

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

918 SCOM32: AK GENERAL STOCK OWNERSHIP CORP. 1979-80 918

1 greater number is required by the articles of incorporation or the
2 bylaws. The act of the majority of the directors present at a meeting
3 at which a quorum is present is the act of the board of directors,
4 unless the act of a greater number is required by the articles of incor-
5 poration or the bylaws.

6 Sec. 10.50.205. PLACE AND NOTICE OF DIRECTORS' MEETINGS. (a)
7 Regular or special meetings of the board of directors maybe held only in
8 the state.

9 (b) Regular meetings of the board of directors may be held with or
10 without notice as prescribed in the bylaws. Special meetings of the
11 board of directors may be held only after the notice prescribed in the
12 bylaws. Attendance of a director at a meeting constitutes a waiver of
13 notice of the meeting, except when a director attends a meeting for the
14 express purpose of objecting to the transaction of any business because
15 the meeting is not lawfully called or convened. The business to be
16 transacted or the purpose of a special meeting of the board of directors
17 must be specified in the notice or waiver of notice of the meeting.

18 Sec. 10.50.210. PARTICIPATION BY TELEPHONE. The members of the
19 board of directors of a corporation, or a committee designated by it,
20 may participate in a meeting of the board or committee by communicating
21 simultaneously with each other by means of conference telephones or
22 similar communications equipment, so long as all members participating
23 in the meeting can hear one another. Participation in a meeting under
24 this section constitutes presence in person at the meeting.

25 Sec. 10.50.215. DISTRIBUTIONS. (a) Except for distributions
26 required to comply with subchapter U, chapter 1 of the Internal Revenue
27 Code of 1954, as amended (26 U.S.C. secs. 1391 - 1397), a corporation
28 may not make a distribution to its shareholders unless

29 (1) the amount of the retained earning of the corporation

1 immediately before the proposed distribution equals or exceeds the
2 amount of the proposed distribution; or

3 (2) immediately after giving effect to the proposed distribu-
4 tion

5 (A) the sum of the assets of the corporation, exclusive
6 of goodwill, capitalized research and development expenses and
7 deferred charges would be at least equal to one and one-fourth
8 times its liabilities, not including deferred taxes, deferred
9 income and other deferred credits; and

10 (B) the current assets of the corporation would be at
11 least equal to its current liabilities or, if the average of the
12 earnings of the corporation before taxes on income and before
13 interest expense for the two preceding fiscal years was less than
14 the average of the interest expense of the corporation for those
15 fiscal years, at least equal to one and one-fourth times its current
16 liabilities.

17 (b) In determining the amount of the assets of the corporation, no
18 appreciation in value not yet realized may in any event be included,
19 except for readily marketable securities, and profits derived from an
20 exchange of assets may not be included unless the assets received are
21 currently realizable in cash.

22 (c) For the purpose of this section "current assets" may include
23 net amounts which the board has determined in good faith may reasonably
24 be expected to be received from customers during the 12-month period
25 used in calculating current liabilities under existing contractual
26 relationships obligating the customers to make fixed or periodic pay-
27 ments during the term of the contract, after giving effect to future
28 costs not then included in current liabilities but reasonably expected
29 to be incurred by the corporation in performing the contracts.

1 (d) The amount of a distribution payable in property shall, for
2 the purpose of this chapter, be determined on the basis of the value at
3 which the property is carried on the corporation's financial statements
4 in accordance with generally accepted accounting principles.

5 (e) Subparagraph (a)(2)(B) of this section does not apply to a
6 corporation which does not classify its assets into current and fixed
7 assets under generally accepted accounting principles.

8 Sec. 10.50.220. DISTRIBUTIONS IN PARTIAL LIQUIDATION. The board
9 of directors may, from time to time, distribute to its shareholders in
10 partial liquidation a portion of its assets, subject to the following
11 provisions:

12 (1) A distribution may not be made at a time when the corpor-
13 ation is insolvent or when the distribution would render the corporation
14 insolvent.

15 (2) A distribution may not be made unless the distribution is
16 authorized by the affirmative vote of the holders of at least two-thirds
17 of the shares voting on the issue at a meeting of shareholders.

18 (3) Each distribution, when made, shall be identified as a
19 distribution in partial liquidation and the amount per share disclosed
20 to the shareholders concurrently with the distribution.

21 Sec. 10.50.225. CERTAIN LOANS PROHIBITED. A loan may not be made
22 by a corporation to its officers or directors, and a loan may not be
23 made by a corporation secured by its shares.

24 Sec. 10.50.230. LIABILITY OF DIRECTORS IN CERTAIN CASES. (a)
25 Directors who vote for or assent to the declaration of a dividend or
26 other distribution of the assets of a corporation to its shareholders
27 contrary to the provisions of this chapter or contrary to restrictions
28 contained in the articles of incorporation are jointly and severally
29 liable to the corporation for the amount of the dividend paid, or the

1 value of assets distributed in excess of the amount of the dividend or
2 distribution which could have been paid or distributed without a viola-
3 tion of the provisions of this chapter or the restrictions in the arti-
4 cles of incorporation.

5 (b) Directors who vote for or assent to the purchase by a corpora-
6 tion of its own shares contrary to the provisions of this chapter are
7 jointly and severally liable to the corporation for the amount of consi-
8 deration paid in excess of the maximum amount which could have been paid
9 without a violation of the provisions of this chapter.

10 (c) The directors who vote for or assent to the distribution of
11 assets of a corporation to its shareholders during the liquidation of
12 the corporation without the payment and discharge of, or making adequate
13 provision for, all known debts, obligations, and liabilities of the
14 corporation are jointly and severally liable to the corporation for the
15 value of the assets distributed, to the extent that the debts, obliga-
16 tions and liabilities of the corporation are not paid and discharged.

17 (d) The directors who vote for or assent to the making of a loan
18 to an officer or director of the corporation, or the making of a loan
19 secured by shares of the corporation, are jointly and severally liable
20 to the corporation for the amount of the loan until it is repaid.

21 Sec. 10.50.235. EFFECT OF GOOD FAITH RELIANCE ON FINANCIAL STATE-
22 MENTS OR BOOK VALUE. A director is not liable under AS 10.50.230(a),
23 (b) or (c) if

24 (1) he relied and acted in good faith upon financial state-
25 ments of the corporation represented to him to be correct by the presi-
26 dent or the officer of the corporation having charge of its books of
27 account, or certified by an independent public or certified public
28 accountant or firm of certified public accountants fairly to reflect the
29 financial condition of the corporation; or

1 (2) in good faith in determining the amount available for a
2 dividend or distribution he considered the assets to be of their book
3 value.

4 Sec. 10.50.240. PRESUMPTION OF CONSENT OF DIRECTOR AND FILING OF
5 DISSENT. A director present at a meeting of the board of directors at
6 which action on a corporate matter is taken is presumed to have assented
7 to the action taken unless his dissent is entered in the minutes of the
8 meeting or unless he files his written dissent to the action with the
9 person acting as secretary of the meeting before its adjournment or
10 forwards his dissent by registered mail to the secretary of the corpora-
11 tion within five days after the adjournment of the meeting. The right
12 to dissent does not apply to a director who voted in favor of the action.

13 Sec. 10.50.245. DIRECTOR'S RIGHT TO CONTRIBUTION. A director
14 against whom a claim is asserted under AS 10.50.230 - 10.50.240 is
15 entitled to contribution from the other directors who voted for or
16 assented to the action upon which the claim is asserted.

17 Sec. 10.50.250. OFFICERS. The officers of a corporation consist
18 of a president, one or more vice-presidents as prescribed by the bylaws,
19 a secretary, and a treasurer. Each of the officers shall be elected by
20 the board of directors at the time and in the manner prescribed by the
21 bylaws. Other necessary officers and assistant officers and agents may
22 be elected or appointed by the board of directors or chosen in the
23 manner prescribed by the bylaws. Two or more offices may be held by the
24 same person, except the offices of president and secretary.

