally paid, or diverted for an illegal purpose, or paid to a person not authorized by law to receive them, may be recovered by action brought by the Attorney General (State to advance costs of suit and recovered from recovery repaid to agency for whom funds recovered [37.10.100]).

(12) 44.62.310: Public Meetings.

CITY OF SEWARD

P. O. BOX 337
SEWARD, ALASKA 99664

CITY MANAGER	224-5214
COMPTROLLER	224-5216
INFORMATION	224-5215
CITY POLICE	224-5201

December 1, 1980

TAMARA BRANDT COOK
LEGISLATIVE COUNSEL
LEGISLATIVE AFFAIRS AGENCY
Pouch Y
JUNEAU, AK 99811

MEMO FROM STATE CLERKS TO TITLE 29 COMMITTEES

Enclosed is a memo regarding various sections of Title 29 and its proposed revisions which the Alaska Association of Municipal Clerks unanimously approved at its annual meeting held in Fairbanks the week of November 10. The Association requested that I forward this memo to the Technical and Policy Committees.

I have been trying to recover from the flu for the past week and still am unsure if I will be in attendance at the December 4-5 Technical meeting. Therefore, I am sending this memo on to you for distribution.

By copy of this letter and the enclosure, I am also forwarding this information to John Messenger's office just in case this does not reach you in Juneau in time.

Thank you.

JOANNE E. SHANLEY
CITY CLERK

Enclosure

cc: John Messenger w/ enclosure

November 5, 1980

Carol A. Tellevick
City Clerk
City of Port Alexander
Box 725
Port Alexander, Alaska 99836

Dear Ms. Tellevick:

Here is a copy of Title 29 and the supplement. The supplement does not include legislation passed during the 1980 session, so you should contact the Michie Company to order the new supplement when it is printed. If I can help in any other way please let me know.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:maf

Encl.

CITY OF PORT ALEXANDER

Box 725 • Port Alexander, Alaska 99836

October 23, 1980

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

Hello:

In reference to your Notice of Meeting concerning the revision of the Municipal Code, Title 29.

The City of Port Alexander for over a year now has been trying to acquire a copy of Title 29. We were instructed to order one from Michie-Bobbs-Merrill, PO Box7587, Charlottesville, Virginia. We sent this company the payment, they claimed they sent us the Title 29 and Supplement. We never received it, so again we ordered one. That was last spring and we haven't heard from them since.

Perhaps you could assist us by sending us a copy of Title 29 and supplement? It would be greatly appreciated.

Sincerely,

Carol A. Tellevik

Carol A. Tellevik
City Clerk

HAINES BOROUGH

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

October 24, 1980

Tamara Brandt Cook
Legislative Counsel
Pouch Y
Juneau, Alaska 99811

Dear Tam:

Thanks for your letter re my suggestions on the service area statute. I have asked the Assembly to send our Borough Attorney, Tom Blanton, to your Fairbanks meeting. However, I hope to follow the Fairbanks meeting through Tom's report.

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

NATIVE VILLAGE OF TYONEK, ALASKA

INCORPORATED
TYONEK, ALASKA 99682

MANAGEMENT OFFICE
1675 "C" STREET — ROOM 246
ANCHORAGE, ALASKA 99501

October 16, 1980

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

Dear Tamara:

I have just recieved a letter of notice of meeting dated October 6, 1980, in regards to the policy advisory group concerning title 29.

Up until I recieved this letter, I was not aware of such a group.

Could you sent me information on this, also it's purpose.

Thank you.

Sincerely,

Donald Standifer, President
of Native Village of Tyonek.

cc: Village File

23 October 1980

Sent copies of Minutes of Meetings for Policy Group Meetings to date.
Sent copy of Legislative Resolution forming Title 29 Commission.

MAF

Chefornak City Council
Chefornak , Alaska 99561

20 June 1980

Local Government Study
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Gentlemen;

We wish to give our full suport to the issue on Capitol Foundation fund. We find it very helpful to our situation because we don't have very much in matching costs to our capitol projects.

Right now we are trying to get funds to build a Cultural Facility but we don't have matching costs. If it is possible, we will introduce the amounts we are trying to get and the matching costs.

We have other capitol projects we would like to get on, but don't have funding.

If we have to fill out forms or questionaires to get those funds, Please don't hesitate to send them to us.

With our support,
Chefornak City Council
Chefornak City Council

cc. D.L.
N.L.

[redacted] 30, 1990

[redacted]
Administrative Secretary
Haines Borough
P.O. Box 1
Haines, Alaska 99827

Dear Ms. [redacted]:

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

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

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

cc: Title 29 Policy Advisory Group

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM October 16, 1980

SUBJECT: A.F.N. Meeting

TO: Policy Advisory Group
Technical Committee
Title 29 Revision

FROM: Tamara Brandt Cook
Legislative Counsel TBC

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.

MEMORANDUM October 7, 1980

SUBJECT: Progress report - Title 29 Revision Committee

TO: Senator Bill Ray, Chairman
Interim Projects Oversight Committee

FROM: Tamara Brandt Cook
Legislative Counsel

CSSCR 66, Legislative Resolve 39 of the last regular legislative session directed the Alaska Legislative Council to revise AS 29 (the municipal government code). A Policy Advisory Group was authorized to assist in the revision and I was assigned to the project from the Legal Services Division. Members of the Policy Group were appointed in August, and the first meeting was held in Anchorage on August 27 and 28, 1980. Minutes of that meeting are attached.

During the first meeting the Policy Group appointed a Technical Revision Committee, composed primarily of attorneys with expertise in municipal law to perform actual drafting. The committee was directed to reorganize Title 29 as a first step in the revision. The Policy Group went on to consider various issues including: greater self-determination and latitude for local governments; whether the provisions relating to development cities should be restructured or eliminated; whether changes should be made in the present categories of municipal government; and the possibility of the state recognizing traditional village governments as municipal governments.

The Technical Committee met in Anchorage on September 8, 1980 and worked out a proposed reorganization format for Title 29. Staff was directed to prepare an index of Title 29 according to the proposed reorganization scheme. The Technical Committee met again in Anchorage on September 19, 1980 to consider the proposed reorganization. The proposed reorganization scheme was rejected as too complicated and

unworkable. An alternative reorganization of Title 29 was worked out and adopted by the committee for presentation to the Policy Advisory Group.

The Policy Advisory Group met in Anchorage on September 29 and 30, 1980. Minutes of that meeting are attached. The morning of the first day was devoted to presentations by members of the public. In the afternoon the Technical Committee presented its reorganization of Title 29. Staff was directed to prepare a complete text of Title 29 according to the proposed reorganization scheme and to mail it to members of the Policy Advisory Group as soon as possible. The rest of the meeting was devoted to discussion of policy issues and proposed changes to Title 29, with the Technical Committee directed to make several drafts incorporating specific changes to be presented for review by the Policy Group at its next meeting.

The next meeting of the Technical Committee is scheduled to take place in Anchorage on October 20, 1980. The committee will attempt to produce a complete technical revision of Title 29, as well as incorporating the specific changes requested by the Policy Group into drafts. The Technical Committee may require three or four additional meetings in order to complete their revision of the municipal code. The Policy Group is scheduled to meet again in Fairbanks on November 10 and 11, 1980. The meeting is planned to coincide with a meeting of the Municipal League to provide maximum opportunity for interested persons to address the Policy Group. After receiving public comments, the group will make a final decision on the reorganization of Title 29, and consider all drafts submitted by the Technical Committee. It is possible that the Policy Group may request one or two additional meetings for the purpose of considering the final revision of the municipal code before presenting it to the legislature. A statement of actual and projected expenditures is attached.

If you have further questions concerning the Title 29 Revision project, please contact me.

TBC:ljb

Enclosures

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM October 7, 1980

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Interim Projects Oversight Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

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If you have further questions concerning the Title 29 Revision project, please contact me.

TBC:ljb

Enclosures

cc: Senator Arliss Sturgulewski
Billy G. Berrier

Title 29 Commission
Actual and Projected Expenditures
As of 06 October 1980

SCHEDULED MEETINGS:	
Balance as of 1 August 1980	$53,785.00
Policy Group Meeting 27 & 28 August 1980	3,910.25
Technical Group Meeting 08 September 1980	1,601.25
Technical Group Meeting 19 September 1980	1,787.75
Estimated Cost: Policy Group Meeting 29 & 30 September 1980	3,500.00
Estimated Cost: Technical Group Meeting 20 Oct 1980	2,000.00
Estimated Cost: Policy Group Meeting 11 & 12 November 1980	6,000.00
Personal Services to 15 January 1981	11,400.00
UNSCHEDULED MEETINGS:	
Policy Group Meeting: Late November 1980 Mid-December 1980	 3,500.00 3,500.00
Technical Group Meetings: November 1980 November 1980	 2,000.00 2,000.00
Technical Group Meetings: December 1980 December 1980	 2,000.00 2,000.00
Projected Total Cost:	45,199.25
Balance:	8,585.75

July 28, 1980

The Honorable Clem V. Tillion
President of the Senate
Halibut Cove, AK 99603

Dear Senator Tillion:

CSSCR 66, Legislative Resolve 39 of the recent legislative session, directs the Alaska Legislative Council to revise AS 29, the municipal government code. A policy advisory group is authorized to assist in that task. Together with two members of each house of the legislature appointed by the respective presiding officers, the resolution also authorizes selection by the presiding officers of an unstated number of public members, drawn from recommendations submitted by legislative members, the Departments of Community and Regional Affairs and Law, the Alaska Municipal League, the Rural Alaska Community Action Program, and the legal services division of this Agency.

At my direction, Jack Chenoweth of this office met today with Ginny Chitwood of the Municipal League, Palmer McCarter (speaking for the administration) and, by phone, Bob Lohr, the deputy director of RuralCAP. It is their suggestion, and my recommendation, that nine public members be appointed to serve with the four legislators previously designated for the policy advisory group for the Title 29 revision. Their suggestion included the following recommended nominations:

Ted Berns, municipal attorney
Municipality of Anchorage

Terry Cook, member of the city council
City of Alakanuk

Marilyn Dimmick, member of the assembly
Kenai Peninsula Borough

James O. Eckstedt, member of the assembly
Matanuska-Susitna Borough, and of the city council
City of Palmer

James Kohler, city manager
City of Yakutat

Gene Moore, city manager
City of Kotzebue

Donna Sherby, city clerk
City of Cordova

Jonathan Solomon, presently working in support of establishment of a rural borough for the Upper Yukon River area, Fort Yukon

Russell W. Walker, attorney
City of Ketchikan and Ketchikan Gateway Borough

The policy advisory group provided for by the resolution will have direct and continuing support and assistance from Palmer McCarter of the Department of Community and Regional Affairs, Ginny Chitwood of the Alaska Municipal League, Phil Smith of RuralCAP, Rod Pegues from the Department of Law, and Tamara Brandt Cook, whom I have assigned from the staff of this division.

Your consideration of the nominations suggested in this letter for appointment as public members of the policy advisory board for the revision of AS 29 is appreciated.

Very truly yours,

Billy G. Berrier
Director
Division of Legal Services

BGB:JBC:jdn

bcc: Senator Sturgulewski
Palmer McCarter
Ginny Chitwood
Phil Smith

MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

Alaska Municipal League - Nominations for Title 29 Revision Committee
(resumes included for several nominees)

Edward Ambarian **Member, Kenai City Council** **Member, Kenai Peninsula Borough Assembly** **Former Member, Kenai Planning Commission**	**P.O. Box 580** **Kenai, Alaska 99611** **283-7535**
Theodore D. Berns **Attorney, Municipality of Anchorage**	**Pouch 6-650** **Anchorage, Alaska 99502** **264-4545**
Richard Careaga Planner, City of Unalaska	P.O. Box 89 Unalaska, Alaska 99685 581-1251
Ginny Chitwood Executive Director, Alaska Municipal League Former Mayor, City & Borough of Juneau Former Chairman, Greater Juneau Charter Commission	204 North Franklin Juneau, Alaska 99801 586-1325
Terry Cook Secretary/Treasurer, Alakanuk City Council	Box 51 Alakanuk, Alaska 99554
Samuel L. Coxson Manager, City of Whittier	6754 Blackberry Street Anchorage, Alaska 99502
Ruby Coyle City of Kenai	P.O. Box 580 Kenai, Alaska 99611 283-7535
Bill Curtis Manager, City of Palmer Member, AML Legislative Committee	P.O. Box 1368 Palmer, Alaska 99645 745-3927
Marilyn Dimmick Member, Kenai Peninsula Borough Assembly Member, AML Legislative Committee Former Member, Borough Planning Commission	Box 151 Ninilchik, Alaska 99639 567-3927
Richard Garnett, III Attorney, Kodiak Island Borough Formerly, Municipality of Anchorage Attorney's Office Formerly, Attorney General's Office	900 West Fifth Avenue Suite 540 Anchorage, Alaska 99501 276-2221

Bob Jones **Finance Director, Fairbanks North Star Borough** **President-Elect, Municipal Finance Officers Association** **Member, AML Revenue Sharing Committee** **Member, State Manpower Services Council**	**P.O. Box 1267** **Fairbanks, Alaska 99707** **452-4761**
Robert S. Juettner McGrath City Administrator	P.O. Box 57 McGrath, Alaska 99627 524-3825
Ronald Larson Mayor, Matanuska-Susitna Borough Chairman, AML Legislative Committee	Box B Palmer, Alaska 99645 745-4801
John Messenger Preston, Thorgrimson, Ellis Holman & Fletcher AML Associate Member Expertise in Bonding and Finance Former Commissioner of Revenue	420 "L" Street Suite 404 Anchorage, Alaska 99501 276-1969
Gene Moore Manager, City of Kotzebue Member, AML Legislative Committee	P.O. Box 186 Kotzebue, Alaska 99752 442-3401
George Navarre Former Chairman, Kenai Peninsula Borough	Box 580 Kenai, Alaska 99611 283-7535
* Jim Nordale Attorney, Fairbanks North Star Borough Member, AML Legislative Committee	P.O. Box 1267 Fairbanks, Alaska 99707 452-4761
Joyce Rasler Manager, City of Wrangell Member, AML Legislative Committee Former Clerk, City of Wrangell	P.O. Box 531 Wrangell, Alaska 99929 874-2381
Andrew Sarisky Attorney, Kenai Peninsula Borough	Box 850 Soldotna, Alaska 99669 262-4441
Barbara Shaffer Council Member, City of Nome Member, AML Legislative Committee	P.O. Box 907 Nome, Alaska 99762 443-2900
Jo Anne Shanley Clerk, City of Seward	P.O. Box 337 Seward, Alaska 99664 224-5216

Gerald Lee Sharp Attorney, City and Borough of Juneau Member, AML Legislative Committee Former Member, Greater Juneau Borough Assembly	155 South Seward Juneau, Alaska 99801 586-3300
Donna Sherby Clerk, City of Cordova	P.O. Box 1210 Cordova, Alaska 99574 424-3237
* Allan E. Tesche Attorney, Matanuska-Susitna Borough	Box B Palmer, Alaska 99645 745-3246
Russell W. Walker Attorney, Ketchikan Gateway Borough Attorney, City of Ketchikan	Box 7300 Ketchikan, Alaska 99901 225-3111 # 327
Michael Walleri Local Government Specialist Tanana Chiefs Conference, Inc.	Doyon Building 1st and Hall Streets Fairbanks, Alaska 99701 452-8251

* Nominees specifically for working group.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Ms. Ginny Chitwood
204 North Franklin
Juneau, AK 99801

Dear Ms. Chitwood:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

Please let me know if there is anything I can do to assist you regarding this or any other of our meetings. I will be happy to make travel or hotel reservations, and send or bring copies of information you would like to have. My telephone number in Juneau is 465-3809, or you can call 465-3867.

Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook ✓

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Mr. Phil Smith,
327 Eagle Street
Anchorage, AK 99501

Dear Mr. Smith:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Secretary, Title 29 Commission

maf

enclosures

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Tamara Brandt Cook

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Mr. Ted Berns
Pouch 6-650
Anchorage, AK 99502

Dear Mr. Berns:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Melissa Aber Fouse

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 9981
907-465-3800

September 10, 1980

Mr. Jonathan Solomon
P.O. Box 269
Fort Yukon, AK 99740

Dear Mr. Solomon:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 9981
907-465-3800

September 10, 1980

Mr. Terry Cook
Box 33
Alakanuk, AK 99554

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

September 10, 1980

Mr. Ronald Larson
Box B
Palmer, AK 99645

Dear Mr. Larson:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

Please let me know if there is anything I can do to assist you regarding this or any other of our meetings. I will be happy to make travel or hotel reservations, and send or bring copies of information you would like to have. My telephone number in Juneau is 465-3809, or you can call 465-3867.

Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

September 10, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, AK 99501

Dear Senator Sturgulewski:

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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Senator Bob Mulcahy
P.O. Box 246
Kodiak, AK 99615

Dear Senator Mulcahy:

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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

September 10, 1980

Representative Charles H. Parr
S.R. Box 50599
Fairbanks, AK 99708

Dear Representative Parr:

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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH V - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

September 10, 1980

Representative Margaret Branson
P.O. Box 740
Cooper Landing, AK 99572

Dear Representative Branson:

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Secretary, Title 29 Commission

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Phil Smith

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3867

September 10, 1980

Mr. Russell W. Walker
Box 7300
Ketchikan, AK 99901

Dear Mr. Walker:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Secretary, Title 29 Commission

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Phil Smith

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465 3800

September 10, 1980

Ms. Donna Sherby
P.O. Box 1210
Cordova, AK 99574

Dear Ms. Sherby:

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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Mr. Gene Moore
P.O. Box 186
Kotzebue, AK 99752

Dear Mr. Moore:

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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

September 10, 1980

Mr. James Kohler
P.O. Box 6
Yakutat, AK 99689

Dear Mr. Kohler:

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Secretary, Title 29 Commission

maf

enclosures

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Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Ms. Marilyn Dimmick
Box 151
Ninilchik, AK 99639

Dear Ms. Dimmick:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

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Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

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

BOX 234
DILLINGHAM, ALASKA 99576
HOME PHONE 842-5302

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
PHONE 465-3738 OR 3739
HOME PHONE 789-7897

BRISTOL BAY — LOWER KUSKOKWIM

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

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

August 26, 1980

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

Dear Senator Sturgulewski,

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

Well, it seems that those of us living in the "bush" know more about what happens in Juneau than some of the state employees living and working there. For example, the Dept. of Health & Social Services just unveiled a plan whereby the communities of Holy Cross, Anvik, 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 advised Bob I wanted him to committee → Jam Cooke — Please copy AS 29 Renew. Committee w/ ex-officio + Dept HSS + Fran Ulmer

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN, MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

September 2, 1980

Title 29 - Technical Review Committee

Re: Organizational Meeting

It is my understanding that you have agreed to serve on a technical review committee to assist in a comprehensive review of AS Title 29. (Municipal Government). A Policy Review Group has been appointed by the Legislature to review Title 29 and report on any recommended revisions. The Technical Committee has been asked to assist the Policy Group in recommending changes and reorganizing the present body of statutes. As a member of the Policy Group, I have been asked to act as liason with the Technical Committee. I would therefore like to propose an organizational meeting and to pass along some preliminary requests made by the Policy Group at its initial meeting on August 27th and 28th in Anchorage.

One of the first points of consensus reached by the Policy Group was a feeling that the present Title 29 is confusing and badly organized. The Policy Group therefore requested the Technical Committee to explore the feasibility of a new organization for Title 29. Under the proposed organization, the present statute would be organized into roughly three or four categories according to their applicability. Category I would be those provisions applicable to and binding upon all municipal governments, including home rule municipalities. Category II would then contain statutory material constituting additional limitations or prescriptions for various classes of cities or boroughs. Category III would seek to address the needs of many smaller communities by containing directory administrative and legislative provisions. Such provisions would apply to local governments unless a municipality, by ordinance, rejected coverage in order to adopt its own local procedures. Probably, a Category IV containing miscellaneous and general matter would also be necessary.

It should be noted that, in addition to favoring a simplified organization for Title 29, there seemed to be considerable initial support for increasing local government autonomy. One of the Policy Group's next tasks will probably be a section-by-section analysis of the present statutes to determine which laws might either be eliminated or placed in a "directory" category to be used at the option of municipalities.

The Policy Group is tentatively looking at a second meeting on or about September 22nd. At this time, it is hoped that the technical group, together with staff, will have prepared an outline of a proposed new organization showing all of the present statutes organized into the three or four categories described above. Additionally, I know many of you submitted specific written comments on the present statutes, and I suggest that we explore a division of labor to begin preparing specific recommended statutory changes for consideration by the Policy Group.

Since time is uncomfortably short, I would like to propose an initial meeting for 9:00 a.m., Monday, September 8, 1980, at the Legislative Information Office, 1024 W. 6th Avenue, Anchorage. At this meeting, the committee would attempt to respond to the requests of the Policy Group and to discuss its future role in the review of Title 29. Hopefully, everyone will be able to consider in advance of September 8, a proposed reorganization along the lines described above and begin our individual grouping of present statutes. Recognizing all of our busy schedules, I am hopeful that a one day meeting on the 8th will be sufficient. However, if necessary, you may wish to allow for some time on your calendar for the morning of the 9th.

It is my understanding that travel and per diem expenses will be reimbursed. Please contact Ms. Tamara Cook, Legislative Counsel, 465-4996 for details. I look forward to seeing you in Anchorage. Please feel free to contact my office at 264-4236 with any questions.

Sincerely,

DEPARTMENT OF LAW

Theodore D. Berns
Municipal Attorney

TDB:gml
cc: Ms. Tamara Cook
Bill Berrier

(907) 586-1325
586-6026
Juneau, Alaska 99801

July 16, 1980

The Honorable Terry Gardiner, Speaker
State House of Representatives
P.O. Box 6092
Ketchikan, Alaska 99901

Dear ~~Representative Gardiner~~ Terry:

Enclosed is a list of people who have volunteered or who have been recommended to serve on the Title 29 Revision Committee. I have sent the same list to Clem Tillion.

I had originally intended to offer a limited number of names for consideration. I believe, however, it is very important that the committee represent a broad spectrum of Alaska local government interests and without knowing what areas were being covered by other nominations, I found it very difficult to cut down my list.

If I can be of any assistance once all the names have been submitted, I will be happy to do so.

Sincerely,

Ginny

Ginny Chitwood
Executive Director

cc: Billy Berrier, Director, Division of Legal Services
Lee McAnerney, Commissioner, Department of CRA
Phil Smith, RuralCAP

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

July 16, 1980

The Honorable Clem Tillion
President, Alaska State Senate
Halibut Cove, Alaska 99603

Dear Senator Tillion:

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Lee McAnerney, Commissioner, Department of CRA
Phil Smith, RuralCAP

MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

Alaska Municipal League - Nominations for Title 29 Revision Committee
(resumes included for several nominees)

Edward Ambarian Member, Kenai City Council Member, Kenai Peninsula Borough Assembly Former Member, Kenai Planning Commission	P.O. Box 580 Kenai, Alaska 99611 283-7535
Theodore D. Berns Attorney, Municipality of Anchorage	Pouch 6-650 Anchorage, Alaska 99502 264-4545
Richard Careaga Planner, City of Unalaska	P.O. Box 89 Unalaska, Alaska 99685 581-1251
Ginny Chitwood Executive Director, Alaska Municipal League Former Mayor, City & Borough of Juneau Former Chairman, Greater Juneau Charter Commission	204 North Franklin Juneau, Alaska 99801 586-1325
Terry Cook Secretary/Treasurer, Alakanuk City Council	Box 51 Alakanuk, Alaska 99554
Samuel L. Coxson Manager, City of Whittier	6754 Blackberry Street Anchorage, Alaska 99502
Ruby Coyle City of Kenai	P.O. Box 580 Kenai, Alaska 99611 283-7535
Bill Curtis Manager, City of Palmer Member, AML Legislative Committee	P.O. Box 1368 Palmer, Alaska 99645 745-3927
Marilyn Dimmick Member, Kenai Peninsula Borough Assembly Member, AML Legislative Committee Former Member, Borough Planning Commission	Box 151 Ninilchik, Alaska 99639 567-3927
Richard Garnett, III Attorney, Kodiak Island Borough Formerly, Municipality of Anchorage Attorney's Office Formerly, Attorney General's Office	900 West Fifth Avenue Suite 540 Anchorage, Alaska 99501 276-2221

Bob Jones **Finance Director, Fairbanks North Star Borough** **President-Elect, Municipal Finance Officers Association** **Member, AML Revenue Sharing Committee** **Member, State Manpower Services Council**	**P.O. Box 1267** **Fairbanks, Alaska 99707** **452-4761**
Robert S. Juettner McGrath City Administrator	P.O. Box 57 McGrath, Alaska 99627 524-3825
Ronald Larson Mayor, Matanuska-Susitna Borough Chairman, AML Legislative Committee	Box B Palmer, Alaska 99645 745-4801
John Messenger Preston, Thorgrimson, Ellis Holman & Fletcher AML Associate Member Expertise in Bonding and Finance Former Commissioner of Revenue	420 "L" Street Suite 404 Anchorage, Alaska 99501 276-1969
Gene Moore Manager, City of Kotzebue Member, AML Legislative Committee	P.O. Box 186 Kotzebue, Alaska 99752 442-3401
George Navarre Former Chairman, Kenai Peninsula Borough	Box 580 Kenai, Alaska 99611 283-7535
* Jim Nordale Attorney, Fairbanks North Star Borough Member, AML Legislative Committee	P.O. Box 1267 Fairbanks, Alaska 99707 452-4761
Joyce Rasler Manager, City of Wrangell Member, AML Legislative Committee Former Clerk, City of Wrangell	P.O. Box 531 Wrangell, Alaska 99929 874-2381
Andrew Sarisky Attorney, Kenai Peninsula Borough	Box 850 Soldotna, Alaska 99669 262-4441
Barbara Shaffer Council Member, City of Nome Member, AML Legislative Committee	P.O. Box 907 Nome, Alaska 99762 443-2900
Jo Anne Shanley Clerk, City of Seward	P.O. Box 337 Seward, Alaska 99664 224-5216

Gerald Lee Sharp **Attorney, City and Borough of Juneau** **Member, AML Legislative Committee** **Former Member, Greater Juneau Borough Assembly**	**155 South Seward** **Juneau, Alaska 99801** **586-3300**
Donna Sherby Clerk, City of Cordova	P.O. Box 1210 Cordova, Alaska 99574 424-3237
* Allan E. Tesche Attorney, Matanuska-Susitna Borough	Box B Palmer, Alaska 99645 745-3246
Russell W. Walker Attorney, Ketchikan Gateway Borough Attorney, City of Ketchikan	Box 7300 Ketchikan, Alaska 99901 225-3111 # 327
Michael Walleri Local Government Specialist Tanana Chiefs Conference, Inc.	Doyon Building 1st and Hall Streets Fairbanks, Alaska 99701 452-8251

* Nominees specifically for working group.

MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

The following information was phoned into the League office:

Richard Careaga - Planner, City of Unalaska
P.O. Box 89
Unalaska, Alaska 99685
581-1251

Eight years planning experience:
In Unalaska since February 1, 1980, establishing planning department.

Masters Degree - Regional Planning

Member - American Planning Association
Member - American Institute of Certified Planners

Represents a First Class City in an Unorganized Borough

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

July 9, 1980

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

Re: Title 29 Revision Committee

Dear Ms. Chitwood:

In reference to the announcement from the Alaska Municipal League concerning nominees for a policy committee to study proposed changes in Alaska Title 29, I would like to submit my name for consideration as a member of the committee. I believe that you are already familiar with my background in municipal law. However, for the benefit of other members of the selection team, I would like to offer a brief synopsis. I have been engaged in the practice of municipal law in Alaska for over four years. I am currently serving as Municipal Attorney for the Municipality of Anchorage, and have held my present position for approximatley two and one-half years. As Municipal Attorney, I have been involved in all phases of municipal law, and have served as past president of the Alaska Municipal Attorney's Association. Additionaly, I have spent considerable time during two past legislative sessions as a lobbyist for the Municipality. Included among my duties was substantial responsiblity for drafting state legislation on behalf of the Municipality of Anchorage. A further description of my academic background and other credentials could be provided upon request.

I believe that I am quite familiar with the provisions of the present AS Title 29 with respect to both home rule and general law of municipalities in Alaska. Although I believe the present code is quite adequate in many respects, I'm sure that others share my concern over many ambiguities in the present law involving such critical aspects of municipal government as service area functions, distinctions between home rule and non-home rule powers, and a variety of other concerns. I have been assured by Mayor Sullivan that he has no objection to my making the necessary time available to serve as a member of the commitee.

Municipality of Anchorage

ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN, MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

July 9, 1980

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

Re: Title 29 Revision Committee

Dear Ms. Chitwood:

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RESUME
1980

COXSON, Samuel L. Telephone: (907) 243-1652, home
6754 Blackberry St.
Anchorage, Alaska 99502

PERSONAL DATA — Born July 22, 1945
Married; two children

EDUCATION

1978 — M.P.A., University of Pittsburgh. Thesis, "Politics of Public Administration: A Case Study of Intergovernmental Lobbying in Alaska."

1971 — B.S. Political Science, Iowa State University

Other Education — Numerous ICMA correspondence courses and short courses in public management.

PROFESSIONAL EXPERIENCE

Present February 1979 — City Manager, Whittier, Alaska. With a summer population of 1,200 and winter population of 300, this diversified community requires a full range of municipal services. The city employs fifteen people, has a budget of approximately $600,000, and occupies 20 square miles. Significant management accomplishments include complete rehabilitation of the city's financial and budgeting procedures; overhaul of financial records of more than $50,000; construction of water system improvements; development and planning for a major recreation area, including road access funds through lobbying; execution of a property tax passed but not levied in prior years; and establishment of an updated and workable personnel system. Additional accomplishments include identification and development of income producing assets owned by the city; risk management evaluation and proper adjustments to risk program; development of tourism brochure for city.

December 1977 May 1975 — Senior Administrative Assistant, Anchorage, Alaska (pop. 200,000). Anchorage, the state's largest city, is approximately 1900 square miles and offers more than the full range of municipal services with its ownership of power and telephone utilities. It has approximately 2,400 employees and an operating budget of $140,000,000. Major management accomplishments as senior administrative assistant were setting up an effective intergovernmental program; assisting in merger of the former City of Anchorage and Greater Anchorage Area Borough and concurrent organizational development concerns; writing and coordinating the execution of

over fifteen million dollars in capital improvement grants and participating as the municipality's first liaison with Anchorage's seventeen community councils.

May 1975
May 1973 — City Manager of Dillingham, Alaska (pop. 1,200). This outpost community, while not only requiring a full range of municipal services, had tremendous logistics problems which affected every facet of municipal management. The city of forty square miles and operating budget of $700,000 required extreme diligence and planning to accomplish the ordinary. Major management accomplishments were the operation of a city-owned fish cold storage plant; expansion and development of an ocean-going barge facility; construction of a sewage treatment plant and establishment of program budgeting and idle cash balance program.

April 1973
September 1972 — Acting Borough Manager, Administrative Assistant, and Administrative Intern of Forest Hills, Pennsylvania (pop. 10,000). Significant management responsibilities were full charge of the $1,200,000 budget, rewriting the purchasing procedures and special projects such as the federal flood plain insurance program.

