SCOMM

#23:9

NAME	SENT TO:	DATE:
Letter fm Chefornak	ALL	23 Oct 80
Drafting Chgs. #1	to Tech. Comm.	24 Oct 80
Letter fm Bob Jettner City Mgr - McGrath	to ALL & Mike Walleri	27 Oct 80
Drafting chgs #2	Tech Comm. (also 12 Nov Mtg)	28 Oct 80
Ltr fm Cities of Kodiak & Palmer	ALL	29 Oct 80
Drafting CHGS #1	To Policy Grp @ Mtg FBX	10 Nov 80
Pgs 32-34 & 133	" " " "	"
St Mary's Ltr & Reply	" " " "	"
Ket Mun. Atty (04 Nov)	" Habbocks & "Burns"	"
Ket Mun Atty: CHAP 53	TO TECH Comm. 12 Nov Mtg	12 Nov
CHAPTER 45 REVISION	" " " "	"
Received:	Policy Group Mtg. FBX	12 Nov
fm Mike Walleri	"Tribal State Relations etc	"
" City of FBX	Ltr re: 29.33.220 w/ ORD #5906 ATTACHED	"
" " Alakanuk Tony Cook	Recommended CHGS	"
" " Tanek	(Horsecart) Sub. by Bonnie Hedley	"
Resolutions fm City of Saxman		"
Resolutions fm Northwest AK Mayor's Conf.		"
Nana Ltr (dtd 11 Nov)	to ALL (Policy, Tech, Ex-O)	18 Nov
City of Kenai (dtd 10 Nov) Ltr	" "	"
City of Kodiak (dtd 10 Nov) by Mahoney	" "	"
Copy proposed dtd 7 Oct	" "	"
Memo Farley/McAneeny	" "	25 Nov 80
Notice of Mtg	to ALL: Members Printed Labels & others	25 Nov 80

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

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 Tom Cook, legal counsel who can transmit our concern to the technical and policy groups of the T29 revision committee.

T. Thompson

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 Constructi

29.51.420

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.

MEMORANDUM State of Alaska

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO Palmer McCarten
Director

DATE November 6, 1980

FILE NO

TELEPHONE NO

FROM Terry Earley
State Assessor

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Attachment

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

Thanks
PDM

02-001A(Rev.10/79)

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

M E M O R A N D U M 19 November 1980

TO: Title 29 Technical Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

SUBJECT: Changes to Drafts Suggested by the Policy Group

Here are revisions to the drafts proposed by the Technical Committee incorporating changes suggested by the Policy Group during their meeting held on November 10th and 11th. In addition to these revisions, two sections are being held by the Policy Group for further review: AS 29.09.080 (Organization Grants), and AS 29.30.040 (Voter Qualifications).

I would appreciate any comments which you may have regarding these revisions. I am planning on sending copies of the revisions to the Policy Group early in December.

TBC:maf

Enclosures

NOTICE OF MEETING
November 24, 1980

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

Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
James Kohler, Manager, City of Yakutat
Ronald Larson, Mayor, Matanuska-Susitna Borough
Gene Moore, Manager, City of Kotzebue
Donna Sherby, City Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough
Senator Arliss Sturgulewski, Anchorage
Senator Bob Mulcahy, Kodiak
Representative Margaret Branson, District 5
Representative Charles Parr, Fairbanks

The fourth meeting of the Policy Advisory Group is scheduled for 15, 16, and 17 December 1980. The meeting will begin at 9:00 a.m. in the Adventure Room of the Captain Cook Hotel, Anchorage, Alaska.

The proposed agenda for this meeting is :

December 15th:

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

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

3. Old Business:
   a. Report by Pat Poland on material prepared for newsletters.
   b. Report by subcommittee chairman on AS 29.09.180 (Organization Grants).
   c. Report by subcommittee chairman on AS 29.30.040 (Voter Qualifications).
   d. Presentation of proposed drafts by the Technical Committee.
   e. Other old business.

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).

Tlátk Saxman

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 Navillage 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

T'atk Saxman

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.

L'Tátk Saxman

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-

'Tl'átk Saxman

City of Saxman
P.O. Box 8676
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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.

Ti'átk Saxman

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

RESOLUTION NO:

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

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

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

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

Ttatk Saxman
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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

T'áth Saxman

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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.

TRIBAL–STATE RELATIONS

A New Paradigm for Local Government in Alaska

TRIBAL-STATE RELATIONS:
A NEW PARADIGM FOR LOCAL GOVERNMENT IN ALASKA

BY MICHAEL WALLERI
VILLAGE GOVERNMENT SPECIALIST
TANANA CHIEFS CONFERENCE
1ST & HALL STREETS
FAIRBANKS, ALASKA 99701

Funding for this project has been made available by the Alaska State Department of Community and Regional Affairs and Tanana Chiefs Conference, Inc. The author wishes to express his appreciation to both agencies for their support of this project. Special appreciation is made to Michael Taveliero, Dave Case, Palmer McCarter, Norma Carlo and Lisa Buskirk for their assistance with this project. --M.W.

Table of Contents

INTRODUCTION

Local government in rural Alaska is plagued by the existence of parallel government systems. On one hand, there exists a system of Native governments. On the other hand, the state has encouraged the formation of municipal governments. Often the dual system exists side-by-side in communities of less than 200 persons. In these situations, confusion, and the duplication of administrative costs and services has had a crippling effect on local government. Communities which attempt to avoid the duplication find themselves either ineligible for the respective benefits of the missing government, or forced to create exotic or ad hoc organizations which are marginally eligible for the desired benefits.

This study is an effort to sort out and compare these two systems of government. Additionally, the study makes suggestions on how to correct this situation within existing constitutional restraints.

PART I

EARLY AND CURRENT ALASKAN LOCAL GOVERNMENTS

A. EARLY ALASKAN LOCAL GOVERNMENTS

The earliest "local governments" in Alaska were Native. As Dave Case points out, primal governments varied between the Native cultures.[1] Generally, however, these early governments were loose associations of individuals based upon family relationships and customs. Group decisions were made by consensus.

Similarly, early non-Native local government in Alaska was very informal. After the purchase of Alaska by the U.S. in 1867, the primary mechanism of local government was the extra-legal mining districts.[2] Like the Native governments, these early miner's governments were loose associations based on custom. Generally, decisions were made by majority vote. In 1884, Congress recognized the authority of these mining districts, but the status of Native governments remained in limbo.

In 1900, Congress enacted a civil code for Alaska which included authorization to form towns of over 300 residents.[3] This first form of municipal government was patterned after the mayor-council type of city government common to the "lower 48." Towns were severely limited as to their ability to tax and contract debt and were highly dependent on intergovernmental transfers for financial support. Their primary function seems to have been providing school services. In 1904, some of these limitations were relaxed, but the next major change had to wait until the formation of a territorial government.

In 1905, Congress authorized the formation of independent (city) school districts, and school districts for unincorporated areas.[4] In both cases, the districts exercised fiscal autonomy over current operating expenditures. They directly received a portion of intergovernmental

revenue transfers due the city. They remained dependent on the city or territorial government for tax revenues for capital expenditures.

In 1912, Congress passed the Organic Act creating the Territorial legislature.[5] In the following years, the legislature created a second class of territorial towns, subject to the limitations of the earlier Act of Congress. It was fully intentioned that local government be kept weak so as to prevent a taxing or regulatory threat to commercial and mining interests in the territory.[6] In fact, the Organic Act prohibited organization of "counties" or other regional local governments.[7] In 1915, the legislature upgraded territorial towns so that they would be subject to the same limitations as the towns authorized under the federal legislation. At the same time, the legislature for the first time attempted to assimilate Native village government through the Indian Village Act of 1915. This Act authorized Indian villages to organize as units of local government.[8]

In 1917, the legislature authorized incorporation of school districts in unincorporated areas. Under this new legislation, the incorporated school districts achieved greater fiscal autonomy through authorization to tax, as well as an increase in shared intergovernmental transfer revenues.

The legislature undertook a revision of the territorial municipal code in 1923. The new code replaced federally authorized towns with first class cities which directly elected a mayor, expanded council powers, provided for mayoral vetoes, and established minimum procedures for city government.[9] Later, in 1929, the legislature repealed the Indian Village Act of 1915, and revised the laws relating to second class cities making them substantially equal to first class cities.

By 1934, the federal policy toward Indians had again shifted away from assimilation. This was reflected by the passage of the Indian Reorganization Act, and the subsequent extension of the Act to Alaska in 1936.[10] The Act was intended to vest "tribal organizations with

real, though limited, authority, and by prescribing conditions which must be met by such tribal organizations."[11]

At this same time, the legislature instituted reforms designed to authorize special purpose regional governments. In 1935, the legislature authorized incorporation of "independent school districts" which included both the area inside city limits and the surrounding adjacent areas. The new school districts were independent of city governments and were fiscally autonomous.[12] Also in 1935, the legislature authorized public utility districts which were fiscally autonomous special purpose governments capable of providing garbage, parks, street, fire, telephones, electrical, and other services.[13]

In 1951, the legislature authorized third class cities, which were essentially the same as second class cities, differing only in geographical and population size.[14]

In 1957, the territorial legislature again attempted to incorporate villages under territorial law.[15] An Incorporated Village had limited powers which included power to provide water, electricity, sewers, and fire protection; regulate dogs, curfews, and land use; and provide public works. The State amended the Act in 1959 to invest the incorporated village with general police powers and provided for village magistrates to levy limited fines. At the same time, the legislature defined the incorporated villages as a city of the fourth class.

At the time of statehood, there existed in the state:

- 24 first class cities
- 8 second class cities
- 2 third class cities
- 10 fourth class cities
- 69 I.R.A.'s
- 5 P.U.D.'s
- 8 independent school districts

- 1 incorporated school district
- unknown number of traditional Native councils

Statehood did not drastically alter the local government pattern since Article XV, Section 1 of the Alaska Constitution provided that, the laws of the territory remained in effect until they were repealed, amended or expired.

Finally in 1972, the state undertook a wholesale revision of the municipal code to create the current system. The main impact of the 1972 revision on the smaller rural communities was to strip those communities which organized under the Village Incorporation Act of their "village" status.

B. CURRENT STATE CHARTERED LOCAL GOVERNMENT

The system of local government authorized under the Alaska Constitution is relatively simple. It is possible to categorize Alaskan local governments into two basic types, i.e., general and special purpose governments. For the sake of analysis, a general purpose government is a government which exercises independent discretion over a broad range of topical concerns. In contrast, a special purpose government is a government which exercises discretion over a specified topical concerns.

General Purpose Governments.

The general purpose government is the constitutionally preferred unit of local government in Alaska. This policy is specifically stated in Article X, Section 1 of the Alaska Constitution which states that, "The purpose of this article is to provide for maximum local self-government with a minimum of local government units, ..." This policy is implemented in Article X, Section 2 which provides that "All local government powers shall be vested in boroughs and cities," and is further stated in Article X, Section 15 which states "Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law."

This concern for consolidating local powers into single general purpose governments is expressed throughout the Constitutional Convention record. The adoption of "one basic local government system" was intended to prevent "creation of numerous types of local units which can become not only complicated but unworkable."[16] Of immediate concern to the Delegates was the governance of the school boards, public utility districts (P.U.D.s) and health districts. As stated by delegate Victor Fischer:

> "That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."[17]

To this end the constitution provides for the creation of boroughs and cities.[18]

The most unique aspect of the Alaskan municipality is the framer's intent to create strong local government units. Systems of government then operating in the majority of the states were felt to be too weak.[19] In his initial address to the convention introducing the Local Government Committee's proposed article, Delegate Vic Fischer expressed the "New Federalist" philosophy favoring general decentralized government. Citing the Congressional Commission on Intergovernmental Relations, delegate Fischer stated:

> "The Commission concerned itself with the need for strengthening of state government and a decentralization of federal power. In this study they found that local government is an important factor in this process and I would like to briefly quote a few paragraphs. In discussing the strengthening of local government, the Committee says, 'The objective of decentralization cannot be obtained by a readjustment of national-state relations alone. It will be fully achieved only when carried through to the lowest levels of government where every citizen has the opportunity to participate actively and directly. The strengthening of local government requires the activities that can be handled by these units be allocated to them together with the financial resources necessary for their support.' Then the report goes on and draws a picture of the tremendous number of overlapping tax jurisdictions and separate local entities we now have in the state and goes on to say, 'More or less hidden in this picture is a paradox that

> consistently plagues the state and bars any easy solution of the problem of achieving the decentralization of government -- too many local governments and not enough local government.' That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."[20]

To implement this plan, the committee adopted the so-called "Texas Plan." This approach was explained to the convention by delegate Victor Rivers as follows:

> The old approach to county government was that they existed and had their authorities only in those specifically delegated to them and specifically spelled out to them by the legislature or by the constitution. The other approach which has been adopted and which has operated in a few states, approximately seven as I recall, particularly in Texas, has been called the Texas Plan, and there, under that plan, they allocate such powers to the intermediate tier of government and the cities are not specifically reserved or eventually withdrawn by the state itself. They have a broad exercise of local authority much as our cities have today. That has been the matter of the choice -- whether we wanted to follow the old pattern in which the constitution and the legislature would delegate certain specific powers to the intermediate form of government, which often is called the county and which we have designated as the borough, or whether we would follow the plan of reserving powers to the state and letting the local government exercise broad general authority within the limits of those reservations.[21]

It is quite clear that the "pure" Texas plan called for application of home rule principals to all local governments. The various classes of cities and boroughs would be defined in law by the quantity and quality of powers reserved by the state.

The record indicates that some delegates to the constitutional convention supported the "pure" Texas Plan.[22] In fact, the concept of a "general law" municipality was not introduced in the floor debate, but seems to have been an assumed constant which carried over from the territorial local government concepts. This is reflected in Article X, Section 9 and 11 which respectively provide that first-class municipalities could assume home-rule status, and that the legislature could extend home rule to other classes of government. The concept of

"general law" municipalities was enacted by statute.[23] It is interesting to note that although the "general law" concept was not discussed in convention floor debates, it has become a fundamental concept upon which the majority of local governments in Alaska are based.

It is also important to note that the framers specifically desired to provide independent authorization for city and borough powers, rather than provide that such powers be delegated to the cities and boroughs by the legislature. The legislature's authority over cities and borough is specifically enumerated. It may only regulate cities and boroughs through its authority to classify and define the respective powers and manner of incorporation.[24] Oddly enough the Constitution provides for legislative definition of borough assemblies' appointment and composition.[25] In contrast, it does not have a similar provision governing city councils. Rather, the Constitution merely provides that the council, however composed, shall be the governing body of the city.[26]

On the other hand, the powers of service areas are delegated. In the case of an incorporated area, the service area's powers are derived from the organized borough.[27] The exercise of this borough power is subject to legislative regulation by the legislature. In contrast, service areas in unorganized areas of the state possess authority delegated and regulated by the legislature.[28]

i) Boroughs: A borough is the intermediate level of government in the State of Alaska. Although the term "borough" is somewhat unique, the notion of an intermediate level of government is common to the American local government scene. The borough "corresponds generally to the county in other states."[29] By statute, the borough is a government for an "area."[30] This is in contrast to a city, which is a government for a "community."[31] The framers of the constitution anticipated that an average size borough would be between 1,000-2,500 square miles.[32] Presumably, an area could include a number of communities and their outlying areas.[33] Clearly, the framers intended to create a system of two-tiered, local coexistent governments.

But the framers also intended local government to be flexible enough to adjust to future developments. It has, therefore, been observed that:

> Boroughs in different parts of Alaska may serve two quite different purposes. In areas which include cities, they may constitute a second tier of government. In other areas, they may themselves be the sole or primary local units.[34]

The Alaska Supreme Court has recognized this by stating that the Constitution does not require the coexistence of boroughs and cities.[35]

There is a strong indication that the original concept of the borough was strongly linked to home rule. This is most notably demonstrated in committee answers to delegate questions regarding the unorganized borough.

> V. Rivers: ... In the extent that the benefits that the legislature sets up will offset the added cost to the people, anc the extent of their desire for home rule will govern how far they go in organizing those boroughs, but it was our thought there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated boroughs...[36]

This sentiment is noticeable in comparing the respective constitutional sections dealing with cities and boroughs. Whereas the constitution specifically states that "Cities shall have the powers and functions conferred by law or charter."[37] (emphasis added) The comparable clause dealing with boroughs is less specific providing that, "The legislature shall classify boroughs and prescribe their powers and functions."[38] (emphasis added) It remains unclear whether such prescription should be by specific enumeration or reservation. Nevertheless, inclusion of reference to boroughs in Article X, Sections 9 and 10 leaves no doubt that general law boroughs were constitutionally contemplated.

ii) Cities. In contrast to boroughs, cities are statutory defined as the local government unit for "communities."[39] The local government

PART II

COMPARISONS OF GOVERNMENTAL AUTHORITY

The question of governmental authority is actually a question of the respective jurisdiction of the governments in question. Basically there are two types of jurisdiction: Territorial jurisdiction, i e., the geographical area over which a government's authority extends; subject matter jursidiction, i.e., the topical areas over which a government has the authority.

A. TERRITORIAL JURISDICTION

i) Municipalities. The Alaska Constitution provides that boundaries are determined by the Local Boundary Commission.[1] The Local Boundary Commission is charged by statute with establishing boundaries upon municipal incorporation[2] and subsequent boundary alterations.[3]

The territorial jurisdiction of Alaskan cities is ill-defined by Alaskan statutes. The statutes provide for the creation of boundaries,[4] which presumably infers that boundaries constitute the jurisdictional demarcation of a city.[5] This inference is further reinforced by statutes which provide for extra-territorial jurisdiction. A municipality may provide parks, roads, trails, playgrounds, emergency medical services, cemeteries, and airports outside its municipal boundaries.[6] Additionally, cities outside boroughs may exercise extra-territorial curfew regulation.[7]

In contrast, a borough's territorial jurisdiction is clearly defined in regards to each respective power. Certain powers are "area-wide," i.e., a power of an organized borough exercised throughout the borough.[8] These include education, planning, platting, zoning, and tax assessment and collection and such additional powers acquired by the borough through transfer or referendum.[9] The borough may exercise other municipal powers as "non-area-wide powers," i.e., powers exercised only in the area outside of cities.[10] First class boroughs may exercise any municipal power as a non-area-wide power by ordinance.[11] Second

The basic model for the regional Native nonprofit organization was established under the terms of the Indian Self-Determination Act. That Act authorizes contracts between the BIA and Native governments or, in their place, Native organizations. Generally BIA programs in Alaska cannot be effectively administered at the village level. The sheer cost of administering such programs at the village level makes such contracting not feasible. In response to this problem, Natives have organized along regional lines to form Native organizations which can effectively contract with BIA for the operation of BIA programs within their region.[94] With the exception of the Inupiat Community and the Tlingit/Haida Central Council, none of these regional Native nonprofit organizations possess de jure governmental authority. Rather, they only provide those services normally provided by BIA or other federal or state agencies under a contract with those agencies. In this way, they are capable of performing governmental functions without the prerequisite governmental stature.

The most notable example is illustrated in the court case State v. Aleut Corporation.[93] In that case, several Native organizations sued the Alaska Division of Lands to prevent a proposed sale of lands adjacent to their communities. In addition to various villages, the plaintiff's list included the Bristol Bay Native Corporation and the Aleut Corporation, both regional corporations formed under the terms of the Alaska Native Claims Settlement Act. The plaintiffs in that case sued under AS 38.05.305, which provided that the Division should give notice and consult with incorporated municipalities and other organized communities adjacent to lands proposed for sale by the state. The court recognized that ANCSA regional corporations perform a number of quasi-governmental functions in rural Alaska, however, the Court specifically held that for the purposes of the Alaska Lands Act, regional Native corporations formed under ANCSA did not possess the requisite governmental attributes to qualify them for notice and consultation under the terms of the then existing statute. Subsequent to the Alaska Supreme Court decision, the Alaska Legislature amended the Alaska Lands Act to specifically require the Division of Lands to give notice to the regional Native profit corporations prior to a proposed sale of lands by the state. In 1979, the legislature again amended Section 305 to require the Division of Lands to give notice and consult with village corporations formed under ANCSA. These notices are similar to those given to organized municipalities. In light of this legislative history, it would seem that the Alaska Legislature intended to vest in ANCSA corporations certain specific governmental powers in spite of their general corporate character.

A second type of quasi-governmental Native organization is characterized by the regional Native nonprofit corporation. The activities of these regional nonprofits substantially vary. Their activities include Self-Determination Act contracting for the administration of BIA programs; contracting from HUD for the administration of housing projects; contracting under Title VI, the Comprehensive Employment and Training Act, for the operation of Native CETA programs; etc.

The organization of the Inupiat Community under the Indian Reorganization Act presents a similar case. Prior to the passage of ANCSA, the Inupiat Community organized several Northern Slope villages to form a regional IRA. The Department of the Interior takes a position for the purpose of the Indian Self-Determination Act, that the Inupiat Community cannot enter into contracts or accept grants without the prior approval of the affected villages.[89] In both cases, the Solicitor has depended upon the terms of the Indian Self-Determination Act itself which defined "Indian Tribe" as:

> any Indian tribe, band, nation, or other organized group or community including any Alaskan Native or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs of services provided by the United States to Indians because of their status as Indians.[90]

In these special cases, it is unclear which is the special purpose government and which is the general purpose government. As a general rule, Indian nations have the power to determine their own form of self-government in accordance with the political and cultural history.[91] This is in accordance with the principle that "the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal governments existed."[92] Under these circumstances, it is necessary to review an organization's status on a case-by-case basis. In light of the Cogo decision, however, it is also necessary to review any relevant specific statutory law to determine if the respective organization has a special function under federal law.