25 Sec. 10.50.255. DUTIES OF OFFICERS. Officers and agents of the
26 corporation, as between themselves and the corporation, may perform
27 duties in the management of the corporation as provided in the bylaws,
28 or as determined by resolution of the board of directors not inconsis-
29 tent with the bylaws.

1 Sec. 10.50.260. REMOVAL OF OFFICERS. An officer or agent may be
2 removed by the board of directors when, in its judgment, the best inter-
3 ests of the corporation will be served. Removal is without prejudice to
4 the contract rights of the person removed. Election or appointment of
5 an officer or agent does not of itself create contract rights.

6 Sec. 10.50.265. BOOKS AND RECORDS. (a) A corporation organized
7 under this chapter shall keep correct and complete books and records of
8 account, minutes of the proceedings of its shareholders and board of
9 directors, and a record of its shareholders, containing the names and
10 addresses of all shareholders and the number and class of the shares
11 held by each.

12 (b) A corporation organized under this chapter shall make these
13 books and records, or certified copies of them, reasonably available for
14 inspection at the registered office or principal place of business in
15 the state by the department or a shareholder described by AS 10.50.270.

16 Sec. 10.50.270. SHAREHOLDER'S RIGHT TO EXAMINE BOOKS AND RECORDS.
17 A shareholder, upon written demand stating the purpose of the demand,
18 may, in person or by agent or attorney, at a reasonable time for a
19 proper purpose, examine and make extracts from its books and records of
20 account, minutes and record of shareholders.

21 Sec. 10.50.275. LIABILITY FOR REFUSAL OF EXAMINATION. An officer
22 or agent who, or a corporation which, refuses to allow a shareholder, or
23 his agent or attorney, to examine and make extracts from its books and
24 records of account, minutes, and record of shareholders, for a proper
25 purpose, is liable to the shareholder in a penalty of \$1,000 for each
26 day, in addition to other damages or remedy given him by law. It is a
27 defense to an action for penalties under this section that the person
28 suing has within two years sold or offered for sale a list of share-
29 holders of the corporation or any other corporation or has aided or

1 abetted a person in procuring a list of shareholders for this purpose,
2 or has improperly used information secured through a prior examination
3 of the books and records of account, or minutes, or record of share-
4 holders of the corporation or any other corporation, or was not acting
5 in good faith or for a proper purpose in making his demand.

6 Sec. 10.50.280. COURT MAY COMPEL INSPECTION. AS 10.50.265 - 10.-
7 50.285 do not impair the power of a court, upon proof by a shareholder
8 of proper purpose, to compel the production for examination by the
9 shareholder of the books and records of account, minutes, and record of
10 shareholders of a corporation.

11 Sec. 10.50.285. SHAREHOLDERS' RIGHT TO FINANCIAL STATEMENT. Upon
12 the written request of a shareholder of a corporation, the corporation
13 shall mail to the shareholder its most recent financial statements
14 showing in reasonable detail its assets and liabilities and the results
15 of its operations.

16 Sec. 10.50.290. REMOVAL OF DIRECTORS BY SUPERIOR COURT. The
17 superior court may upon an action filed by the attorney general or at
18 least 100 shareholders of at least 18 years of age, remove from office
19 any director in case of fraudulent or dishonest acts or gross abuse of
20 authority or discretion with reference to the corporation and may bar
21 from reelection a director so removed for a period prescribed by the
22 court. The corporation shall be made a party to the action.

23 Sec. 10.50.295. SHAREHOLDER REMOVAL OF DIRECTORS. (a) The entire
24 board of directors an initial director, or a director elected by the
25 board of directors may be removed from office by the affirmative vote of
26 the holders of a majority of the shares voting at an annual or special
27 meeting for which notice of the proposal has been given.

28 (b) An individual director may be removed if the number of votes
29 cast for his removal exceeds the number of votes he received at the last

1 preceding election during which he was a candidate for the office of
2 director.

3 Sec. 10.50.300. SHAREHOLDERS' DERIVATIVE ACTION. (a) An action
4 may be brought on behalf of a corporation, by a shareholder of the
5 corporation, for a judgment in its favor.

6 (b) A person bringing suit under this section must be a share-
7 holder at the time of bringing the action, and must have been a share-
8 holder at the time of the transaction of which he complains or have
9 received his shares by operation of law at that time.

10 (c) In an action under this section, the complaint shall set out
11 with particularity the efforts of the plaintiff to secure the initiation
12 of an action by the board of directors or the reasons for not making
13 those efforts.

14 (d) An action under this section may not be discontinued, com-
15 promised or settled, without the approval of the court having jurisdic-
16 tion of the action. If the court determines that the interests of the
17 shareholders will be substantially affected by a discontinuance, com-
18 promise, or settlement, the court, in its discretion, may direct that
19 notice, by publication or otherwise, be given to the shareholders whose
20 interests it determines will be affected. If notice is required, the
21 court may determine which one or more of the parties to the action must
22 bear the expense of giving the notice, in an amount the court determines
23 and finds to be reasonable, and the amount determined shall be awarded
24 as special costs of the action and recoverable by the prevailing party.

25 (e) If the action on behalf of the corporation is successful, in
26 whole or in part, or if anything is received by the plaintiff as the
27 result of a judgment, compromise or settlement of an action, the court
28 may award the plaintiff reasonable expenses, including reasonable attor-
29 ney fees, and shall direct the plaintiff to account to the corporation

1 for the remainder of the proceeds received by him. This subsection does
2 not apply to a judgment rendered only for the benefit of an injured
3 shareholder and limited to a recovery of the loss or damage sustained by
4 him.

5 (f) In an action under this section, at any time within 30 days
6 after service of summons upon the corporation or upon any defendant who
7 is an officer or director of the corporation, or who held such office at
8 the time of the transaction complained of, the corporation or other
9 defendant may move the court for an order, upon notice and hearing,
10 requiring the plaintiff to furnish security. The motion shall be based
11 upon one or both of the following grounds:

12 (1) that there is no reasonable possibility that the prosecu-
13 tion of the cause of action alleged in the complaint will benefit the
14 corporation or its shareholders; or

15 (2) that the moving party, if other than the corporation, did
16 not participate in the transaction complained of in any capacity.

17 (g) If the court determines, after hearing the evidence adduced by
18 the parties, that the moving party has established by a preponderance of
19 the evidence any of the grounds upon which the motion is based, the
20 court shall fix the nature and amount of security, not to exceed \$50,000,
21 to be furnished by the plaintiff for reasonable expenses, including
22 attorney fees, which may be incurred by the moving party or the corpora-
23 tion in connection with the action, including expenses for which the
24 corporation may become liable under this chapter. A ruling by the court
25 on the motion is not considered a determination of any issue in the
26 action or of its merits. The amount of the security may be increased or
27 decreased in the discretion of the court upon a showing that the secur-
28 ity provided has or may become inadequate or excessive, but the court
29 may not increase the total amount of the security beyond \$50,000 in the

1 aggregate for all defendants. If the court, upon motion, decides that
2 security must be furnished by the plaintiff as to any one or more defen-
3 dants, the action shall be dismissed as to the defendant or defendants,
4 unless the security required by the court is furnished within a reason-
5 able time fixed by the court. The corporation and the moving party have
6 recourse to the security in the amount the court determines upon the
7 termination of the action.

8 (h) If the plaintiff, before an order or determination pursuant to
9 a motion under (f) of this section, posts bond in the aggregate amount
10 of \$50,000 to secure the reasonable expenses of the parties entitled to
11 make the motion, the plaintiff has complied with the requirements of
12 this section and with any order for security. A pending motion under
13 (f) of this section shall be dismissed and no further or additional bond
14 or other security may be required.