MILITARY EXPERIENCE — U.S. Army, Army Security Agency, September, 1963-August, 1967.

BACKGROUND SUMMARY — A professional municipal management background in managing two cities; significant contribution to the merger and operation of Anchorage and extensive lobbying on intergovernmental relations for that city. Success in developing municipal infrastructure and encouraging economic development and growth. Proven ability to work with elected officials, the public, business and municipal employees on a cooperative and positive basis.

PROFESSIONAL ACCOMPLISHMENT — Secretary for three years of Alaska Municipal Management Association; membership in the ICMA Academy for Professional Development; university instructor in public administration; participant in research programs in state revenue sharing analysis and labor relations seminars.

REFERENCES — Mr. Vernon R. Johnson, C.P.A., 5310 North Star Dr., Anchorage, AK 99502, (907) 279-8129, home; (907) 276-7401, office.

Mr. Norman Levesque, Manager, Matanuska-Susitna Borough, P.O. Box B, Palmer, AK 99645, (907) 279-8129, home; (907) 276-7401, office.

Mr. Douglas G. Weiford, City Manager, 3900 Main St., Riverside, CA 92501, (714) 787-7552, office.

July 2, 1980

Alaska Municipal League
204 North Franklin
Juneau, AK 99801

To Whom It May Concern:

Regarding public members for the policy committee for revision of the Alaska Municipal Government Code -- Title 29, Bob Juettner, City Administrator for the City of McGrath would be an asset to the committee in it's endeavors. He is an interested, knowledgable person concerned with responsive, meaningful local government.

He has exhibited this concern and knowledge while serving in the community of McGrath. There has been measurable increases in citizen involvement and governmental and community services. Bob works conscientiously, with dedication in all of his objectives.

I would recommend his selection for the policy committee for revision of Title 29 without any reservations. Feel free to contact me if you would like further references about Bob Juettner's character and abilities.

Respectfully,

Michael C Harrington

Michael Harrington,
McGrath City Council

MH:jv

CURRICULUM VITAE OF

ROBERT S. JUETTNER

EDUCATION

1977-Present — Master of Arts in Teaching, University of Alaska. This program consisted of course work and research under the direction of the faculty of the Center ofr Cross Cultural Studies, U. of A., Fairbanks. While engaged in this program I was one of nine graduate assistants who participated in the Small High School Project which gathered data concerning the effectiveness of small high schools in western Alaska established under the Tobeluk consent decree and developed alternative educational program development. I currently hold a Type A, Alaska Secondary Teaching certificate and am six hours short of completing my degree.

1972 — Master of Arts, History, University of Arizona. This program consisted of 30 hours in Chinese and Japanese history and 12 hours of supporting courses in Oriental Studies.

1967 — Bachelor of Arts, History and Philosophy, Defiance College.

HONORS AND PUBLICATIONS

1977 — Kellogg Foundation Assistantship
1971 — Out-of-State Tuition Scholarship, University of Arizona
1969 — Navy Achievement Award with Combat "V".
1979 — Evaluation-Who Needs It? A Small High School Illustration. Bob Juettner, Judith Kleinfeld
1978 — Small High School Programs For Rural Alaska. Barnhardt, et al.
1978 — Iditarod Area School District Small High School Evaluation. Bob Juettner and Judith Kleinfeld.

Certifications--Arizona Community College Academic certificate, major History, minor Philosophy. Type A Alaska Secondary teaching certificate in social studies.

WORK EXPERIENCE

Nov. 1978-Present — City of McGrath, McGrath, Alaska. As City Administrator I perform the managerial functions for the City and supervision of three City employees. I possess a working knowledge of several State and Federal agencies and programs and have been highly successful in securing capital improvement funding for the City. More importantly, I have established good working relationships with Federal and State officials including our legislators in Juneau. In addition, I have successfully coordinated a $2,000,000 City, State, and Federal Capital Improvement Project for this community and combined a direct legislative appropriation with FmHA fund to complete a comprehensive growth plan for the City begun with HUD "70" funds. Besides having a knowledge of programs and intimate awareness of the problems faced by muncipalities in western Alaska, I have a good understanding of the complex relationships that exist as a result of ANCSA, previous BIA policies, Statehood, and the diverse peoples who comprise it's population.

Spring 1977 — Community Education, Southern Arizona. In Pima County, as a volunteer, I initiated and coordinated the first county wide community education meetings including rural school administrators, county education personnel, Southwest Regional Center for Community Education personnel and Project PREP personnel. PREP is a nonprofit, rural outreach organization.

[illegible]

[illegible]-1977 Duval Sierrita Corporation, Sahuarita, AZ. As an Analyst I, my duties were divided into two areas: administrative and technical. My administrative duties include the training of new personnel in proper laboratory procedures and the review of daily and special project reports. Technical duties include geochemical, oil, environmental analysis and special projects with a strong instrumentation background.

Spring 1973 Continental Elementary School, Continental, AZ. As a volunteer, I conducted the community and resource surveys that led to the Continental Community School.

1967-1969 United States Marine Corps. I performed the duties of a rifleman and Battalion Mail Clerk. I achieved the rank of corporal before my honorable discharge in 1969.

OUTSIDE INTERESTS

Hiking, backpacking, mountaineering, reading and music.

PERSONAL INFORMATION

Maritial Status: Married
Health: Excellent
Number of Dependants: Two

REFERENCES

Available upon request.

SALARY
Negotiable, dependent upon responsibility and duties.

MAUNELUK ASSOCIATION

P. O. Box 256
Kotzebue, Alaska 99752

Phone
(907) 442-3311
or
(907) 442-3313

July 8, 1980

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

Dear Commissioner McAnerney:

We recommend that you select for the Title 29 revision committee Mr. Gene Moore, City Manager of Kotzebue.

Mr. Moore has had experience in trying to operate under Title 29 in a bush community, and has ideas on how to revise the statutes. He brings experience from other states which could be useful.

The City of Kotzebue has had to deal with most of the problems endemic to bush communities, including facility development and maintenance on a restricted revenue base.

In addition, he has been involved in discussions at the Municipal League on the unorganized borough, and has been more exposed than others in the State to the combination of Coastal Management, Regional Strategy, and the problems they seek to solve jointly.

While his perspective may be different than the region as a whole, and Kotzebue's problems may not be exactly the same as small villages, he could articulate the problems, and suggest appropriate language for the statutes.

A background resume' is attached. Thank you.

Sincerely,

MAUNELUK ASSOCIATION

Dennis J. Tiepelman
President

DJT/etk

ENCLOSURE

Synopsis of Resume of:

Gene F. Moore
P O Box 186
Kotzebue, Alaska 99752

Home Phone
907-442-3407

Work Phone
907-442-3401

Employment

Oct. 78 - Present	City Manager City of Kotzebue, Alaska
Jun. 77 - Oct. 78	Town Manager Town of Bluefield, Virginia
Sept. 75 - Apr. 77	City Manager City of Manassas Park, Virginia
Apr. 74 - Sept. 75	Dir. Community Development/Acting City Manager City of Manassas Park, Virginia
Feb. 54 - Apr. 74	Superintendent of Operations Control Center Office of the Secretary United States Air Force (Pentagon) Washington, D.C.

Education

High School:	Sand Hill, Asheville, North Carolina
College:	University of Omaha, Omaha Nebraska University of Maryland, Far East Division, Japan
Other:	Numerous courses in Public Administration, Engineering, Political Science, Economics and Management both in residence and correspondence.

Personal

Age:	43
Date of Birth:	December 23, 1936
Place of Birth:	Asheville, North Carolina
Appearance:	Height: 6' ; Weight 185 lbs.
Health:	Excellent
Affilations:	American Legion V F W Lions Club Alaska Municipal Managers Assoc. International City Management Assoc. American Management Assoc. American Water Works Assoc. American Society of Public Administration Society of Planning Officials Alaska Municipal League National League of Cities American Industrial Development Assoc.

References and expanded resume available on request.

KENAI PENINSULA BOROUGH
BOX 850 · SOLDOTNA, ALASKA 99669
PHONE 262-4441

DON GILMAN
MAYOR

July 8, 1980

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

Dear Ginny:

I would like to nominate Andrew Sarisky, Borough Attorney for the Kenai Peninsula Borough, to be appointed to the Policy Committee for the revision of the Alaska Municipal Code.

Andy has an extensive background in utility and municipal law, having practiced in and for the City of Cleveland, Ohio, for many years before coming to Alaska as the first general counsel for RCA-Alascom.

He has some definite ideas and suggestions on how to streamline and consolidate many of the provisions which are overlapping after the consolidation of Title 29 and Title 7 in 1972.

I feel he would be a definite asset to any Policy Committee.

Sincerely,

Donald E. Gilman, Mayor
Kenai Peninsula Borough

DEG:mw

Alaska Association Chiefs of Police

July 1, 1980

GINNY CHITWOOD -- EXECUTIVE DIRECTOR
ALASKA MUNICIPAL LEAGUE
204 N. Franklin Street
JUNEAU, AK 99801

Dear Ginny:

In response to your letter of June 27, 1980, regarding the appointment of a policy committee for the revision of Title 29, I would like to submit for your review the name of JoAnne Shanley.

JoAnne has been the City Clerk for Seward for the past four years and, in that position, works with Title 29 on almost a daily basis. Although Seward is a Home Rule city, the Clerk refers to Title 29 on a regular basis to make sure the provisions of the Seward City Code are in compliance with the State Statutes; and, furthermore, she makes recommendations for revisions to the Seward Code based on Title 29 provisions. She has proven very knowledgeable in her basic understanding and applicability of the Alaska Municipal Government Code and I am sure she would be an asset to the committee.

Enclosed is JoAnne's resume' for your perusal. Thank you for your consideration of her name as an appointee to the committee.

Sincerely,

LOUIS BENCARDINO
PRESIDENT

Enclosure

LB/jes

RESUME' - JOANNE SUHR SHANLEY

PERSONAL INFORMATION AND EDUCATION:

Birthdate:	April 4, 1951
Marital Status:	Single
College:	Central Washington State, Ellensburg
Majors:	Business Education/Administrative Management
Graduated:	March 16, 1973

WORK EXPERIENCE:

City Clerk-Treasurer for City of Seward, Alaska. Employed by seven-member Council. Responsible for preparing agendas and recording proceedings of City Council, Harbor Commission and Planning and Zoning Commission meetings; maintain permanent City records and, upon my arrival in 1976, initiated legislative history system which is now complete for City Council proceedings from 1912-present; drafting of routine legal contracts and agreements, ordinances and resolutions, acting in a paralegal capacity; preparing of departmental budget ($80,000); organized all deeds and easements relative to City property; administer City elections and assist with State and Borough elections; responsible for legal publications; supervise 2-3 employees, establishing specific goals but allowing for employees' discretion in the attainment of the end product. Employed June 16, 1976 - present

Assistant City Clerk for Evelyn L. Roberson, City Clerk, City of South Lake Tahoe, California. ~~Letter of recommendation explaining duties in detail attached~~. Employed September 1975 - May 1976

Manager of The Lakewood Lodge Motel, South Lake Tahoe, California; Ralph and Pat Forgeon, owners. Managed 60 unit motel complex and 5-10 employees depending on the season. Employed December 1974 - September 1975

Administrative Assistant for Seattle/King County Office of the Ombudsman, Seattle. ~~Letter of recommendation explaining duties in detail attached.~~ Employed January - August 1974

Secretary to J.A. McMillan, Labor Relations Administrator, Pacific Maritime Association, Seattle, Duties included routine correspondence, minutes of meetings, duplicating and bulk mailings, kardex and general filing systems and other office/clerical tasks, legal arbitration research. Employed March - September 1973

Director of SERVE - Students Engaged in Research and Volunteer Experiences Prepared annual budget and coordinated office duties of four employees, established program goals and objectives, conferred with off-campus agencies and department heads to arrange for student volunteer, credited experiences. Employed from January - December 1972 while attending college.

AWARDS AND HONORS:

Most Outstanding Junior Award - Junior Class, Kennewick High School, WA (1968)
Girl of the Year and Dormitory President - Jennie Moore Hall, Central Washington State College, Ellensburg, WA (1971)
Who's Who Among Students in American Universities and Colleges - 1972-1973
Who's Who in the West - 1980-1981 edition

REFERENCES:

Available upon request

GERALD LEE SHARP
PERSONAL

Date of Birth: February 9, 1935

Home Address: 957 Gold Belt Avenue
Juneau, Alaska 99801
(907) 586-6862

Office Address: 155 South Seward Street
Juneau, Alaska 99801
(907) 586-3300

EMPLOYMENT (LAW)

Assistant Attorney, City and Borough of Juneau
August 1973 - June 1974

Attorney, City and Borough of Juneau
July 1974 - present

EDUCATION

B.A. Political Science, University of Washington, 1970

J.D., University of Washington School of Law, 1973

MEMBERSHIPS

Alaska State Bar
Washington State Bar
American Bar Association
Alaska Municipal Attorneys' Association (Currently President)
National Institute of Municipal Law Officers
American Association of Hospital Attorneys
Alaska Municipal League Legislative Policy Committee

PUBLICATIONS

Sharp, Home Rule in Alaska: A Clash Between the Constitution and the Court, UCLA-Alaska Law Review 1, 1973.

ALLAN E. TESCHE

PERSONAL

Date of Birth: August 3, 1948

Home Address: P. O. Box 2601
Palmer, Alaska 99645
(907) 376-5384

Office Address: Matanuska-Susitna Borough
Box B
Palmer, Alaska 99645
(907) 745-4801

EMPLOYEMENT

Matanuska-Susitna Borough, Borough Attorney
August, 1979 - present

I am presently reponsible for handling all legal matters of the Matanuska-Susitna Borough and monitor private counsel retained by the Borough for special projects or overflow work. My duties also include advising the Borough Assembly and numerous Borough boards and commissions during their official proceedings, preparing legal opinions, legal document drafting and review, assisting the Borough Assembly and Manager on labor relations matters including collective bargaining with Borough employees and special projects as assigned. I also serve as Acting Manager of the Borough in the absence of the Borough Manager.

Municipality of Anchorage, Deputy Municipal Attorney
February, 1978 - August, 1979

I was responsible for the supervision of eight attorneys, two legal interns and approximately ten support staff assigned to the Civil Division of the Office of Municipal Attorney. My responsibilities included assignment of cases and opinion requests to attorney staff, allocation of staff to special projects, and review of Municipal Assembly agenda items. Although my primary duties were managerial, I maintained a moderately heavy caseload of land use, regulatory, and miscellaneous litigation. Finally, I advised the Mayor and attended Assembly meetings as Acting Municipal Attorney in the absence or on request of the Municipal Attorney.

Municipality of Anchorage, Assistant Municipal Attorney
August, 1975 - February, 1978

Under the supervision of the Municipal Attorney, I advised the Public Works Department on zoning and building code enforcement matters and handled related litigation from that department,

advised the Municipal Clerk on business licensing regulations, advised the Planning Department on land use matters, assisted in selected labor and personnel problems, handled several pieces of major litigation, assisted in misdemeanor prosecution and legislative drafting. Past assignments with the Department of Law include advising the Municipal Health Department and managing a small collections staff which litigates delinquent utility and tax cases in district court.

Greater Anchorage Area Borough, Legal Intern
June - December, 1974

For six months I participated in the Quarter Away clinical program sponsored by the Greater Anchorage Area Borough and the University of California-Davis Law School. My duties included misdemeanor prosecution, legal research, advising administrative departments on legal matters, and assisting in civil litigation.

State of California, Department of Consumer Affairs, Legal Intern
Summer, 1973

Assigned to the Department's Consumer Affairs Division, I assisted its legal staff in preparation and analysis of state legislation affecting the Department, drafting position papers and testimony, handling routine consumer complaints, and special research projects, including proposed reforms of California's small claims courts.