Native Quasi-Governments

In addition to the general purpose governments and the special purpose governments outlined above, there exists entities which, for the lack of a better term, may be called Native quasi-governments. These types of organizations are not governments in the formal sense, however, they exercise a variety of functions which are generally exercised by governments. In rare cases, these types of organizations have been formally recognized as exercising governmental authority.

at least analogous to the tribal organization found in the "lower 48." This principle is recognized under Alaskan state law and was enunciated by the Alaska Supreme Court in Ollestead v. Native Village of Tyonek.[85] In that case, the court recognized the tribal status of the Native village of Tyonek council.

It is, therefore, clear that to the extent that they exist, Alaska Native Village Councils organized under Indian Reorganization Act are recognized as local tribal government organizations.

Special Purpose Governments

While it is clear that the general purpose governments of Alaskan Natives are organized at the village level, additional special purpose Native governments exist which complicate the governmental pattern of Alaskan Natives. Most notable in this category is the Tlingit/Haida Central Council.

The specific status of Tlingit/Haida Central Council was litigated in Cogo v. the United States.[86] In that case, an individual brought a lawsuit against the Council to require inclusion in the preparation of the tribal roll under the Tlingit/Haida Settlement.[87] In that case, the council successfully claimed sovereign immunity as a tribal organization. The plaintiffs argued that the Council was not a tribal organization, and, therefore, could not assert tribal sovereign immunity. Specifically, the plaintiff pointed to the language in the Indian Self-Determination Act which seems to indicate that in Alaska, the village council was the tribal organization.[88] The court rejected the plaintiff's claim stating that the language in the Indian Self-determination Act was irrelevant for the purposes of this suit and went on to state that, although the Tlingit/Haida Central Council was certainly not a tribal organization for the purposes of the Indian Self-Determination Act, it was a tribal organization for the purposes of Tlingit/Haida Settlement. This case has clearly established a principle that special purpose tribal governments exist in Alaska, however, the exact extent of such special purpose tribal governments has not been fully delineated.

1936 to specifically extend its provisions to the Territory of Alaska.[79] The operation of the Indian Reorganization Act under the 1936 Alaska amendment was substantially different than the general application of the Act in the "lower 48." The adoption of the Alaska amendment marked the extension of the reservation policy to Alaska. Under the Act, Indian communities could petition the federal government for the creation of reservations.[80] Between 1934 and 1949, several IRA reserves were established. The IRA reserve policy, however, was greatly opposed by non-Native residents of Alaska and through the operation of territorial politics, lawsuits and other pressures on the Bureau of Indian Affairs, the Bureau abandoned the policy of creating IRA reserves in Alaska.[81] Even though the reservation policy was abandoned by the Bureau, the organizational efforts of the Bureau left in its wake a number of organized Native villages without reservations. Those few reservations actually formed pursuant to the Act were later revoked by the Alaskan Native Claims Settlement Act.[82] The net result of this course of events has left a number of Native governments continuing to operate under their IRA constitutions.

The legislative history accompanying passage of the Alaska amendment clearly indicates that Congress intended to recognize the Alaska Native village as analogous to a tribal organization. A House report stated:

> The proposed amendment, number 1 above, set out is necessary because of the peculiar nontribal organization under which the Alaska Indians operate. They have no tribal organizations as the term is understood generally. Many groups that would otherwise be termed tribes live in villages which are the basis of their organization.[83]

In this sense, the Alaska amendment was consistent with the general statutory purpose of the Indian Reorganization Act, which was

> To stabilize the tribal organization of Indian tribes by vesting such tribal organizations with real limited authority and by prescribing conditions which must be met by such tribal organizations.[84]

In light of these Congressional enactments and legislative history, it is clear that the Alaskan Native IRA Village Council is equivalent or

tribes. For example, Native villages receive identical treatment as Indian tribes under the Indian Self-Determination Act,[70] the State and Local Fiscal Assistance Act,[71] the Housing and Community Development Act,[72] the Comprehensive Employment Training Act,[73] and the Indian Child Welfare Act.[74] Additionally, Congress has recognized self-governing qualities of Alaska Native communities when it provided for the extension of state civil jurisdiction over Alaska Natives. In applying PL 83-290 to Alaska, Congress expressly reserved that:

> Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community, in the exercise of any authority which it may posess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil cause of action pursuant to this section.[75]

The executive branch has likewise dealt with Alaska Native villages as Native governments where it exercises discretion. The best example of this is the Omnibus Crimes Control and Safe Streets Act which places responsibility of the Secretary of the Interior to determine those Indian tribes which perform law and order functions.[76] Under this authority, the Secretary of the Interior has recognized several Alaska Native villages as exercising the law and order functions including the employment of tribal police, establishment of tribal courts, corrections functions, and the adoption a law and order code.[77]

i) I.R.A.s. A second type of general Native government in Alaska is the "IRA Village Council." IRA stands for Indian Reorganization Act, or the Howard-Wheeler Act, which was passed in the 1930s in an effort to modernize Indian or Native American governments.[78] The Act originally applied only to the "lower 48." Its application in Alaska was somewhat unique. A 1934 version of the Indian Reorganization Act provided that only an "Indian tribe or tribes residing on the same reservation" could organize to adopt constitutions under the Act. Since few reservations existed in Alaska at the time, the Act had, in its original form, doubtful utility in Alaska To address the special problems of Indian organization in Alaska, Congress amended the Indian Reorganization Act in May of

General Purpose Governments.

It is commonly stated that there are two types of general Native governments in Alaska: Traditional Councils and IRA Councils.[66] In practice, there is little difference between the operation of these two types of government. The distinction between the two governments is largely theoretical. This distinction is important, however, when the authority or status of the government comes into question.

i) Traditional Councils. In a strict sense, traditional councils are not traditional to the Alaska Native people. As pointed by David Case, the traditional precontact Native governments were primarily based on family ties.[67] Traditional councils have been formed in reaction to contact with the non-Native culture for local representation of the Native community before outside interest. Many of these councils have adopted formal traditional constitutions while others seem to operate according to an unwritten constitution like the United Kingdom. In all cases, the basic level of organization is the village.

The basis of these government's authority rests in their retained sovereignty, i.e., the principle that absent express Congressional action to the contrary, Indian nations retain the inherent power of internal self-government.[68]

This observation has led to several inquiries regarding the tribal status of Alaskan Native villages. Although the question of tribal status in Alaska is intriguing from an ethnic and political perspective, its resolution has doubtful legal significance. More important that tribal status however, is the general recognition of a group's authority to govern itself. This recognition is directly linked to its dependent status vis-anvis the federal government.[69] In turn, a Native community's dependent status is determined by legislative and executive course of action respecting the Native community in question.

Congress has specifically extended this recognition to Alaska Native villages and has treated them in the same manner as other Indian

areas may organize a special service area for the conducting district coastal management programs.[62] These programs operate to guide state agencies in the operation of their programs throughout the coastal areas of the state. While the state continues to be the basic provider of basic services, the service area boards operate as a centralized planning agency for the area. The board of the service area is popularly elected.

Third, the regional education attendance areas (REAA) are service areas providing eudcational services within the unorganized borough.[63] Like the coastal zone management areas, the REAA's are controlled by a popularly elected board, but were mandatorally organized by the legislature after a settlement of the "Molly Hootch" case.[64]

Finally, the legislature has "impliedly" authorized organization of volunteer fire departments for unorganized areas of the state through the state revenue sharing program.[65] Under this program, local fire departments may organize under regulations adopted by the state fire marshall. Upon approval and registration of the departments, the organizations are eligible for state funding. Generally, these departments enjoy substantial fiscal autonomy, provided that they confine their activities to fire protection.

As noted above, there is great variety in the organization and operation of these special service areas. At the present time, the authority of these special service areas has not been challenged in court, so that it is impossible to define the limits of the legislature's discretion as to the manner and form that these service areas may take. If the past record is an indication of legislative authority, it can only be stated that the legislature possesses broad discretion in creating and organizing service areas, provided they are defined taxing authority.

C. ALASKA NATIVE GOVERNMENT ORGANIZATION

As with state chartered local governments, Alaskan Native governments can be categorized as general or special purpose governments. Additionally, there exists "quasi-governmental" entities.

range of services for a community without city incorporation. This concept is not beyond the framer's contemplation, in that both pro-integration, and anti-integration factions within the Constitutional Convention characterized cities as "a collection of service areas".[57] It must be remembered, however, that a collection of service areas lack independent taxing authority possessed by cities. Thus, a collection of service areas would be totally dependent on intergovernmental transfers, whether from the borough or the state. Furthermore, a collection of service areas would be subordinate to borough regulation in areas of "local control". The collection of service areas, however, could exercise substantial autonomy in areas of state interest, as defined by the legislature.

Service areas have their greatest utility in the unorganized boroughs. The constitution directs the legislature to provide necessary services in the unorganized boroughs, "allowing for maximum local participation and responsibility."[58] To implement this section, the legislature provided that it may authorize "service areas" in the unorganized borough.[59] It is agreed that such service areas do not possess powers of fiscal autonomy,[60] however, they may exercise other powers delegated by the legislature.

The legislature has seen fit to authorize four types of service areas in the unorganized borough - i.e.: 1) aquaculture service areas; 2) coastal resource service areas; 3) regional educational service areas, and 4) volunteer fire departments.

The legislature authorized the Commissioner of Commerce and Economic Development to declare aquaculture service areas.[61] The purpose of these service areas are to provide fishery enhancement services. The service area board is comprised of representatives of member user groups.

The coastal zone management service areas are general planning units for coastal areas of the state. Whereas, coastal boroughs are automatically designated coastal zone management districts, unorganized

revenues from intergovernmental transfers. For example, under the terms of A.S. 29.89.030 (2), a health district operating a hospital may qualify for state revenue sharing. Although, the sponsoring municipality would initially receive the revenue sharing payments, the municipality is required to transfer such payments to the service area to be used for health services at the discretion of the hospital "directors".

The second major limitation on a service area's autonomy is related to the operation of the "local activity rule." As the Court stated in Macauley, the legislature may delegate to service areas power beyond the regulation of the parent municipality in areas which are the subject of state concern. It follows, therefore, that service area autonomy is inversely related to "local" concerns. For example, a municipality could certainly regulate the use of municipal property regardless of whether it was assigned to the service area, since municipal property is purely a local concern.[54] Of course, is is not easy to define what is a "local" concern as opposed to a "state" concern. This is even less clear under the borough form of government in that the framers of the constitution intended boroughs to assume greater responsibility in the area of traditional state concerns as state government "decentralized." The framers seemed to have accepted this ambiguity, and left the matter to the legislature. The courts, in turn, have recognized this role for the legislature by holding that municipal regulation is invalid in the face of contrary statutory law.

In spite of these limitations, service areas would seem to be remarkably flexible mechanisms of local government. For example, the Constitution authorized intergovernment cooperative agreements between "any local governments" for joint administration of any functions or powers.[55] Presumably, these provisions would apply to service areas since they are local governments. This view is supported by the fact, that only cities and boroughs are authorized to transfer powers, while "all local governments" are authorized to enter into intergovernmental agreements.[56] Thus, it would seem possible for co-extensive service areas to enter into cooperative administrative agreements for such things as centralized accounting and budgeting, personnel management and property management systems. Such mechanisms could be used rather extensively to provide a wide

exclude the exercise of governmental authority by governments other than cities and boroughs.

This balance is further demonstrated in those constitutional provisions which provide that when a borough is organized, existing service districts shall be "integrated" into the borough government.[49] Once a borough is organized, the assembly may create service areas within its borders.[50] This latter power is subject to the single prohibition that services areas cannot be established where such services can be rendered by annexation to an existing service area or city.[51] This prohibition is consistent with the general preference for integration rather than separate incorporation.

It is quite clear that service areas are only "semi-autonomous." As indicated above, the service area would be subject to the exclusive "fiscal jurisdiction" of the assembly. Beyond this, however, the framer's contemplated that service area boards could be set up and exercise substantial powers. This was clarified by delegate Fischer who stated:

> ..., it is the intent of the committee that when you establish a service area you could, say, establish a separate school board,...to supervise the school functions...[52]

Thus, it is possible for a service area to exercise substantial power independent of the general borough assembly.

It must be remembered, however, that the service area may never exercise total autonomy. There seems to be two chief limitations on the service areas. First, the service area may not unilaterally tax. The Constitution specifically provides that only cities and boroughs may tax.[53] As indicated above, this limitation on service areas was perceived by the framers as the sufficient link needed to achieve local government coordination. There remains, however, substantial autonomy even in fiscal matters as indicated by the Macauley v. Hildebrand case. A school district may maintain separate financial records. Similarly, while service areas have limited control over tax revenues, they may possess substantial autonomy with respect to

however, provided for service areas and districts which seem to be semi-autonomous special purpose governments. In understanding the role of special purpose governments, it is necessary to recognize that service areas represent a compromise between the constitutional delegates who argued in favor of wholly integrated local governments, and those delegates who favored continuing the independent school districts, health districts and P.U.D.s formed under the territorial government. In expressing this compromise, delegate Vic Fischer stated:

> Mr. Johnson, it was not the intention of the committee to do away with any existing school districts just by the enactment of this article. (Sec 15). The intent was to leave them within a new framework of government.... what we visualize is putting them under the general fiscal jurisdiction of the larger entity, which includes all the people within the particular school district.[44]

This was again explained by delegate Rivers who stated:

> Mr. President, the idea was that the general powers of government would be with the general elected representatives of the people. Now, as Mr. Fischer has pointed out, the special functions in regards to the use of one group for one special purpose such as health, education or anything else, the power to take the board and take its powers away, the powers of the boards would probably continue except for the taxing power being centralized in the one taxing agency which would thus have its own appraising, its own assisting agency, its own condemnations.[45]

This point was recognized by the Alaska Supreme Court in Macauley v. Hildebrand[46] where the Court held that a home rule borough may not require its school system by ordinance to participate in centralized accounting where the Legislature has delegated express authority to the school board to resist such requirements. The Court based its decision upon the theory that education was an area of "pervasive state authority." The obvious conclusion, therefore, is that service areas may exercise substantial autonomy in areas of "pervasive state authority." In a similar manner, the legislature could provide substantial autonomy to public utility districts since regulation of public utilities is also an area of state concern.[47] Thus, while the constitution provides that "all local powers shall be vested in boroughs and cities",[48] it does not

committee of the Constitutional Convention considered the option of abolishing the city form of government. It was felt, however, that such a move was "too drastic a step," and it was felt that the existing territorial units of governments should be perpetuated.[40] On the other hand, it was also stated that,

> "... we visualize the possibility that as the borough becomes a more definite unit of government over the years, which we hope it will, the scope better defined, that all the functions that can best be carried out on the unified basis be transferred over to the borough."[41]

In City of Douglas v. City and Borough of Juneau,[42] the Court recognized that "Unification is consistent with the purpose expressed in Article X, Section 1 of minimizing the number of local government units." But in preserving the city, the convention did not intend to subordinate the city to the borough as indicated by the following exchange:

> HURLEY: The borough then has nothing to say about the services that the city offers its own residents within its boundaries. Is that true?
>
> ROSSWOG: Yes, the city should remain as much the same as today, or practically the same unless there are some gradual changes in the future. They can delegate powers back and forth but the borough would not tell the city that they had to supply certain services or couldn't supply certain services. That is why the two are set up as having the authority.
>
> HURLEY: In essence, then, you have two local government units?
>
> ROSSWOG: Yes, that is right.[43]

Thus, while the momentum set in force by the Constitutional Convention contemplates eventual dissolution of cities in favor of boroughs, the interim is governed by the principals of sovereign coexistence.

Special Purpose Governments

As noted above the integrated/unified local government is the preferred vehicle of local government in Alaska. The constitution,

class boroughs may only exercise certain enumerated powers as non-area-wide powers by ordinance. These include regulatory power over fireworks, animals, motor vehicles, snow vehicles, garbage, water pollution. A second class borough may only acquire other municipal if such powers are specified in its charter or subsequently acquired by referendum.[12]

ii) Native Government. Native Village constitutions, whether adopted under the traditional form of government or under the Indian Reorganization Act, generally fail to define the exterior boundaries of their territorial jurisdiction. It is, therefore, necessary to look to common law in order to determine the respective jurisdictions of the tribal organizations.

Generally, it is said that tribal law and custom are applicable within "Indian country."[13] This rule was not altered when Congress extended the State of Alaska's jurisdiction to Alaskan Indian country. Congress expressly reserved that Indian law and custom shall be given full force and effect in the determination of civil causes of action arising within Indian country in Alaska.[14]

This observation, however, begs the question to whether Indian country exists in Alaska, and, if so, what are the limits of Indian country in Alaska? Unfortunately, in Alaska the question whether Indian country exists is largely disputed, and supported by a vacillating history of cases.

As Felix Cohen illustrates in his early attempt to define the term Indian country, the term is a dynamic concept. Originally, the concept seems to have been born out of respect for the territorial integrity of Indian nations.[15] Later, the idea was supported in the Jacksonian policy of Indian removal to reserves, a policy designed to physically separate Indians and the immigrant culture.[16] From thence, the concept found its way into the early Indian Intercourse Acts to indicate Indian lands west of the Mississippi.[17] From this point, the courts and Congress have separately, albeit tangentially, developed the concept of "Indian country."

Congress repealed the definition section of the Act in 1834 and failed to reenact a substitute general definition of Indian country.[18] Later, however, Congress defined the term Indian country in relation to specific crimes.[19] The only current federal statutory definition of Indian country exists in 18 USC 1151 which defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation,

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state, or

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

It should be noted that this definition of Indian country only applies to a set of federal criminal statutes contained in Title 18 of the U.S. Code. The term Indian country, however, is also found in 28 USC 1360 dealing with state civil jurisdiction over Indians. The result is that there is no general statutory definition for Indian country, nor is there a statutory definition for Indian country in the civil sense.

The resulting ambiguity from the lack of a statutory definition of Indian country led to a series of Supreme Court decisions laying down the principal common law definition of Indian country. Felix Cohen states that the first ruling by the Supreme Court on the issue came in Bates v. Clark,[20] which stated in essence that:

> "It follows from this that all the country described by the Act of 1834 is Indian country, remains Indian country so long as the Indians retain their original title to the soil, and ceases to be Indian country when ever they lose that title, in the absence of any different provision by treaty or act of Congress."

This basic principle was expanded in Donnelly v. U.S.,[21] where the Court stated that executive order reservations constituted Indian

country even though the respective band did not possess original title to the land in question.

Of more importance to the Alaskan situation however, was the case U.S. v. Sandoval,[22] which held that Pueblo lands not held in trust by the United States, but owned in fee simple by a Native community under a Spanish land grant, was in fact Indian country. In his treatise on the federal-Indian relationship, David Case pointed out that the Sandoval doctrine presents a clear analogy to the Alaskan situation. Like the New Mexico pueblos, Alaska Native communities own land in fee simple through their Native corporations. In the Sandoval case, the court looked to the statutory definition embodied in 18 USC 1151 and held that the Pueblos of New Mexico were clearly "dependent communities" within this definition of Indian country. In a similar case, U.S. v. Chavez,[23] the Court defined Indian country as "any unceded lands owned or occupied by an Indian nation or tribe of Indians." If these Court cases are to be literally applied to the Alaska situation, it is clear that Indian country does exist in Alaska. However, the matter has never truly been settled.

The modern federal courts have only addressed the question whether Indian country exists in Alaska on three occasions. In the first case, In re McCord,[24] the Court heard a petition in a proceeding for a writ of habeas corpus arising from a conviction for statutory rape occurring upon the Tyonek Indian Reserve. In that case, the Court followed the Donnelly decision and held that the executive order reservation was in fact Indian country which denied state jurisdiction to prosecute the defendant in the case. The second major case following McCord by one year, was U.S. v. Booth.[25] In that case, the court held that the Metlakatla Indian Reservation did not constitute Indian country because the reservation was not a "reservation in the traditional sense." The Court further distinguished the case from McCord by noting the different conditions and history behind the Metlakatla Reservation. The decision in the McCord case, however, led to a general public outcry of concern over the lack of law and order within Indian country in Alaska. Alerted to this apparent gap in jurisdiction, Congress passed an amendment to

PL 83-280 (P.L. 280) including Alaska among those states where mandatory state jurisdiction extended over Indian country within the borders of the state.[26] The legislative history behind this action clearly indicates that the Congress reacted to the nolding in the McCord case, and indicates that Congress clearly desired to overrule and reverse the precedents set by that case.[27] If the application of PL 280 to Alaska was a congressional reaction to McCord, rather than Booth, it is safe to assume that the holding in McCord was a correct statement of the legal crisis prior to the application of PL 280 to Alaska. That Act specifically states that the State of Alaska shall have jurisdiction over Indian country within its borders. It therefore seems incredible to assert that Indian country does not exist in Alaska.

But the doctrinal confusion regarding the existence of Indian country in Alaska has continued. This is primarily due to the nature of the cases in which the claim of Indian country arises. For example, in the People of South Naknek v. Bristol Bay Borough,[28] the plaintiffs claimed a tax exemption for Native townsites within the borough by claiming that the townsites were Indian country and therefore exempt from state taxation. The court firmly refused to attempt an answer as to whether or not the land in question was in fact Indian country. The Court, however, noted the historical confusion over the question of Indian country in Alaska. The Court blamed much of this confusion on "one of the principal Indian jurisdictional cases that has emerged from Alaska," specifically, the Organized Village of Kake v. Egan.[29] Like Naknek, the Kake case arose out of a claim denying state jurisdiction. It is important to note, however, that Kake did not deal with the question of Indian country per se, but addressed a narrower question of whether state law applied to off-reservation Indians. Kake, like Naknek, did not address the question whether Indian country exists in Alaska.