15 (i) If a motion is filed under (f) of this section, no pleadings
16 need be filed by the corporation or any other defendant and the prosecu-
17 tion of the action shall be stayed until 10 days after the motion has
18 been disposed of.

19 Sec. 10.50.305. FRAUDULENT TRANSFERS OF SHARES. An individual who
20 transfers or obtains shares of the corporation, or in his capacity as
21 legal guardian obtains shares of the corporation for another, through
22 fraud, misrepresentation, or any deceitful or illegal means is guilty of
23 a felony.

24 Sec. 10.50.310. POLITICAL ACTIVITIES. (a) A corporation may not

25 (1) make contributions or spend money to influence the nomi-
26 nation or election of a candidate for office or the outcome of a ballot
27 proposition or question;

28 (2) endorse a candidate for office or any side of a ballot
29 proposition or question;

1 (3) make any expenditures, including reimbursement for travel
2 and living expenses, or employ any person for the purpose of influencing
3 legislative action.

4 (b) A corporation that knowingly violates this section or that
5 knowingly causes, participates in, aids, or confirms a violation of this
6 section is, upon conviction, punishable by a fine of not more than
7 \$10,000 for each offense.

8 (c) An individual who knowingly violates this section, whether
9 acting for himself, on behalf of an employer, or in concert with another
10 person, is, upon conviction, guilty of a misdemeanor.

11 (d) An individual who knowingly causes, participates in, aids, or
12 confirms any violation of this section is, upon conviction, guilty of a
13 misdemeanor.

14 ARTICLE 2. FORMATION OF CORPORATIONS.

15 Sec. 10.50.315. INCORPORATORS. Three or more natural persons at
16 least 18 years of age may act as incorporators of a corporation by
17 signing, verifying and delivering in duplicate to the commissioner
18 articles of incorporation for the corporation.

19 Sec. 10.50.320. ARTICLES OF INCORPORATION. (a) The articles of
20 incorporation of a corporation shall set out

- 21 (1) the name of the corporation;
22 (2) the period of duration, which may be perpetual;
23 (3) the purpose or purposes for which the corporation is
24 organized;
25 (4) the aggregate number of shares which the corporation may
26 issue;
27 (5) that only one class of stock may be issued by the cor-
28 poration;
29 (6) that shares of stock may be issued only to individuals

1 who were residents of the state on the effective date of its chartering
2 legislation and who continued to be residents until the date of issuance
3 of the shares;

4 (7) that at least one share of stock shall be issued to each
5 individual eligible under (6) of this subsection, unless that individual
6 elects within one year after the date of issuance not to receive the
7 share;

8 (8) that no share of stock may be voluntarily or involun-
9 tarily transferred

10 (A) or encumbered by a shareholder, other than by will
11 or under the laws relating to intestate succession, until five
12 years after the date of issuance of the share, except if the share-
13 holder ceases to be a resident of the state;

14 (B) to an individual other than one who is a resident on
15 the date of transfer;

16 (C) to an individual who, after the transfer, would own
17 more than 10 shares of stock of the corporation;

18 (D) or encumbered by a shareholder under 18 years of age
19 or encumbered by that shareholder's parent or legal guardian;

20 (9) that the corporation must qualify as a general stock
21 ownership corporation under subchapter U of the Internal Revenue Code of
22 1954, as amended (26 U.S.C. secs. 1391 - 1397);

23 (10) any other provision consistent with law which the incor-
24 porators elect to set out in the articles of incorporation for the
25 regulation of the internal affairs of the corporation, including a
26 provision which, under this chapter, is required or permitted to be set
27 out in the bylaws;

28 (11) the address of its initial registered office, and the
29 name of its initial registered agent at that address;

1 (12) the number of directors constituting the initial board of
2 directors and the names and addresses of the persons who are to serve as
3 directors until their successors are elected and qualify;

4 (13) the name and address of each incorporator.

5 (b) It is not necessary to set out in the articles of incorpora-
6 tion any of the corporate powers enumerated in this chapter.

7 Sec. 10.50.325. FILING OF ARTICLES OF INCORPORATION. (a) Dupli-
8 cate originals of the articles of incorporation shall be delivered to
9 the commissioner. If the commissioner finds that the articles of incor-
10 poration conform to law, he shall, when all fees prescribed in AS 10.-
11 05.708 - 10.05.774 have been paid,

12 (1) endorse on each duplicate original the word "filed" and
13 the date of the filing;

14 (2) file one duplicate original in his office;

15 (3) issue a certificate of incorporation and affix the other
16 duplicate original to it.

17 (b) The certificate of incorporation, together with the duplicate
18 original of the articles of incorporation affixed by the commissioner,
19 shall be returned to the incorporators or their representative.

20 Sec. 10.50.330. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORA-
21 TION. Upon the issuance of the certificate of incorporation, the cor-
22 porate existence begins. The certificate of incorporation is conclusive
23 evidence that all conditions required to be performed by the incorpora-
24 tors have been complied with and that the corporation has been incor-
25 porated. The issuance of the certificate does not affect the right of
26 the state to bring a proceeding to cancel or revoke the certificate of
27 incorporation or for involuntary dissolution of the corporation.

28 Sec. 10.50.335. ARTICLES OF INCORPORATION AND INITIAL BYLAWS. (a)
29 The corporation shall submit copies of the original articles of incor-

1 poration and the initial bylaws adopted under AS 10.05.340 to the legis-
2 lature within 30 days of the issuance of the certificate of incorpora-
3 tion.

4 (b) The legislature, within 60 legislative days after receipt of a
5 copy of the original articles of incorporation and the initial bylaws,
6 may disapprove any provision of the articles of incorporation or bylaws
7 by concurrent resolution. Disapproval by the legislature of a provision
8 of the articles of incorporation or the bylaws of a corporation does not
9 alter or impair the power of a corporation to fulfill the terms of a
10 contractual agreement or impair the rights of a person with whom a
11 corporation has entered into a contractual agreement.

12 (c) A provision of the articles of incorporation or the bylaws is
13 suspended upon disapproval by the legislature and is of no effect unless
14 approved by a majority of the shares voting on the issue at the next
15 meeting of the shareholders.

16 Sec. 10.50.340. ORGANIZATION MEETING OF DIRECTORS. After the
17 issuance of the certificate of incorporation an organizational meeting
18 of the board of directors named in the articles of incorporation shall
19 be held in the state, at the call of a majority of the incorporators,
20 for the purpose of adopting bylaws, electing officers, and the trans-
21 action of other business as may come before the meeting. The incor-
22 porators calling the meeting shall give at least 10 days notice of the
23 meeting by mail to each director named. The notice shall state the time
24 and place of the meeting.

25 ARTICLE 3. APPLICATION FOR SHARES.

26 Sec. 10.50.345. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Beginning
27 not less than 90 days before the initial issue of stock, the corporation
28 shall at least weekly notify the public of its intention to issue stock
29 and the method for qualifying and applying for shares. The notice shall

1 be by publication in newspapers of all regions of the state, by radio
2 and television announcements, and by other means the corporation deter-
3 mines to be appropriate and reasonable, and shall be continued at least
4 one each month for 11 months following the date of issuance of shares.

5 Sec. 10.50.350. CORPORATION NOT LIABLE TO SHAREHOLDERS. Regis-
6 tration for issuance of the initial shares of the corporation is a
7 responsibility solely of an individual eligible under AS 10.50.320(a)(6)
8 to receive the initial shares of the corporation. The corporation may
9 not be held liable for

- 10 (1) any loss resulting directly or indirectly from the
11 failure of an individual to apply for shares of the corporation; or
12 (2) payment of a declared or paid dividend to an individual
13 who would have been entitled to receive the dividend had he been a
14 shareholder at the time of declaration or payment.