United States Peace Corps, El Salvador
1970 - 1972

Assigned to a community development program, I had primary responsibility for the promotion, organization, and execution of self-help public works projects in rural communities located in the northwest region of El Salvador. The last six months of my tour consisted of managing a special projects fund for the United States AID program in El Salvador.

EDUCATION

University of California School of Law, Davis, California
J.D. 1975

Member, Phi Delta Phi legal fraternity.
Graduated in upper half of calss with 2.9 grade point average.

University of California, Davis, California
B.A., 1970

Majors in history and political science.
Graduated with high honors and 3.56 grade point average. Awarded a History Department Citation for undergraduate achievement and President's research fellowship.

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

July 10, 1980

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

Dear Ginny:

In response to an inquiry requesting names for consideration to the Title 29, Policy Review Committee, the Borough Assembly is submitting the name of Russ Walker, Municipal Attorney. The Office of Municipal Attorney does all the legal work for the City of Ketchikan and Ketchikan Public Utilities, as well as the Borough, therefore, Mr. Walker is very knowledgable about the functions and authorities of not only a second-class borough, but also a home-rule first-class city which operates a public utility. You will find a resume from Mr. Walker attached.

In addition to the Assembly's endorsement of Mr. Walker for consideration to the policy committee, I would personally offer my own. Russ Walker is one of the most qualified and knowledgable person concerning municipal government with whom I have been associated. Even though he has not been in Alaska long, he has a thorough working knowledge of Title 29, is familiar with the previous codes, 29 & 7, and brings a wealth of previous municipal knowledge to Alaska. This assignment is going to require persons with the capacity of seeking out and understanding all sides of complex issues. Russ is uniquely capable in this regard.

Please do not hesitate to contact me for further information.

Sincerely yours,

KETCHIKAN GATEWAY BOROUGH

Judith A. Slajer
jw

Judith A. Slajer
Borough Manager

JAS:jw

attachment

RESUME OF:

RUSSELL W. WALKER

P. O. Box 7818
Ketchikan, Alaska 99901
(907) 225-3111, ex. 327 (business)
(907) 247-8585 (home)

EXPERIENCE

1979 - Present: Municipal Attorney, Ketchikan Gateway Borough and City of Ketchikan, Box 7300, Ketchikan, Alaska 99901.

1974 - 2/1979: Partner, private law practice, WALKER & GANN, Attorneys at Law, 333 South Juniper, Suite 214, Escondido, California 92025, (714) 743-3022

1971-1974 Assistant Attorney General, United States Department of the Interior, Department of Territories.

1968-1971 Partner, private law practice, WALKER, WALKER & GANN, Escondido, California 92025.

1965-1968: Deputy County Counsel III, Office of County Counsel, San Diego, California 92101.

1961-1964: Deputy County Counsel II, Office of County Counsel, San Diego, California 92101.

QUALIFICATIONS

Education: Doctor of Jurisprudence (J.D.) Degree, 1959 from Hastings College of the Law, San Francisco, California.

Admitted to Bar, State of Alaska, 1979.

Admitted to Bar, State of California, 1960.

Law Review: Hastings Law Journal, Note and Comment Editor, 1958-1959.

Thurston Society, Scholastic Honor Society of the Hastings College of the Law (top 10%).

Allen D. Wilson Memorial Scholar, 1958-1959.

Newhouse Award, 1956 and 1957.

Hastings College of the Law, Student Body President, 1959.

Certification: Bar Membership and admissions to practice:

State of Alaska - 1979.
State of California - 1960.
Supreme Court of the United States.
United States Court of Appeals, Ninth Circuit.
United States District Court, Alaska District.
United States District Court, Southern District of California.
High Court, Trust Territory of the Pacific Islands.
San Diego Trial Lawyers Association.

PERSONAL:

BORN: 1-29-31 in Berkeley, California.
Height: 6'0", weight: 180 lbs.

MARRIED: 1964, Wife KEREN A. WALKER, Masters Degree in Education. 2 children, ages 7 and 2 years.

HEALTH: Good, no physical limitations.

RESIDENCE: Own.

FINANCES: Good order.

RECREATIONAL INTERESTS: Skiing, hunting, camping, fishing and acquatic sports.

SERVICE: United States Marine Corps, 1950-1953, honorable discharge

EXPERIENCE:

1979 - Present: Municipal Attorney, Ketchikan Gateway Borough and City of Ketchikan, Box 7300, Ketchikan, Alaska 99901

1974 - 2/1979: WALKER & GANN, Attorneys at Law, partner, private, general civil, business, real estate, litigation, and public law practice.

1971 - 1974: Assistant Attorney General, United States Department of the Interior, Department of Territories. Assigned as Assistant Attorney General, Trust Territories of the Pacific Islands. Legal counsel to District Administrator on all civil and criminal matters, including immigration, economic, development, and foreign investment, and the preparation and review of legislation, contracts, land use agreements, and represent government in preparation and trial of land acquisition and other litigation by and against public agencies and employees.

1968 - 1971: WALKER, WALKER & GANN, Attorneys at Law, partner, private practice; general civil, business litigation practice, with emphasis on real estate, business litigation, and public agency law.

1961 - 1968: Practiced six (6) years in the office of the County Counsel of the County of San Diego, State of California, attaining the position of Deputy County Counsel III. In this capacity, practice related to the rendition of legal advice to virtually all departments, and to a wide variety of special districts, boards, and committees, including the County Board of Supervisors, Chief Administration Officer, Engineering, Personnel, Probation, and Sheriff's Department, Superior and Municipal Court officers, Welfare Department, and Department of Public Health and Local Agency Formation Commission. These duties involved rendering both written and oral opinions on public law and the statutory structure within which these public agencies function and a close-working relationship with boards, committees and department heads in the drafting and formulation of legislation, both in the form of county and special district ordinances, and proposed legislative bills to be submitted to the State Legislature, California Law Revision Commission, and also at the local level; the preparation and approval of construction bids and contracts to be let by public agencies, leases, and substantially all forms of documents related to the normal functioning of a public agency. Duties also involved extensive preparation and trial of complex litigation involving eminent domain and land acquisition, contracts, judicial review of administrative actions, state and federal preemption, claims against the county and public agencies, and the prosecution of appropriate actions on behalf of the county and the various special districts against given parties; also preparation of appellate briefs and conducting appeals.

1964: Travel throughout Latin America, Europe, and North Africa.

Tanana Chiefs Conference, Inc.
Doyon Building
1st and Hall Streets
Fairbanks, Alaska 99701
Phone (907) 452-8251

July 1, 1980

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

Dear Ms. Chitwood:

I wish to thank you for your recent letter of inquiry regarding the formation of the Policy Advisory Group on Title 29 Code Revision. In response to that letter, I would like to recommend Michael Walleri as a candidate for nomination to this group. I feel Mike is highly qualified to sit on this policy committee. He is a member of the Alaska Bar with an extensive background in local government in rural Alaska. For the last year and a half, he has served as TCC's Village Government Specialist rendering technical assistance to TCC villages and staff on local government matters. He is currently working under a grant from the Department of Community & Regional Affairs on a legal research project dealing with the relationships between various local governments in rural Alaska. In this capacity, he has gained a working familiarity with the history, operation and problems of rural Alaskan local government.

During the last legislature, the issues of local government in rural Alaska were addressed in various bills. The Title 29 revision is an appropriate and timely mechanism for addressing this issue in a coordinated fashion. Mike's background, experience, and knowledge will greatly assist the group as it addresses those issues.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. "Spud" Williams
President

107K3

Tam --

Tillion has affirmed selection of eight of the nine appointees to the Title 29 committee. Arliss's instruction is to call the eight and invite their participation at the upcoming meeting. Then follow up by letter with the mail out.

The problem surrounds Tillion's insistence that Ron Larson replace Jim Eckstedt. Please call Terry Gardiner in Ketchikan and confirm with him this replacement. If Terry is agreeable, contact Larson and advise him of the meeting.

Your letters and phone calls should also make contact with the four legislative members: Sturgulewski, Mulcahy, Parr and Branson.

JC

Ronald Larson
Mayor, Matanuska - Susitna Borough
Chairman, AML Legislative Committee

Box B
Palmer, AK 99645
745-4801

3720
Rep. Gardiner 225-9675
per Billie Bessies - ok Ron Larson confirmed 9/21/80

July 28, 1980

The Honorable Terry Gardiner
Speaker of the House of Representatives
Box 6092
Ketchikan, AK 99901

Dear Representative Gardiner:

CSSCR 66, Legislative Resolve 39 of the recent legislative session, directs the Alaska Legislative Council to revise AS 29, the municipal government code. A policy advisory group is authorized to assist in that task. Together with two members of each house of the legislature appointed by the respective presiding officers, the resolution also authorizes selection by the presiding officers of an unstated number of public members, drawn from recommendations submitted by legislative members, the Departments of Community and Regional Affairs and Law, the Alaska Municipal League, the Rural Alaska Community Action Program, and the legal services division of this Agency.

At my direction, Jack Chenoweth of this office met today with Ginny Chitwood of the Municipal League, Palmer McCarter (speaking for the administration) and, by phone, Bob Lohr, the deputy director of RuralCAP. It is their suggestion, and my recommendation, that nine public members be appointed to serve with the four legislators previously designated for the policy advisory group for the Title 29 revision. Their suggestion included the following recommended nominations:

Ted Berns, municipal attorney
Municipality of Anchorage
Pouch 6-650
Anchorage, Ak 99502
264-4545

Terry Cook, member of the city council
City of Alakanuk
Box ~~54~~ 33
Alakanuk, Ak 99554

Marilyn Dimmick, member of the assembly
Kenai Peninsula Borough
Box 151
Ninilchik, Ak 99639
567-3927

James O. Eckstedt, member of the assembly
Matanuska-Susitna Borough, and of the city council
City of Palmer

James Kohler, city manager
City of Yakutat

Gene Moore, city manager
City of Kotzebue
P.O. Box 186
Kotzebue, AK 99752
442-3401

Donna Sherby, city clerk
City of Cordova
P.O. Box 1210
Cordova, AK 99574
424-3237

Jonathan Solomon, presently working in support of establishment of a rural borough for the Upper Yukon River area, Fort Yukon

Russell W. Walker, attorney
City of Ketchikan and Ketchikan Gateway Borough
Box 7300, Ketchikan AK 99901 225-3111 #327

The policy advisory group provided for by the resolution will have direct and continuing support and assistance from Palmer McCarter of the Department of Community and Regional Affairs, Ginny Chitwood of the Alaska Municipal League, Phil Smith of RuralCAP, Rod Pegues from the Department of Law, and Tamara Brandt Cook, whom I have assigned from the staff of this division.

Your consideration of the nominations suggested in this letter for appointment as public members of the policy advisory board for the revision of AS 29 is appreciated.

Very truly yours,

Billy G. Berrier
Director
Division of Legal Services

BGB:JBC:jdn

bcc: Senator Sturgulewski
Palmer McCarter
Ginny Chitwood
Phil Smith

Rep. Parr
Rep. Branson

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

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

July 24, 1980

DICTATED 7/22/80
BUT NOT READ

Mr. Billy G. Berrier
Director
Division of Legal Services
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

FILE: Title 29 Revision

Dear Billy:

On June 27, 1980, I sent out to the mailing list which is enclosed a letter alerting various attorneys in the state to the formation of the policy group under the provisions of CSSCR 66 and of the possibility that a working group might also be formed. The enclosed letter to Gary Thurlow sets forth the content of the letter.

Enclosed are copies of the responses. Please note that Gary Thurlow's response is hand-written at the end of my letter to him. If a working group is formed, please do not take the non-response of anyone on the list as an indication of non-interest. I believe Jim Nordale and probably Russ Walker (Ketchikan City and Borough) and others may be willing to serve on such a group.

I have been nominated by the assembly for the policy group. Obviously, if not chosen to serve on the policy group, I would certainly like to be considered for a position on the working group if one is formed. Although I would certainly appreciate some assistance in the way of travel and per diem if travel is involved, I believe I can probably manage some travel and per diem from the budget.

I am leaving Juneau Wednesday, July 23, 1980, and will be out of the state until the latter part of August. I look

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

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I am leaving Juneau Wednesday, July 23, 1980, and will be out of the state until the latter part of August. I look

forward, upon my return, to working on or with the policy or working group.

Very truly yours,

Gerald L. Sharp/cab

Gerald L. Sharp
Attorney

GLS:cab

Enclosures

cc: Ginny Chitwood
Executive Director, AML

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

June 27, 1980

Gary Thurlow, Esq.
Attorney at Law
738 H Street, Suite 200
Anchorage, Alaska 99501

SUBJECT: Title 29 (Municipal Code) Revision

Dear Gary:

Enclosed is the material which I have just received from the Alaska Municipal League. Please review it and take whatever action you believe is appropriate. Note that nominations to the policy committee must be in by July 10, 1980.

There is some possibility that a working group will be formed of municipal attorneys and perhaps others who are intimately involved in the administration of Title 29. If you have the time available and would be interested in serving on such a working group, I suggest that you let me know as soon as possible. If such a group is formed, we will be able to submit the names of those who are interested to those who will be selecting such a group. It appears that the funding for the Title 29 revision is sufficient to cover the per diem and travel expenses of the policy group and perhaps also similar expenses for a working group. If you are willing to serve on the working group you should state whether or not your serving on the group is contingent upon reimbursement for all, some or none of your travel and per diem expenses.

Whether you are interested in serving on either the policy or working group, please note the request in paragraph 3 of the joint RuralCAP, Alaska Municipal League and Department of Community and Regional Affairs letter. Please take time right now, if you have not already done so, to begin a list of Title 29 problems. Any inconsistencies, ambiguities, restrictions, inadequate delegations or other problems which you have encountered in Title 29 should be briefly described and forwarded to Ginny Chitwood whose address is on the attached letters. Please note the July 30, 1980, deadline for this list.

There are many inadequacies in Title 29 which have resulted from oversights when the code was revised in 1972, the passage of time and the expansion of municipal functions, court decisions and legislative modifications in response to special interests. We now have an opportunity to straighten out many of these problems. Even if you are unable to participate as a full-time member in a working group (if one is formed) please let both groups have the benefit of your experience and thoughts regarding needed changes.

Sincerely,

Lee

Gerald L. Sharp
President
Alaska Municipal Attorneys Association

Attachments

Lee
I would like to be
on a working group
committee. Travel &
per diem expenses are
paid. I represent Valdez
Sand

LAW OFFICES OF
HAHN, JEWELL & STANFILL

A. ROBERT HAHN, JR.
ALLEN L. JEWELL
STAN B. STANFILL

542 WEST SECOND AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE 279-1544

HOMER, ALASKA
TELEPHONE 235-8709

July 3, 1980

Gerald L. Sharp, Esq.
President
Alaska Municipal Attorneys Assoc.
155 South Seward St.
Juneau, Alaska 99801

Dear Mr. Sharp:

Thank you for your letter of June 27 concerning possible revisions of Title 29. I would indeed be interested in participating in this long overdue effort. I am City Attorney for Homer and Seldovia and one of my partners represents Port Lions; thus a substantial part of our practice involves municipal law. I would be willing to serve on either the policy or working group. I would prefer that travel and per diem expenses be reimbursed.

Please keep me advised of your progress.

Sincerely,

HAHN, JEWELL & STANFILL

A. Robert Hahn, Jr.

ARH/db

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

July 9, 1980

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

Re: Title 29 Revision Committee

Dear Ms. Chitwood:

In reference to the announcement from the Alaska Municipal League concerning nominees for a policy committee to study proposed changes in Alaska Title 29, I would like to submit my name for consideration as a member of the committee. I believe that you are already familiar with my background in municipal law. However, for the benefit of other members of the selection team, I would like to offer a brief synopsis. I have been engaged in the practice of municipal law in Alaska for over four years. I am currently serving as Municipal Attorney for the Municipality of Anchorage, and have held my present position for approximatley two and one-half years. As Municipal Attorney, I have been involved in all phases of municipal law, and have served as past president of the Alaska Municipal Attorney's Association. Additionaly, I have spent considerable time during two past legislative sessions as a lobbyist for the Municipality. Included among my duties was substantial responsiblity for drafting state legislation on behalf of the Municipality of Anchorage. A further description of my academic background and other credentials could be provided upon request.