It should be noted that the mere existence of Indian country and consequent tribal jurisdiction is not an exclusive claim to jurisdiction and does not exclude state criminal and civil jurisdiction. As noted earlier, Alaska is subject to the mandatory provisions of PL 280 which authorized the extension of state jurisdiction over Indian country. As

a general rule, however, the application of PL 280 does not create exclusive state jurisdiction nor does it substantially affect tribal jurisdiction. In Bryan v. Itasca County,[30] the Court stated that:

> . . . nothing in its [PL 280] legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to states would result in the undermining or destruction of such tribal governments as did exist and a conversion of the affected tribes into little more than private voluntary organizations.[31]

In reaching this conclusion, the court noted that 28 USC Section 1360(c) provided for full force and effect of any tribal ordinances or customs heretofore or hereafter adopted by an Indian tribe if not inconsistent with any applicable civil laws of the state. In light of these cases, it would seem that territorial jurisdiction over those areas which can be determined to be Indian country, would seem to be concurrent between the state and the tribe.

There remains, however, substantial concern that the Alaska Native Claims Settlement Act placed in question the existence of Indian country in Alaska. Specifically, concern centers around Section 19 of the Act, which revoked existing reservations in Alaska. The supporters of this theory contend that, when the reservations were revoked, the territorial jurisdictions of the respective villages were destroyed. The argument, however, rests upon the proposition that Indian country is dependent upon the existence of reservations. The Supreme Court has clearly announced that there is nothing magic in the term "reservation."[32] Other forms of Indian country exist in addition to reservations. It is also clear that tribal jurisdiction is not dependent upon federal ownership of the territory in question.

The Pueblo cases arising out of the New Mexico situation clearly demonstrate these principles. In the Chavez case, Indian country was defined as "any unceded land owned or occupied by an Indian nation or tribe of Indians." It is not necessary to establish clear unequivocal boundaries. Rather, it is only necessary that the lands in question are occupied by "distinctly Indian communities" recognized and treated by the government as dependent communities entitled to its protection.[33] Applying this

rule to Post-ANCSA Alaska it is quite easy to identify those villages in rural Alaska which continue to be "distinctly Native communities." Such communities retain substantial cultural, social, and economic characteristics identifiable as Native and therefore these villages clearly fall within the definition of a dependent Indian community enunciated in the Chevez decision. Additionally, it must be recognized that ANCSA clarified continued Native title to certain lands within the state. Under the terms of the Act, Alaskan Native aboriginal claims to the land were extinguished.[34] In compensation for the extinguishment of such claims, Alaska Native villages were allowed to select and receive substantial amounts of land surrounding the villages.[35] The main effect of this act was to continue Native occupancy and ownership of a substantial amount of land surrounding Native communities. Thus those lands selected and ultimately conveyed to the village corporations clearly constituted "unceded lands owned and occupied" by the Native villages concerned. Again, the definition of Indian country as specified in the Chavez case is clearly met. As noted earlier, the fact that such lands were conveyed in fee simple was ruled irrelevant in the Sandoval case.

This view is consistent with a recent solicitor's opinion which stated that,

> The continued existence of Indian country in Alaska, in our view, does not conflict with the Settlement Act, and consequently, that Act should not be construed to have abolished Indian country or the possibility that Native villages might qualify as "dependent Indian communities."[36]

The opinion then considered a number of factors including whether the Native village was modern and urban in character, a high percentage of Native residents, the village's elibiligy to receive federal services, and the land tenure pattern, and concluded that,

> In our view, these factors are sufficient to support presumption that the area (Allakaket) is a dependent Indian community and, therefore, Indian country for the purposes of the liquor laws.[37]

Of course, this does not address the substantial concern which may arise upon subsequent land transfers by the respective Native

communities. The problem presents itself in two distinct situations. First, what is the status of lands originally selected by a village corporation and then conveyed by the corporation to non-Natives? Secondly, what is the status of lands subsequently acquired by the Native village?

The basic rule governing subsequently acquired Indian lands and their respective status as Indian country was laid down in United States v. McGowan.[38] In that case, the lands in question were lands owned by the United States and purchased out of funds appropriated by Congress for this purpose. The ruling that such lands were in fact Indian country relied on the role of the government in the establishment of the colony. The role of the federal government in the creation of the Reno Colony is substantially analagous to the role of the federal government in the identification and conveyance of lands received under the terms of ANCSA. Subsequent purchases of private land by Alaskan Native villages in fee simple would by definition not involve the federal government. Under the rationale of McGowan, the diminished federal role in the identification of Indian lands would substantially impact the status of those lands under the McGowan test. Subsequently, acquired land which would not involve federal government participation in their acquisition would not necessarily extend village jurisdiction.

The above type of subsequent acquisition, however, should be sharply contrasted from acquisitions authorized under the Indian Reorganization Act.[39] Lands acquired in this manner would fall under the black letter rule of McGowan, so that lands subsequently acquired pursuant to the terms of the Indian Reorganization Act would clearly extend village jurisdiction to those lands.

The possibility that a village might sell or otherwise dispose of village lands to nonmembers of the community presents a substantially different problem. In the case Seymour v. Superintendent,[40] the United States Supreme Court held that lands conveyed to non-Indians within the exterior boundaries of a former reservation did not lose the character of Indian country. This rests upon the theory that once Congress has set aside certain lands for the use and occupancy of

Indians, such use and occupancy shall not be disturbed. Broadly applying this principle to Alaskan Native villages, it would seem that lands within the Alaskan Native village selections authorized under the terms of ANCSA, would continue to be Indian country in spite of subsequent conveyance of such lands to non-Indians by the village.[41] In contrast to these decisions, however, is the decision in DeCoteau v. District County Court.[42] In that case, the Court held that the Lake Traverse Indian Reservation in South Dakota was terminated and returned to the public domain and, hence, Indian country on the Lake Traverse reservation ceased to exist on this reservation. The Court in DeCoteau noted that the Act in question was a ratification of a prior negotiated agreement which was fully intended to terminate the reservation. By the terms of the agreement itself, the Indians would "cede, sell, and relinquish, and convey" all the remaining land in the reservation. The court distinguished Matz and Seymour as being cases involving unilateral Congressional action rather than possession or sale of land by the Indians. From these two lines of cases it is unclear whether that a sale of Indian lands by a village would result in the relinquishment of tribal jurisdiction over those lands.

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iii) Summary Comparison. In summary, it seems clear that the territorial jurisdiction of state municipal governments are basically defined in terms of their boundaries. Borough's territorial jurisdiction may be limited in regards to a number of powers by the existence of cities within its boundaries. Finally, all municipalities may exercise extra-territorial jurisdiction in respect to certain enumerated powers. The procedure for enlarging or diminishing boundaries is statutorily prescribed.

In contrast, a Native village government's territorial jurisdiction is defined in reference to the village's "Indian country." It is most likely that a village's Indian country is coextensive with lands received under ANCSA, and any other lands subsequently acquired with federal participation. It is unclear whether village's Indian country is diminished through unilateral sale or cession of village lands.

B. PERSONAL JURISDICTION

In contrast to a municipal government, tribal government has very limited personal jurisdiction. It is generally assumed that personal jurisdiction of a municipality extends to all or most individuals within its territorial jurisdiction. This may depend upon the subject matter involved (see below). A tribe's jurisdiction is generally linked to its membership. The U.S. Supreme Court enunciated the basic principles of tribal personal jurisdiction in the companion cases, Oliphant v. Suquamish[43] and U.S. v. Wheeler.[44] In Oliphant, the Suquamish tribe attempted to enforce a local traffic ordinance against a nontribal member. In its decision, however, the Court denied the tribe's claim to jurisdiction over nonmembers. In Wheeler, however, the Court upheld the Navajo Reservation's claim to enforcement jurisdiction over tribal members.

There are basically two ways to interpret the meaning of these cases. In the broad sense, the Oliphant decision can be interpreted as denying tribal jurisdiction over non-members. It is important to note, however, that the Court in Oliphant did not overrule the holding in U.S. v. Mazurie.[45] In that case, the Court upheld the extension of tribal liquor ordinances over non-members of the tribe. Although the cases seem irreconcilable at first glance, there was a substantial difference between these two cases. In Mazurie, the Court upheld the authority of the tribe to prescribe the ordinance and stated that such legislative acts extend and apply to nontribal individuals. The actual enforcement mechanism in the Mazurie case were federal authorities, i.e., the federal courts. In contrast, the tribe in Oliphant was attempting to enforce tribal ordinances through tribal courts. The only way these two cases can be reconciled is to recognize that tribal ordinances extend to non-members but that tribes lack the authority to enforce such ordinances against non-members. The result is that tribes must seek alternative enforcement mechanisms against nontribal members, i.e., the state or federal courts. As noted in Bryan v. Itasca, federal courts are not available in a PL 280 state such as Alaska since federal jurisdiction has

generally been withdrawn. Thus, in Alaska the state courts are the only forum for the enforcement of most tribal ordinances against non-members.

As noted above, "PL 280" requires the state to give "full force and effect" to valid tribal ordinances in civil cases.[46] This supports the notion that a village would have prescriptive jurisdiction over non-tribal members. It also clarifies that state enforcement of tribal ordinances is clearly required by federal law in civil matters.

There remains, of course, the question of criminal cases. PL 280 has no comparable requirement for "full force and effect" of tribal ordinances in criminal cases. There exists, however, two lines of authority on this issue. Some states have extended "full faith and credit" to tribal ordinances by holding that a tribe is a "territory" under 28 USC 1738.[47] On the other hand, many states have refused full faith and credit, but have extended "comity" to tribal ordinances.[48] The issue remains unresolved.[49]

C. SUBJECT MATTER JURISDICTION

Subject matter jurisdiction refers to the types of issues with which a government may concern itself. Often subject matter jurisdiction is referred to as the "powers" of a government. Title 29 of the Alaska Statutes enunciates, in a comprehensive manner, the powers of state chartered local governments. In contrast, there exists no similar comprehensive and authoritative exposition of tribal powers. Understanding tribal powers requires a thorough review of a substantial body of federal and international common law. Finally, there exists a less formidable body of federal common law governing the interaction of these respective jurisdictions.

1) Concurrent Jurisdiction

There are two basic principals governing the interaction between municipal and tribal governments.

The first principle was enunciated by the United States Supreme Court in Williams v. Lee.[50] In that case, the United States Supreme Court held that states have jurisdiction over Indians except where such state jurisdiction infringes upon tribal self-government. This test was specifically applied to Alaska in Organized Village of Kake v. Egan.[51] In that case, the Court analyzed the development of this principle and stated:

> "these decisions indicate that even on reservations, state laws may be applied to Indians unless such application would interfere with reservations, self-government, or impair a right granted or reserved by federal law."

In explaining these lines of decisions, the Supreme Court further stated that, "it must be remembered that the Courts in applying the Williams test, have dealt principally with situations involving non-Indians."[52] In these situations, both the tribe and state fairly claim an interest in asserting jurisdiction. The Williams test was designed to resolve this conflict by providing that the state could protect its interest in its non-Native citizens up to the point where tribal self-government would be affected.[53] In fulfillment of this policy, cases arising between tribal members fell within the exclusive interest of the tribal government.

The second major principle is a modification of the above rule required by the fact that Alaska is governed by the operation of Public P.L. 280.[54] Generally, this law confers upon the state criminal and civil jurisdiction to adjudicate matters between Natives within Indian country. It is important, however, to understand the parameters of PL 280 as recently defined by the courts. The courts have generally attempted to limit the effect of PL 280 because of the devastating impact the law has had on tribal governments."[52] In Brian v. Itasca County, the U.S. Supreme Court in commenting on PL 280 stated:

> "nothing in this legislative history remotely suggest that Congress meant the acts extension of civil jurisdiction to the states should result in the undermining or destruction of such tribal governments as did exist in a conversion of the affected tribes in the little more than "private volunteer organizations," a possible result if

> tribal governments and reservation Indians were subordinated to full panoply of civil regulatory powers, including taxation of state and local governments. The act itself refutes such an inference: There is notably absent any conferral of state jurisdiction of the tribes themselves and Section 4 C, 28 U.S. C Section 1360(C) (28 U.S. CS Section 1360 (C)), providing for the "full force in effect" of any tribal ordinances or custums "heretofore or hereafter adopted by An Indian Tribe...if not inconsistent with any applicable civil laws of the state, contemplates the continuing vitality of tribal government."[56]

The court went on in a footnote to further explain this policy of promoting Native governments. In a comment of particular importance to Alaska, the court stated:

> "the suggestion is that since tribal governments are disabled under many state laws from incorporating as local units of government, general regulatory control might relegate tribal governments to a level below that of counties and municipalities, thus essentially destroying them, particularly if they might raise revenue only after the tax base had been filtered through many governmental layers of taxation. Present federal policy appears to be returning to a focus upon strenghthening tribal government...and the Court of Appeals of the Ninth Curcuit has impressed the view that courts are not obliged in ambiguous instances to strain to implement an assimilationist policy Congress has now rejected, particularly, where to do so will interfere with the present Congressional approach to what is after all an ongoing relationship."[57]

This general policy, favoring the strengthening of tribal governments has two effects.

First, PL 280 does not confer upon a state general civil regulatory control over Indian country.[58] Although the Supreme Court has failed to fully define what the scope of "regulatory" means, it is clear that taxation of personal property on trust land,[59] zoning authority,[60] and outdoor advertizing61 in Indian country are beyond the state's authority.

The second effect of Brian v. Itasca was that PL 280 only made applicable to Indian country those state laws which "had a general applicability throughout the state." In short, this general principle denies the authority of local governments to exercise authority over Indian country since their authority does not extend throughout the state.[62] This basic principle, if applied in Alaska, could have a crippl-

ing effect on rural Alaskan municipal governments. The result would be the creation of local governments chartered under state law whose authority only extended over non-Indians. The end result would be the creation of parallel local government units incapable of exercising jurisdiction over the respective persons subject to the other local government's personal jurisdiction.

2) Local Government Powers.

The basic rule regarding the powers of a tribal government is that such powers are not in general delegated powers granted by Congress, but rather are inherent powers of a limited sovereignty which has never been extinguished.[63] This has recently been compared with the concept of home rule under Alaska state law.[64]

In contrast, Alaskan municipalities are of two types. A home rule municipality, like an Indian tribe possesses all local government powers not reserved from it by state law.[65] A general law municipality possesses powers delegated to it by state law.[66] Basically, general municipalities exercise four types of powers.

A general law municipality possesses "general powers" related to the municipal corporate identity. These powers include the following powers: be sued; employ municipal officers and officials; levy taxes and special assessments; enforce ordinances; prescribe penalties for violations; acquire manage, control, use, and dispose of personal and real property; promote legislation for the municipality; expend funds for community purposes; and borrow money and issue evidence of undebtedness.[67] By statute, all municipalities possess the unilateral authority to exercise these powers.

Second, general law municipalities "regulatory powers," which relate to: public rights-of-way facilities to services, traffic and general transportation including buses, taxis, etc., animal control, sales of goods, foods, and alcoholic beverages, dangerous insect and rodent control, recreational devices, building codes, public nuisance abatement,

garbage & solid waste collection, water and air pollution, licensing of day-care facilities, police powers, or other general health safety and well-being welfare functions.[68]

As a general rule, cities possess the unilateral authority to exercise the regulatory powers. Boroughs, however, are subject to a narrower grant of authority depending on whether the power is area-wide or non-area-wide (see Part II (i) above).

Third, Alaska Statutes outline a number of municipal facilities and services which general law municipalities may provide. These include services and facilities relating to streets and sidewalks, sewage treatment facilities, harbors, flood control, health and hospital services, cemeteries, police and jail services, cold storage, telephone, lights, power, heat, water, transportation, community centers, libraries, recreation facilities, airport facilities, garbage facilities, fire protection, parking, urban renewable, consumer protection, and historical sites, buildings and monuments.[69] Any city may exercise the powers necessary to provide these facilities, however, boroughs must assume the powers to provide these facilities and services in a like manner required for the exercise of regulatory powers. Third class boroughs are not specifically authorized to provide such facilities and services.

Fourth, general law municipalities are authorized to exercise what are commonly called area-wide powers, i.e., education, and planting, platting, and zoning authority. Generally, first and second class boroughs have the statutory authority to unilaterally provide exercise such powers on an area-wide basis.[70] All third class boroughs may provide educational services on an area-wide basis and may, upon voter approval, exercise planning and zoning authority. As a rule, cities do not exercise such powers except when they are located outside borough boundaries.[71]

An exhaustive comparison of these powers is certainly beyond the scope of this project, however, it is possible to select areas for special consideration.

i) Police Powers. While municipalities possess police powers,[72] tribes possess the power to regulate the conduct of members.[73] The federal government has withdrawn tribal jurisdiction over most felony crimes by enactment of the Major Crimes Act,[74] and Assimilative Crimes Act.[75] Both the tribe and the municipality are limited from prescribing a punishment for violation of an ordinance in excess of $500 and/or thirty (30) days in jail.[76]

Municipalities are prevented from operating "courts" since the Alaska Constitution provides for an integrated court system under state government.[77] This constitutional reservation of power to the state, however, does not prevent municipalities from operating "administrative tribunals" capable of enforcing ordinances.[78] Such tribunals, however, are subject to the same constitutional guarantees protecting the rights of the accused, where the ordinance provides for the regulation of acting which traditionally connotes criminality.[79]

In contrast to municipalities, Native governments possess the inherent power to create courts to enforce their ordinances.[80] While tribal courts are not generally subject to the individual guarantees of the Bill of Rights,[81] they are subject to the guarantees of the Indian Civil Rights Act of 1968,[82] which applies the constitutional protections of the Bill of Rights to Indian governments.

ii) Planning. Both tribes and municipalities possess planning authority. Alaska statutes specifically provide for municipal planning authority. Within organized boroughs, planning is an area-wide function of the borough.[83] Of course, the borough may also delegate such powers to a city within its borders.[84] Outside organized boroughs, first class cities are required, and second class cities may exercise planning powers.[85] In unorganized areas of the state, planning authority rests with the Department of Natural Resources.[86]

Tribal planning authority is a power retained by tribes in the absence of contrary federal law. This authority is already expressly recognized by the state. While the Court in State v. Aleut Corp.,[87]

held that ANCSA regional corporations lacked governmental planning authority so as to require the State Division of Lands to give notice of pending land actions, the Court also held that traditionally organized Native villages constituted local authorized planning agencies.[88]

While both entities enjoy substantially similar planning authority, the entities implement this authority in substantially different ways. Muncipalities have authority to directly implement their plans through zoning, platting,[89] and operation and licensing. The municipality, however, is not able to direct state agencies to comply with local plans. For example, the prior A.S. 29.33.090(d) required certain state land management programs to comply with municipal plans. This was repealed.[90]

Municipalities also may implement tneir plans through its licensing power over vehicles, animals, day care facilities, etc.[91]

A tribe's most potent implementation tool is its recognized authority to license. For example, in U.S. v. Mazurie,[92] the Supreme Court upheld a tribe's right to license bars owned by non-Natives on fee simple land within Indian country. Secondly, a village may regulate the nature of member's ownership rights in property.[93] By defining members property rights, a tribe can restrict uses of property which are delitereious. Finally, there is some authority to believe that a Native village government may exercise zoning authority over Native land. In Santa Rosa Band of Indians v.Kings County,[94] the Court struck down local zoning ordinances holding that "the extension of local jurisdiction is inconsistent with tribal self-determination and autonomy."[95] This infers, of course, that the local government invaded a power to zone reserved to the tribe.

iii) Taxation. The right of a Native government to tax is a retained sovereign power.[96] The extent of this power is almost wholly uncertain, since few Native governments exercise th's power. The courst however, have upheld tribal taxes on business,[97] occupations,[98] or to accompany tribal permits,[99] regardless of whether the tax was levied against members or non-members.

The taxing powers of municipalities are more clearly defined. They may levy sales and use taxes,[100] and property taxes.[101] These taxing powers are subject to a substantial number of exemptions and limitations.[102]

Conclusion. While the municipalities and tribes do not have co-extensive powers, they have many similar areas of concern where their powers overlap. It should be remembered that the tribal organization is a governmental unit with broader areas of concern and responsibility than the municipality. For example, tribal powers include regulation of property rights, marital relations, and child custody.[103] Tribes provide employment, welfare, economic development, child protection, and various other services generally felt to be beyond the scope of local government. As local government in Alaska develops along the path of decentralization envisioned by the framers, it is likely that municipal governments will also address these subject areas. In any case, it is clear that village and municipal government are not the same thing. It is also evident that they are closer than commonly perceived.

PART III

SUGGESTIONS TO INCLUDE NATIVE VILLAGE GOVERNMENTS WITHIN THE ALASKAN LOCAL GOVERNMENT SYSTEM

The decision to allow inclusion of Native village government within the state local government is, of course, a policy issue. Several factors must be considered in making this decision. First is the question whether such action is consistent with the Alaska Constitution. Second, the actions of other states must be considered. Thirdly, the backdrop of federal law needs to be considered. Finally, the state interest in non-Native citizens needs to be addressed.

A. THE CONSTITUTION

Substantial concern exists as to whether the proposed action is consistent with the Alaska Constitution. The proposal raises two issues. First, the proposal must be analyzed to determine whether it is consistent with the constitutional scheme for local government. The local government committee of the Constitutional Convention articulated five basic principles with which the proposal may be compared, i.e., self-government, unified system, prevention of overlapping tax authorities, flexibility, and state interest. Additionally, the proposal raises a question whether it is consistent with the equal protection clause of the Alaska Constitution.