15 Sec. 10.50.355. LATE APPLICATION FOR SHARES. An individual eli-
16 gible under AS 10.50.320(a)(6) to receive the initial shares of the
17 corporation who failed to apply for the shares within one year after
18 their issuance may apply for and receive the shares any time after one
19 year and within two years after the date of issuance if he is otherwise
20 qualified to own stock of the corporation and upon the payment of the
21 book value of the shares.

22 Sec. 10.50.360. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS
23 SHAREHOLDER. The ownership interest in shares of the corporation's
24 stock issued to an individual ineligible to receive the initial shares,
25 who has presented fraudulent or misleading information regarding his
26 eligibility to own those shares, is void upon the issuance of an appro-
27 priate order by the superior court. The ineligible individual is also
28 liable for the full amount of dividends, or other distributions to
29 shareholders received by him plus interest from the date of distribu-

1 tion, and legal fees and costs of recovery incurred by the corporation.
2 This section applies to an individual who has presented fraudulent or
3 misleading information regarding the eligibility of another person for
4 whom he acts in the capacity of legal guardian.

5 ARTICLE 4. AMENDMENT.

6 Sec. 10.50.365. RIGHT TO AMEND ARTICLES OF INCORPORATION. A cor-
7 poration may amend its articles of incorporation so long as its articles
8 of incorporation as amended contain provisions which could be lawfully
9 contained in original articles of incorporation at the time the amend-
10 ment is made.

11 Sec. 10.50.370. PURPOSES FOR WHICH ARTICLES MAY BE AMENDED. With-
12 out limitation on the general power of amendment, a corporation may
13 amend its articles of incorporation to

- 14 (1) change its corporate name;
- 15 (2) change its period of duration;
- 16 (3) change, enlarge or diminish its corporate purposes;
- 17 (4) increase or decrease the aggregate number of shares, or
18 shares of a class, which the corporation may issue;
- 19 (5) exchange or cancel its shares, whether issued or un-
20 issued.

21 Sec. 10.50.375. PROCEDURE TO AMEND ARTICLES OF INCORPORATION.
22 Amendments to the articles of incorporation shall be made in the follow-
23 ing manner.

24 (1) The board of directors may adopt a resolution setting out
25 the proposed amendment and directing that it be submitted to a vote at
26 the next meeting of shareholders.

27 (2) A proposed amendment shall be submitted to a vote at the
28 next meeting of shareholders if the secretary of the corporation re-
29 ceives a petition setting out the proposed amendment and is signed by at

1 least 1,000 shareholders.

2 (3) Written or printed notice setting out the proposed amend-
3 ment or a summary of the changes to be effected shall be given to each
4 shareholder of record entitled to vote within the time and in the manner
5 provided in this chapter for the giving of notice of meetings of share-
6 holders. If the meeting is an annual meeting, the proposed amendment or
7 summary may be included in the notice of the annual meeting.

8 (4) At the meeting a vote of the shareholders entitled to
9 vote shall be taken on the proposed amendment. The proposed amendment
10 shall be adopted if it receives the affirmative vote of the holders of
11 at least two-thirds of the shares voting.

12 (5) More than one amendment may be submitted to the share-
13 holders and voted upon at one meeting.

14 Sec. 10.50.380. ARTICLES OF AMENDMENT. The articles of amendment
15 shall be executed in duplicate by the corporation by its president or
16 vice-president and by its secretary or an assistant secretary, and
17 verified by one of the officers signing the articles, and shall set out

18 (1) the name of the corporation;

19 (2) the amendment adopted;

20 (3) the date of the adoption of the amendment by the share-
21 holders;

22 (4) the number of shares outstanding and the number of shares
23 voting;

24 (5) the number of shares voted for and against the amendment,
25 respectively;

26 (6) if the amendment provides for an exchange or cancellation
27 of issued shares, and if the manner in which this is carried out is not
28 set out in the amendment, a statement of the manner in which it is to be
29 carried out.

1 Sec. 10.50.385. FILING OF ARTICLES OF AMENDMENT. (a) Duplicate
2 originals of the articles of amendment shall be delivered to the commis-
3 sioner. If the commissioner finds that the articles of amendment con-
4 form to law, he shall, when all fees and franchise taxes prescribed in
5 this chapter have been paid,

6 (1) endorse on each duplicate original the word "filed" and
7 the date of the filing;

8 (2) file one duplicate original in his office;

9 (3) issue a certificate of amendment and affix the other
10 duplicate original to it.

11 (b) The certificate of amendment, together with the duplicate
12 original of the articles of amendment affixed by the commissioner, shall
13 be returned to the corporation or its representative.

14 Sec. 10.50.390. EFFECT OF CERTIFICATE OF AMENDMENT. (a) Upon the
15 issuance of the certificate of amendment by the commissioner, the amend-
16 ment becomes effective and the articles of incorporation are considered
17 amended accordingly.

18 (b) No amendment may affect an existing cause of action in favor
19 of or against the corporation, or a pending suit to which the corpora-
20 tion is a party, or the existing rights of persons other than share-
21 holders. In the event the corporate name is changed by amendment, no
22 suit brought by or against the corporation under its former name abates
23 for that reason.

24 Sec. 10.50.395. RESTATED ARTICLES OF INCORPORATION. A corporation
25 may at any time, by resolution adopted by the board of directors, re-
26 state its articles of incorporation as amended up to that time. Upon
27 the adoption of the resolution, restated articles of incorporation shall
28 be executed in duplicate by the corporation by its president or a vice-
29 president and by its secretary or assistant secretary and verified by

1 one of the officers signing the articles and shall set out all of the
2 operative provisions of the articles of incorporation as amended up to
3 that time together with a statement that the restated articles of incor-
4 poration correctly set out without change the corresponding provisions
5 of the articles of incorporation as amended up to that time and that the
6 restated articles of incorporation supersede the original articles of
7 incorporation and all amendments to them.

8 Sec. 10.50.400. EXECUTION OF RESTATED ARTICLES OF INCORPORATION.
9 Upon approval of the restated articles of incorporation, they shall be
10 executed in duplicate by the corporation by its president or vice-presi-
11 dent and by its secretary or assistant secretary, and verified by one of
12 the officers signing the articles.

13 Sec. 10.50.405. CONTENTS OF RESTATED ARTICLES OF INCORPORATION.
14 The restated articles of incorporation shall set out

- 15 (1) the name of the corporation;
- 16 (2) the period of its duration;
- 17 (3) the purpose or purposes which the corporation is autho-
18 rized to pursue;
- 19 (4) the aggregate number of shares which the corporation may
20 issue;
- 21 (5) any provisions, not inconsistent with law, which are set
22 out in the articles of incorporation as amended, for the regulation of
23 the internal affairs of the corporation;
- 24 (6) a statement that the restated articles of incorporation
25 correctly set out without change the corresponding provisions of the
26 articles of incorporation as amended, and that the restated articles of
27 incorporation supersede the original articles of incorporation and all
28 amendments to the original articles of incorporation.

29 Sec. 10.50.410. FILING OF RESTATED ARTICLES OF INCORPORATION WITH

1 COMMISSIONER. (a) Duplicate originals of the restated articles of
2 incorporation shall be delivered to the commissioner. If the commis-
3 sioner finds that the restated articles of incorporation conform to law,
4 he shall, when all fees and franchise taxes prescribed in this chapter
5 have been paid,

6 (1) endorse on each duplicate original the word "filed" and
7 the date of the filing;

8 (2) file one duplicate original in his office;

9 (3) issue a restated certificate of incorporation and affix
10 the other duplicate original to it.

11 (b) The restated certificate of incorporation, together with the
12 duplicate original of the restated articles of incorporation affixed by
13 the commissioner, shall be returned to the corporation or its repre-
14 sentative.

15 Sec. 10.50.415. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF
16 INCORPORATION. Upon the issuance of the restated certificate of incor-
17 poration, the restated articles of incorporation become effective and
18 supersede the original articles of incorporation and all amendments.