I believe that I am quite familiar with the provisions of the present AS Title 29 with respect to both home rule and general law of municipalities in Alaska. Although I believe the present code is quite adequate in many respects, I'm sure that others share my concern over many ambiguities in the present law involving such critical aspects of municipal government as service area functions, distinctions between home rule and non-home rule powers, and a variety of other concerns. I have been assured by Mayor Sullivan that he has no objection to my making the necessary time available to serve as a member of the commitee.

If you have any other questions concerning my interests or qualifications, please do not hesitate to contact me at 264-4236.

Sincerely yours,

DEPARTMENT OF LAW

Theodore D. Berns
Municipal Attorney

TDB:leo

Matanuska-Susitna Borough

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

BOROUGH ASSEMBLY

July 3, 1980

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

Dear Commissioner McAnerney:

It is our understanding that through passage of CSSCR 66 that the State Legislature has directed formation of a policy advisory group consisting of two members of each house and four members of the public to assist the Legislative Affairs Agency in presenting a revision of Title 29 of the Alaska Statutes to the First Session of the Twelth Legislature. The purpose of this letter is to place a nomination in the name of Allan E. Tesche, Borough Attorney, for the Matanuska-Susitna Borough for appointment to that policy advisory group.

As the attached resume of Mr. Tesche's qualifications will demonstrate, Mr. Tesche has had substantial experience in municipal government in the State of Alaska, having assisted two Alaskan municipalities in their legal affairs for the past six years. Mr. Tesche is also active in the Alaska Municipal Attorneys' Association and is currently serving as the Secretary-Treasurer of that group. Moreover, Mr. Tesche has represented the AMAA in important Constitutional litigation relating to municipal problems for the Supreme Court of this state and has actively assisted the Board of Directors and Legislative Committee of the Alaska Municipal League in legislation affecting municipalities in Alaska.

If I can answer further questions regarding Mr. Tesche's qualifications for service as a member of the policy advisory group, please do not hesitate to contact me at 745-4801.

Cordially,

John D. Nash

John Nash, Assemblyman
Mayor Pro Tem

er

cc: Phil Smith, Executive Director
RuralCAP
Ginny Chitwood, Executive Director
Alaska Municipal League
Lee Sharp, Attorney
City and Borough of Juneau

CITY OF FAIRBANKS
ALASKA
99701

CHARLES M. GIBSON
CITY ATTORNEY

BRETT M. WOOD
DEPUTY CITY ATTORNEY

HERBERT P. KUSS
DEPUTY CITY ATTORNEY

MICHAEL P. McCONAHY
ASSISTANT CITY ATTORNEY

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

July 9, 1980

Gerald L. Sharp, Esq.
President
Alaska Municipal Attorneys Association
155 South Seward Street
Juneau, Alaska 99801

Re: Title 29 (Municipal Code) Revision

Dear Lee:

Thank you for your letter of June 27, enclosing material from the Alaska Municipal League.

I am, of course, keenly interested in the review and revision of Title 29; however, as much as I would like to serve on one of the working groups, I do not have the time available and will have to limit my input to suggestions as to needed changes. I have noted the July 30 deadline for submitted proposals to Ginny Chitwood and will schedule our response accordingly.

It was good to hear from you and hope things are going well.

With kindest personal regards, I remain

Sincerely yours,

Charles M. Gibson
City Attorney

CMG:vms

A. Robert Hahn, Jr.
Attorney at Law
542 W. 2nd Avenue
Anchorage, Alaska 99501

Charles Gibson, Attorney
City of Fairbanks
410 Cushman Street
Fairbanks, Alaska 99701

Ben T. Delahay, Attorney
City of Kenai
P. O. Box 580
Soldotna, Alaska 99611

Theodore L. Carson, Jr.
City Attorney
City of Soldotna
P. O. Box 1869
Soldotna, Alaska 99669

Raneld H. Jarrell, Esq.
Hughes, Thorsness, Gantz,
Powell & Brundin
509 W. Third Avenue
Anchorage, Alaska 99501

R. Eldridge Hicks, Esq.
Ruskin, Baker & Hicks
630 W. Fourth Avenue
Anchorage, Alaska 99501

Burton C. Biss, Esq.
Star Route Box 5111
Wasilla, Alaska 99687

Noel Kopperud, Esq.
P. O. Box 1630
Wasilla, Alaska 99687

Robert J. Mahoney, Esq.
Cole, Hartig, Rhodes,
Norman & Mahoney
717 "K" Street
Anchorage, Alaska 99501

Richard W. Garnett III
Attorney at Law
900 W. Fifth Avenue, Suite 540
Anchorage, Alaska 99501

Allan E. Tesche, Attorney
Matanuska Susitna Borough
Box B
Palmer, Alaska 99645

James D. Nordale, Attorney
Fairbanks North Star Borough
P. O. Box 1267
Fairbanks, Alaska 99707

Andrew R. Sarisky, Attorney
Kenai Peninsula Borough
P. O. Box 850
Soldotna, Alaska 99669

Conrad Bagne, Attorney
North Slope Borough
Box 69
Barrow, Alaska 99723

Richard C. Folta, Esq.
P. O. Box 37
Haines, Alaska 99827

Russell W. Walker, Attorney
Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

Pete Hallgren, Attorney
City and Borough of Sitka
P. O. Box 79
Sitka, Alaska 99835

Fred Miller, Esq.
426 Main Street
Ketchikan, Alaska 99901

Gary Thurlow, Esq.
Attorney at Law
738 H Street, Suite 200
Anchorage, Alaska 99501

L. B. Jacobson, Esq.
Robertson, Monagle, Eastaugh,
& Bradley
P. O. Box 1211
Juneau, Alaska 99802

William Ruddy, Esq.
Robertson, Monagle, Eastaugh
& Bradley
P. O. Box 1211
Juneau, Alaska 99802

Theodore D. Berns, Attorney
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502

Kenneth Jacobus, Esq.
Hughes, Thorsness, Gantz,
Powell & Brundin
509 W. Third Avenue
Anchorage, Alaska 99501

Edward Stahla, Esq.
Christianson, Royce & Stahla
P. O. Box 4
Sitka, Alaska 99835

Paul Dillon, Esq.
Birch, Horton, Bitner, Monroe
Pestinger & Anderson
130 Seward Street, Suite 411
Juneau, Alaska 99801

LAW OFFICES OF
RICHARD W. GARNETT III

THOMAS F. KLINKNER
SUITE 540, 900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501

TEL. (907) 276-2221

July 16, 1980

Lee Sharp
Attorney
City and Borough of Juneau
155 S Seward Street
Juneau, Alaska 99801

RE: Title 29 Revision

Dear Lee:

I would be glad to serve on a work group, policy group, or otherwise in the Title 29 Revision effort. I could donate a fair amount of time, but would need reimbursement for travel.

I have not yet produced a comprehensive listing of needed revisions, but the following came to mind:

29.28.070 (b) - Service area initiatives are potential problems; could lead to Balkanization" of municipalities.

same - Standardize use of "general" and " regular" as to elections to avoid uncertainty as to required number of signatures.

29.28.090 (b) - Not specifically provided that assembly may not immediately repeal ordinance enacted under threat of initiative.

29.28..40 - More specificity as to whether recall may be based on "political" factors.

29.48.130 (5) - No need to require ordinance for routine fund transfers.

29.48.150 (a) - Majority required to set ordinance for hearing. Should be less to give minority a chance to make it's case.

29.48.170 - Maybe need some procedure for enacting municipal regulations.

29.48.260 - Vote on sale of all property over $25,000 may be unduly burdensome.

29.53.010 - Why not permit exemption of all personalty or various classes.

29.53.025 (b) (1) - Special treatment for boats.

29.63.090 (e) - Reference to "delegation" of powers to service areas needs clarificaton.

29.78.101 (16)- Definition of "subdivision"; consider application to division for leasing, as by holders of oil leases.

Public Records - Clarify application of public records law, section 09.25.110. to municipality.

Home Rule - More clear criteria for application of non-title 29 provisions to home rule. (Maybe require inclusion in AS 29.13.10 laundry list).

APUC - Consider need for APUC regulation of municipality owned utilities.

29.18 - Clarify rights to VUU land vis a vis state classification under AS 38.

29.41 - Consider need for third class borough.

I look forward to your ideas.

Very truly yours,

Richard W. Garnett III

RG/jec

CITY OF KENAI
"Oil Capital of Alaska"
P. O. BOX 550 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

RECEIVED
JUL 11 1980
CITY-BOROUGH ATTORNEY

July 7, 1980

Mr. Gerald L. Sharp
President
Alaska Municipal Attorneys Association
155 South Seward Street
Juneau, Ak 99801

Re: Title 29 Revision

Dear Lee:

Last Wednesday I brought to the attention of the City Council the combination letter from Ginny Chitwood and others as well as your letter. Several nominations are being made by the Mayor with Council approval for the policy committee which will be forwarded.

I would like very much to serve on either of these committees, but as I told Council I have too many things that I cannot get to on my desk without taking several weeks off to do this work.

I have run into so many road blocks to efficient government in my years with the Borough, the home-rule City of Fairbanks, and City of Kenai that I would certainly like to stir the pot if I only had the time. I expect that you will probably be able to serve on one of these committees - I hope so. If so, I would note that when I was with the Borough several million dollars were saved the Borough by issuance of refunding bonds, but this was complicated because in order to take advantage of differentiation of interest rates, the banks had to have a prompt response. This is hardly the type of thing that I consider appropriate under an emergency ordinance (AS 29.48.160), and it really should not be as difficult to pass as an emergency ordinance. The indebtedness has already been approved by the voters and incurred, and the only question is refunding at a proper time to take advantage of market conditions to lower cost to the taxpayer. I would suggest a new section in AS 29.58 authorizing that an

ordinance for refunding bonds be passed on one hearing, at either a regular or special meeting, and with only the normal majority vote.

I believe the chapter on service areas, (AS 29.63) could also stand a lot of clarification. My experience in this Borough would indicate that section has many unwise provisions that should be modified - there is too much authority in the Assembly to handle the decisions in the service area which should be made by those in the service area paying the taxes.

I am sorry that I will not be able to serve with you on one of these committees.

Sincerely,

Ben T. Delahay
City Attorney

BTD/md

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

August 20, 1980

Mr. Ted Berns
Pouch 6-650
Anchorage, AK 99502

Dear Mr. Berns:

Welcome to the Policy Advisory Group which will be involved in the revision of Title 29. Enclosed you will find a copy of Title 29 and copies of bills passed during the 1980 session which changed sections or added sections to Title 29. I am also sending you copies of suggestions for changes to Title 29 which I have received to date.

Despite the short notice, I hope you can attend the initial organizational meeting to be held next week, August 27th and 28th in Anchorage. The meeting is scheduled to begin at 9:00 A.M. in the Legislative Information Office, located at 1024 West 6th Avenue. The telephone number for the Legislative Information Office in Anchorage is 278-3668.

September 22nd and 23rd (Juneau) and November 10th and 11th (Fairbanks) have been suggested as possible dates for future meetings of the Policy Advisory Group. If these dates are not convenient for you, please let me know. Hopefully, a final decision on the dates of future meetings of the group will be made during the meeting in Anchorage.

I look forward to seeing you in Anchorage.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

Enclosures

cc: Billy G. Berrier
Ginny Chitwood
Palmer McCarter
Phil Smith

July 23, 1980

The Honorable Terry Gardiner
Speaker of the House of Representatives
Box 6092
Ketchikan, AK 99901

Dear Representative Gardiner:

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At my direction, Jack Chenoweth of this office met today with Ginny Chitwood of the Municipal League, Palmer McCarter (speaking for the administration) and, by phone, Bob Lohr, the deputy director of RuralCAP. It is their suggestion, and my recommendation, that nine public members be appointed to serve with the four legislators previously designated for the policy advisory group for the Title 29 revision. Their suggestion included the following recommended nominations:

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Matanuska-Susitna Borough, and of the city council
City of Palmer

James Kohler, city manager
City of Yakutat

Gene Moore, city manager
City of Kotzebue

Donna Sherby, city clerk
City of Cordova

Jonathan Solomon, presently working in support of establishment of a rural borough for the Upper Yukon River area, Fort Yukon

Russell W. Walker, attorney
City of Ketchikan and Ketchikan Gateway Borough

The policy advisory group provided for by the resolution will have direct and continuing support and assistance from Palmer McCarter of the Department of Community and Regional Affairs, Ginny Chitwood of the Alaska Municipal League, Phil Smith of RuralCAP, Rod Pegues from the Department of Law, and Tamara Brandt Cook, whom I have assigned from the staff of this division.

Your consideration of the nominations suggested in this letter for appointment as public members of the policy advisory board for the revision of AS 29 is appreciated.

Very truly yours,

Billy G. Berrier
Director
Division of Legal Services

BGB:JBC:jdn

bcc: Senator Sturgulewski
Palmer McCarter
Ginny Chitwood
Phil Smith

July 28, 1980

The Honorable Clem V. Tillion
President of the Senate
Halibut Cove, AK 99603

Dear Senator Tillion:

CSSCR 66, Legislative Resolve 39 of the recent legislative session, directs the Alaska Legislative Council to revise AS 29, the municipal government code. A policy advisory group is authorized to assist in that task. Together with two members of each house of the legislature appointed by the respective presiding officers, the resolution also authorizes selection by the presiding officers of an unstated number of public members, drawn from recommendations submitted by legislative members, the Departments of Community and Regional Affairs and Law, the Alaska Municipal League, the Rural Alaska Community Action Program, and the legal services division of this Agency.

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Very truly yours,

Billy G. Berrier
Director
Division of Legal Services

BGB:JBC:jdn

bcc: Senator Sturgulewski
Palmer McCarter
Ginny Chitwood
Phil Smith

July 23, 1980

The Honorable Clem V. Tillion
President of the Senate
Halibut Cove, AK 99603

Dear Senator Tillion:

RE: Policy Advisory Group established in CSSCR 66

As you know the Legislative Council has been directed to revise Title 29 of the Alaska Statutes (Municipal Government) with the help of a policy advisory group composed of persons appointed by the presiding officer of each house. Public members are to be selected from persons recommended by legislative members, 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.

Our office has been contacted with a recommendation for a public member offered by Senator Robert H. Ziegler, Sr. In case you have not heard from him directly, I am forwarding this name to you:

Russell Walker - Attorney for the Gateway Borough and the City of Ketchikan

If our office receives additional nominations to the policy advisory group from senators, I will notify you. Please let me know if I can help in any other way.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

cc: Senator Arliss Sturgulewski
Senator Robert H. Ziegler, Sr.

Next Title 29 meeting is set for the

Legislative Information Offices conference area

second floor, 1024 West Sixth Anchorage

for Thursday and Friday, 8/21 and 22 ← meeting in Palmer 27-28 & 22-23

Room is available all day both days

Contact for arrangements is Kathy Baltes, Anchorage office 278-3668

Please confirm this with Marilyn Miller at the Juneau office of Alaska Municipal League, and with Arliss

(Pioneers School, originally suggested, not available for morning meetings)

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

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
OFFICIAL BUSINESS

July 1, 1980

Senator Robert H. Ziegler, Sr.
307 Bawden Street
Ketchikan, AK 99901

Dear Senator Ziegler:

According to CSSCR 66, the presiding officer of each house is to appoint two members of each legislative body to the policy advisory group involved with the revision to Title 29, the municipal code. In addition, public members shall be selected from among persons recommended by legislators and various organizations. Since Senator Mulcahy and myself are the only members who have been appointed to the policy advisory group so far, I am taking the liberty of contacting you to ask for your recommendations of other persons who ought to be considered for appointment to the group. I am also enclosing a copy of a letter which was sent to approximately 400 interested organizations and persons in an effort to insure that as many qualified individuals as possible are considered for nomination to the group.