1. Self-government. Maximum local control over local government was a primary goal of the framers. This policy is specifically enunciated in Section 1 of Article 10 of the Constitution which provides that, "the purpose of this Article is to provide for maximum local self-government..." This concern is reflected in other provisions of Article 10. For example, Section 6 provides that the legislature shall provide for the performance of services that it deems necessary and advisable in the unorganized boroughs "allowing for maximum local participation and responsibility." (emphasis added) Section 9 provides that home rule charters of first-class

municipalities shall be approved by popular election. This policy favoring local self-government in municipal matter is consistent with federal policy favoring self-determination of Indian tribes. Fundamental to self-government/self-determination, is the right of people to determine what form their government shall take and to establish rules and regulations regarding the management and operation of that government. For a variety of reasons, several Alaskan Native villages have failed to organize as second-class city under the Alaska state law. The prefer rather to organize themselves exclusively as Alaska Native villages. In many cases, such organization reflects a community decision to organize a local government which best reflects the cultural and social character of the respective community. Under this rationale, the state should encourage communities to organize themselves under any authorized governmental form which best represents the respective communities' social, cultural and economic pattern. The inclusion of Native governments within the system of Alaska state local government promotes this policy. This action would broaden the number of local options available to communities desiring to organize, thereby leaving greater control at the local level.

2. Integrated local government system. The framers of the Alaskan Constitution desired to create a single system of local government within Alaska. As noted by this study, however, two parallel systems of local government exist in Alaska, i.e., state chartered municipalities and tribal government. The quality and quantity of interaction between these two types of government varies from community to community. The quality and quantity of possible interaction ranges from substantial cooperative efforts to substantial opposition. Often times coordination between governments is merely a function of interlocking office holders. Where the Native council and the city council are substantially the same, the respective governmental efforts are highly coordinated. In contrast, where the councils are not interlocked there is little coordination and counterproductive efforts often result. State and federal programs often depend on the existence of local cooperation. Nonrecognition of Native governments is a impediment to this local cooperation.

Non-recognition problems also result where a community is exclusively organized as a Native village government. Such communities are not immuned from the same problems which plaque communities organized as municipalities. Where the municipality may draw on the resources of the state to help address such problems, the Native village encounters greater reluctance by the state to render equal assistance. The obvious solution to this problem is for the community to organize as a municipality. The community would in fact only trade problems--i.e., the community would trade a reluctance on part of the state to render assistance in exchange for the duplicity and confusion which results from parallel governments.

The inclusion of the Native government within the local government system, therefore, would further state policy favoring a unified local government system. It would promote cooperation where parallel governments exist and it would alleviate the necessity of creating parallel local governments where none exist now.

3. Prevention of overlapping taxing and authorities. As noted above, the framers of the Alaska Constitution specifically intended to eliminate overlapping tax authorities and promote physical integration within local government. For this reason, Article 10, Section 2, specifies that cities and boroughs are the only local governments authorized to tax under the Alaska Constitution. As noted above, however, this plan is somewhat frustrated by the existence of Native government which possess authority to levy taxes and dues on members and non-members. Additionally, the eligibility of Native villages to receive intergovernmental revenue transfers frustrates the state's objective to facilitate fiscal integration of local government. This lack of fiscal integration within the community leads to a number of problems including duplicate accounting systems, redundant and excessive administrative costs and, in some cases, program duplication. The framers had hoped to avoid such problems in adopting a policy favoring fiscal integration. The inclusion of Native governments within the local government system will help avoid these inefficient fiscal management systems.

4. Flexibility. Throughout the Constitutional floor debates, the drafters of Article 10 emphasized their desire to provide a "framework" for local government which would be flexible enough to meet community demands throughout a highly pluralistic state such as Alaska. Native governments represent a flexible accommodation to the need for pluralistic representation in local government. It, therefore, follows that the inclusion of such governments fulfill a constitutional policy favoring flexibility in Alaskan local government.

5. State interest. As noted above, the framers of the Alaska Constitution felt that strong local government was a mechanism to facilitate the decentralization of state government. It was fully intended that strong local government could perform traditional state functions much better than a centralized government structure. This plan, however, is dependent on the existence of local government. Since the state does not recognize Native governments, these local mechanisms are unavailable to the state. The inclusion of Native governments within the state system of local government makes available to the State existing government entities through which the State may operate. In this sense, the Native government can serve as a conduit for the provision of state services. In a limited sense, the state has already adopted this policy. For example, in the Coastal Zone Management Act, the Rural Development Act, the Municipal Trust Land (14c) Program, the Community Legal Assistance Program, the Community Miscellaneous Assistance Program and various state contracting programs utilize Native government to administer and otherwise implement these programs which require substantial community participation. The general inclusion of Native governments within the local government system of the State of Alaska will make available to the state a valuable local instrument.

6. Equal Protection. It is unfortunate that the Alaska Constitutional Convention failed to address the issue of Native local governments. In the heady atmosphere of the convention, the delegates seemed to assume that the state mechanism would be comprehensive. The record fails to indicate that the convention ever considered that viable Native governments would continue. In this vacuum it is difficult to analyze the

constitutionality of state legislation which seeks inclusion of Native government in the local government system. Generally, however, there exists concerns whether such legislation would violate the equal protection clause of the Alaska Constitution.[2] Since this is a novel question in Alaska, we must look to sister states for guidance.

The Supreme Court of Minnesota was forced to deal with the issue in State v. Forge.[3] In that case, non-Indians sought to challenge the constitutionality of a compact between the state and the Chippewa Tribe over ricing and fishing. The state legislation vested certain rights in members of the Chippewa tribe that did not extend to state citizens in general. The court upheld the statutes in the face of a challenge based on the equal protection guarantees of the Minnesota Constitution.

In deciding that the state action did not violate the state constitutional guarantee of equal protection, the Court noted that the compact related to the reconciliation of claims between the state and the Indian tribes. As such, the classifications made by the state law rationally related to the competing claims of the state and the tribes.[4] It is important to note that the court's finding was based upon Indian treaty rights, which could not be used as a basis for Alaskan legislation. Nevertheless, the Court noted that:

> Even in the absence of treaty rights, the United States Supreme Court has frequently upheld legislation that singles out Indians for particular and special treatment.[5]

Subsequent to State v. Forge, the United States Supreme Court dealt with the issue directly in United States v. Antelope.[6] In that case, Antelope was tried for murder under the Major Crimes Act. The defendant argued correctly that if he were not an Indian, he would have been charged under the Assimulative Crimes Act for manslaughter. The court held that the statute did not create an impermissible racial classification since the constitution specifically authorizes particular and special treatment of Indians.[7]

There is one distinction, however, which may distinguish Alaska's and Minnesota's Constitution. The standards of the equal protection clause under the Minnesota Constitution are synonymous with the U.S. Constitution's equal protection clause.[8] In contrast, however, the standards of protection under Alaska's equal protection clause is not synonymous with that of the U.S. Constitution.[9] Absent an express ruling to the contrary, however, the Minnesota interpretation is probably an accurate indicator of the Alaskan position.

B. OTHER STATES

Other states have attempted to establish direct tribal-state relations in one of two basic ways - 1) incorporation, or 2) recognition and compact.

1) Incorporation. Incorporation is the formation of a unit of local government. As noted above, such incorporation may result in the formation of either a general or special purpose government. Theoretically, it is possible to incorporate Native governments under state law. In Bryan v. Itasca, the court stated that one reason it was reluctant to extend local government jurisdiction over Native communities was the fact that many states did not allow incorporation of Native government under state law.[10] This implies, of course, that it is possible for a state to allow such incorporation if it removes its self-imposed prohibitions.

As noted above, this has been attempted twice in Alaska's past. Several current second class cities were originally incorporated under the 1957 Village Incorporation Act. The villages lost their village status through the 1972 municipal code revision.[11] In general, the attributes of tribal self-government are no longer present, so that neither the people, the state, nor the federal government recognize these governments as tribal entities.

Direct state incorporation of general purpose Native governments is not common. There are, however, a few instances of such state action.

One example is New Mexico, which provides for the incorporation of Peubleo Indian communities.[12] The courts, however, have ruled that the pueblo's did not gain any powers, rights or duties under this statue, but rather their powers stem from their authority as Indian tribes.[13]

In contrast, Maine has recently enacted the Maine Indian Claims Settlement Act[14] which does not incorporate the tribal enities, but rather delegates to them "all the rights, privileges, powers and immunities" of a state municipality.[15] This includes the authority to enact ordinances, collect taxes and provide general services like any municipality. Conversely, the tribe is subject to all duties, obligations, liabilities and limitations of a municipality in the operation of municipal authority. A major exception is the internal organization of the tribes.

The tribes' jurisdiction extend over "Indian territory" as defined by the Act, which includes newly created reservations (akin to townsites) and surrounding lands conveyed in fee simple to the new Native corporations.[16] As enities possessing municipal authority, the tribal councils have jurisdiction to prescribe criminal and civil ordinances over non-Natives, but may only judicially enforce certain ordinances against members and handle small claims matters between members.[17] The state courts have jurisdiction to hear all other cases.[18] Law enforcement is handled through a cross-deputization of tribal and state police.[19]

The state has also sought to protect nonmember's rights by making municipal authority dependent upon nondiscriminatory delivery of services and guaranteeing enfranchisement in county, state and federal elections.[20]

In considering the Maine Settlement, two major points must be made. First, the Main Settlement was prompted by litigation over both the land claims and governmental claims of the Maine Indians. By comparison, the Alaska Settlement only addressed land claims, and left unresolved the governmental claims of the Alaskan Native people. This oversight is generally attributable to the common perception of P.L.-280 in the pre-ANSCA period. It must be remembered that ANCSA preceded

Bryan v. Itasca,[21] which was decided in 1976. Prior to 1976, the general feeling was that P.L. 280 replaced tribal authority. The court in Bryan v. Itasca, however, clearly rejected this analysis, and reasserted that P.L.-280 merely resulted in concurrent state/tribal jurisdiction.

Secondly, except of the delegation of municipal powers, the Maine Settlement Act does not substantially change the respective authority of the state and tribes. Generally, the Act serves as a restatement of the law as currently understood. Thus, the Maine statutory scheme may serve as a useful model for incorporation of general purpose Native government under a state's authority.

In contrast to general purpose incorporation, some states have sought to declare Indian tribes as special purpose governments. For example, Florida, like Connecticut, has established a state reservations which in effect is an extension of a federal Seminole reservation.[22] In addition, however, the state has declared the whole Seminole Reservation (both federal and state portions) and the Miccosukee Reservation as "special improvement districts."[23] While the state recognizes that the tribes may regulate their members and lands as other tribes,[24] the state law provides that the tribal councils (organized as I.R.A.s) shall be the governing body of the districts, and are granted law enforcement, housing, and health powers, along with providing a variety of state services.[25]

It is interesting to note, that Florida is not the only state which has set up state Indian reservations. Connecticut has also established state reservations.[26] Management of the reservations is through an Indian Affairs Council and tribal councils, both of which have state regulatory powers over the reservation.[27] The State Administrative Procedure Act specifically applies to regulatory decisions of the councils. Texas also has authorized state Indian reservations.[28] Furthermore, Texas has extended state recognition of a federally nonrecognized tribe, and committed the state to seek federal recognition.[29] Even more unique than this, Texas has delegated bonding

authority to tribal councils.[30] Under state law, lands held in trust by the state and the rents, royalties, revenue and income from such lands, may be pledged to back the bonds.[31]

While the above states have attempted various types of incorporation, many states have taken the intermediate step of creating State Commissions on Indian Affairs.[32] A fairly representative example is Minnesota which created an Indian Affairs Board.[33] While the tribes are not brought within state government directly, the board is a state commission comprised of various state commissioners, state legislators, and tribal officials. The commission does not attempt to exercise governmental authority over tribes. Rather it acts as a liaison between state and tribal service programs.

Simiarly, in California, state law authorizes the formation of school districts within Indian reservations.[34] Unlike Florida, either the tribal governing body or an independently selected body is the governing body of such a district.

2) Recognition and Compact. Recognition is a concept borrowed from international law. It is the process whereby one government acknowledges the authority of another government. It is more than taking note of a mere fact. It is the process whereby two governments seek to establish intergovernmental relations. There are two types of recognition - recognition of the community and recognition of the government. Recognition of the community is acknowledgement that the community is a legal enity capable of being organized under an independent and effective government.[35] Recognition of the government is acknowledgement that an individual or body of individuals act as the government for the community.[36]

The use of the concept of recognition is quite useful in the context of Native governments since the state is not attempting to create a racially defined institution under its own authority. Rather the State is acknowledging the existence of the Native communities and governments. Thus,

the Native government gains no authority from the State, but merely enters into cooperative relations under its existing authority.

States typically implement recognition of Native governments in one of two ways. Either a state may extend general purpose recognition to Native governments, and provide for a systematic procedure for entering into compacts, or the state may adopt an incremental policy of limited recognition for specified purposes.

The Interlocal Cooperation legislation in Nevada,[37] Washington[38] and South Dakota[39] are good examples of legislation which reflect this first policy. Typically, these statutes allow state and local governments to enter into agreements providing for the joint exercise of powers, procedures for entering into such agreements, and financing of joint programs. In the above three states, the Interlocal Act simply defines entities eligible to enter into these agreements to include Indian tribes. Nevada has clarified this inclusion by enacting legislation which guarantees the rights of self-government of Indian tribes;[40] and provides that the administrative jurisdiction of state agencies is not extended over Indian country.[41]

In contrast, other states have adopted an incremental approach to recognition and compacts with Native government. A good example of this approach is Minnesota. A dispute between the State of Minnesota and the Chippewa Tribe arose over ricing and game regulation. The dispute led to a substantial amount of litigation which in turn led to an out-of-court settlement in the form of a ricing and game management compact between the state and the tribe.[42] The compact is a limited effort by the state and tribe to cooperate in these limited subject areas, and does not attempt to establish an ongoing general relationship.

A more common area of limited state-tribal cooperation is in the area of law enforcement. In New Mexico, for example, state law provides general cross-deputization of state and tribal police.[44] Under this agreement, pueblo and Navaho tribal police also carry an appointment under

state law, and may, therefore, enforce state law within Native communities. State police also carry a tribal appointment.

C. FEDERAL LAWS

In considering inclusion of Native governments within the state local government system, the backdrop of federal law will have substantial effect. Of prime concern is the extent state law attempts to regulate the internal organization of Native government organization. Secondly, there is future legislation to be considered.

First, the Williams' doctrine prohibits states from regulating the internal self-government of Indian tribes.[45] Thus, the state could not mandate incorporation of Native governments under Title 29. Rather, the state could only authorize such incorporations upon consent of the tribe.

The Alaska constitution authorizes only three forms of local government - cities and boroughs which are capable of possessing all local government powers; and service areas/districts which are only capable of possessing enumerated powers.[46] Therefore, the legislature is limited to these modes of organization. The legislature may classify, define powers, and define manner of incorporation. Thus, in order to provide for the incorporation of a Native government under state law, the legislature must create a class of city, borough or service area, and define the powers of such government in a manner consistent with the Native government character.

If the legislature provided for state incorporation of Native governments as boroughs, however, the constitutional provisions vesting in the legislature the authority to regulate composition and apportionment of borough assemblies[47] would be inconsistent with the Williams' doctrine, which prevents state regulation of internal organization. This inconsistency is irreconcilable.

On the other hand, if the legislature provides for incorporation as a city, there exists no comparable constitutional claim to internal regulation. The state would merely create a class of city over which it disclaims authority to regulate composition.

The remaining option is the service area. The use of service areas in the unorganized areas of the state is relatively simple. Since such service areas operate by delegation of authority, the legislature may simply adopt the Florida or Maine plan and delegate to Native governments certain powers. In contrast, service areas within organized areas are subject to borough regulation. While the legislature may authorize boroughs to create a class of service area appropriate to the Native government, the character of borough regulation is equally important. Borough regulation which violates the Williams' test would invalidate the plan. To avoid this, the legislature may declare that the furtherance of Native self-determination is a matter of state interest, and under the local activity rule, the legislature could preempt borough regulation of Native service area composition.

Thus it is conceivable that the state could provide for incorporation of Native government as cities and service areas whether within or without organized boroughs.

The second consideration is the proposed Tribal-State Compact Act which is currently before the U.S. House of Representatives (see Appendix C). The implementation of the tribal-state paradigm would be substantially affected by the terms of the Act. In its current form, the bill specifically authorizes states and local governments to enter into agreements with Native governments. Such legislation is needed in non-P.L. 280 states because of recent court decisions invalidating such agreements.[48]

In addition to merely authorizing tribal-state agreements, Sec. 102 of the proposed Act provides federal assistance to the entity assuming new obligations under the terms of a tribal-state compact. If passed, the Act will provide a mechanism to assist the state in its constitutional

plan of decentralization. By entering into eligible arrangements, the state may take advantage of available federal funding to facilitate implementation of state programs. Such agreements are more likely to operate in rural areas of the state where program costs are greatest. Use of such federal funding will decrease the burden on the state budget that such programs represent. While the state enjoys its present wealth, the need for federal assistance is less, yet, as projected state revenues decline in the future, the need for federal assistance will increase.

D. NON-NATIVES

The greatest concern over inclusion of Native village governments into the Alaska local government system is the preception that the Native governments are racially defined institutions. As such, it is feared that non-Natives will be relegated to a status of second class citizens in their own communities. This view is founded on two questionable assumptions: 1) non-Natives cannot participate in Native government, and 2) non-Natives have no rights under a Native government.

It is a general rule of law that a Native tribe has the exclusive authority to determine its membership.[49] This power specifically includes the power to provide for the adoption of non-Natives into the tribe.[50] This general rule is subject to one exception. The Secretary of the Interior is charged with the responsibility of determining tribal enrollment for the purposes of distributing tribal trust funds.[51]

In contrast, Native governments providing services under federal contracts may also render services to non-Native tribal members, since, for the purpose of contracting, "Indian" is defined in terms of tribal membership.[52] Benefits provided through state revenue sharing are required by state procedures to be equally available to non-Native residents of the respective communities. Thus, it is quite possible for non-Natives to fully participate in Native government.

Participation by non-Natives in Native government is quite common, despite efforts of the B.I.A. to discourage the practice. In one case,

a Native village constitution goes so far as to guarantee non-member/ non-Native heads of households representation on behalf of their Native children before the Native council.[53] In practice, Native councils are reluctant to open village roles to non-Natives who may be transient or are reluctant to establish permanent ties with the community. This is understandable in that membership in a village generally carries with it cultural duties and obligations. This reluctance is analogous to the policy of the federal government to extend citizenship to aliens.

The second major concern relates to the individual rights of non-Natives under Native government. The prime guarantee of individual rights under a Native government is the Indian Civil Rights Act of 1968.[54] The Act mandates that a Native government provide many of the same individual protections provided under the U.S. Constitution. These include:

- free exercise of religion
- freedom of speech, press and assembly
- freedom of unreasonable search and seizure
- protection from double jeopardy and self-incrimination
- protection from taking of property without compensation
- right of due process and counsel
- protection from cruel and unusual punishment and excessive bail
- right to equal protection of the laws
- prohibition of bills of attainder or expost facto laws, and
- right to trial by jury

These rights extend to members and non-members alike.[55]

There is some concern that the Act only provides relief through the right of habeas corpus. This concern focuses around dicta contained in Santa Clara Pueblo v. Martinez.[56] In that case, the Court reviewed a tribal ordinance which conferred benefits upon tribal members based upon a distinction between patrilinial/matrilinial ancestors. In dicta, the Court stated that Congress only provided one clear remedy for plaintiffs under the Act - i.e., habeas corpus. A full reading of

Martinez, however, reveals that the holding of the case rests upon a test which balances two current policies of federal Indian law - i.e., self-determination and protection of individual rights. As one commentator remarked, "In litigation under the Indian Civil Rights Act, federal court jurisdiction outside the scope of habeas corpus proceedings has been firmly established.[57]

CONCLUSIONS

It is clearly feasible to include Native village government into the state local government system. This may be done in one of two ways - either through compacts (see Appendix A) or direct incorporation (see Appendix B).

The first draft bill (see Appendix A) would be sufficient to authorize tribal state compacts. In addition to recognition, the bill defines the method whereby the State will engage in relations with the Native villages. The proposal provides that Native villages could participate in state programs to the same extent as second-class cities. It does not delegate to tribes general local government powers but does recognize the existing tribal powers retained by Native governments. The bill will clarify the status of Native village laws before state courts.

The bill also proposes cooperative agreements between the state and the Native governments to carry out state programs. This section anticipates the passage of the Tribal-State Compact Act which would allow federal funding of programs conducted under a State-Tribal agreement, and thus, reduce the burden on the state treasury for those areas affected by these agreements.

Finally, the bill conditions the relationship upon the Native government's compling with anti-discrimination provisions. This, of course, exempts federally funded Indian programs. The bill allows the Governor to enforce compliance through withdrawal of recognition.

The bill does not attempt to expand the jurisdiction of the State or the Native village. Section three (3) allows municipalities and village governments to enter into similar agreements.

The second draft bill (see Appendix B) would also provide for state-tribal compacts. In addition to this recognition, the bill allows direct incorporation of the Native government as a third class city. As a third class city, the government would have the attributes of a municipality and a Native village government. To avoid conflicts with the Williams doctrine, state law which regulates the internal operation of a city government are not made applicable to the third class city.

Other provisions of the bill are comparable to the first draft.

APPENDIX A

A BILL

For an Act entitled: "An Act Relating to Native Village Governments."

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

CHAPTER ____ NATIVE VILLAGE GOVERNMENTS

Sec. 29 --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes Native Villages as distinct, independent, political communities exercising original tribal soverienty in

dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted Native village government, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, provided that such Court shall have jurisdiction to hear such cause as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.--. 020. ELIGIBILITY FOR STATE PROGRAMS. A Native village government, for a village which is not incorporated under this title, and is not located within an organized borough is,

a) eligible to participate in all state programs to the same extent and in the same manner as a second-class city;

b) entitled to notice concerning proposed actions by the state to the same extent as a government of a second-class city is entitled to notice; and

c) entitled to consultation with the state on state actions and programs which affect the village to the same extent that the government of a second-class city is consulted on state actions and programs.

Sec. 29.--.030. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judical, law enforcement, and correction services.

(b) When the Commissioner negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The

Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.--.040. NONDISCRIMINATION.

(a) A Native village government which is a party to an agreement under AS 29.--.030 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.--020 void.