19 ARTICLE 5. SALE OF ASSETS.

20 Sec. 10.50.420. SALE OR MORTGAGE OF ASSETS IN REGULAR COURSE OF
21 BUSINESS. The sale, lease, exchange, mortgage, pledge, or other dispo-
22 sition of all, or substantially all, the property and assets of a cor-
23 poration, when made in the usual and regular course of the business of
24 the corporation, may be made upon the terms and conditions and for the
25 consideration, which may consist in whole or in part of money or pro-
26 perty, real or personal, including shares of another corporation, domes-
27 tic or foreign, authorized by the board of directors. No authorization
28 or consent of the shareholders is required.

29 Sec. 10.50.425. SALE OR MORTGAGE OF ASSETS OTHER THAN IN REGULAR

1 COURSE OF BUSINESS. A sale, lease, exchange, mortgage, pledge, or other
2 disposition of all, or substantially all, the property and assets, with
3 or without the good will, of a corporation, if not made in the usual and
4 regular course of its business, may be made upon the terms and condi-
5 tions and for the consideration, which may consist in whole or in part
6 of money or property, real or personal, including shares of another
7 corporation, as authorized in the following manner.

8 (1) The board of directors shall adopt a resolution recom-
9 mending the sale, lease, exchange, mortgage, pledge, or other disposi-
10 tion and directing the submission of the resolution to a vote at the
11 next meeting of shareholders.

12 (2) Written or printed notice shall be given to each share-
13 holder of record entitled to vote at the meeting within the time and in
14 the manner provided in this chapter for the giving of notice of meetings
15 of shareholders, and, whether the meeting is an annual or a special
16 meeting, shall state that the purpose, or one of the purposes, of the
17 meeting is to consider the proposed sale, lease, exchange, mortgage,
18 pledge, or other disposition.

19 Sec. 10.50.430. APPROVAL OF PLAN BY SHAREHOLDERS. At the meeting
20 the shareholders may authorize the sale, lease, exchange, mortgage,
21 pledge, or other disposition and may fix, or may authorize the board of
22 directors to fix the terms and conditions and the consideration to be
23 received by the corporation. Each outstanding share of the corporation
24 is entitled to vote. The authorization requires the affirmative vote of
25 the holders of at least two-thirds of the shares voting.

26 Sec. 10.50.435. ABANDONMENT OF PLAN BY BOARD OF DIRECTORS. After
27 authorization by a vote of shareholders, the board of directors may,
28 nevertheless, abandon the sale, lease, exchange, mortgage, pledge, or
29 other disposition of assets, subject to the rights of third parties

1 under contracts relating to the disposition, without further action or
2 approval by shareholders.

3 Sec. 10.50.440. RIGHTS OF DISSENTING SHAREHOLDERS UPON SALE OR
4 EXCHANGE OF ASSETS. If a sale or exchange of all or substantially all
5 of the property and assets of a corporation other than in the usual and
6 regular course of its business, or in connection with the dissolution
7 and liquidation of the corporation, is authorized by a vote of the
8 shareholders of the corporation, a shareholder who files a written
9 objection with the corporation, before or at the meeting of shareholders
10 at which the sale or exchange is authorized, and who does not vote in
11 its favor may, within 10 days after the date on which the vote was
12 taken, make written demand on the corporation for the payment to him of
13 the fair value of his shares as of the day before the date on which the
14 vote was taken. If the sale or exchange is effected, the corporation
15 shall pay to the shareholder, upon surrender of his certificate or other
16 evidence of ownership representing the shares, their fair value. The
17 demand shall state the number of shares owned by the dissenting share-
18 holder. A shareholder failing to make demand within the 10-day period
19 is bound by the terms of the sale or exchange.

20 Sec. 10.50.445. NOTICE TO DISSENTING SHAREHOLDER. Within 10 days
21 after the sale or exchange is effected, the corporation shall give
22 notice that it is effected to each dissenting shareholder who has made
23 demand as provided in AS 10.50.440 for the payment of the fair value of
24 his shares.

25 Sec. 10.50.450. PAYMENT TO DISSENTING SHAREHOLDER AFTER AGREEMENT
26 ON VALUE OF SHARES. If within 60 days after the date on which the sale
27 or exchange was effected the value of the shares is agreed upon between
28 the dissenting shareholder and the corporation, payment shall be made
29 within 90 days after the date the sale or exchange was effected, upon

1 the surrender of his certificate or certificates representing the shares.
2 Upon payment of the agreed value, the dissenting shareholder ceases to
3 have an interest in the shares or in the corporation.

4 Sec. 10.50.455. ACTION BY DISSENTING SHAREHOLDER TO COMPEL PAYMENT
5 UPON FAILURE TO AGREE ON VALUE. If within the 60-day period the share-
6 holder and the corporation do not agree, the dissenting shareholder may,
7 within 60 days after the expiration of the 60-day period, file a peti-
8 tion in the superior court asking for a finding and determination of the
9 fair value of the shares, and is entitled to judgment against the cor-
10 poration for the amount of the fair value as of the day before the date
11 on which the vote was taken approving the sale or exchange, together
12 with interest to the date of the judgment. The judgment is payable only
13 upon and simultaneously with the surrender to the corporation of the
14 certificate or other evidence of ownership representing the shares.
15 Upon payment of the judgment, the dissenting shareholder ceases to have
16 an interest in the shares or in the corporation. Unless the dissenting
17 shareholder files the petition within the 60-day period, he and all
18 persons claiming under him are bound by the terms of the sale or ex-
19 change.

20 Sec. 10.50.460. EFFECT OF ABANDONMENT OR REVOCATION OF SALE OR
21 EXCHANGE ON SHAREHOLDER'S RIGHTS. The right of a dissenting shareholder
22 to be paid the fair value of his shares ceases when the corporation
23 abandons the sale or exchange or the shareholders revoke the authority
24 to make the sale or exchange.

25 Sec. 10.50.465. STATUS OF SHARES ACQUIRED FROM DISSENTING SHARE-
26 HOLDER. Shares acquired by the corporation pursuant to the payment of
27 the agreed value or to payment of the judgment entered for the agreed
28 value may be held and disposed of by the corporation as treasury shares.

29 ARTICLE 6. DISSOLUTION.

1 Sec. 10.50.470. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the
2 issuance of the certificate of dissolution, the existence of the cor-
3 poration ceases.

4 Sec. 10.50.475. VOLUNTARY DISSOLUTION BY ACT OF CORPORATION. (a)
5 A corporation may be dissolved by the act of the corporation when autho-
6 rized in the manner provided in this section and in AS 10.50.485.

7 (b) The board of directors shall adopt a resolution recommending
8 that the corporation be dissolved, and directing that the question of
9 dissolution be submitted to a vote at the next meeting of shareholders.

10 (c) A proposed dissolution of the corporation shall be submitted
11 to a vote at the next meeting of shareholders if the secretary of the
12 corporation receives a petition proposing dissolution signed by at least
13 100 shareholders.

14 (d) Written or printed notice shall be given to each shareholder
15 of record entitled to vote at the meeting within the time and in the
16 manner provided in this chapter for the giving of notice of meetings of
17 shareholders, and, whether the meeting is an annual or special meeting,
18 the notice shall state that the purpose of the meeting is to consider
19 the advisability of dissolving the corporation.

20 (e) At the meeting a vote of shareholders entitled to vote shall
21 be taken on the resolution to dissolve the corporation. Each outstand-
22 ing share of the corporation may vote on the resolution. The resolution
23 is adopted if it receives the affirmative vote of the holders of at
24 least one-third of the shares entitled to vote.