As the policy advisory group will be working under considerable time pressure, please send your recommendations for nominations to the group as soon as possible to the Legal Services Division of Legislative Affairs to be forwarded to the presiding officer of your house. For your information, the home address of Senator Clem V. Tillion, President of the Senate, is Halibut Cove 99603.

I would also like to take this opportunity to ask you for any suggestions which you may have concerning changes to Title 29 or issues which you would like the policy advisory group to consider. If you are interested in being kept informed of the progress made in revising the municipal code during the interim, please contact Tamara Brandt Cook, Legal Services Division, Legislative Affairs Agency, Pouch Y, Juneau 99811. I look forward to hearing from you.

Sincerely,

Arliss Sturgulewski
Sig TBC

Arliss Sturgulewski, Senator

Enclosure

Dear Arliss: Don't have time to go through channels. A Russell Walker, Gateway Borough + City atty, is highly recommended. You might pass this on to Legal Svs. also. Don't much

Cite AS 29.53.080. What presumably [illegible] parties sell or pay for property need not necessarily reflect f.m.v. Alaskan assessors are supposed to assess at 100% of true value. Ergo. if they can examine + / inspect properties, why in hell can't they appraise w/o involving records of the buyer/seller?

3 —

P.S. (I've lost this argument before!)

July 14, 1980

Arliss Sturgulewski, Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Municipal Recall Statutes

Dear Senator Sturgulewski,

It is my understanding that you are reviewing the problems associated with recalling municipal officials. I believe that due to my recent intimate knowledge of the recall of two officials in the City of Petersburg, that some of the problems found there (and elsewhere in Alaska) could prove illuminating in your efforts to revise the municipal recall statutues.

A list of the problems includes:

1. Sec. 130 of AS 29.28 is unclear as to whether an official is re-callable within six months of being re-elected. It would seem that the original intent of this section was to protect rookie mayors and councilmembers, rather than the official that is re-elected. In any event the language should be clarified to either include or exlude re-elected officials. My personal inclination is to allow a municipal official to be recalled any time after the initial six months have been served, and when that person is re-elected, then he or she may be recalled at any time, and the six months grace period would not apply.

2. The grounds for recall as listed in section 140 are a constant source of argument since the three allowable reasons seem rather narrow in scope. Typically, recall petitions are thrown out based on this section. Many people feel that the three reasons are just legalisms craftily used by municipal attorneys to save their clients political hide. There is no necessity for proving that the stated grounds are in fact true, therefore, the usual scheme of things is to "hang a reason" on one of the three allowable terms. From a practical standpoint, the issue is whether you want to permit recall not based on th three statutory reasons.

3. Section 150 should make clear that a petition must be separate from from other petitions. In other words, a petition may contain only one name on it.Also, the petition should contain the mailing address of each person signing the petition.

4. Section 180 should be clarified to state that a new petition may not be filed sooner than six months after a petition is rejected based on insufficiency(and not lack of signatures).

5. There has been a fear that once a sufficient petition has been submitted and accepted, that members of the council could resign and then be re-appointed to the council. The statutues should preclude such an effort once the petition is sufficient.

6. The problem with the number of signatures required is well known. It is my opinion that a local recall effort should be based on the last regular municipal election, not the state election.

7. Some people have interpreted that once the election has been certified, that a person recalled is at once removed from the seat. This causes a disruption in local government, and if this is the correct method, then a provision should be included to clarify such, and to allow some means to permit a minicipal government to continue to operate when a majority has been recalled from office.

8.

Thanks for listening, and I hope this helps.

Cordially,

Bruce

Bruce Aronson
P.O. Box 923
Petersburg, Alaska 99833

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

July 14, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

Dear Arliss:

I hereby appoint Rep. Bill Parker and Rep. Margaret Branson to the Title 29 revision.

Thank you.

Terry Gardiner

cc: Rep. Parker
Rep. Branson
Myrt Charney
Senator Tillion
Senator Hohman

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

July 10, 1980

Representative Terry Gardiner
Speaker of the House of Representatives
P.O. Box 6092
Ketchikan, AK 99901

Dear Representative Gardiner:

RE: Policy advisory group established in CSSCR 66

As you know, the Legislative Council has been directed to revise Title 29 of the Alaska Statutes (Municipal Government) with the help of a policy advisory group composed of persons appointed by the presiding officer of each house. We have been informed that two members have been appointed to date, Senator Bob Mulcahy and Senator Arliss Sturgulewski. Public members are to 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 divison.

Representative Margaret Branson has contacted our office by mail with recommendations for public members for the policy advisory group. In case you have not heard from her directly, I am forwarding these names to you.

Charles LaPage - Mayor Pro Tem, Councilman, Valdez

Malcolm "Pete" Islieb - Councilman, Cordova

Andy Sarisky - Attorney, Kenai Borough

Erle Cooper - Kenai Borough Assembly

Don McCloud - Borough Assembly

If our office receives additional nominations to the policy advisory group from representatives, I will notify you. Please let me know if I can help in any other way.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

cc: Senator Arlisa Sturgulewski
Representative Margaret Branson

Alaska State Legislature

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811

TEL. (907) 595-1265
BOX 740
COOPER LANDING, ALASKA
99572

MARGARET BRANSON
REPRESENTATIVE
DISTRICT 5

Senator Stevens Stuzgulewski

Per your letter of July 1
I would like to recommend:

Charles La Page - Mayor Pro Tem
Councilman
Valdez

Malcolm "Pete" ~~Hoslich~~ Councilman
Cordova

Andy Sarichy - Attorney Kenai Boro

Eric Cooper - Kenai Boro Assembly

Jon McCord - Law Assembly

Rural Alaska Community Action Program, Inc.

Alaska Municipal League

204 North Franklin
Juneau, Alaska 99801

DEPARTMENT OF COMMUNITY
AND REGIONAL AFFAIRS
STATE OF ALASKA

Pouch B, Juneau, AK 99811

The Second Session of the Eleventh Legislature passed Senate Concurrent Resolution 66 directing the Alaska Legislative Council to revise Alaska Municipal Government Code -- Title 29. A copy of this resolution is enclosed for your information.

A policy committee, consisting of four legislators and eight public members, will play a key role in determining what changes are made in Title 29, the Municipal Government Code. Therefore, it is important that interested, knowledgable persons be nominated to sit on this committee Other than demands on committee members' time, costs for transportation and per diem will be paid by the State. Our three agencies have been given the responsibility of nominating persons to fill the eight seats reserved for public members. We would like for you to send to one, or all, of our organizations any recommendations you may have for candidates you feel are qualified to serve on the policy committee. A resume or background sketch of qualifications for each of your nominees will assist us in selecting the best persons to submit as nominees to the President of the Senate and the Speaker of the House of Representatives. Time is critical and we need to receive your recommendations by July 10, 1980.

We would also urge you to make any comments or suggestions which might improve Title 29. If you have problems or concerns about sections of Title 29 we want to know about them; it would be even more helpful if you can suggest specific remedies in the form of deletions, rewritten or additional language, or restructuring of the Municipal Government Code. We need to receive these comments by July 30, 1980.

The Legislature has given all of us a rare opportunity to make needed revisions in Title 29 so that Alaska may have a meaningful, responsive municipal government statute. To make the most of this opportunity for change, we need thorough, well thought-out recommendations and comments. We look forward to hearing from you.

Sincerely,

Phil Smith
Executive Director
RuralCAP

Ginny Chitwood
Executive Director
Alaska Municipal League

Lee McAnerney
Commissioner
Community & Regional Affairs

Alaska State Legislature

OFFICIAL BUSINESS

POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

June 5, 1980

Senator Arliss Sturgulewski
Senator Robert Mulcahy

Dear Senators:

According to CSSCR 66, the presiding officer of each house is to appoint two members of each body to the Policy Advisory group concerned with the revision of Alaska Statutes 29, the Municipal Code.

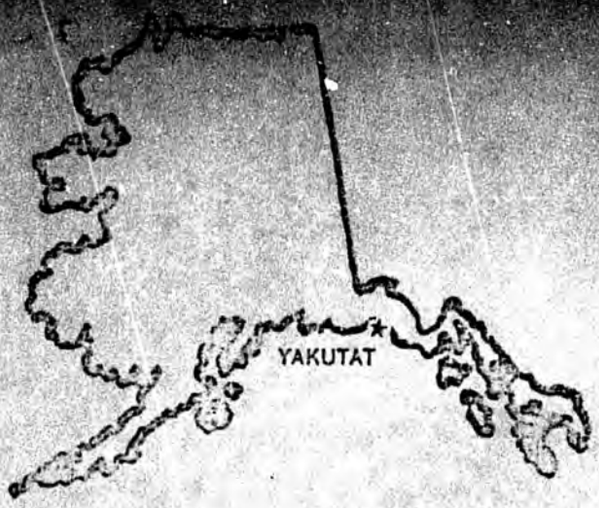
By this letter I am appointing both of you to the Senate positions on that policy advisory group.

Sincerely,

Clem Tillion

Senator Clem Tillion
Senate President

cc: Billy Berrier



CITY of YAKUTAT
P. O. Box 6
YAKUTAT, ALASKA 99689
(907) 784-3323

June 3, 1980

Palmer McCarter
Director, Division of Local
Government Assistance
Dept. of Community and
Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Palmer:

Please accept this letter as a formal request to serve on either the Title 29 review policy committee or working committee.

I have served as the City Manager in Yakutat since February, 1979. Prior to that time I held planning positions with the State of Nebraska and the City of Lincoln, Nebraska.

My experience with Alaskan local government has been tempered strongly with issues ranging from OCS oil exploration to annexation, planning for both corporate and non corporate areas, overseeing the transition of a 1st class municipality from a Mayor/Council form of government to a City Manager form of administration and developing local capital infrastructures to encourage economic growth, specifically fisheries development.

In the process I have daily witnessed the strengths and weakness of Title 29 provisions.

I also bring experience from other systems of local government including a large municipality, a small rural community which I served as Chairman of their Planning and Zoning Commission and a State that was served by a unicameral legislature.

My graduate training is in Anthropology with concentration on systems and the dynamics of systems change.

I can serve the review committee significally and offer the following references for both personal and professional skills and capabilities in this area:

Larry Powell
Mayor
City of Yakutat

Byron Mallott
Chairman, Board of Directors
Sealaska
Juneau, Alaska

Senator Arliss Sturgulewski
Alaska State Senate
Juneau, Alaska

Senator Frank Ferguson
Alaska State Senate
Juneau, Alaska

Ms. Ginney Chittwood
Alaska Municipal League
Juneau, Alaska

Thank you for your consideration.

Sincerely,

James M. Kohler
City Manager

mjr

cc. Larry Powell, Mayor, City of Yakutat
Byron Mallott, Chairman, Board of Directors, Sealaska Juneau
Senator Arliss Sturgulewski, Alaska State Senate, Juneau
Senator Frank Ferguson, Alaska State Senate, Juneau
Ms. Ginney Chittwood, Alaska Municipal League, Juneau

July 1, 1980

Senator Arliss J. Sturgulewski
2957 Sheldon Jackson Street
Anchorage, AK 99504

Dear Senator Sturgulewski:

I have included a copy of the letter I sent to all members of the legislature under your name for your files. I was unable to reach Senator Mulcahy to obtain his consent to add his name to the letter, despite extraordinary efforts by Mary Jo Simmons in the Legislative Information Office in Kodiak to contact him. Apparently, Senator Mulcahy is fishing and was outside of radio contact both yesterday and today.

Ms. Simmons was able to reach a relative or friend of Senator Mulcahy's and was told that the Senator would probably not be back to Kodiak until August. Ms. Simmons informed me that it is possible to leave a message for Senator Mulcahy with her office, but that it would take several days to get it to him through the tenders. I wanted to alert you to this situation in case you should need to get in touch with him during July.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

Enclosures

May 19, 1980

Allan E. Tesche
Borough Attorney
Box B
Palmer, Alaska 99645

Dear Allen:

Thank you for your comments on SCR 66 relating to interim review of the municipal code. A companion bill, HCR 70, has passed from House Judiciary and is now in House Finance.

Neither of these concurrent resolutions have been considered by their respective finance committees. I strongly suggest that you contact appropriate legislators and encourage their positive action on these two resolutions. There was some initial problem on the Senate side on two questions raised by Senator Ferguson, regarding geographic representation on the policy committee. In my conversation with him, he has indicated he is satisfied with some proposed substitute wording. I see no other problems in passing the resolution, with the exception of the critical time. Your support would be appreciated.

Kindest personal regards,

Arliss Sturgulewski
Senator, District 10-H

Matanuska-Susitna Borough

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

BOROUGH ATTORNEY'S OFFICE

May 5, 1980

The Honorable Arliss Sturgulewski
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Arliss:

I have received a copy of the proposed Senate Concurrent Resolution No. 66 relating to interim review of the municipal code. I am very pleased to learn that your committee and you, in particular, recognize the need for a comprehensive revision of that important body of law.

If the Legislature adopts SCR 66 or otherwise approves this project, I am very willing to volunteer my time to assist in review and analysis of Title 29; I am also confident that other members of the Alaska Municipal Attorneys' Association will be able to assist as well.

Thank you for your continued interest in this matter.

Cordially,

Allan E. Tesche
Borough Attorney

er

cc: Mayor Ronald L. Larson
Norman J. Levesque, Borough Manager

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

Date: May 23, 1980

TO: Senate Finance Committee

From: Ginny Chitwood, Executive Director - Alaska Municipal League

Re: SCR 66 - Title 29 Review

Alaska Municipal League urges your favorable consideration of SCR 66. Since the last major revision of Title 29 - Municipal Code, there have been many changes to the original sections of the law. Although a simple meshing of the supplement with the original Title 29 would help those of us who work daily with the municipal provisions, it would be better to have a comprehensive review of the Title 29 - Municipal Code provisions in order to assure resolution of the conflicts created by amendments over the years.

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

May 14, 1980

To: Representative Parr, Chairman
House Judiciary Committee
and all members of the Committee

From: Alaska Municipal League

Re: HCR 70

The Alaska Municipal League supports HCR 70 which directs the Alaska Legislative Council to revise AS 29 (Municipal Government).

Attached is a copy of the priority list for 1980 developed by the Board of Directors of the League following the 29th Local Government Conference in Sitka in November of 1979. You will note item "I" refers to a revision of Title 29 and reads as follows: "The League supports the initiation of a complete review of Title 29 as outlined by the Local Government Study recently conducted by the Legislature."

The League feels this is of paramount importance to the municipalities of Alaska and urges this committee to pass out HCR 70 with a do pass recommendation.

The following are the legislative priorities for the Alaska Municipal League for 1980. All of these proposals are of paramount importance to the municipalities of Alaska. They are the highlights of the policy statement which was adopted at the League's 29th annual conference which was held in Sitka on November 2, 1979.

A. State Shared Revenues

1. The League strongly supports increased funding of the State Shared Revenue Sharing Program to a level at least three times the 1979 funding level, including any new programs to foster economic development, and continues to support the philosophy of HB 192 as introduced in the 1st Session of the 11th Legislature.

2. The League supports legitimate and reasonable changes in the amount of money requested for the municipal services shared revenue program and remains adamant in the belief that each Legislature has the obligation to fund the program 100% annually.