(b) The Governor may withdraw recognition of a Native village government authorized under AS 29.--.010 whenever he shall make a determination that the Native Village government has adopted a rule or operates a program which creates or extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds which provide services to persons or organizations because of their status as Native persons or Native organizations.

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.--.050. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or

village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing this this chapter deprives a Native person, Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.--.060. DEFINITIONS. In this chapter,

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC, Sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3. AS 29.48.010 (4) is amended to read:

(4) to enter into agreement, including those for cooperative or joint administration of any functions or powers with a local government, with the state, (OR) with the United States, or with a Native village government recognized under AS 29.--.010.

APPENDIX B

A BILL

For an Act entitled: "An Act Relating to Native Village Governments Establishing Third Class Cities."

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) Provide for incorporation of Native village.

(3) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

CHAPTER ____ NATIVE VILLAGE GOVERNMENTS

Sec. 29 --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes the Native villages as distinct, independent, political communities exercising original tribal soverienty in dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted governing body of Native village, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, provided that such Court shall have jurisdiction to hear such cause as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.--. 020. INCORPORATION OF THIRD CLASS CITIES.

a) A Native village government as defined in this chapter shall be eligible to incorporate as a third class city.

b) Nothing in this chapter shall prevent such Native governments from exercising any power retained by that government by virtue of its tribal authority.

Sec. 29.--.030. ORGANIZATION OF COUNCIL.

a) A third class city shall be organized pursuant to the organic documents for the Native village government seeking incorporation under this chapter.

b) The following provisions of this title shall not apply to third class cities.

1) A.S. 29.?3.200-250 (organization of city counci).

2) A.S. 29.48.130-260 (administrative procedures).

c) A third class city shall possess all powers of a second class city outside boroughs as provided in A.S. 29.43.

Sec. 29.--.040. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judical, law enforcement, and correction services.

(b) When the Commissioner negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.--.050. NONDISCRIMINATION.

(a) A Native village government which is a party to an agreement under AS 29.--.030 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.--020 void.

(b) The Governor may withdraw recognition of a Native village government authorized under AS 29.--.010 whenever he shall make a determination that the Native Village government has adopted a

rule or operates a program which creates or extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds which provide services to persons or organizations because of their status as Native persons or Native organizations.

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.--.060. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing this this chapter deprives a Native person, Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.--.070. DEFINITIONS. In this chapter,

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC, Sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3. AS 29.48.010 (4) is amended to read:

(4) to enter into agreement, including those for cooperative or joint administration of any functions or powers with a local governmen', with the state, (OR) with the United States, or with a Native village government recognized under AS 29.--.010.

96TH CONGRESS
2D SESSION

S. 1181

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1980

Referred to the Committee on Interior and Insular Affairs

AN ACT

To authorize the States and the Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tribal-State Compact Act of 1980".

DECLARATION OF POLICY

SEC. 2. The Congress hereby declares that it is the policy of this Nation to continue to preserve and protect the tribes of the American Indian people. The policy of this Nation is premised on the status of tribal governments as a continuing part of the American political fabric. Accordingly,

the United States has a responsibility to establish a legal framework which will enable the tribes and the States to achieve maximum harmony and facilitate their cooperative efforts in the orderly administration of their governments. Federal enabling authority for the establishment of viable intergovernmental agreements between the tribes and the States based on mutual consent must be established.

DEFINITIONS

SEC. 3. For purposes of this Act:

(a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community which is exercising powers of self-government and which is recognized by the Secretary of the Interior as eligible for services provided by the United States to Indians because of their status as Indians.

(b) "State" means any of the States of the United States, including cities, counties, municipalities, or other political subdivisions thereof.

(c) "Secretary" means the Secretary of the Interior unless otherwise designated in this Act.

(d) "Indian country" shall be defined in accordance with the provisions in section 1151 of title 18, United States Code.

TITLE I—AUTHORIZATION OF COMPACTS AND AGREEMENTS

SEC. 101. (a) Notwithstanding the Act of August 15, 1953 (67 Stat. 588), as amended, or any other Act transferring civil or criminal jurisdiction over Indians within Indian country from the United States to the various States, or establishing a procedure for such transfers, and notwithstanding the provisions of any enabling Act for the admission of a State into the Union, the consent of the United States is hereby given the States and the Indian tribes and the same are hereby authorized to enter into compacts and agreements between themselves on matters relating to (1) the enforcement or application of civil, criminal, and regulatory laws of both within their respective jurisdiction, and (2) allocation or determination of governmental responsibility of States and tribes over specified subject matters or specified geographical areas, or both, including agreements or compacts which provide for concurrent jurisdiction between the States and the tribes, and (3) agreements or compacts which provide for transfer of jurisdiction of individual cases from tribal courts to State courts or State courts to tribal courts in accordance with procedures established by the laws of the tribes and States.

(b) Such agreements and compacts shall be subject to revocation by either party upon six months written notice to

the other unless a different period of time is agreed upon. No agreement may provide for a period for revocation in excess of five years unless first approved by a majority of the adult enrolled Indians within the affected area voting at a special election as prescribed in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), but such approval shall not curtail the right of the parties to revoke the agreement by mutual consent within a shorter period of time.

(c) Agreements or compacts entered into under the provision of this section must be filed with the Secretary within thirty days of consummation. In the event an agreement is not so filed, it shall be subject to immediate revocation by either party. The Secretary shall cause the jurisdictional provisions of any such agreement, compact, or revocation to be published in the Federal Register.

(d) Such agreements, compacts, or revocation thereof shall not affect any action or proceeding which arose prior to the effective date of such an agreement, compact, or revocation, and no such action or proceeding shall abate by reason of such agreement, compact, or revocation unless specifically agreed upon by all parties to any such action or proceedings and by the parties to the agreement or compact.

(e) Nothing in this Act shall be construed to: (1) enlarge or diminish the jurisdiction over civil or criminal matters which may be exercised by either State or tribal governments

except as expressly provided in this Act; (2) authorize or empower State or tribal governments, either separately or pursuant to agreement or compact, to expand or diminish the jurisdiction presently exercised by the Government of the United States to make criminal, civil, or regulatory laws for or enforce those laws in the Indian country; (3) authorize or empower the government of a State or any of its political subdivisions or the government of an Indian tribe from entering into agreements or exercising jurisdiction except as authorized by their own organizational documents or enabling laws; (4) authorize agreements or compacts which provide for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or (5) to enter into agreements or compacts for the transfer of unlimited, unspecified, or general civil and criminal jurisdiction of an Indian tribe, except as provided under section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326).

(f) Nothing in this Act shall be construed as impairing or restricting the right of the United States, States and Indian tribes to enter into negotiations with each other with respect to settlement of property rights arising from aboriginal ownership, treaties or other Federal laws or judicial decisions.

FUNDING AND IMPLEMENTATION—FEDERAL ASSISTANCE

SEC. 102. (a) In any agreement or compact between an Indian tribe and a State authorized under this Act, the United States, upon agreement of the parties and the Secretary, may provide financial assistance to such party for costs of personnel or administrative expenses in an amount up to 100 per centum of costs actually incurred as a consequence of such agreement or compact, including indirect costs of administration which are clearly attributable to the services performed under the agreement or compact. In determining the amount of Federal assistance, if any, to be provided the Secretary may consider among other things:

(1) Whether or not the party assuming an obligation under the agreement or compact is already obligated or entitled to perform the function which is the subject of the compact.

(2) Whether or not the Federal assistance will cause or enable the contracting party to perform the function at a standard above that which it is already obligated to perform.

(3) The financial capacity of the contracting parties to underwrite the expenses without Federal assistance.

(4) The extent to which the success or failure of the compact may depend upon Federal assistance.

(5) The extent to which the proposed compact or agreement will contribute to fostering of community relations between Indian and non-Indian communities.

(6) The extent to which the proposed compact or agreement will enhance protection of resources of both Indian and non-Indian communities.

(7) The comparative costs if the function which is the subject of the compact or agreement were to be performed by the United States.

(8) The extent to which Federal funding is already supplied through revenue sharing, grants in aid, or other Federal program moneys.

(b) Whenever a party to such agreement or compact seeks financial assistance from the United States, to offset their costs, such party shall prepare a detailed statement of the projected costs; a copy of such statement shall be supplied to the other party; and the original of such statement shall be supplied to the Secretary at the time said agreement or compact is tendered to him for his approval.

(c) In any agreement or compact in which one of the parties qualifies for Federal assistance, the other party shall be supplied with copies of all vouchers for payment at the time they are submitted and shall be fully informed of all payments made by the United States to the recipient party. In the event disputes arise between the parties, either party

may request an audit. The books and records of the party receiving Federal assistance which are relevant to the agreement or compact shall be open to inspection by authorized representatives of the United States.

(d) In the funding of governmental operations authorized under this Act, the Secretary may enter into agreements or other cooperative arrangements with any and all other Federal departments, agencies, bureaus, or other executive branches for transfer of funds or contributions of funds appropriated for programs within the category of the functions to be performed by the parties under such agreements or compacts, and such departments, agencies, or bureaus are hereby authorized to use such funds in the implementation of this Act.

(e) All Federal departments, agencies, and other executive branches are authorized to provide technical assistance and material support and assign personnel to aid tribal and State authorities in the implementation of the agreements or compacts they may enter into under the terms of this Act.

(f) The Secretary is hereby authorized to promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

(g) There are authorized to be appropriated such sums as may be necessary during fiscal year 1981 not to exceed $10,000,000 and each subsequent fiscal year in order to

carry out the agreements or compacts entered into pursuant to this title. Such funds shall be expended by the Secretary only after determination that there are no funds available from alternative sources as provided in subsection (d) of this section. The Secretary shall provide for such records as may be necessary for the accounting and justification of the funds expended under this authorization.

TITLE II—PLANNING AND MONITORING BOARDS

SEC. 201. (a) The Secretary is hereby authorized and directed to encourage the tribes and the States to establish councils, committees, boards, or task forces comprised of representatives of the States and individual tribes, or on a statewide or regional basis, to discuss and confer upon jurisdictional questions which exist between the parties, and to provide Federal representatives at such conferences.

(b) In furtherance of this objective, the Secretary is authorized and directed to provide adequate representation of tribal members at such conferences, and such further conferences among the tribes as may be necessary for their separate deliberations, and to participate in the payments of expenses in employment of reporters, transcription of statements, and preparation of reports as may be appropriate.

(c) Beginning October 1, 1980, funds appropriated pursuant to the Act of November 21, 1921 (42 Stat. 208), may be utilized for the purposes of this title.

TITLE III—JUDICIAL ENFORCEMENT

SEC. 301. Any party to an agreement or compact entered into in accordance with this Act may bring a civil action to secure equitable relief, including injunctive and declaratory relief, for the enforcement of any such agreement or compact, but no action to recover damages arising out of or in connection with such agreement or compact shall lie except as specifically provided for in such agreement or compact. The United States district courts shall have original jurisdiction of any civil action authorized by this section. States and Indian tribes, by entering into compacts or agreements in accordance with this Act, shall be deemed to have consented to suit with respect to the subject matter of such compacts or agreements unless the agreement or compact specifically states otherwise.

Passed the Senate May 30 (legislative day, January 3), 1980.

Attest: J. S. KIMMITT,

Secretary.

FOOTNOTES

PART I

1. D. Case, The Special Relationship of Alaskan Natives to The Federal Government, pp. 119-127 (ANF, 1978).
2. Preliminary Report on Borough Government, p. 11 (Alaska Legislative Council, 1960) [hereinafter cited "Preliminary Report"].
3. id.
4. id. at 14
5. 37 Stat. 512 See Preliminary Report, at 12.
6. R. Cease & J. Saroff, The Metropolitan Experiment in Alaska, p. 2 (Praeger, 1968).
7. id.
8. Chapter 11, SLA 1915; amended Chapter 25, SLA 1917; repealed (h.23, SLA 1923.
9. Preliminary Report, supra, at 12-13
10. 25 U.S.C. 476
11. Sen. Rpt. 1080, 73rd Cong. 2d Session, 1 (1934)
12. Preliminary Report, supra, at 14
13. id., at 15
14. id.
15. Chapter 150, SLA 1957; amended Chapter 79, SLA 1959.
16. Con. Cov. Proc., Pt.4, p. 47
17. id. at 2161
18. Ak. Const., Art. X, Sec. 2.
19. Con. Cov. Proc., Pt. 6, p. 59.
20. Con. Cov. Proc., Pt. 4, pp. 2616-7.
21. id., pp. 2613-4
22. See Comments by Delegate Lonberg, Con. Cov. Proc., Pt. 4, p. 2651.
23. A.S. 29.08.020
24. AK. Const., Art. X, Sec. 3 & 7.
25. AK. Const., Art. X, Sec. 4.
26. AK. Const., Art. X, Sec. 8.
27. AK. Const., Art. X, Sec. 5.
28. AK. Const., Art. X, Sec. 6.
29. Walters v. Cease, 380 P.2d 263 (Alaska, 1964)
30. A.S. 29.18.030
31. A.S. 29.18.011
32. Con. Cov. Proc., Pt. 4, pp. 2621-2.
33. id.
34. Local Government Under The Alaska Constitution, p. 46 (1959, Public Administration Service).
35. City of Douglas v. City and Borough of Juneau, 484 P.2d 1040 (Alaska, 1971). See also Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska, 1974).
36. Con. Cov. Proc., Pt. 4, p. 2650.
37. Ak. Con., Art. X, Sec. 7.
38. id, Sec. 3.
39. A.S. 29.18.011
40. Con. Conv. Proc., Pt. 4, p. 2654.

41. id.
42. 484 P.2d 1040 (Alaska, 1971).
43. Con. Conv. Proc., Pt. 4, p. 2653.
44. id, at 2623
45. id, at 2624.
46. 491 P.2d 720 (Alaska, 1971).
47. Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska, 1970).
48. Ak. Const. Art. X, Sec. 2.
49. id, Sec. 15.
50. id, Sec. 5.
51. id.
52. Con. Conv. Proc., Pt. 4, pp. 2719-20.
53. Ak. Const., Art. X, Sec. 2 See Liberati v. Bristol Bay Borough, 384 P.2d 1130 (Alaska, 1978).
54. Wien v. City of Ketchikan, 383 P.2d 721 (Alaska, 1963).
55. Ak. Const., Art. X, Sec. 13.
56. id.
57. Compare Con. Conv. Proc. Pt. 4, pp. 2713 and 2652.
58. Ak. Const., Art. X, Sec. 6.
59. A.S. 29.03.020
60. 1961 Op. Attorney General No. 24
61. A.S. 16.10.380
62. A.S. 46.40.110 et. seq.
63. A.S. 14.08.031
64. Hootch v. Alaska State-Operated Schools, 536 P. 2d 793 (Alaska, 1975)
65. A.S. 29.89.040
66. D. Case, supra at 130.
67. See generally id., at 119-127.
68. Cohen, Handbook on Federal Indian Law, 122 (1948); 55 ID14 (1934) Powers of Indian Tribes; Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).
69. U.S. v. Sandoval 231 U.S. 28 (1913)
70. P.L. 93-638, Sec. 4(a)
71. P.L. 92-512, Sec. 108(b) (14)
72. P.L. 93-383, Sec. 102(a) (1)
73. P.L. 93-203, Sec. 302
74. P.L. 95-608, Sec. 4(8)
75. 28 U.S.C. 1360 (c)
76. P.L. 90-351, Sec. 601(b)
77. See Fed. Reg. (May 25, 1973) p. 13758; Fed. Reg. (July 10, 1980) p. 46581-2.
78. 25 U.S.C. 476
79. 25 U.S.C. 473(a)
80. 25 U.S.C. 466
81. See generally D. Case, supra, at 38-40
82. 43 U.S.C. 1618
83. House Rept. No. 2244, 74th Cong., Second Session, .2 (1936).
84. Senate Rpt. No. 1080, 73d Cong., Second Session, 1 (1934).
85. 560 P.2d 31 (Alaska, 1977)
86. 465 F. Supp. 1286 (D.C. Alaska, 1978).

87. Act of June 19, 1935 (49 Stat. 388), as amended by Act of August 19, 1965 (79 Stat. 543).
88. P.L. 93-638, Sec. 4(a).
89. Field Solicitor's memorandum, Status of the Inupiat Community of the Arctic Slope for Self-Determination Act contracting and other purposes, May 1, 1979 (unpublished).
90. 25 U.S.C. 450(b).
91. Pueblo of Santa Rose v. Fall, 273 U.S. 315 (1927).
92. Williams v. Lee, 358 U.S. 217 (1959).
93. 541 P.2d 730 (Alaska, 1975).
94. See D. Case, supra, at 136-141.

PART II

1. AK. Const. Art. X, Sec. 12
2. A.S. 29.18.090
3. A.S. 29.68
4. A.S. 29.18.050 et. seq. and A.S. 29.68
5. See generally. Fairview Public Utility District No.1 v. City of Anchorage, 368 P.2d 540 (Alaska, 1962)
6. A.S. 29.48.037
7. A.S. 29.43.100
8. A.S. 29.78.010 (18)
9. A.S. 29.33.010 et. seq. A third class borough may only exercise taxing and education powers. A.S. 29.41.010
10. A.S. 29.78.010 (19)
11. A.S. 29.38.010
12. A.S. 29.48.020; A.S. 29.38.020; A.S. 29.38.030
13. F. COHEN, supra at 5
14. 2 U.S.C. 1360(c) (PL 83-280) states
    Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant this section (i.e., which arise in Indian country).
15. See PRICE, LAW AND THE AMERICAN INDIAN, 79-84, (1973)
16. id
17. Indian Intercourse Act of 1834 (4 Stat. 729)
18. F. COHEN, supra, at 5-6
19. id. at 6n60
20. 5 U.S. 240 (1887)
21. 228 U.S. 243 (1913)
22. 231 U.S. 28 (1913)
23. 290 U.S. 357 (1933)
24. 151 F. Supp 132 (Alaska, 1957)
25. 161 F. Supp 269 (Alaska, 1958)
26. P.L. 85-615
27. 1978 Op. Atty. Gen. File No. J-66-001-67, J-66-503-77. Memo re: State Taxation of Alaska Natives and Business Enterprises Operated by Native Organizations. p.21
28. 466 F. Supp 860 (Alaska, 1979)
29. 369 U.S. 60 (1962)
30. 426 U.S. 373 (1976)

31. Citing U.S. v. Mazurie, 419 U.S. 544 (1975); See also Santa Rose Band of Indians v. Kings County, 532 F.2d 655, (9th Cir., 1975)
32. U.S. v. McGowan, 302 U.S. 535 (1938)
33. U.S. v. Sandoval, supra
34. 43 U.S.C. 1603(e)
35. 43 U.S.C. 1611, 1613
36. U.S. Solicitor's Opinion, (Oct. 1, 1980), p. 2.
37. id.
38. 302 U.S. 535 (19380.
39. See generally 25 U.S.C. 465, 473(a)
40. 368 U.S. 351 (1962)
41. See Matz v. Arrnet, 412 U.S. 481 (1973)
42. 420 U.S. 452 (1975)
43. 436 U.S. 191 (1978)
44. 436 U.S. 313 (1978)
45. 419 U.S. 544 (1975)
46. 28 U.S.C. 1360(c)
47. Jim v. C.I.T. Financial Services Corp., 87 N.M. 362, 533 P.2d 751 (N.M., 1975). 28 U.S.C. 1738, requires that: Acts, records, and judicial proceedings (of any State, Territory or Possession) shall have the same full faith in credit in every Court within the United States and its Territories and Possessions as they have by usage in the Courts of such State, Territory or Possession from which they are taken. See also In re Buehl, 87 Wash 2d 649, 555 P.2d 1334 (1976); Ragsdale, Problems in Application of Full Faith and Credit for Indian Tribes, 7 N. Mex. L. Rev. 133 (1977)
48. Fox v. Fox, 542 P.2d 918 (Or. Apn., 1975); Begay v. Miller, 70 Ariz. 380, 222 P.2d 624 (1950)
49. Compare Santa Clara Pueblo v. Martinez, 98 S.Ct. 1670 (1978) and U.S. v. Wheeler, supra.
50. 358 U.S. 217 (1959)
51. 369 U.S. 69 (1962)
52. id, at 75-76
53. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973).
54. P.L. 83-280 (67 Stat. 588), amended to add Alaska, P.L. 85-615 (72 Stat. 545). Now codified as 18 U.S.C. 1162, 28 U.S.C. 1360 and other scattered sections.
55. See Goldberg, Public Law 280: The Limits of State's Jurisdiction Over Rservation Lands, 22 UCLA Law Review 535 (1975).
56. 426 U.S., 388-89 citing U.S. v. Mazurie, supra.
57. id.
58. id, at 384
59. id.
60. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir., 1975)
61. Morongo Band of Mission Indians v. Area Director, IBILA 79-18-A (1979).
62. See generally Goldberg, supra; Santa Rosa Band of Indians v. Kings County, supra.
63. F. COHEN, supra, at 122
64. D. CASE, supra, at 152-3
65. A.S. 29.08.010