25 Sec. 10.50.480. EXECUTION OF STATEMENT OF INTENT TO DISSOLVE.
26 Upon the adoption of the resolution, a statement of intent to dissolve
27 shall be executed in duplicate by the corporation by its president or
28 vice-president and by the secretary or an assistant secretary, and
29 verified by one of the officers signing the statement. The statement of

1 intent to dissolve shall set out

- 2 (1) the name of the corporation;
- 3 (2) the names and addresses of its officers;
- 4 (3) the names and addresses of its directors;
- 5 (4) a copy of the resolution adopted by the shareholders
- 6 authorizing the dissolution of the corporation;
- 7 (5) the number of shares outstanding;
- 8 (6) the number of shares voted for and against the resolu-
- 9 tion.

10 Sec. 10.50.485. FILING OF STATEMENT OF INTENT TO DISSOLVE. Dupli-
11 cate originals of the statement of intent to dissolve shall be delivered
12 to the commissioner. If the commissioner finds that the statement
13 conforms to law, he shall, when all fees and franchise taxes prescribed
14 in this chapter have been paid,

- 15 (1) endorse on each duplicate original the word "filed" and
- 16 the date of the filing;
- 17 (2) file one duplicate original in his office;
- 18 (3) return the other duplicate original to the corporation or
- 19 its representative.

20 Sec. 10.50.490. EFFECT OF STATEMENT OF INTENT TO DISSOLVE. On the
21 filing by the commissioner of a statement of intent to dissolve, the
22 corporation shall cease to carry on business, except that necessary for
23 the winding up of its business. However, corporate existence continues
24 until a certificate of dissolution has been issued by the commissioner
25 or until a decree dissolving the corporation has been entered by a
26 competent court as provided in this chapter.

27 Sec. 10.50.495. PROCEDURE AFTER FILING OF STATEMENT OF INTENT TO
28 DISSOLVE. After the commissioner has filed the statement of intent to
29 dissolve, the corporation

1 (1) shall immediately mail notice of the filing to each known
2 creditor of the corporation;

3 (2) shall proceed to collect its assets, convey and dispose
4 of its property which is not to be distributed in kind to its share-
5 holders, pay, satisfy and discharge its liabilities and obligations and
6 do all other acts required to liquidate its business and affairs, and,
7 after paying or adequately providing for the payment of its obligations,
8 distribute the remainder of its assets, either in cash or in kind, among
9 its shareholders according to their respective rights and interests;

10 (3) at any time during the liquidation of its business and
11 affairs may apply to a court of competent jurisdiction in the state to
12 have the liquidation continued under the supervision of the court;

13 (4) shall, if it has not completed dissolution proceedings
14 within two years after the date the statement of intent to dissolve is
15 filed, be involuntarily dissolved by the commissioner after 60 days
16 notice of his intent to do so has been given to the corporation.

17 Sec. 10.50.500. MANNER OF REVOKING A VOLUNTARY DISSOLUTION PRO-
18 CEEDING. (a) The board of directors may adopt a resolution recommend-
19 ing that the voluntary dissolution proceedings be revoked, and directing
20 that the question of revocation be submitted to a vote at a special
21 meeting of shareholders.

22 (b) A proposed revocation of a voluntary dissolution of the cor-
23 poration shall be submitted to a vote at the next meeting of share-
24 holders if the secretary of the corporation receives a petition pro-
25 posing revocation signed by at least 1,000 shareholders.

26 (c) Written or printed notice, stating that the purpose of the
27 meeting is to consider the advisability of revoking the voluntary dis-
28 solution proceedings, shall be given to each shareholder of record
29 entitled to vote at the meeting within the time and in the manner pro-

1 vided in this chapter for the giving of notice of special meetings of
2 shareholders.

3 (d) At the meeting a vote of the shareholders entitled to vote
4 shall be taken on the resolution to revoke the voluntary dissolution
5 proceeding. Adoption of the resolution requires the affirmative vote of
6 the holders of at least two-thirds of the shares voting.

7 (e) Upon the adoption of the resolution, a statement of revocation
8 of voluntary dissolution proceedings shall be executed in duplicate by
9 the corporation by its president or vice-president and by its secretary
10 or an assistant secretary, and verified by one of the officers signing
11 the statement. The statement of revocation of voluntary dissolution
12 shall set out

- 13 (1) the name of the corporation;
- 14 (2) the names and addresses of its officers;
- 15 (3) the names and addresses of its directors;
- 16 (4) a copy of the resolution adopted by the shareholders
17 revoking the voluntary dissolution proceedings;
- 18 (5) the number of shares outstanding;
- 19 (6) the number of shares voted for and against the resolu-
20 tion.

21 Sec. 10.50.505. FILING OF STATEMENT OF REVOCATION OF A VOLUNTARY
22 DISSOLUTION PROCEEDING. Duplicate originals of the statement of revo-
23 cation of voluntary dissolution proceedings shall be delivered to the
24 commissioner. If the commissioner finds that the statement conforms to
25 law, he shall, when all fees and franchise taxes prescribed in this
26 chapter have been paid,

- 27 (1) endorse on each duplicate original the word "filed" and
28 the date of the filing;
- 29 (2) file one duplicate original in his office;

1 (3) return the other duplicate original to the corporation or
2 its representative.

3 Sec. 10.50.510. EFFECT OF STATEMENT OF REVOCATION OF A VOLUNTARY
4 DISSOLUTION PROCEEDING. Upon the filing by the commissioner of a state-
5 ment of revocation of a voluntary dissolution proceeding, the revocation
6 of the proceeding becomes effective and the corporation may again carry
7 on its business.

8 Sec. 10.50.515. EXECUTION OF ARTICLES OF DISSOLUTION. If a volun-
9 tary dissolution proceeding has not been revoked, then when all debts,
10 liabilities, and obligations of the corporation have been paid and
11 discharged, or adequate provision has been made for payment, and all of
12 the remaining property and assets of the corporation have been distri-
13 buted to its shareholders, articles of dissolution shall be executed in
14 duplicate by the corporation by its president or vice-president and by
15 its secretary or an assistant secretary, and verified by one of the
16 officers signing the articles. The articles of dissolution shall set
17 out

18 (1) the name of the corporation;

19 (2) that the commissioner has filed a statement of intent to
20 dissolve the corporation, and the date on which the statement was filed;

21 (3) that all debts, obligations and liabilities of the cor-
22 poration have been paid and discharged or that adequate provision has
23 been made for payment;

24 (4) that the remaining property and assets of the corporation
25 have been distributed among its shareholders in accordance with their
26 respective rights and interests;

27 (5) that there are no suits pending against the corporation,
28 or that adequate provision has been made for the satisfaction of a judg-
29 ment, order or decree which may be entered against the corporation in a

1 pending suit.

2 Sec. 10.50.520. FILING OF ARTICLES OF DISSOLUTION. (a) Duplicate
3 originals of the articles of dissolution shall be delivered to the
4 commissioner. If the commissioner finds that the articles of dissolu-
5 tion conform to law, he shall, when all fees and franchise taxes pre-
6 scribed in this chapter have been paid,

7 (1) endorse on each duplicate original the word "filed" and
8 the date of the filing;

9 (2) file one duplicate original in his office;

10 (3) issue a certificate of dissolution and affix the other
11 duplicate original to it.

12 (b) The certificate of dissolution, together with the duplicate
13 original of the articles of dissolution affixed, shall be returned to
14 the representative of the dissolved corporation.

15 Sec. 10.50.525. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the
16 issuance of the certificate of dissolution the existence of the corpora-
17 tion ceases, except for the purpose of suits, other proceedings and
18 appropriate corporate action by shareholders, directors and officers as
19 provided in this chapter.