— Also, transfer hospital construction outside / rev. sharing

B. Municipal Lands

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

2. The League supports legislation which would require legal access to all state land disposals; and that, except for state subdivisions in remote areas or for dispersed entry, local subdivision improvement requirements be honored by the state by either installing such improvements or by acquiescing in the formation of service areas and local improvement districts containing such property and honoring the obligation to pay LID assessments on such property while it is in state ownership.

3. The League supports the concept of an Enterprise Fund as a means for the state to provide required improvements in state land disposals.

4. The League supports legislation which mandates land use capability and resource inventory findings for each tract of land included in the disposal bank.

C. Income Tax

1. The League strongly supports the development and implementation of a tax credit program which would allow state income tax payers to use as a tax credit on their state income tax return that portion of Alaska local taxes they pay for local school support.

2. The League supports tax credit programs being installed to reduce the net income tax paid by Alaskan residents and property owners through the existing state income tax system.

D. Economic Development

1. The League supports and urges the state legislature to establish and provide immediate funding of programs which will create, assist, or aid both public and private enterprises to plan, finance, and develop job related industries, businesses, and facilities that are compatible with the desires of local government.

E. Energy

1. The League supports uninterrupted continuance of loan funds from the state for feasible hydroelectric projects within the state and further supports that long-term, low interest loans for these projects be funded from non-renewable resource revenues such as those presently being generated by oil and gas receipts.

F. Apportionment

1. The League is addressing the question of local apportionment. As Legislation is developed, the League will make recommendations regarding a specific bill.

G. School Support

1. The League further encourages the Legislature to continue to support school capital projects at 80% construction level or higher (as defined by the rules and regulations established by the Department of Education) and calls upon the Legislature and the Governor to fund this amount annually. The League strongly supports legislation that will provide for a supplemental appropriation to fully fund the 1979 fiscal year school capital project fund at the legislated 80% level. The League also supports legislation under which the state will provide the 80% funding for all approved school capital projects to the local district at the time of approval.

H. Public Safety

1. The demand for trained competent local police and fire departments is accelerating throughout Alaska. It is urged that the Legislature, at an early date, assure that police, fire and emergency medical personnel training programs throughout the state have adequate facilities and program resources for training of local safety people, and provide financial support to assist the communities who participate.

I. Revision of Title 29

1. The League supports the initiation of a complete review of Title 29 as outlined by the Local Government Study recently conducted by the Legislature.

J. Civic Centers

1. While legislation has been enacted into law to enable the state to assist local communities in the construction, maintenance and operation of cultural, civic, convention and community recreation centers, only minimal funding has been available for this purpose. The League, therefore, urges the Legislature to authorize the issuance of bonds for this or any similar legislation in an amount sufficient to meet the construction requirements in Alaska comminities.

K. Alaska '84

1. The League supports the concept of Alaska '84. We urge the state (1) to provide adequate feasibility funding to determine the viability of the proposal and (2) to provide construction money in accordance with the recommendation of the feasibilty study when completed.

March 31, 1980

TO: Senator Clem Tillion

FROM: Senator Arliss Sturgulewski

RE: Revision of AS 29

It is generally recognized, especially by those who work most closely with it, that AS 29 is in need of revision. Since the time of original enactment, changes in the title, problems in its application, and policy questions of importance have been noted by municipal attorneys, city managers and clerks, and such other municipal officials as assessors. The Legislative Revisor has indicated that AS 29 should be next approached in terms of needed revision.

The work of revision is complicated and, at times, highly technical. I have received numerous inquiries and requests for a process by which to revise AS 29. I have discussed this problem with many people, including Mr. Berrier, and Ms. Chitwood of the Alaska Municipal League.

I would like to suggest the following as an approach to the revision of AS 29 during the period of time between this session and the 1981 session. Funds and responsibility for this project would be directed by the Legislative Council to Mr. Billy Berrier, Legislative Legal Services, to conduct the revision. I foresee the project as follows: two groups would be selected by Mr. Berrier from recommendations provided by the Department of Community and Regional Affairs, Alaska Municipal League and other interested and affected parties. The first group would be a policy advisory group composed of a variety of perspectives and interests, representing the diversity of local governments across the state, and would include a representative of the legislature. The second, a much smaller group, would be a working group, composed of people who have had experience in the application of AS 29. The work group should consist of municipal attorneys, representatives of the Department of Community and Regional Affairs and the Department of Law, as well as a staff member of Legislative Legal Services; other municipal staff functions should also be represented, such as managers or clerks. While the actual technical work would be conducted by the working group, the policy group would provide overall guidance and assistance on policy questions.

Administrative and secretarial responsbility would rest in Legal Services. In order to support this project funds would be required for travel and per diem. Most local governments will be glad to contribute staff time to this project. However, for both the policy and the working group it will be necessary to provide travel funds. As often as possible, teleconferencing will be used to reduce travel needs and to expedite the

project. A draft bill will be ready for January 1981.

It is anticipated that $20,000 should cover the cost of this project. Any funds remaining would be returned.

Thank you for your attention to this matter.

April 28, 1980

J. D. Nordale
Borough Attorney
Fairbanks North Star Borough
Box 1267
Fairbanks, Alaska 99707

Dear Jim:

Enclosed is a copy of SCR 66 which directs the Alaska Legislative Council to revise AS 29, Municipal Government. I'm also attaching a copy of my March 31 memo to Senator Clem Tillion which spoke to this issue. The Senate Concurrent Resolution was drawn as a result of that memorandum. The fiscal note is much higher than I anticipated, however, I think it is important that there be an advisory group and working group, and that funds be provided to bring people together.

I would appreciate whatever support you can lend to see the passage of SCR 66. I will be contacting the House Community and Regional Affairs Committee to request that they introduce a similar resolution on their side, and expedite it as fast as possible through the system. I will be bringing SCR 66 to the Senate Community and Regional Affairs Committee Tuesday, April 29.

Kindest personal regards,

Arliss Sturgulewski
Senator, District 10-H

Enclosure

FAIRBANKS NORTH STAR BOROUGH
Box 267, Fairbanks, Alaska 99707

April 1, 1980

Senator Arliss Sturgulewski
Pouch V
Juneau, Alaska 99811

Re: Municipal Code Revisions

Dear Arliss:

Both because of Alan Teshe's letter of March 18 to you and a recent conversation with Ginny Chitwood, I would urge you to make every effort to provide for the interim review of AS 29. I would urge that the Alaska Municipal League be a participant in the review process either as a contractor, a co-sponsor or in some other capacity. Based upon the discussions at the Local Government Symposium as well as comments received by the Joint House-Senate C & RA hearings, I think that participation from the unorganized borough is desirable.

A good deal of the criticism of and antagonism toward local government stems from inflexibility in portions of the code and vagueness in other parts. The writers of the Constitution were wise in their recognition that strong and flexible local government could best meet the needs of the diverse areas of this state. Too often local governments are unable to respond effectively because of unrealistic restrictions imposed by the state.

I hope that there is something that you can do to accomplish this review, and if I can be of any assistance, please let me know.

Very truly yours,

J. D. Nordale
Borough Attorney

JDN/sy

SENATOR
ARLISS STURGULEWSKI

COMMITTEES
CHAIRMAN
Community & Regional Affairs

VICE-CHAIRMAN
Commerce

Health & Social Services

Senate

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99504
DISTRICT 10-H

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3712

March 25, 1980

note: Dave Walsh agreed to do but has not confirmed in writing

Mr. Dave Walsh, President
Alaska Municipal League
c/o Pouch 6-650
Anchorage, Alaska 99502

Dear Dave:

The ability for municipalities to have a fair and equitable tax base is absolutely critical to healthy local government. I would like to urge the Alaska Municipal League, possibly in conjunction with the Alaska Native Foundation, RuralCap and others, to undertake, prior to next session, a major review of the kind and amount of taxes that the various classes of municipalities can levy and collect. The current Legislature is addressing House Bill 192, dealing with municipal revenue sharing, and Senate Bill 199, dealing with the school foundation program. These two areas provide major cornerstones for municipal school revenues. A third cornerstone, real and personal property tax, is currently faced with possible erosion and decreased credibility.

The Senate Community and Regional Affairs Committee has some twelve bills pending which impact the municipal property tax by allowing certain classes of exemptions, imposing restrictions, etc. Some, but not all, of these bills allow the municipalities to be reimbursed for the changes in their ability to levy and collect real and personal property taxes. Certainly the bills carry a major fiscal impact. I am enclosing a summary of the bills currently before my Committee. Many other tax bills affecting municipalities are before the Legislature, such as changes in the amount of sales tax which can be levied in certain municipalities and elimination of the business inventory tax.

Relating specificially to real and property taxes, it seems to me that policies must be established regarding possible exemption. If such policies are not developed, we will create a hodgepodge of a program that will serve no one well. For example, should we consider exemptions on a need basis rather than exemptions for special groups of people? Should there be equality for a whole group, rather than special interest exemptions within a group? What kind of things would be better left to grant and aid programs as opposed to exemptions in the property tax approach?

The Department of Community and Regional Affairs recently completed a study of the exemption problem. Their study gives a synopsis of information developed that deals with major exemption problems, and in some cases, suggests several options that might be taken. Their broad policy statement favors few, if any, additional exemptions, and they feel that any exemption program should meet the following criteria: "any exemption granted should be either for public property or for sufficient public good to justify a transfer of burden to the balance of the community." They recognize that the credibility of property tax has been questioned continually and with increasing intensity these past few years, and that many taxpayers feel that they are paying more than their fair share.

The state has recognized certain senior citizens' exemptions, as a matter of public policy. These exemptions support a policy of encouraging age diversity in Alaskan society, show esteem for and gratitude to the pioneers of the state and give a method of helping many to afford to stay in our state, rather than have to leave family, and friends to begin a life in another state, where it might be cheaper to live. The senior citizens who are on a fixed income and cannot absorb property taxes increased by inflation certainly are in need of assistance. However, some bills are now reaching into special groups within the senior citizens; for example, allowing for surviving spouses 55 and older of those senior citizens who qualified for real property exemption to continue to benefit from the exemption. But, what about other senior citizens within that same age group who might have just as much, or a greater need for exemptions? Disabled veterans are another group being suggested for special exemptions, but what about the equity question of all other disabled people in our State? Other questions of equity need to be considered.

Each piece of proposed legislation offers a shift in public policy -- new groups which deserve special treatment, new funding approaches, and so forth. However, sound public policy decisions can be made only within the context of effects or impacts on local governments and the general public. How can we create a new special exemption, for example, unless we are certain of municipalities fiscal needs, alternative revenue sources and the impact of using those other sources?

Again, I would urge the Alaska Municipal League to take a leadership position in review of the municipal property tax, as well as the broader impact of local municipalities being able to raise adequate revenues to fund needed municipal services. I would be most pleased to have your response as to whether you feel the Alaska Municipal League finds merit

in this proposal, and if so, I sincerely hope the league will analyze the kind and amount of taxes that the various classes of municipalities can and should levy and collect.

Sincerely yours,

Arliss Sturgulewski
Senator, District 10-H

Enclosures
cc: Alaska Federation of Natives
RuralCap
Governor's Advisory Committee on Aging
Ms. Dove Kull
Commissioner Lee McAnerney
Mayor George Sullivan
Mr. Phil Younker
Senator John Sackett
Senator Bill Ray
Representative Russ Meekins
Sponsors: SB 138, 154, 296, 299, 360, 370, 427, 431, 456, 465 & 510

Taxes (home improvement exemption)

SENATE BILL NO. 138, by Senators Bradley and Stimson. Relates to establishment of tax exemption for home improvements. Amends AS 29.53 by adding section which provides that the "value of an alteration, repair, renovation, addition to, or improvement of an existing structure which is used by a taxpayer as his personal residence is exempt from assessment for purposes of levy and collection of property taxes under this chapter....." Repeals AS 29.53.025(f) & (g) relating to current exemptions for improvements. Provides Act effective January 1, 1979.

Introduced February 13 and referred to Community & Regional Affairs, then to Finance.

Veterans (disabled) (property tax exemption)

SENATE BILL NO. 154, by Senator Bradley. Amends AS 29.53.020(e) to include disabled veterans of any age to section which exempts persons 65 or over from payment of property tax. Applies to resident veterans, honorably separated from service whose service-related disability has been rated at 50% or more. Provides Act effective January 1, 1980.

Introduced February 13 and referred to Community & Regional Affairs, then to Finance.

Residential Property Tax (partial exemption)

SENATE BILL NO. 296, by Senator Stimson. Adds to list of exemptions from municipal property tax in AS 29.53.020(a) "the real property owned and occupied as a permanent place of abode by a resident, not exceeding $25,000 in value." Provides state shall reimburse a borough or city for revenues lost. Repeals AS 29.53.025(a) which allows municipalities to exclude or exempt or partially exempt residential property from taxation by ordinance ratified by voters, the exemption not to exceed $10,000 per residence. Provides Act effective January 1, 1981.

Introduced January 14 and referred to Community and Regional Affairs and then to Finance.

Property Tax (municipal) reduction of)

SENATE BILL NO. 299, by Senator Kerttula. Amends AS 29.53.050(a) (Tax Limitation on Municipalities) to read: "A (NO) municipality may not levy and tax for any purpose in excess of nine-tenths of one (THREE) percent of the assessed valuation of property within the municipality in any one year." Provides Act effective 1/1/81.

Introduced January 14 and referred to Community and Regional Affairs.

Property Tax (disabled Vets exempt)

SENATE BILL NO. 360, by Senators Sumner and Hackney, by request. Exempts from municipal property tax the real property owned and occupied as a permanent place of abode by a disabled veteran. Provides exemption is allowed to veteran "for a percentage of the assessed value of the real property which is the same as his percentage of disability as established by his service disability rating." Provides Act effective January 1, 1981.

Introduced January 24 and referred to Community and Regional Affairs and Finance.

Fire Prevention

SENATE BILL NO. 370, by Senators Colletta and Bradley. Adds to AS 29.53.020 (Municipal Property Tax - Required Exemptions) "Two

percent of the assessed value of a structure is exempt from taxation if the structure contains fire protection systems in operating condition incorporated as a fixture or part of the structure. The exemption is limited to 1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if fire protection systems are a fixture of the real property on January 1, 1981; or an amount equal to two percent of the value of the structure as of January 1 following the installation of the fire protection systems as fixtures of the structure after January 1, 1981.

Introduced January 31 and referred to Community & Regional Affairs.

Sr. Citizens Tax Exemp. (surviving spouse)

SENATE BILL NO. 427, by Senators Ferguson, Ray, Sackett, Meland, Colletta, Sumner, Kerttula, Hohman, Mulcahy and Bradley. Amends AS 29.53.020(e) relating to municipal property tax exemption for senior citizens by adding: "The real property exempt from taxation under this subsection continues to be exempt if owned and occupied as a permanent place of abode by the surviving spouse of the resident, if the surviiving spouse is 55 years or older and has a gross annual income of less than $20,000." Does not provide for effective date.

Introduced February 12 and referred to Community and Regional Affairs, then to Finance.

Property Tax Exemptions (for energy

SENATE BILL NO. 431, by the Rules Committee by request of the Legislative Council by request. Adds new section to AS 29.53 (Municipal Assessment & Taxation) which exempts from municipal property tax "The value of an alternation or improvement of an existing structure that reduces energy consumption in the structure." Section applies to mobile homes also. Provides Act effective January 1, 1981.

Introduced February 12 and referred to Community and Regional Affairs, then to Finance.

Municipal Property Taxes (exemp. sr. citizens--personal property)

SENATE BILL NO. 456, by Senators Stimson and Bradley. Amends Municipal Assessment and Taxation (AS 29.53), required exemptions (020) by stating that the property of certain residents of the state is exempt and further states that "(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over, and the personal property owned by a resident 65 years of age or over, is exempt from taxation of the assessed value of the (REAL) property." Deletes reference to "real" property throughout and repeals AS 29.53.020(i) which defines "real property" as property including, but not limited to mobile homes whether classified as real or personal property for municipal tax purposes. Provides Act takes effect January 1, 1981.