66. A.S. 29.08.020
67. A.S. 29.48.010
68. A.S. 29.48.035
69. A.S. 29.48.030
70. A.S. 29.33
71. A.S. 29.43
72. A.S. 29.48.030 (7); Town of Ketchikan v. Greenbaum, 5 Alaska 396 (1915)
73. 55 I.D. 14 (Powers of Indian Tribe)
74. 18 U.S.C. 1153
75. 18 U.S.C. 1152
76. Compare A.S. 29.48.200 and 25 U.S.C. 1302 (7)
77. Ak. Const. Art. IV, Sec. 1
78. See McKenzie, YOU HAVE THE RIGHT, 25-27 (AFN, 1976); Keiner v. City of Anchorage 378 P.2d 406 (Alaska, 1963); State v. Lundgren Pacity Const. Co. Slip Op. 1980 (Alaska, 1979).
79. Gutherie, Analysis of Amendment to HB 533 proposed by Tanana Chiefs, Legislative Affairs Agency (March 21, 1980), citing Baker v. City of Fairbanks, 471 P.2d 386; Alexander v. City of Anchorage, 490 P.2d 910 (1979)
80. Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (1959)
81. Talton v. Mayes, 163 U.S. 376 (1896)
82. 25 U.S.C. Sections 1301-1303
83. A.S. 29.33.070. et. seq.
84. A.S. 29.33.070(b)(2)
85. A.S. 29.29.43.040
86. A.S. 38.05.037
87. 541 P.2d 730. See P.24 infra, for discussion
88. id, at 737-8
89. A.S. 29.33.070 et. seq.
90. Sec. 45, Chap 85 SLA 1979
91. A.S. 29.48.035
92. 419 U.S. 544 (1975)
93. Johnson v. Chilkoot Indian Village, 957 F. Supp. 384 (D. Alaska, 1978)
94. 532 F.2d 655 (9th Cir., 1977)
95. id, at 663
96. Buster v. Wright, 135 F.947 (8th Cir. 1905). Iron Crow v. Oglala Sioux Tribe, supra; Barta v. Oglala Sioux Tribe, 259 F.2d 553. (8th Cir., 1958), cert. den. 385 U.S. 932 (1959); 55 I.D. 14, 28 (1934) (Powers of Indian Tribes)
97. Buster v. Wright, supra.
98. Maxey v. Wright, 105 F. 1003 (8th Cir., 1900)
99. Morris v. Hitchcock, 194 U.S. 384 (1904)
100. A.S. 29.53.415 et. seq. (boroughs); A.S. 29.53.440 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)
101. A.S. 29.53.010 (boroughs); A.S. 29.53.400, 410 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)
102. A.S. 29.53.020, et. seq.
103. 55 I.D. 14 (1934) (Powers of Indian Tribes). See also Indian Child Welfare Act, P.L. 95-608

PART III

1. Con. Conv. Proc., Pt. 6, p.478
2. AK. Const., Art. I, Sec. 1, provides that this constitution is dedicated to the principles...that all persons are equal and entitled to equal rights, opportunities, and protection under the law;...
3. 262 N.W. 2d 341 (Minn., 1977)
4. id., at 348
5. id., at 348n24 citing Morton v. Mancavi, 417 U.S. 535 (1974) and McClanahan v. Arizona State Tax Comm., 411 U.S. 164 (1973)
6. 430 U.S. 641 (1977)
7. U.S. Const., Art. 1, Sec. 8
8. 262 N.W. 2d, at 347n.23
9. State v. Erickson, 574 P. 2d 1 (Alaska, 1978); Isakson v. Rickey, 550 P. 2d 358 (Alaska, 1976); Lynden Transport, Inc. v. State, 522 P. 2d 1125 (Alaska, 1974)
10. 426 U.S., at 388-9
11. A.S. 29.08.050(b)
12. N.M. Stat. Ann. Sec. 53-9-1.
13. Toledo v. Pueblo de Jemez, 119 F. Supp. 429 (D.N.M., 1954)
14. 30 M.R.S.A. Sec. 6201 et. seq.
15. 30 M.R.S.A. Sec. 6206
16. 30 M.R.S.A. Sec. 6206
17. 30 M.R.S.A. Sec. 6206
18. 30 M.R.S.A. Sec. 6204
19. 30 M.R.S.A. Sec. 6210
20. 30 M.R.S.A. Sec. 6206
21. 426 U.S. 373 (1976)
22. Fl. Stat. Sec. 285.06
23. id., Sec. 285.17
24. See id., Sec. 285.061 (2). See Solicitor's Opinions, No. M-36907 (Nov. 14, 1978) Criminal Jurisdiction on Seminole Reservations in Florida.
25. Fl. Stat. Sec. 285.18
26. Conn. Gen. Stat., Sec. 47-63, et. al.
27. Conn. Gen. Stat., Sec 47-65(d)
28. Texas Stat., Chapter XLIV, Acts of the 5th Legislature, 1854
29. Texas Stat., Art. 5421z, Sec. 11A
30. Texas Stat., Art. 5421z, Sec. 12
31. Texas Stat., Art. 5421z, Sec. 18
32. These states include California, Delaware, Idaho, Montana, Maryland, Massachusetts, Michigan, Minnesota, North Dakota, Oregon, South Dakota, Wisconsin, and Wyoming.
33. Minn. Stat., Sec. 922 et. seq.
34. Cal. Code Educ. 4084
35. KELSEN, PRINCIPLES OF INTERNATIONAL LAW, 387 (2nd ed., 1966)
36. id., at 399
37. Nev. Rev. Stat. Sec. 277.080 et seq
38. R.C.W. 39.34
39. S.D. Compiled Laws Ann. Sec. 1-23-24 et seq
40. Nev. Rev. Stat. Sec. 233A.120
41. Nev. Rev. Stat. Sec. 233A.130

42. See State v. Forge, 262 N.W. 2d 341 (Minn. 1977); Minn. Stat. 97.431
43. Or. Rev. Stat. Sec. 390.845
44. N.M. Rev. Stat. 29-1-11. See also Tribal-State Compact Act of 1978. Hearings on S.2502 before the U.S. Senate Select Committee on Indian Affairs, 95th Cong., 2d Sess. 35-36, 183-189, and 252-259 (1978) Statements on cross-deputization in other states.
45. See generally Part II(B)(1) supra.
46. See generally Part II(B) supra.
47. AK. Const., Art. X, Sec. 4
48. See White v. Califano, 437 F. Supp. 543 (1977); Black v. District Court, 158 Mont. 523 (1973); Kennerly v. District Court, 400 U.S. 423 (1971)
49. 55 ID 14 (1934), Smith v. Bonifer, 154 F.883 (1909); Ollestead v. Native Village of Tyonek, 560 P.2d 31 (1977).
50. Smith v. Bonifer, supra.
51. 25 USC 163
52. 25 CFR 271.2 (i)
53. Proposed IRA Constitution for Dish-Ina-Nek, Art. 5, Sec. 4
54. 25 U.S.C. 1301
55. Dodge v. Nakai, 298 F. Supp. 26 (D. Ariz., 1969); Dry Creek Lodge, Inc. v. United States, 515 F.2d 926 (10th Cir., 1975)
56. 436 U.S. 49 (1978)
57. MANUAL OF INDIAN LAW, B-9 (The American Indian Lawyer Training Program, Inc., 1976)

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

Draft of Revised Title 29 with Index

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

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

The law provides that the organized borough shall provide, establish, maintain, and operate the schools within its boundaries. Ownership of state-operated schools must be conveyed by the state to the local school district as soon as possible after incorporation. The transfer of state administration of those schools [illegible] shortly after incorporation prior to the beginning of the next school year, and as nearly as [illegible] 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 [illegible] Slope Borough, Superior Court, [illegible] Dist. C.A. No. [illegible] and C.A. No. [illegible] (1975).

[illegible] history of public education in Alaska [illegible]

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 § 37-2-87, 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 overall 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. 1165 (File No. 2076), 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. 50 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 399, 38 L.Ed.2d at 373.

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

4. 457 P.2d 622, 632 (Alaska 1969).

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 test of agency than when other forms of entities 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)

[illegible] regulations in effect at [illegible] 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 $[illegible] and the Home Insurance Company as insurer of the borough, contributed $[illegible] to that settlement. The [illegible]

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.. 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 29.23.040.

4 By so arguing, the borough relies on the statement (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 A.2d 120, 420, 8 N.Y.S.2d 108, 105 (1962).

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, of 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 [illegible]
>
> 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 [illegible] "Delegation" is defined in Webster's Seventh New Collegiate Dictionary (1972) [illegible] 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. 891 (1972); Pantess v. Saratoga Springs Authority, 225 App.Div. 426, 8 N.Y.S.2d 103, 105-106 (1938); see D. R. Smalley & Sons, Inc. v. United States, 372 F.2d 505, 178 Ct.Cl. 593 (1967), and Eden 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, 290 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, 47 Cal.2d 732, 437 P.2d 352 (1968).

10. Paige v. State, 290 N.Y. 352, 199 N.E. 617, 618 (1936) (citations omitted).

11. The borough cites Jaffke v. Westchester County, 267 N.Y. 375, 196 N.E. 258 (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 138, 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. See also we did point out the "control" aspect of the "right to control" test utilized to determine whether an injured workman was an employee of the contractor or an employee of the principal in the 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. [illegible]

15. [illegible]

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 contract.[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 [illegible] by the only case to rule

16. 372 F.2d at 567.

17. *Id.* (citations omitted).

18. 300 F.2d 432, 438 (9th Cir. 1962).

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

20. [illegible] Hildebrand, [illegible] (Alaska 1974).

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 time 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 785, 105 Cal.Rptr. 901 (1972).

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

23. The [illegible] bus was not owned by the state, and the state did not own, operate or control any of the buses at any time. 29 Cal.App.3d at 805, 105 Cal.Rptr. at 906. We [illegible] upon the same distinction [illegible] involved in the instant case.

24. [illegible] Alaska 30 [illegible]

25. [illegible]

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

Affirmed.

James O. ADKINS, Appellant,

v.

Michael LESTER et al., Appellees.

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

v.

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

Nos. 2078, 2113.

Supreme Court of Alaska.

Feb. 3, 1975.

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

Petition denied.

Rabinowitz, C. J., did not participate.

Appeal and Error ⇐1056.1(5)

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

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

Barton 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 appellee Lester. It refused to find the speed

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OF COUNSEL:
G. KENT EDWARDS

November 10, 1980

REPLY TO:
Anchorage

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

Re: Proposed Legislative Changes
Our File 844-10

Dear Mr. Ryan:

Pursuant to your request, I have reviewed Title 29 of the Alaska Statutes and the supplements for the purpose of making recommendations regarding proposed changes to statutory sections that might be presented to the Alaska Municipal League during its meeting in Fairbanks during the week of November 17, 1980. In 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 proposed above are based in substantial part upon the experience I have had in the City of Kodiak over the past six years. Recommendations as to specific language for changes in the statutes are merely rough proposals and would have to be carefully reviewed and refined if it was determined that those proposals could be supported by the Alaska Municipal League. Nevertheless, I believe the problem areas are adequately highlighted and possible solutions proposed.

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

Kindest regards.

Very truly yours,

HARTIG, RHODES,
NORMAN & MAHONEY

Robert J. Mahoney

Robert J. Mahoney

RJM:bad

Motion made by Fred Stickman and seconded by Jonah Tokienna

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO. 23

A RESOLUTION: PETITIONING THE STATE OF ALASKA TO FUND AT 100% ADEQUATE FIRE FIGHTING EQUIPMENT FOR RURAL CITIES.

WEHREAS, Fire is a great destroyer of life and property in rural Alaska, and

WHEREAS, rural communities have little economic base from which to purchase and to provide necessary fire equipment,

THEREFORE BE IT RESOLVED: That the State of Alaska fund at 100% adequate fire fighting equipment for rural cities.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE THIS 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

21 OF 30 INVITED MAYOR'S TOOK PART IN THE NOV 6th & 7th CONFERENCE ALL RESOLUTIONS PASSED UNANIMOUSLY EXCEPT 5 & 17

Motion made by Leo Rasmussen and seconded by John Jenewouk.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO. 22

A RESOLUTION: PETITIONING THE ALASKA STATE LEGISLATURE TO AWARD SURPLUS STATE EQUIPMENT AND MACHINERY WITHOUT A BID TO THE NEAREST LOWER LEVEL OF GOVERNMENT.

WHEREAS, Presently excess State equipment is often required to be bid upon, and

WHEREAS, many of the State's smaller communities have no economic base and therefore, no money with which to make a bid.

NOW THEREFORE BE IT RESOLVED: That the Alaska State Legislature pass legislation to award without a bid surplus State equipment and machinery to the nearest lower level of government.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by Jonah Jenewouk and seconded by Melvin Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 21

A RESOLUTION: TO INCREASE STATE REVENUE SHARING ALLOCATION FOR EVERY SECOND-CLASS CITY IN RURAL ALASKA.

WHEREAS, the State Legislature has seen fit to fund each city at $25,000.00, and

WHEREAS, the Alaska Municipal League has supported the State Revenue Sharing Program.

NOW THEREFORE BE IT RESOLVED: That the State Legislature be petitioned to increase the basic State Revenue Sharing allocations to $50,000.00 for each city.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by Karl Ashenfelter and seconded by Jonah Tokienna.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO. 20

A RESOLUTION: PETITIONING THE ALASKA STATE LEGISLATURE TO FIND PERSONNEL TO FILL DRUG ABUSE ENFORCEMENT AND EDUCATION POSITIONS.

WHEREAS, drug abuse is an increasing problem among the citizens of rural Alaska, and

WHEREAS, the citizenry of the State of Alaska is its most precious resource.

THEREFORE BE IT RESOLVED: That the Northwest Alaska Mayors' Conference petitions the Alaska State Legislature to fund additional law enforcement and education positions to specifically combat drug abuse.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

RRT

SECRETARY

Motion made by Leo Rasmussen & Mayor Madros and seconded by Mayor Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 19

A RESOLUTION: REQUESTING THE APPOINTMENT OF PERSONS WITH THE ABILITY TO INTERPRET AND ENFORCE THE LETTER OF THE LAW; THUS PROVIDING COMPLIANCE TO THE LAW, RESULTING IN AN EQUITABLE SYSTEM IN PROVIDING LAW AND ORDER.

WHEREAS, Leniency to offenders in the area of public order is considered as a major contributor to the breakdown of law and order, and

WHEREAS, this breakdown in law and order is increasingly harmful to the citizenry of rural Alaska.

THEREFORE BE IT RESOLVED: That the Northwest Alaska Mayors' Conference request of the Judicial Council in reviewing appointments for District, Superior and Supreme Court judgeships; to only consider for recommendation, those persons who will more strictly construe law and order for our communities.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

RR, T

SECRETARY

Motion made by Karl Ashenfelter and seconded by Leo Rasmussen.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 18

A RESOLUTION: PETITIONING THE ALASKA STATE LEGISLATURE TO PROVIDE A JUDICIAL SYSTEM FOR RURAL ALASKA.

WHEREAS, there is presently no judicial officer close nearby for most cities of rural Alaska, and

WHEREAS, local ordinances can not be enforced in the absence of a judicial system.

THEREFORE BE IT RESOLVED: That the conference of Northwest Alaska Mayors' petitions the Alaska State Legislature to fund a judicial system that will make a judicial officer available in each city in rural Alaska.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

RRF

Motion made by John Jenewouk and seconded by Melvin Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO: 17

A RESOLUTION: OPPOSING NOME'S CITY ANNEXATION PLAN.

VOTE: YES 2

NO 14

1 ABSTAINED

Motion made by Karl Ashenfelter and seconded by Jonah Tokienna.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 16

A RESOLUTION REQUESTING THE ALASKA STATE LEGISLATURE TO REQUIRE MINIMUM STANDARDS AND INSPECTION TO WHICH ALL NEW HOUSING BUILT IN RURAL ALASKA MUST CONFORM AND TO FUND REBUILDING AND RENOVATION OF EXISTING SUBLEVEL HOUSING.

WHEREAS, much housing built in rural Alaska has been of substandard design and construction, and

WHEREAS, there is presently little standard to which new housing built in rural Alaska must conform.

THEREFORE BE IT RESOLVED: by the Conference of Northwest Alaska Mayors' that the Alaska State Legislature be petitioned to require minimum standards and inspection to which all new housing built in rural Alaska must conform and to fund rebuilding and renovating of existing sublevel housing.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

RRF

Motion made by Fred Stickman and seconded by Mayor Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 15

A RESOLUTION: TO SUPPORT THE LEGISLATIVE ACTION THAT WAS TAKEN DURING THE THE LAST LEGISLATIVE SESSION TO SUBSIDIZE ELECTRIC POWER AND EXPLORE ALTERNATIVE ENERGY SOURCES.

WHEREAS, energy costs are rapidly increasing for Northwestern Alaska, and

WHEREAS, this increasing cost is a growing burden on the citizens of the region.

BE IT RESOLVED: That the conference of Northwest Alaska Mayors' supports legislative action that has been taken to subsidize electric power and explore alternate energy sources for rural Alaska.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

RRC

Motion made by Karl Ashenfelter and seconded by Willie Thomas.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 14

A RESOLUTION: TO REQUEST THE DOT/PF TO PROVIDE ADEQUATE AIRPORT LIGHTING AND TO CONSTRUCT AIRPORTS TO THE MINIMUM LENGTH OF 4,000 FEET AND TO INCLUDE RUNWAYS TO ACCOMODATE PREVAILING CROSSWINDS.

WHEREAS, many airports in Northwest Alaska are not adequate to meet the needs of the citizens of Northwest Alaska, and

WHEREAS, it is the responsibility of the State of Alaska to provide airports in rural Alaska.

THEREFORE BE IT RESOLVED: That the Department of Transportation/Public Facilities and the Alaska State Legislature be requested to provide in northwestern Alaska adequately lighted, well constructed airports of a minimum length of 4,000 feet to include alternate landing strips to accomodate prevailing crosswinds.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by Ted Katcheak and seconded by Karl Ashenfelter.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 13

A RESOLUTION: THAT THE DIVISION OF COMMUNITY PLANNING BE DIRECTED TO PROVIDE ADDITIONAL PERSONNEL TO MEET THE TERMS OF 14 (C) ANCSA IN RURAL ALASKA.

WHEREAS, The Alaska Native Claims Settlement Act sets aside 1,280 acres under 14(c) Reconveyances to municipalities, and

WHEREAS, there is a need for technical assistance in the processing of this section under the ANCSA, and

WHEREAS, the Division of Community Planning is to provide that assistance.

NOW THEREFORE BE IT RESOLVED that the Division of Community Planning be directed to act expeditiously in meeting the terms of 14(c) ANCSA.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by John Jenewuk and seconded by Percy Nayokpuk.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 12

A RESOLUTION: TO HAVE THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO ASSESS THE NEEDS OF THE REGION AND TO SUPPLY THE FUNDS NECESSARY TO PROVIDE SAFE AND SANITARY WATER AND SEWER SYSTEMS TO ALL COMMUNITIES THAT REQUIRE THEM AT THE EARLIEST POSSIBLE DATE.

WHEREAS, there is an immediate need for safe and sanitary water and sewer systems in the communities in the Bering Straits and NANA regions, and the Doyon region; and

WHEREAS, the State of Alaska, Department of Environmental Conservation is charged with providing the funds to construct water and sewer systems in rural Alaska.

NOW THEREFORE BE IT RESOLVED: That the Commissioner of the Department of Environmental Conservation be directed to assess the needs in the Bering Straits and NANA regions respectively, and

LET IT FURTHER BE RESOLVED that funds be earmarked to provide safe and sanitary water and sewer systems in all communities that need them and that construction begin at the earliest possible date.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

Motion made by M. Citta of Koyuk and Seconded by Paul Brown, Sr. of Noorvik.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO: 11

A RESOLUTION TO IMPROVE TELE-COMMUNICATIONS SYSTEMS IN NORTHWEST ALASKA AND TO PROVIDE TWO TRAINED TECHNICIANS TO REPAIR TELE-COMMUNICATIONS EQUIPMENT IN NORTHWEST ALASKA.

WHEREAS, modern maintained tele-communications systems are absent in most of Northwest Alaska, and

WHEREAS, modern, maintained tele-communications are increasingly important in today's world.

THEREFORE BE IT RESOLVED: that the Alaska State Legislature be petitioned to improve tele-communications in Northwestern Alaska and to provide two trained technicians to maintain this equipment.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by John Jemewuk and seconded by Jonah Tokienna.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 10

A RESOLUTION: TO INCREASE THE SERVICES PROVIDED BY THE V.P.S.O. PROGRAM TO ALL COMMUNITIES NOT CURRENTLY SERVED BY THE PROGRAM.

WHEREAS, the Village Public Safety Officer Program is deemed to be an excellent effort on the part of the Department of Public Safety, and

WHEREAS, the need for law enforcement still remains largely unmet in all of the communities in the Bering Straits and NANA regions, and the Doyon regions:

WHEREAS, the State of Alaska is the only source of funds for rural law enforcement.

NOW THEREFORE BE IT RESOLVED THAT THE STATE OF ALASKA EXPAND THE V.P.S.O PROGRAM to include those communities in the Bering Straits and NANA regions that are not presently served by the V.P.S.O. Program.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by Karl Ashenfelter and Seconded by Jonah Tokienna.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 9

A RESOLUTION TO REQUIRE THE PUBLIC HEALTH SERVICE TO PROVIDE AIR FARES FOR HOSPITAL PATIENTS REQUIRING MEDICAL EVACUATIONS.

WHEREAS, most villagers have little economic resources to pay for air transportation, and

WHEREAS, the Public Health Service has funds to provide air transportation.

NOW THEREFORE BE IT RESOLVED: That the Public Health Service pay patient travel to and from the Norton Sound Hospital and the Kotzebue Hospital.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE THIS 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by John Jemewuk and seconded by Melvin Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 8

A RESOLUTION: That the Department of Community and Regional Affairs provide additional personnel in the area of servicing the region by providing technical assistance.

WHEREAS, The Department of Community and Regional Affairs (LGAD) has the responsibility to provide a wide range of technical assistance to second-class cities ranging from Point Hope to Stebbins and all those in between including Kaltag, Nulato, and Koyukuk on the Yukon, and

WHEREAS, there are only two Local Government Specialists assigned to serve over 30 second-class cities in this region, and

WHEREAS, the needs of second-class cities are becoming increasingly complex and numerous,

NOW THEREFORE BE IT RESOLVED that the Department of Community and Regional Affairs fund one additional Local Government Specialist for the Nome field office.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by Ted Katcheak of Stebbins & Seconded by Fred Stickman, Jr., Kulato.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 7

A RESOLUTION: TO ENDORSE THE SUBSTITUTION OF THE WORD DENALI FOR MCKINLEY.