20 Sec. 10.50.530. INVOLUNTARY DISSOLUTION. (a) A corporation may
21 be dissolved involuntarily by the commissioner when

22 (1) the corporation is delinquent six months in fil'ng its
23 annual report or in paying a license filing fee or penalty;

24 (2) the corporation has failed for 30 days to appoint and
25 maintain a registered agent in this state; or

26 (3) the corporation has failed for 30 days after change of
27 its registered office or registered agent to file in the office of the
28 commissioner a statement of the change;

29 (4) the corporation has failed for two years to complete

1 dissolution under a statement of intent to dissolve; or

2 (5) a vacancy in the board of directors of a corporation is
3 not filled within six months or the time of the next annual meeting,
4 whichever occurs first.

5 (b) A corporation may not be involuntarily dissolved unless the
6 commissioner has given the corporation at least 60 days notice of its
7 delinquency or omission by certified mail addressed to its registered
8 office or in care of one of its principal officers or directors, at the
9 last known address of the officer or director, as shown by the records
10 of the commissioner, and the corporation has failed to correct the
11 neglect, omission or delinquency before involuntary dissolution.

12 (c) When a corporation has given cause for involuntary dissolution
13 and has failed to correct the neglect, omission or delinquency as pro-
14 vided in this section, the commissioner shall dissolve the corporation
15 by issuing a certificate of involuntary dissolution containing a state-
16 ment that the corporation has been dissolved, the date, and the reason
17 for which it was dissolved. The original certificate of dissolution
18 shall be placed in the department files and a copy of it mailed to the
19 corporation at its registered office or in care of one of its principal
20 officers or directors, at the last known address of the officer or
21 director, as shown by the records of the commissioner. Upon the issu-
22 ance of the certificate of involuntary dissolution, the existence of the
23 corporation shall cease, except as otherwise provided in this section,
24 and its name shall be available to and may be adopted by another cor-
25 poration no less than six months after the dissolution.

26 (d) A corporation dissolved by the commissioner under the provi-
27 sions of this section may be reinstated by the commissioner at any time
28 within two years from the date of the certificate of involuntary disso-
29 lution whenever it is established to the satisfaction of the commis-

1 sioner that in fact there was no cause for the dissolution, or whenever
2 the neglect or delinquency resulting in dissolution has been corrected
3 and payment made of double the amount delinquent along with the amount
4 the corporation would have paid had it not been dissolved during the
5 two-year period. Reinstatement may not be authorized if the same or a
6 deceptively similar corporate, limited partnership, reserved or regis-
7 tered name is currently on file with the commissioner, unless the cor-
8 poration being reinstated contemporaneously amends its articles of incor-
9 poration to change its name to conform with the provisions of this
10 chapter.

11 (e) Nothing in this section relieves a corporation reinstated
12 under this section from penalty of forfeiture of its powers as a corpo-
13 ration in case of failure to pay subsequently accruing licenses and
14 taxes imposed by a law of this state.

15 (f) An action arising out of a contract assigned by a corporation
16 dissolved under this section may be brought in the name of the assignee.
17 The fact of assignment and of purchase by the plaintiff shall be set out
18 in the complaint or other process. The defendant may avail himself of
19 any matter of defense of which he might have availed himself in a suit
20 upon the claim by the corporation, had it not been dissolved under this
21 section.

22 (g) Service of process on a corporation dissolved under this
23 section shall be made in the same manner prescribed by law as if the
24 corporation had not been dissolved.

25 (h) In addition to any other remedies provided by law a corpora-
26 tion may be dissolved involuntarily by a decree of the superior court in
27 an action filed by the attorney general when it is established that

28 (1) the corporation procured its certificate of incorporation
29 through fraud; or

1 (2) the corporation has continued to exceed or abuse the
2 authority conferred upon it by law.

3 Sec. 10.50.535. VENUE AND PROCESS. (a) An action for the invol-
4 untary dissolution of a corporation shall be commenced by the attorney
5 general in the superior court.

6 (b) Summons shall issue and be served as in other civil actions.
7 If process is returned not found, the attorney general shall publish
8 notice as in other civil cases in a newspaper published in the judicial
9 district where the registered office of the corporation is situated,
10 containing a notice of the pendency of the action, the title of the
11 court, the title of the action, and the date on or after which default
12 may be entered. The attorney general may include in one notice the
13 names of any number of corporations against which actions are pending in
14 the same court.

15 (c) The attorney general shall have a copy of the notice mailed to
16 the corporation at its registered office within 10 days after the first
17 publication of it.

18 (d) Notice shall be published at least once each week for two
19 successive weeks, and the first publication may begin at any time after
20 the summons has been returned.

21 (e) Unless a corporation is served with summons, no default may be
22 taken against it earlier than 30 days after the first publication of the
23 notice.

24 Sec. 10.50.540. JURISDICTION OF COURT TO LIQUIDATE ASSETS AND
25 BUSINESS OF CORPORATION. The superior court may liquidate the assets
26 and business of a corporation in the cases provided in AS 10.50.545 -
27 10.50.560.

28 Sec. 10.50.545. ACTION BY SHAREHOLDER FOR LIQUIDATION. In an
29 action by a shareholder, the superior court may liquidate the assets and

1 business of a corporation when it is established

2 (1) that the directors are deadlocked in the management of
3 the corporate affairs and the shareholders are unable to break the
4 deadlock, and that irreparable injury to the corporation is being
5 suffered or is threatened by reason of the deadlock;

6 (2) that the acts of the directors or those in control of the
7 corporation are illegal, oppressive or fraudulent;

8 (3) that the shareholders are deadlocked in voting power, and
9 have failed, for a period which includes at least two consecutive annual
10 meeting dates, to elect successors to directors whose terms have expired
11 or would have expired upon the election of their successors; or

12 (4) that the corporate assets are being misapplied or wasted.

13 Sec. 10.50.550. ACTION BY CREDITOR FOR LIQUIDATION. In an action
14 by a creditor, the superior court may liquidate the assets and business
15 of a corporation when

16 (1) the claim of the creditor has been reduced to judgment
17 and an execution on the judgment has been returned unsatisfied and it is
18 established that the corporation is insolvent; or

19 (2) the corporation has admitted in writing that the claim of
20 the creditor is due and owing and it is established that the corpora-
21 tion is insolvent.

22 Sec. 10.50.555. LIQUIDATION ON APPLICATION BY CORPORATION. Upon
23 application by a corporation which has filed a statement of intent to
24 dissolve, as provided in this chapter, to have its liquidation continued
25 under the supervision of the court, the superior court may liquidate the
26 assets and business of the corporation.

27 Sec. 10.50.560. LIQUIDATION IN ACTION BY ATTORNEY GENERAL FOR
28 DISSOLUTION. When an action has been filed by the attorney general to
29 dissolve a corporation and it is established that liquidation of its

1 business and affairs should precede the entry of a decree of dissolu-
2 tion, the superior court may liquidate the assets and business of a
3 corporation.

4 Sec. 10.50.565. JOINDER OF SHAREHOLDERS NOT MANDATORY. It is not
5 necessary to make shareholders parties to an action or proceeding for
6 liquidation of the assets and business of a corporation unless relief is
7 sought against them personally.

8 Sec. 10.50.570. PROCEDURE IN LIQUIDATION OF CORPORATION BY COURT.
9 In a proceeding to liquidate the assets and business of a corporation,
10 the superior court may issue injunctions, appoint a receiver pendente
11 lite with powers and duties as the court may direct, and take other
12 proceedings necessary to preserve the corporate assets wherever situated
13 and carry on the business of the corporation until a full hearing is
14 had.

15 Sec. 10.50.575. APPOINTMENT OF RECEIVER. After a hearing held
16 upon such notice as the court may direct to be given to all parties to
17 the proceedings and to any other parties in interest designated by the
18 court, the court may appoint a liquidating receiver with authority to
19 collect the assets of the corporation, including amounts owing to the
20 corporation by shareholders on an unpaid portion of the consideration
21 for the issuance of shares. The liquidating receiver may, subject to
22 the order of the court, sell, convey and dispose of all or a part of the
23 assets of the corporation wherever situated, either at public or private
24 sale.