Introduced February 18 and referred to Community & Regional Affairs, then to Finance.

Property Tax (residential-partial exem. from assess)

SENATE BILL NO. 465, by Senators Ferguson, Colletta, Fahrenkamp and Sumner. Exempts from general taxation (Municipal Assessment and Taxation, required exemptions--AS 29.53.020(a)) "(7) the real property owned and occupied as a permanent place of abode by a resident, not exceeding $85,000 in value." Exempts real property owned and occupied by a resident 65 years of age or over from

taxation of the assessed value of property which exceeds $85,000 in value. Repeals AS 29.53.025(a) (Municipal Assessment and Taxation. Optional Exemptions and exclusions. Section (a) states: "Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election."), and amends AS 29.53.020(g) (relating to reimbursement of borough or city for revenue lost by exemption) by deletion of language stating that upon proper application an individual would have been granted an exemption. Provides Act takes effect January 1, 1981.

Introduced February 18 and referred to Community and Regional Affairs, then to Finance.

Municipal Property Tax (exempting business inventory)

SENATE BILL NO. 510, by the Rules Committee by Request (for the Interim Tax Policy Committee). Exempts business inventory from municipal property tax levy and provides for reimbursement to municipalities of tax revenues lost by operation of the exemption. Reimbursement made on the basis of the application of the tax rate of the borough or city to the value of business inventory reported to the state by businesses for the purpose of taxation under the Alaska Net Income Tax Act, and subject to legislative appropriation to the Department of Community and Regional Affairs for the purpose. State Departments may adopt regulations to carry out the provisions of chapter. Repeals sections of Municipal Assessment and Taxation (AS 29.53) relating to assessment of business inventory and reassessment in the case of cessation of business during the tax year. Provides Act takes effect January 1, 1980.

Introduced March 5 and referred to Community and Regional Affairs, then to Finance.

SENATOR
ARLISS STURGULEWSKI

COMMITTEES
CHAIRMAN
Community & Regional Affairs

VICE-CHAIRMAN
Commerce

Health & Social Services

Senate

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99504
DISTRICT 10-H

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3712

April 2, 1980

Jay S. Hammond, Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Jay:

Re: Senior Citizens Tax Exemption from Municipal Property Tax

The legislature has under consideration, SB 328, which would establish an Older Alaskans Commission. In the event this legislation is adopted, I would like to bring to them, through you, a matter for their review and, hopefully, recommendations to the next session of the legislature. I am bringing this matter to the attention of your Advisory Committee on Aging.

The Senate Regional and Community Affairs Committee has had over twelve bills pending which impact the municipal property tax by allowing certain classes of exemptions, imposing restrictions, etc. Some, but not all, of these bills allow the municipalities to be reimbursed for the changes in their ability to levy and collect real and personal property taxes. Since real and property taxes create such a major corner stone of tax revenue source for municipalities, I have asked the Alaska Municipal League to look into the matter of establishing policies regarding possible exemptions. We will create a hodgepodge of a program in the absence of such policy. Dave Walsh, Chairman of the Alaska Municipal League, has indicated to me that the League will undertake such a study. However, I feel it would be important that a commission, dealing particularly with older Alaskans' needs, undertake a study of that part of the real and personal property tax which deals with older Alaskans.

The state has recognized certain senior citizens' exemptions as a matter of public policy. These exemptions support a policy of encouraging age diversity in Alaskan society, they show esteem for and gratitude to the pioneers of the state, and give a method of helping many to afford to stay in the state, rather than to leave family and friends to begin a life in another state where it might be cheaper to live. The senior citizens who are on a fixed income and cannot absorb property taxes increased by inflation certainly are in need of assistance. However, some bills are now reaching into special groups within the senior citizens; for example, allowing for surviving spouses 55 and older of those citizens who qualified for real property exemption to continue to benefit from the exemption. But, what about other senior citizens with the

same age group who might have just as much, or a greater need for exemptions?

Disabled veterans are another group being suggested for special exemptions, but what about the equity question of all other disabled people in our state? Other questions of equity need to be considered. Each piece of proposed legislation that we have considered offers a shift in public policy. New groups which deserve special treatment, new funding approaches, etc. However, sound public policy decisions can be made only within the context of effects or impacts on the general public, and certainly on local governments.

The Department of Community and Regional Affairs recently completed a study of the exemption problem. Their study gives a synopsis of information developed that deals with major exemption problems, and in some cases, suggests several options that might be taken. Their broad policy statement favors few, if any, additional exemptions, and they feel that any exemption program should meet the following criteria: "any exemption granted should be either for public property or for sufficient public good to justify a transfer of burden to the balance of the community." They recognize that the credibility of property tax has been questioned continually and with increasing intensity these past few years, and that many taxpayers feel that they are paying more than their fair share.

Again, I think the matter of senior citizens exemptions merits consideration by the Older Alaskans Commission. If such a commission is established by the legislature I would appreciate it if you would approach them on this subject.

Sincerely,

Arliss Sturgulewski

Arliss Sturgulewski
Senator, District 10-H

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI

COMMITTEES
CHAIRMAN
Community & Regional Affairs

VICE-CHAIRMAN
Commerce

Health & Social Services

Senate

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99504
DISTRICT 10-H

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3712

April 3, 1980

Betty Warren, Chairman
Governor's Committee on Aging
Box 116
Kenai, Alaska 99611

Dear Betty:

Enclosed are copies of letters I recently sent to Dave Walsh, President of the Alaska Municipal League, and to Governor Jay Hammond regarding tax exemptions from the municipal property tax. It seems to me that your Committee on Aging would have interest in taking a good look at the issue raised in my letters, particularly as they relate to older Alaskans.

With the pending change before the legislature, regarding the continuation of your Committee on Aging and the possible Older Alaskans Commission, I wanted to be sure to touch all bases. If you feel the issues raised have merit for consideration by your committee, I would be very delighted to have whatever follow-up information you might develop. You might wish to contact Dave Walsh to give input to the work that the Municipal League will be doing over the next year.

Thank you for your consideration of this material, and I do look forward to hearing from you.

Kindest personal regards,

Arliss Sturgulewski

Arliss Sturgulewski
Senator, District 10-H

Enclosure

Matanuska-Susitna Borough

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

BOROUGH ATTORNEY'S OFFICE

March 18, 1980

The Honorable Arliss Sturgulewski
Alaska State Senate
Pouch V
State Capital
Juneau, Alaska 99811

Dear Arliss:

Re. Municipal code revisions.

Attached with this letter is a list of examples of various provisions of Title 29 which should be clarified through revision of that title. This list is by no means exhaustive and I am sure that other attorneys and municipal officials throughout the state could add additional examples and support a thorough revision of Title 29.

As we discussed some time ago in Juneau, I recommend that the Legislature form an interim committee to review AS 29 during the next two years and that the committee be empowered to seek assistance from municipal attorneys throughout the state, hold hearings as it deems appropriate, and present a new municipal code to the Legislature in 1981 or 1982. I have received expressions of support from attorneys representing several municipalities throughout the state and am confident they will assist the Legislature in preparing a revised municipal code.

Thank you very much for your continued attention to this matter. If there are additional questions I can answer regarding Title 29 or if the Legislature is prepared to take action in this matter, please do not hesitate to contact me.

Cordially,

Allan E. Tesche
Borough Attorney

er

cc: Jerry Wertzbaugher
Tom Klinkner
Jim Nordale
Russ Walker
Lee Sharp

AS 29: Revisions Needed

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 appointmet 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.

29.33.070-245

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 only by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands to obtain release for portions of lots or tracts originally subdivided even though such lands were illegally subdivided in violation of AS 29.33.190.

29.33.070

It is unlear 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 incoprorates 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 borroughs 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 .035, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very least confusing and perhaps unnecessary.

29.48.030(a)(12)

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

29.48.260

Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover, the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

29.53.135

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.

January 4, 1980

Mr. Thomas F. Klinkner
Law Offices of Richard W.
Garnett III
900 West 5th Avenue, Suite 540
Anchorage, Alaska 99501

Dear Tom:

Thank you very much for your comments regarding the Local Government Study. Our final report is due out very soon and I will see that you are added to this mailing list. Overall, I am pleased with the results of this study. Although the proposals may seem modest, they seem to follow well the constitional directions set for local governments and certainly can bring some cohesiveness and coordination to the delivery of services to rural Alaska. Your indepth comments and support can certainly help in seeing that this needed legislation is adopted by this session of the Legislature.

Your voice adds to a growing chorus speaking to the need for thorough technical revision of Title 29 of the Alaskan Statutes. When a certain number of amendments have been made to the Statutes, a recommendation is made for a revision of the Title. This is the case, as I understand it, with Title 29 and the recommendation is being made that Title 29 be the next title to be revised. I have had preliminary discussions with Representative Bill Parker regarding this and with several other interested parties, such as the Alaska Municipal League. One possible approach might be the establishment of a short-term committee composed of chairs of the Senate and House Community and Regional Affairs, Mr. Jack Chenoweth, from the Legislative Legal Department, other attorneys who are familiar with working on the Statutes, and other interested persons. I would see this as a working group that would produce revisions to Title 29 for introduction to the next Legislature. It seems to me there needs to be a careful delineation of the so-called housekeeping aspects and other issues that may be of major policy impact. For example, issues dealing with service areas, annexation procedures, etc., may take some special review and consideration.

I will discuss this matter further with Mrs. Ginny Chitwood, Alaska Municipal League, and with Representative Bill Parker as to possible methods for best proceeding with the revision of Title 29. I am sending copies of this letter to a number of people in hopes that both you, Tom, and the ones receiving copies will send me their thoughts and comments as to how best to proceed. It would be very helpful to have some input as to the number of policy issues, in addition to overall revisions that may well need to be addressed. Again, thank you for your interest and I will look forward to hearing from you further on this.

Sincerely,

Arliss Sturgulewski
Senator, District 10-H

cc: Mr. Lee Sharp
Juneau City Attorney
Mr. Bruce Aronson
Petersburg City Manager
Mrs. Ginny Chitwood, Ex. Dir.
Alaska Municipal League
Mr. Alan Tesche
Mat-Su Borough Attorney
Mr. Jim Nordale
North Star Borough
The Honorable Bill Parker
House of Representatives
Mr. Jim Nordale
North Star Borough

LAW OFFICES OF
RICHARD W. GARNETT III

THOMAS F. KLINKNER
SUITE 540, 900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501

TEL. (907) 276-2221

December 5, 1979

Senator Arliss Sturgulewski
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Arliss:

I appreciated the opportunity to attend your discussion group on local government in rural Alaska, and thank you for sending me a copy of the report resulting from that session. I regret that I have not responded sooner to your request for implementation proposals.

While it certainly is not an essential prerequisite to the program you propose, I suggest that you consider as a complementary project a thorough technical revision of Title 29 of the Alaska Statutes. As an attorney for general law municipalities who has had substantial experience working with Title 29, I frequently am exposed to its legal inadequacies as a charter for the operation of small municipalities. Title 29 is at once too vague to be helpful in some areas and too restrictive in others. A new rural municipality can ill afford the added expense of developing a home rule charter and detailed municipal code merely to avoid the deficiencies of Title 29. While the structure of local government organization under Title 29 is basically sound, many of its procedural and administrative provisions do not provide the support and instruction that those who administer small, rural municipalities require.

I believe that if there were support for the project in the legislature it would not be difficult to assemble a committee of attorneys and others with day to day experience in the operation of general law municipalities to undertake a revision of Title 29 to make it more useful to those who operate under it-generally the smaller, more rural municipalities in the state.

LAW OFFICES OF
RICHARD W. GARNETT III

Please let me know if you would be interested in pursuing such a project.

Yours truly,

Thomas F. Klinkner

Thomas F. Klinkner

TFK:pac

DEVELOPMENT CITY - Title 29

Senate Community and Regional Affairs
Arliss Sturgulewski

February 1979

Notes by Ann Shook - F

It must be remembered that this statute was written for the Lost River project located near Nome in an unorganized borough containing no inhabitants. When Community and Regional Affairs received the petition for a development city on Afognak Island from the Afognak Island Native Association, they were given the impression that this area was devoid of inhabitants and proceded on this assumption. Most of the inhabitants are, in fact, transient cannery workers and may not wish for a voice in the development stage of a development city. It is not clear if all of the land is owned by the Native Corp. and if so, on whose land are the remaining inhabitants residing. If these inhabitants do not own land, they will not be subject to property tax even when it becomes a first class city. (they must pay tax only on improvements on the land).

29-18-050 (8) Provision for a first class city incorporation

This should be changed if there are inhabitants in the area. This section of the statute does not follow the standard incorporation procedures because it was assumed that a development city would result in an uninhabited area.

29-18-340 Development City Council

Change statute to "the Governor shall appoint no fewer that two public members from a list of nominees designated by the major developer providing the industrial base of the city as measured by employment and capital investment; and two members who are state residents preferably residing in the surrounding area or borough if the development city is located in a borough".

29-18-360 Powers and Duties of the Council

Considerable controversy has arisen over this provision as it gives planning & zoning powers to the division of planning and research and the Dept. of Environmental Conservation during the development stage. The original project for which this was written (Lost River) was located in an unorganized borough whereas Afognak is located within a borough which may want some control over development within its confines. An addition which may alleviate this problem is "except within an organized borough unless the borough waives DPD powers over development, planning, and zoning".

Actually, according to 29-18-290, the petition for a development city may be rejected

Actually, according to 29-18-290, the petition for a development city may be rejected under (4) if the organized borough is capable and willing to carry out the program and activities being considered or if the borough wishes to promote a development city within its area (5) (a) the assembly may "present to the Local Boundary Commission a contractual agreement outlining responsibilities assumed by the borough and the industrial developer to implement the proposed development program."

29-18-380 Procedures

Add "meetings shall be made public".

29-18-390 Development City Capital Improvements

Regulations presently being written by Community and Regional Affairs will clarify this.

29-18-430 Revenue Bonds

Mr. Shey is incorrect in his assumption that issance of Revenue Bonds would result in the 85 residents becoming 1/85 of the taxable base. Revenue bonds are issued from a coporation or bank based on the value of the project or facility thereby placing no liability on the tax payers. In the development stage, the inhabitants will not be taxed,and unless they own property, they will be taxed only on improvements on land when the development city is incorporated. The state may support the area with funds for certain capital improvement projects thereby represently the use of general tax monies. Mr. Shey gives an example of the building of a dock for which he says his concern is "the tax liability of the bond on the city should the industry fail to be profitable. . ." The facility would be liable in the case of Revenue bonds not the city.

Therefore, there are four alternatives before us:

1. Change the law to apply to locations which include a population; providing for a more democratic process in the development state of the project.

2. Repeal the law and in the process disallow certain developments that may be needed and beneficial to Alaska in uninhabited areas of the state.

3. Limit the law to only those areas in unorganized boroughs that have no inhabitants.

4. Leave the statute as is, counting on the regulations from Community and Regional Affairs to clarify the less definitive and confusing aspects of the law.

Chefornak City Council
Chefornak , Alaska 99561

20 June 1980

Local Government Study
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Gentlemen;

We wish to give our full suport to the issue on Capitol Foundation fund. We find it very helpful to our situation because we don't have very much in matching costs to our capitol projects.

Right now we are trying to get funds to build a Cultural Facility but we don't have matching costs. If it is possible, we will introduce the amounts we are trying to get and the matching costs.

We have other capitol projects we would like to get on, but don't have funding.

If we have to fill out forms or questionaires to get those funds, Please don't hesitate to send them to us.

With our support,
Chefornak City Council
Chefornak City Council

cc. D.L.
N.L.