WHEREAS, we recognize that the place name Denali is an authentic Athabascan origin name for the tallest mountain in North America, and

WHEREAS, Denali is derived from an ancient Athabascan name Denali meaning "Tall one", and

WHEREAS, Athabascan people have strong feelings toward this great mountain because it is virtually in the center of traditional Alaskan Athabascan territory, and because it is thought of respectfully as the one the ancestors viewed, and

WHEREAS, the name "McKinley" has no comparable antiquity or tradition, and

WHEREAS, the Alaska State Legislation has passed a joint resolution recognizing the name Denali, and

WHEREAS, Denali is the name officially recognized by the State of Alaska for said mountain.

NOW THEREFORE BE IT RESOLVED, that the NORTHWEST ALASKA MAYORS' CONFERENCE hereby calls on the United States Board of Geographical Names to recognize the original name of the mountain, Denali.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November 1980.

PRESIDENT

ATTEST

SECRETARY

Motion made by Mayor Stickman and Seconded by Mayor Madros.

NORTHWEST ALASKA MAYORS' CONFERENCE.

November 6 - 7, 1980

RESOLUTION NO. 6

A RESOLUTION: To establish regulations to require certified audits of all R.E.A.A. School Districts and said audits to be made public.

WHEREAS, generally acceptable accounting practices may not be used by all R.E.A.A.'s Districts; and

WHEREAS, any financial information used and generated by some R.E.A.A.'s Districts comes from their Accounting Departments.

THEREFORE BE IT RESOLVED: To request the State to establish regulations requiring all R.E.A.A. School Districts to publicly make available an annual certified audit of their operations.

PASSED an APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by John Jenewouk of Elim and Seconded by Percy Nayokpuk of Shishmaref.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 5

A RESOLUTION: OBJECTING TO BIA CLOSING OF MT. EDGECUMBE.

FAILED BY A VOTE OF 12-5

RRF

Motion made by Karl Ashenfelter and Seconded by John Jenewuk.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 4

A RESOLUTION: TO HIRE AN EDUCATION SPECIALIST TO HELP EVALUATE EDUCATION IN NORTHWEST ALASKA.

WHEREAS, there is an apparent deterioration of basic education in Northwest Alaska;

WHEREAS, basic education is apparently being supplanted with alternate courses.

NOW THEREFORE BE IT RESOLVED: That the Northwest Alaska Mayors' Conference requests the State of Alaska to hire an Education Specialist to evaluate education, its delivery in Northwest Alaska, and to provide a listing of proposed changes that would better provide the delivery of basic education to our children.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by Earl Ashenfelter and seconded by James Commack.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 3

A RESOLUTION: REQUESTING THE DEPARTMENT OF EDUCATION TO EVALUATE THE ACADEMIC PROGRAMS IN THE VILLAGES IN NORTHWEST ALASKA.

WHEREAS, there are questions regarding the quality of basic academic programs in Northwestern Alaska, and

WHEREAS, there are no apparent systems established to provide this data.

NOW THEREFORE BE IT RESOLVED: That the Department of Education provide a Curriculum Development Specialist to investigate academic programs in Northwest Alaska with special emphasis on Basic Education.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST

SECRETARY

KRF

Motion made by John Jenewouk and seconded by Karl Ashenfelter.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 2

A RESOLUTION: ASKING THAT THE STATE PROVIDE MONIES TO FUND A PERMANENT CITY CLERK OR CITY ADMINISTRATOR POSITION WITH A MINIMUM SALARY OF $1,500.00 PER MONTH FOR ALL CITIES.

WHEREAS, It is almost impossible to hire a capable part-time or full-time City Clerk or Administrator with the monies now provided;

WHEREAS, present State Revenues hardly cover minimal costs of administering small cities.

THEREFORE BE IT RESOLVED: That the State fund a City Clerk or City Administrator position for all cities at a salary not less than $1,500.00 per month.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

RRF

Motion made by John Jenewuk and seconded by Charles Riley

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 1

A RESOLUTION: REQUEST THE HOLDING OF PUBLIC HEARINGS ON THE MOVE OF THE DISTRICT OFFICES OF THE BERING STRAITS R.E.A.A. SCHOOL DISTRICT TO UNALAKLEET.

WHEREAS, the public has not been adequately noticed of the move of the Bering Straits R.E.A.A. School District and its offices to Unalakleet, and

WHEREAS, the public has not been adequately allowed to publicly voice its views on the move, and

WHEREAS, the move of the offices and the Bering Straits R.E.A.A. School District could impair education of the students it is charged with in terms of quality of education.

NOW THEREFORE BE IT RESOLVED: That the NORTHWEST ALASKA MAYORS' CONFERENCE asks that Public Hearings, duly noticed, be held on the potential or occurring move of the offices and headquarters of the Bering Straits R.E.A.A. School District to Unalakleet.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

RRF

SECRETARY

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

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

August 5, 1980

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

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

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; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NATIVE VILLAGE OF TYONEK, ALASKA

INCORPORATED
TYONEK, ALASKA 99682

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

RECEIVED
NOV 3 1980

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 be fit 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,
Village Administrator

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554

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

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 municipality?

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

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

page 76-line 8; the limits should be raised

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

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

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

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

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

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

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

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

* denotes a question

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554

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.29.43.10
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 the

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.

Ttatk Saxman

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

RESOLUTION NO:

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

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

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

Mark Saxman

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.

Trak Saxman

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P.O. Box 8676
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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-

Ttatk 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.

City of Saxman

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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-

City of Saxman
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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

Frank Saxman

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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.

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

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

August 5, 1980

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

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

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

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 (e).

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

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

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

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

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,
Village Administrator

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554

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

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 municipality regulate private or Co-operative utility if not owned by the municipality?

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

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

page 76-line 8; the limits should be raised

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

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

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

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

*page 78-line 24; should this read(move)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.29.42.030 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.

CHAPTER 45. MUNICIPAL TAXATION

(Chapter 53. MUNICIPAL ASSESSMENT AND TAXATION

Article 1. MUNICIPAL PROPERTY TAX

Sec. 29.45.010. (Sec. 29.53.010.) GENERAL PROPERTY TAX. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter.

Sec. 29.45.020. (Sec. 29.73.070) TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE (AS 14.17)	$
STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100)	$
MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE (AS 29.88)	$
STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES (AS 29.89)	$
TOTAL AID	$

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

	MILLAGE EQUIVALENT	
	PREVIOUS YEAR	THIS YEAR
PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE	....MILLS	....MILLS
STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT	....MILLS	....MILLS
MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE	....MILLS	....MILLS
STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES	....MILLS	....MILLS
TOTAL MILLAGE EQUIVALENT	....MILLS	....MILLS

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) If there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 (AS 29.88) and state aid for miscellaneous municipal services under AS 29.62 (AS 29.89). The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met.

Sec. 29.45.030. 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 household [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.
(7) real property to the extent and subject to the conditions provided in (j) of this section.

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

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization.
(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;
(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;
(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

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

(d) * check (2)

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

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

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

(h) Except as provided in (g) of this section, 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 sec. 25 of this chapter.

(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.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Formerly: AS 29.53.020

Comments: Based on Alaska Association of Assessing Officers (AAAO) recommendation:

(1) Para. (a)(2): deletes $500 limit on exemption of household furniture;

(2) Para. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

(3) Para. (f): clarifies filing of a claim for exemption is a requirement for only the senior citizen exemption under 'e), and not for the other exemptions addressed in the section.

Sec. 29.45.040. (Sec. 29.73.060.) PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. 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) All or any portion of the household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use, and all personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use. "Personal effects" shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles, and the like [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

Formerly: AS 29.53.025

Comments: modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects. Based upon recommendation of AAAO since assessors currently do not include household furnishings and personal effects of family members.

Sec. 29.45.060. 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 exempt [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.

Formerly: AS 29.53.030

Comments: Deletes $200 valuation figure. AAAO recommends deletion since administrative costs exceed taxes to be realized in carrying property at $200 figure on roll.

Sec. 29.45.070. (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 percent 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 preceeding seven years. The balance of the payment shall be made to the city or borough.

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

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of h yearly gross income from the farm use land. The provisions of this sectio do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owne

wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

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

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

Sec. 29.45.080. (Sec. 29.53.040.) MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. (Sec. 29.53.045.) TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent 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. 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.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, 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, and shall advise each municipality of its population as so determined by January 15 of each year.

Sec. 29.45.100. Tax limitations.

(a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaires 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 $1,500 [$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 or 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.

Formerly: AS 29.53.050

Comments: Technical change requested by AAAO to conform with provisions of AS 29.53.045 (SLA 80)

Sec. 29.45.110. (Sec. 29.53.055.) NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

Sec. 29.45.120. Full and true value.

(a) The assessor shall value [assess] property at its full and true value as of January 1 of the assessment year, except as provided in this section and sections 60 [30], 70 [35] and 240 [160] of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

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

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

Formerly: AS 29.53.060

Comments: Requested by AAAO

Sec. 29.53.130. (Sec. 29.53.070.) RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. (Sec. 29.53.080.) INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request furnish to the assessor or his agent every facility and assistance for the

purposes of the investigation. If refused entry, the assessor may seek a court order to compel entry.

(c) An assessor may examine a person on oath. Upon request, the person shall present himself for examination by the assessor.

Sec. 29.45.150. (Sec. 29.53.090.) STATEMENT. A person who fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a misdemeanor. Upon conviction, he is punishable by a fine of not more than $500, or by imprisonment for not more than 30 days, or by both, together with costs of prosecution.

Sec. 29.45.160. (Sec. 29.53.095.) REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. (Sec. 29.53.100.) ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the

name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. 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.

Formerly: AS 29.53.110

Deletes requirement that assessor include in the assessment notice the date the board of equalization will meet since many times assessors at that time do not know the dates at the time the notices are mailed. Based on the recommendation of AAAO.

Sec. 29.45.190. (Sec. 29.53.120.) CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions 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.

Sec. 29.45.200. (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.

a notice of intent, submit to the assessor a written appeal specifying the 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.

Sec. 29.45.210. Board of Equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, however, may delegate this authority to one or more boards appointed by it for that purpose. An appointed board may be composed of not less than three (3) persons, who may be members of the assembly, private individuals, or a combination thereof. [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 establish the qualifications for membership and adopt rules of conduct of the board.

Formerly: AS 29.53.135

Comments: Change would clarify authority to establish boards of equalization composed of other than assembly members and by ordinance to establish qualifications. Deletion required to allow appointment of boards of three members or more which number may be less than number required for quorum of assembly.

Sec. 29.45.220. 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 and [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 except as to supplementary assessments.

(f) [an] The appellant and the assessor may appeal the board's action to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on and limited to the record established at the hearing before the board of equalization. [for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial].

Formerly: AS 29.53.140

Comments: (1) Para. (c): Based on recommendation of AAAO, substitutes and for or to assure must set forth factual grounds in written appeal and prove at hearing;

(2) para. (e): Based on recommendation of AAAO, clarifies that there may be further proceedings after June 1 in event there are supplementary assessments per former section 29.53.150;

(3) para. (f): deletes provisions regarding trial de novo and jury trial and limits scope of review to substantial evidence rule and clarifies confusion created by Wineqardner v. Greater Anchorage Area Borough (534 P.2d 541)

Sec. 29.45.230. 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. Any supplementary roll must be finalized and certified on or before September 1 of the assessment year.

Formerly: AS 29.53.150

Comments: Recommended by AAAO. State assessor requires for his purposes all proceedings to be completed not later than September 1, including any supplemental assessments.

Sec. 29.45.240. (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 proper 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.

Sec. 29.45.250. (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.

Sec. 29.45.260. (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 percent may be added to all delinquent taxes, and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments and the first half is not paid when due, the entire tax becomes delinquent and penalty and interest accrue as follows:

(1) if the first half is paid when due, the second half is payable on the due date fixed by the assembly for the second half and if not paid is delinquent after that date;

(2) a penalty not to exceed eight percent shall be added to all taxes delinquent until the due date fixed for payment of the second half, and interest at the rate of eight percent a year shall be charged on

the whole of the unpaid taxes, not including penalty, from due date until paid in full;

(3) after the due date for the payment of the second half, a total penalty of not more than 10 percent may be added to all delinquent taxes, and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalties, from due date until date paid in full.

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

(c) If the assembly charges interest on property taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. (Sec. 29.53.200.) VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. (Sec. 29.53.210.) TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

(b) Real property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. (Sec. 29.53.220.) ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide

the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice given by posting or publication. The seizure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty, interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale.

Sec. 29.45.320. (Sec. 29.53.230.) REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

(b) If the tax on property described in Sec. 40 of this chapter or on a leasehold interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Sec. 29.45.330. (Sec. 29.53.240.) FORECLOSURE LIST. (a) The borough shall

(1) annually present a petition for judgment and a certifie copy of the foreclosure list for the previous year's delinquent taxes in th superior court for judgment;

(2) publish the foreclosure list for four consecutive week in a newspaper of general circulation distributed within the borough or, i there is no newspaper of general circulation distributed within the boroug post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appe on the list a notice advising of the foreclosure proceeding in which a

petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of deliquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspection at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitutes and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. (Sec. 29.53.250.) CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. (Sec. 29.53.260.) LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. (Sec. 29.53.270.) GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded

against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeal as provided in AS 29.33.130(e).

Sec. 29.45.370. (Sec. 29.53.280.) ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. (Sec. 29.53.290.) JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. (Sec. 29.53.300.) TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complain and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and decree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. (Sec. 29.53.310.) REDEMPTION PERIOD. (a) Properties transferred to the borough are held by the borough for at least one year.

During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under Sec. 350(a) of this chapter. Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

(b) A person holding a mortgage or other lien of record covering a part only of a parcel of real property included in the judgment and decree of foreclosure may redeem that part by paying the proportionate amount applicable under the judgment and decree.

Sec. 29.45.410. (Sec. 29.53.320.) EFFECT. Receipt of redemption money by the clerk releases all claims of the borough to the property. The clerk shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk shall file the certificate with the recorder and collect the recording fee from the person redeeming at the time of redemption. The court clerk shall file the certificate as part of the judgment roll.

Sec. 29.45.420. (Sec. 29.53.330.) ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. (Sec. 29.53.340.) POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

Sec. 29.45.440. Expiration.

(a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000 [$10,000], to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Formerly: AS 29.53.350

Comments: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgment of foreclosure.

Sec. 29.45.450. (Sec. 29.53.360.) DEED TO BOROUGH OR CITY. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid

borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

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

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

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

Sec. 29.45.460. (Sec. 29.53.370.) DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of this chapter shall be retained by the municipality for a public purpose. The ordinance snall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist

LA-LT20 ordinance shall contain the information required in (a) of this section

(c) The clerk shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the property owner at the last address of record.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. (Sec. 29.53.375.) REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale, including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under Sec. 350(a) of this chapter.

(b) After adoption of an ordinance providing for the retention of a parcel of tax-foreclosed property by the municipality for a public purpose, the right of the former record owner to repurchase the property ceases.

Sec. 29.45.480. (Sec. 29.53.380.) PROCEEDS OF TAX SALE. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and

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

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

Sec. 29.45.490. (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.

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Sec. 29.45.510. (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 percent 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.

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. (Sec. 29.53.400.) POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter. The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.540. (Sec. 29.53.410.) LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

Sec. 29.45.570. (Sec. 29.53.415.) SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales or

rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

Sec. 29.45.590. (Sec. 29.53.420.) REFERENDUM, ADOPTION AND MODIFICATION. (a) The assembly shall hold a referendum vote on the question of enacting a sales tax or increasing the rate of levy of sales taxes. Borough sales tax propositions may be presented only once in any 12-month period. A sales tax proposition may be submitted to the voters at a regular or special election or at a general election of the state.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough.

ARTICLE 5. CITY SALES AND USE TAXES

Sec. 29.45.610. (Sec. 29.53.440.) POWER OF LEVY. Cities within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs.

Sec. 29.45.620. (Sec. 29.53.450.) POWER OF LEVY AND COLLECTION. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.630. (Sec. 29.53.460.) COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails.

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November 4, 1980

John Messenger, Esq.
Preston, Thorgrimson, Ellis
and Holman
420 L Street, Suite 404
Anchorage, Alaska 99501

Re: Title 29 Review - Proposed Revisions to Chapter 53 "Municipal Assessment and Taxation"

Dear John:

In furtherance of our discussion this date, please find enclosed herewith the following:

(1) Draft of proposed revisions to existing chapter 53 (Assessments). Comments to each section indicate the purpose of each proposed change.

(2) Copy of mark-up of chapter 53 prepared by the Alaska Association of Assessing Officers.

(3) Tamara Cook's rewrite under date October 2, 1980, of the required exemptions provisions of existing section 29.53.020.

I would appreciate any observations or comments you may have regarding these proposed or other amendments to chapter 53.

As we also discussed, the major remaining area which I intend to address is the area relating to corrections, cancellations and refund of taxes which I believe will solve many problems currently confronting assessors and administrators of the tax provisions.

Yours very truly,

Russell W. Walker
Municipal Attorney

Enclosures

Sec. 29.45.030. 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 household [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.

(7) real property to the extent and subject to the conditions provided in (j) of this section.

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

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

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

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

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

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

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

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

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

(h) Except as provided in (g) of this section, 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 sec. 25 of this chapter.

(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.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Formerly: AS 29.53.020

Comments: Based on Alaska Association of Assessing Officers (AAAO) recommendation:

(1) Para. (a)(2): deletes $500 limit on exemption of household furniture;

(2) Para. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

(3) Para. (f): clarifies filing of a claim for exemption is a requirement for only the senior citizen exemption under (e), and not for the other exemptions addressed in the section.

Sec. 29.45.050. 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) All or any portion of the household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use, and all personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use. "Personal effects" shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles, and the like [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

Formerly: AS 29.53.025

Comments: modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects. Based upon recommendation of AAAO since assessors currently do not include household furnishings and personal effects of family members.

Sec. 29.45.060. 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 exempt [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.

Formerly: AS 29.53.030

Comments: Deletes $200 valuation figure. AAAO recommends deletion since administrative costs exceed taxes to be realized in carrying property at $200 figure on roll.

Sec. 29.45.100. Tax limitations.

(a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaires 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 $1,500 [$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 or 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.

Formerly: AS 29.53.050

Comments: Technical change requested by AAAO to conform with provisions of AS 29.53.045 (SLA 80)

Sec. 29.45.120. Full and true value.

(a) The assessor shall value [assess] property at its full and true value as of January 1 of the assessment year, except as provided in this section and sections 60 [30], 70 [35] and 240 [160] of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

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

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

Formerly: AS 29.53.060

Comments: Requested by AAAO

Sec. 29.45.180. 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.

Formerly: AS 29.53.110

Deletes requirement that assessor include in the assessment notice the date the board of equalization will meet since many times assessors at that time do not know the dates at the time the notices are mailed. Based on the recommendation of AAAO.

Sec. 29.45.210. Board of Equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, however, may delegate this authority to one or more boards appointed by it for that purpose. An appointed board may be composed of not less than three (3) persons, who may be members of the assembly, private individuals, or a combination thereof. [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 establish the qualifications for membership and adopt rules of conduct of the board.

Formerly: AS 29.53.135

Comments: Change would clarify authority to establish boards of equalization composed of other than assembly members and by ordinance to establish qualifications. Deletion required to allow appointment of boards of three members or more which number may be less than number required for quorum of assembly.

Sec. 29.45.220. 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 and [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 except as to supplementary assessments.

(f) [an] The appellant and the assessor may appeal the board's action to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on and limited to the record established at the hearing before the board of equalization. [for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial].

Formerly: AS 29.53.140

Comments:

(1) Para. (c): Based on recommendation of AAAO, substitutes and for or to assure must set forth factual grounds in written appeal and prove at hearing;

(2) para. (e): Based on recommendation of AAAO, clarifies that there may be further proceedings after June 1 in event there are supplementary assessments per former section 29.53.1

(3) para. (f): deletes provisions regarding trial de novo and jury trial and limits scope of review to substantial evidence rule and clarifies confusion created by Winegardner v. Greater Anchorage Area Borough (534 P.2d 541)

Sec. 29.45.230. 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. Any supplementary roll must be finalized and certified on or before September 1 of the assessment year.

Formerly: AS 29.53.150

Comments: Recommended by AAAO. State assessor requires for his purposes all proceedings to be completed not later than September 1, including any supplemental assessments.

Sec. 29.45.440. Expiration.

(a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000 [$10,000], to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Formerly: AS 29.53.350

Comments: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgment of foreclosure.

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
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.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

Sec. 29.15.080. (Sec. 29.13.080.) CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter or by initiative referendum as provided in AS 29.30.090-29.30.180 (AS 29.28.060-29.28.110), except that no amendment shall be effective unless ratified by the voters.

Article 2. HOME RULE LIMITATIONS

Sec. 29.15.110. (Sec. 29.13.100.) LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.09.140 (29.18.140) Borough Transition

(2) AS 29.12.010 (29.73.050) Municipal Name Change

(3) AS 29.12.040 (29.68.010) Annexation and Exclusion

(4) AS 29.12.080-160 (29.68.030-29.68.110) Merger and Consolidation

(5) AS 29.12.420-29.12.500 (29.68.500-29.68.580) Dissolution

(6) AS 29.15.080 (29.13.080) Charter Amendment

(7) AS 29.24.010 (29.23.555) Conflict of Interest

(8) AS 29.24.020 (29.23.580) Meetings Public

(9) [Effective until January 1, 1981] AS 29.23.020-29.23.050 Borough Assembly Representation

[Effective January 1, 1981 AS 29.24.060; 29.24.080-29.24.140 (29.23.021; 29.23.025-29.23.050) Borough assembly composition and Apportionment; Borough Assembly Members

(10) AS 29.24.150 [29.23.060(c)] Explusion of Borough Assemblymen

(11) AS 29.24.200 [29.23.130(f), Removal of Borough Mayor from Office

(12) AS 29.24.290 [29.23.210(b)] Explulsion of City Councilman from Office

(13) AS 29.24.340[a] (29.23.250[a]) Election and Term of Mayor

(14) AS 29.24.350 (29.23.255) Removal of Mayor from Office

(15) AS 29.24.680 (29.23.540) Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 (29.23.560) Municipal Reports

(17) AS 29.27.010[a][12] (29.48.130[a][12]) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 (29.48.180) Codification

(19) AS 29.30.010, 29.30.030[b]-29.30.040 (29.28.010, 29.28.020[b]-29.28.030 Municipal Elections

(20) AS 29.30.060 [29.28.050(f)] Expulsion, Removal from Office

(21) AS 29.30.210-29.30.330 (29.28.130-29.28.250) Recall

(22) AS 29.33.020 (29.48.037) Extraterritorial jurisdiction

(23) AS 29.33.030 (29.73.020) Eminent Domain

(24) AS 29.33.080 (29.48.033) Garbage and Solid Waste Services

(25) AS 29.33.090[b] (29.48.035[b]) Effect of Areawide Exercise of Borough Power

(26) AS 29.33.090[c] (29.48.035[c]) Borough Building Code Jurisdiction within Cities

(27) AS 29.33.100-29.33.160 (29.48.040-29.48.100) Utilities

(28) AS 29.33.220 (29.48.210) Expenditure of Borough Revenue

(29) AS 29.33.230 (29.48.220) Post Audit

(30) AS 29.36.010[b] (29.33.010[b]) Areawide Borough Powers

(31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020[a] (29.33.050, 29.41.010[d], 14.12.020[a]) Responsibility for education on Military Reservations

(32) AS 29.36.130[c] (29.33.290[c]) Acquisition of Additional Areawide Powers

(33) AS 29.39.020-29.39.060 (29.43.020-29.43.040) Powers of Cities Outside Boroughs

(34) AS 29.42.040[d] (29.33.090[d]) Zoning of State Land for Homesite Entry

(35) AS 29.42.080[b] (29.33.150[b]) Applicability of Local Platting Regulations to State Land in a Municipality

(36) AS 29.45.010-29.45.530 (29.53.010-53.400) Borough and City Property Taxes

(37) AS 29.45.020 [AS 29.73.060(070)] Taxpayer Notice

(38) AS 29.45.580[d] (29.53.415[d]) Interest on Sales Tax

(39) AS 29.48.090 (29.63.065) Exemption from Special Assessment

(40) AS 29.51.420-29.51.430 (29.58.345-29.58.350) Bonded Debt for School Construction

(41) AS 29.51.210[b] (29.58.180[b]) Security for Bonds

(42) AS 29.51.390 (29.58.315) Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. (29.88) Municipal Tax Resource Equalization

(44) AS 29.62. (29.89) State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 (29.73.030) Adverse Possession

(46) AS 29.71.020 (29.73.040) Taxation of Municipalities

market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

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

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

Sec. 29.45.130. (Sec. 29.53.070.) RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. (Sec. 29.53.080.) INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the

CITY OF KODIAK
ALASKA

Ak Tanks to Note available to Committee a/

October 21, 1980

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

Dear Senator Sturgulewski:

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

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

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

POST OFFICE BOX 1397. KODIAK . ALASKA 99615 PHONE (907) 486-3224

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

THE HEART OF THE MATANUSKA VALLEY

CITY OF PALMER

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

Rec'd 10/20/80

October 17, 1980

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

Dear Gordon,

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

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

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

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

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

M E M O R A N D U M

28 October 1980

TO: Technical Committee
Title 29 Revision Commission

FROM: Tamara Brandt Cook
Legal Services

SUBJECT: Changes Recommended to Title 29 by the Technical Committee

Attached is the second batch of the drafting changes we discussed at our 10 October meeting. If you get an opportunity to check these over, I would appreciate it. Take an especially close look at the explanations, since these will form the basis of a memo I prepared to justify these changes to the Policy Group.

Please send me any recommendations for improvements to either the drafts themselves or to the explanations, or I can be reached by phone at 465-4996 November 5th, 6th, and 7th.

maf

Attachments

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

MEMORANDUM 28 October 1980

TO: Technical Committee
Title 29 Revision Commission

FROM: Tamara Brandt Cook TBC
Legal Services

SUBJECT: Changes Recommended to Title 29 by the Technical Committee

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Please send me any recommendations for improvements to either the drafts themselves or to the explanations, or I can be reached by phone at 465-4996 November 5th, 6th, and 7th.

maf

Attachments

Sec. 20.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by at least ten municipal voters who will sponsor the petition, shall contain the address to which all correspondence relating to the application may be sent and shall be filed with the municipal clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form, and, for an inititative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would not be unenforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

EXPLANATION: This section is new. The first part is modeled after section 2 of the intiative article in the state constitution. As drafted, the section would require the clerk to review an initative for substantive legality, with his decision subject to appeal. This would allow for a judicial determination of the legality of an initiative prior to incurring the expense of an election.

Sec. 29.30.110. PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. The petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days of the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing address of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signtures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, that each signer had an opportunity before signing to read the petition, that he believes each signer to be a municipal voter, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section would require the clerk to provide the petition forms to the petitioners to insure that they are complete and legible. This is similar to the requirement imposed upon the Lieutenant Governor in state initiative proceedings. The petition contents are essentially the same as those provided in present law, with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the signers must provide, and the addition of the circulator's affidavit.

Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days of the date the clerk issues the petition. The statement provided under AS 29.30.110 (a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular municipal election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signtures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: This section carries forward the 60 day signature gathering period. It does not eliminate the possibility of an initiative or referendum on a matter which affects only a service area, but it does require that such petitions contain the same number of signatures as a petition on an areawide matter. Permitting a service area to initiate and vote on a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body, and service areas will then have the authority to become essentially automomous units of government. Changes have been made to require rejection of a signature not accompanied by a legible residence address and to allow a signer to withdraw his name up until the time the petition is certified, whereas now he must withdraw within seven days after the petition is filed.

Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) The pages of a petition shall be assembled and filed as a single instrument. Within ten days of the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be amended or supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(3) Within 10 days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: The only significant change makes it clear that in providing supplementary signatures, the sponsors have only ten days to gather the signatures and may not use signatures which were gather prior to the first filing but not submitted, and that they may not use signatures gathered during the period in which the clerk is checking the petition.

Sec. 29.30.140. PROTEST. Repeal

EXPLANATION: Since the clerk determines the sufficiency of a petition, it was felt that allowing a protest to the municipal executive when a petition is rejected to be considered by the assembly or council would serve no purpose. The assembly or council would simply rely upon the clerk, since he has the voter registration records.

Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new application for a petition on substantially the same matter may not be filed sooner than six months after the petition is rejected.

EXPLANATION: This section was changed slightly to take into account the application procedure and to clarify that a new petition may not be filed dealing with the same matter, but that a petition on a different matter may be filed sooner than the six month period.

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council the clerk, after certifying it, shall present it to the assembly or council at its next regular meeting or special meeting called for that purpose.

(b) Unless substantially the same measure is adopted, an iniatiative measure presented to the assembly or council shall be submitted to the voters at the next regular municipal election held more than 45 days after the measure was presented to the assembly or council. If the assembly or council adopts substantially the same measure and if it is not vetoed, the petition is void and the question shall not be submitted to the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

EXPLANATION: The changes allow for the submission of a measure at any time of the year, but provides it would be placed before the voters at the first regular election occurring 45 days after submission to the assembly or council. Since the clerk determines whether the subject is within the restrictions and since this determination is subject to judicial review, the assembly or council no longer makes that determination. This section requires an areawide vote whether the mattter is areawide or nonareawide because a service area should not be allowed to become automonous.

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote, the clerk shall submit the matter to the voters at the next regular or special election. If no regular or special election occurs within 75 days of the certification of a petition, the assembly or council shall hold a special election within 75 days of filing.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it is suspended, becomes immediately effective.

EXPLANATION: The ability to suspend an ordinance or resolution which had taken effect when a petition is filed within 20 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to exercise a temporary repeal. The reference to amending a charter by initiative or referendum was deleted as it is covered under AS 29.13.080. This section once again requires submission of the question to the areawide voters.

Sec. 29.30.180. EFFECT. (a) An ordinance or resolution adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed may not be repealed or amended by the assembly or council within two years of its effective date.

(b) If an ordinance or resolution is repealed in an referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified by the assembly or council.

EXPLANATION: Technical revisions and a change in (c) to accommodate the petition application process.

Sec. 29.30.210. RECALL. An application for a petition for the recall of a mayor or a member of the assembly, council, or school board may be filed with the municipal clerk after the official has served six months of the term for which elected or appointed.

EXPLANATION. This section lists the municipal officials which may be recalled rather than providing for the recall of an elected official in order to avoid the possibility of recalling service area board members who may be elected officials. It clarifies the dates to be used in determining when the six month period has run and includes the possibility of recalling officials who are appointed to elected positions.

Sec. 29.30.220. GROUNDS. Grounds for recall may include any grounds which constitute failure to perform official duties to the satisfaction of petitioners.

EXPLANATION: This section broadens the grounds for recall in order to avoid forcing petitions to name a ground in a petition which has no connection with the real reasons which may inspire a recall effort. It is felt that an elected official ought not to be subjected to being labeled incompetent or guilty of misconduct or failure to perform his duties in a petition when the reason for a recall effort may not be based on any of those things.

Sec. 29.30.225. APPLICATION FOR RECALL PETITION. An application for a recall petition shall contain

(1) the signature and residence address of at least ten voters who will sponsor the petition;

(2) the address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity as to specific actions, pertinent ordinances, laws, regulations, or judicial decrees.

EXPLANATION: This section requires a submission of an application to the clerk for a recall petition. The clerk will provide petition forms and the application procedure is necessary in order to allow the official sought to be recalled to be given an opportunity to have his statement included on the petition.

Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.230, he shall submit a copy of the application to the official who is the subject of the application. The official shall have ten days from receipt of the application to provide the clerk with a statement of 200 words or less if he so chooses.

(b) The clerk shall prepare a recall petition containing

(1) the name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application;

(3) if provided, the statement of the official sought to be recalled;

(4) the date the petition is issued by the clerk;

(5) notice that signatures must be secured within 30 days of the date the petition is issued;

(6) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing address of each signer;

(7) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, that each signer had an opportunity before signing to read the petition, that he believes each signer to be a municipal voter, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section sets forth requirements similar to those proposed under the initiative and referendum procedures as it relates to petition content. Requiring the clerk to prepare the petition insures that it is complete and legible. The period of time within which signatures must be collected has been reduced to 30 days to minimize the period of disruption in government created by a recall effort.

Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 30 days of the date the clerk issues the petition. The statement provided under AS 29.30.240(b)(7) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by 35 percent of the voters residing wthin the municipality based on the number of votes cast at the last regular election for that office. If a petition seeks to recall an official who represents a district, the petition shall be signed by 35 percent of the voters residing within the district based on the number of votes cast at the last regular election for that office.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: This section continues the 30 day signature gathering period and clarifies which election is to be used as a standard for determining the number of signatures required. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that is number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The pages of a petition shall be assembled and filed as a single instrument. Within ten days of the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be amended or supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which is insufficient on its face may not be supplemented. It shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

Sec. 29.30.260. NEW PETITION. The rejection of a petition for any reason does not preclude the filing of a new recall petition. However, a new application may not be filed sooner than six months after a petition is rejected.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficent signatures alone triggers the waiting period.

Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the clerk shall submit it to the assembly or council at its next regular meeting.

EXPLANATION: This section requires the clerk to submit the petition at the next regular meeting rather than immediately as required under existing law.

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days, but not sooner than 40 days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within 75 days, the assembly or council shall hold a special election within 75 days but not sooner than 40 days after a petition is submitted to the assembly or council.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the petition shall not be submitted to the voters. The assembly or council may not appoint the official who resigns from an office after a sufficient recall petition is filed naming him to the same office.

EXPLANATION: The 40 days requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) the statement of the official which appeared on the recall petition or a statement of 200 words or less which is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES () NO ()".

EXPLANATION: This section makes reference to the fact that the statement of the grounds is limited to 200 words or less and provides that the statement of the official used on the petition will appear on the ballot unless the official provides a different statement.

Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that 20 days notice shall be given notwithstanding an ordinance or charter provision to the contrary.

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

Sec. 29.30.310. MAJORITY REQUIRED. A majority vote is required to recall an official. Only those voters residing in the district or area which elects an official may vote on the recall of the official.

EXPLANATION: This section adds a new sentence which makes it clear that if an official is elected by the voters of a district, then only those voters may vote to recall him.

Sec. 29.30.320. EFFECT. If a majority votes to recall an official, the official's seat shall become vacant immediately upon certification of the result of the election. If an incumbent is not recalled at a recall election, an new application for a petition to recall the same incumbent may not be filed sooner than six months after the date the election is certified.

EXPLANATION: The first sentence was added to make it clear when a recalled official looses his seat. The second sentence clarifies the fact that the commencement of the six month period is the date of certification of the election results.

Sec. 29.30.330. SUCCESSORS. (a) If one or more officials is recalled from an assembly or council, the assembly or council, by the affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If one or more officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

(d) A person appointed under (a) - (c) of this section shall serve until a successor is elected and takes office.

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials.

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

NOTICE OF CHANGES
27 OCTOBER 1980

The Title 29 Revision Commission Policy Advisory Group meeting was scheduled for 9:00 a.m., Monday 10 November 1980 in the Chena Room of the Traveler's Inn, Fairbanks.

The time of the meeting has been changed to 10:00 a.m. to accommodate airline scheduling. The place of the meeting has been changed from the Chena Room of the Traveler's Inn to the East Gold Room of the Traveler's Inn.

maf

October 21, 1980

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

Dear Senator Sturgulewski:

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

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

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

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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

THE HEART OF THE MATANUSKA VALLEY

CITY OF PALMER

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

Read 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

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

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

24 October 1980

TO: Technical Committee
Title 29 Revision Commission

FROM: Tamara Brandt Cook TBC
Legal Services

SUBJECT: Changes Recommended to Title 29 by the Technical Committee

Attached you will find the first batch of the drafting changes which are, hopefully, accurate reflections of the drafts agreed to by the Technical Committee. If you get the opportunity to check these over, I would appreciate it. Take an especially close look at the explanations, since these will form the basis of a memo I prepared to justify these changes to the Policy Group.

Please send me any recommendations for improvements to either the drafts themselves or to the explanations, or I can be reached by phone at 465-4996 November 5th, 6th, and 7th. I will send you the other drafts as rapidly as they are completed.

maf

Attachments

Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and a political subdivision. It is a city of the first class or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all legislative powers not prohibited by law or charter.

EXPLANATION: A reference to unified municipalities along with a cross-reference to provisions dealing with the organization of unified municipalities has been included so that this section will provide a complete definition of home rule. No substantive change.

Sec. 29.06.050. Repeal

EXPLANATION: This section deals with the transition period following the 1972 revision of the Municipal Code and is of no effect. The reclassification of municipalities to conform to provisions of the 1972 Code were to have been essentially completed within two years of September 10, 1972.

Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to a municipal form of government and in order to provide for initial government operations, each municipality incorporated after January 1, 1981, or, for a second class city, reclassified after January 1, 1981 is entitled to an organization grant of $150,000, except that a municipality which is merged, consolidated, or unified under AS 29.12. is not entitled to an organization grant.

EXPLANATION: Since no new municipality formed is likely to contain a great enough population to qualify for a grant over the minimum, the provision tying population to the amount of the grant has been eliminated in favor of a flat amount. The amount of the grant has been raised from $25,000 to $150,000 in recognition of the fact that setting up a government has become an expensive proposition and to encourage the formation of local governments despite this expense. In addition, a second class city will qualify to receive that grant as well as a city within an organized borough, whereas the existing law ties the amount of a grant to a second class city and to a first class city in an organized borough to its population. This change encourages the formation of local governments in rural areas where the population may be small. The formation of a city is expensive regardless of the size of the population. It is felt that the grant should be used to cover any initial government operation, so the terms "development and interim" were eliminated as unduly restrictive. The increased grant will be available only to a municipality formed after January 1, 1981.

Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION.

(b) If at least one nomination of a qualified charter commission candidate is not filed in accordance with AS 29.12.240. for each available seat the resolution or petition for unification is void and no election on the question of unification shall be held.

EXPLANATION: Subsection (b) has been added to avoid the expense and inconvenience of an election on unification where there is not enough interest in the question to assure that a charter commission can be formed. An alternative would be to provide for appointment of members when not enough nominations are received, but it was felt that in such cases basic interest in unification was probably lacking so the process should be halted.

Sec. 29.15.020. NOMINATION.

(b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or city council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

EXPLANATION: Subsection (b) has been added to avoid the expense and inconvenience of an election on the question of forming a charter commission if not enough nominations for commission members are received. An alternative would be to provide for appointment of members in such cases but it was felt that failure to nominate a sufficient number of commission candidates indicated a general lack of interest in the formation of a charter commission.

Sec. 29.15.050. INITIATIVE AND REFERENDUM. (a) A municipal charter shall provide procedures for initiative and referendum.

EXPLANATION: This is technical clean-up creating no substantive change in existing law. However, it has been argued that the phrase "charters shall provide the procedures" refers to the procedures set out in Title 29 applicable to general law municipalities. Consequently, "the" has been dropped in order to clarify the fact that home rule municipalities are free to establish procedures which may differ from those set out in Title 29.

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS.

(13) AS 29.24.340(a) (election and term of mayor) Repeal.

(19) AS 29.30.040 (voter qualification) Repeal.

(28) AS 29.33.220 (expenditure of borough revenue) Repeal.

EXPLANATION: AS 29.24.340(a) provides that a home rule city may prescribe additional residency requirements by charter for eligibility to hold the office of mayor. This is not a limitation and does not properly appear in the list of home rule limitations. That section also stipulates that a mayor must be a municipal voter, but it is felt that those sort of administrative decisions ought to be left up to a home rule municipality.

AS 29.30.010 provides that three judges shall be appointed for each polling place and that the assembly or council prescribe rules for conduction elections. These appear to be administrative decisions properly left up to a home rule municipality.

AS 29.30.030(b) provides that the assembly or council may call a special election upon at least 20 days notice. This is an administrative matter properly left up to home rule municipalities. However, it was felt that the section dealing with voter qualifications ought to be included as a limitation on home rule powers to preserve uniformity across the state in this area.

AS 29.33.220 provides that revenues collected on an areawide basis may be expended on general administrative costs and on areawide functions only. Likewise, revenues collected outside cites may be expended on general administrative costs and in providing services outside cities. It was felt that home rule municipalities ought to be given more flexibility in managing revenues.

Sec. 29.65.050. FULFILLMENT OF LAND ENTITLEMENTS.

(j) Notwithstanding AS 29.65.010 - 29.65.130, a municipality which is unable to satisfy its entitlement due to a shortage of vacant, unappropriated, unreserved land suitable for residential, commercial or industrial purposes may fulfill its remaining entitlement by selection of other state land which is vacant, unappropriated and unreserved.

EXPLANATION: This added subsection addresses a problem which has come up when a municipality is formed in an area with little vacant state land nearby. This allows a municipality the option of selecting land not suitable for residential, commercial or industrial purposes rather than being paid for the deficiency, if it desires land for other purposes.

Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. If possible, a judge shall be a voter of the precinct for which he is appointed.

EXPLANATION: Adds the provision that judges be appointed from among precinct voters in order to conform to the 1980 revision of AS 15.10.120. "The municipality may not alter voter qualification requirements of this title" was deleted because that issue is addressed in AS 29.28.030. Subsection (b) which makes this applicable to home rule municipalities was deleted to conform to the change suggested in the proposed draft of AS 29.15.110.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance the procedure for the nomination of elected officers by declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

EXPLANATION: This is a technical revision which does not substantively alter existing law.

Sec. 29.30.030. ELECTION DATES. (a) Unless otherwise provided by ordinance, a regular municipal election shall be held annually on the first Tuesday of October.

EXPLANATION: This is a technical revision assuring maximum flexibility for local governments.

Sec. 29.30.040. VOTER QUALIFICATION. (a) A person may vote if he meets the requirements of AS 15.05.010 - 15.05.040, has been a resident of the municipality for 30 days immediately preceding the election, is registered to vote in state elections and is not disqualified under article V of the state constitution.

(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 the precinct, district, or service area in which he votes.

(c) This section applies to home rule and general law municipalities.

EXPLANATION: A reference has been provided to the voter qualification requirements for state elections. A municipality has been granted the flexibility of imposing a requirement that a person be a resident of the area in which he votes to avoid the possibility of people voting on nonareawide matters who will not have to live with the outcome of the vote.

Sec. 29.30.050. MAJORITY ELECTIONS. (a) A municipality may by ordinance provide for a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

(c) Unless provided otherwise by ordinance, a runoff election shall be held within three weeks from the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

EXPLANATION: Under existing law a runoff election is required if no candidate receives over 40 percent of the votes cast for his office. This has been liberalized to allow a municipality to provide for this by ordinance for certain offices only. Otherwise, the person who receives the greatest number of votes is elected. The provisions specifying when a runoff must be held and the notice requirements is no longer mandatory. In addition, the procedure set out in (c) for municipalities which desire more procedural guidance allows three weeks before the runoff is held rather than two. The additional time would enable cities within boroughs to coordinate their runoffs and hold them at the same time.

CITY OF MC GRATH

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

Jan - Please copy Policy members + Technical Com + Mike W. Thanks Arliss.

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

In file 7-0's Put in natural resources org.

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.