25 Sec. 10.50.580. DISPOSITION OF ASSETS OR PROCEEDS FROM SALE OF
26 ASSETS. The assets of the corporation or the proceeds from a sale,
27 conveyance or other disposition of assets shall be applied to the ex-
28 penses of liquidation and to the payment of the liabilities and obli-
29 gations of the corporation. Remaining assets or proceeds shall be

1 distributed among shareholders according to their respective rights and
2 interests.

3 Sec. 10.50.585. STATED POWERS AND DUTIES OF RECEIVER. The order
4 appointing the liquidating receiver shall state his powers and duties.
5 The powers and duties may be increased or diminished at any time during
6 the liquidation proceedings.

7 Sec. 10.50.590. COMPENSATION OF RECEIVER AND ATTORNEYS. The court
8 may allow from time to time as expenses of the liquidation compensation
9 to the receiver and to attorneys in the proceeding, and direct the
10 payment of compensation out of the assets of the corporation or the
11 proceeds of a sale or disposition of assets.

12 Sec. 10.50.595. POWER OF RECEIVER TO SUE AND BE SUED. A receiver
13 of a corporation appointed under AS 10.50.570 - 10.50.600 may sue and
14 defend in all courts in his own name as receiver of the corporation.

15 Sec. 10.50.600. APPOINTING COURT HAS EXCLUSIVE JURISDICTION. The
16 court appointing the receiver has exclusive jurisdiction of the corpora-
17 tion and its property, wherever situated.

18 Sec. 10.50.605. QUALIFICATIONS OF RECEIVERS. A receiver shall be
19 a citizen of the United States or a corporation authorized to act as
20 receiver, which corporation may be a domestic corporation or a foreign
21 corporation authorized to transact business in the state. A receiver
22 shall give the bond the court directs with sureties the court requires.

23 Sec. 10.50.610. FILING OF CLAIMS IN LIQUIDATION PROCEEDINGS. (a)
24 In a proceeding to liquidate the assets and business of a corporation,
25 the court may require creditors of the corporation to file with the
26 clerk of the court or with the receiver, in the form the court pre-
27 scribes, proof under oath of their respective claims.

28 (b) If the court requires the filing of claims, it shall fix a
29 date, not less than four months from the date of the order, as the last

1 day for the filing of claims, and shall prescribe the notice to be given
2 to creditors and claimants of the date fixed. Before the date fixed,
3 the court may extend the time for the filing of claims.

4 (c) A creditor who fails to file proof of his claim on or before
5 the date fixed may be barred by order of the court from participating in
6 the distribution of the assets of the corporation.

7 Sec. 10.50.615. DISCONTINUANCE OF LIQUIDATION PROCEEDINGS. The
8 liquidation of the assets and business of a corporation may be discon-
9 tinued at any time during the liquidation proceeding when it is estab-
10 lished that cause for liquidation no longer exists. In this event, the
11 court shall dismiss the proceeding and direct the receiver to redeliver
12 to the corporation its remaining property and assets.

13 Sec. 10.50.620. DECREE OF INVOLUNTARY DISSOLUTION. In a pro-
14 ceeding to liquidate the assets and business of a corporation, when the
15 costs and expenses of the proceeding and the debts, obligations and
16 liabilities of the corporation have been paid and discharged and the
17 remaining property and assets are not sufficient to satisfy and dis-
18 charge the costs, expenses, debts and obligations, and all the property
19 and assets have been applied to their payment, the court shall enter a
20 decree dissolving the corporation.

21 ARTICLE 7. GENERAL PROVISIONS.

22 Sec. 10.50.625. AS 10.05 INCORPORATED BY REFERENCE. The provi-
23 sions of AS 10.05.699 - 10.05.819 apply to a corporation organized under
24 this chapter and are incorporated by reference as a part of this chapter,
25 except when inconsistent with this chapter.

26 Sec. 10.50.630. FALSE STATEMENTS AFFECTING VALUE OF SHARES. A
27 director, officer or agent of a corporation who knowingly concurs in
28 making, publishing or posting either generally or privately to the
29 shareholders or other persons (1) a written report, exhibit, statement

1 of its affairs or pecuniary condition or notice containing any material
2 statement which is false, or (2) an untrue or wilfully or fraudulently
3 exaggerated report, prospectus, account, statement of operations, values,
4 business, profits, expenditures or prospects, or (3) any other paper or
5 document intended to produce or give, or having a tendency to produce or
6 give, the shares of stock in the corporation a greater value or a less
7 apparent or market value than they really possess, or who refuses to
8 make any book entry or post any notice required by law in the manner
9 required by law, upon conviction, is guilty of a misdemeanor.

10 Sec. 10.50.635. DIRECTOR MAKING UNLAWFUL DIVIDEND OR DISTRIBUTION
11 OF ASSETS. A director of a corporation who concurs in any vote or act
12 of the directors of the corporation to knowingly and with dishonest or
13 fraudulent purpose make a dividend or distribution of assets either with
14 the design of defrauding creditors or shareholders or of giving a false
15 appearance to the value of the stock and thereby defrauding subscribers
16 or purchasers, upon conviction, is guilty of a misdemeanor.

17 Sec. 10.50.640. RESERVATION OF POWER. The legislature reserves
18 the power to make amendments to this chapter to apply to all existing
19 and future corporations organized under this chapter. An amendment to
20 this chapter may not alter or impair the power of a corporation to
21 fulfill the terms of a contractual agreement or impair the rights of a
22 person with whom a corporation has entered into a contractual agreement.

23 Sec. 10.50.645. DEFINITIONS. In this chapter,

24 (1) "articles of incorporation" means the original or re-
25 stated articles of incorporation and all amendments;

26 (2) "authorized shares" means the shares which the corpora-
27 tion may issue;

28 (3) "certificate" means any evidences of ownership of shares
29 of a corporation;

1 (4) "chartering legislation" means the Act of the legislature
2 or an initiative approved by the voters that creates a general stock
3 ownership corporation;

4 (5) "commissisoner" means the commissioner of commerce and
5 economic development;

6 (6) "corporation" means a general stock ownership corpora-
7 tion;

8 (7) "department" means the Department of Commerce and Econo-
9 mic Development;

10 (8) "franchise tax" means the annual corporation tax imposed
11 under Alaska law on corporations (AS 10.05.717);

12 (9) "insolvent" means inability of a corporation to pay its
13 debts as they become due in the usual course of its business;

14 (10) "net assets" means the amount by which the total assets
15 of a corporation, excluding treasury shares, exceed the total debts of
16 the corporation;

17 (11) "resident" means an individual who maintains a permanent
18 place of abode in the state with the intention of making the state his
19 permanent place of residence and who resides in the state continuously
20 except for temporary purposes only and with the intent of returning; a
21 person may not be considered to have gained a residence solely by reason
22 of his presence and he may not lose it solely by reason of his absence
23 while in the civil or military service of this state or of the United
24 States or by reason of his absence because of marriage to a person
25 engaged in the civil or military service of this state or the United
26 States; a person may not be considered to lose his residence while a
27 student at an educational institution, while in an institution at public
28 expense, while confined in prison, while engaged in the navigation of
29 waters of this state, of the United States, or of the high seas, or

1 while residing upon an Indian or military reservation; a minor takes the
2 residence of his parent or of his legal guardian; a married woman may
3 establish her own residence and does not presumptively take the resi-
4 dence of her husband;

5 (12) "shareholder" means one who is a holder of record of a
6 share in a corporation;

7 (13) "shares" means the units into which the proprietary
8 interest in a corporation is divided;

9 (14) "subscriber" means one who subscribes for a share in a
10 corporation before or after incorporation;

11 (15) "treasury shares" means shares which have been issued,
12 have been subsequently acquired by and belong to the corporation, and
13 have not either by reason of the acquisition or thereafter, been can-
14 celled or restored to the status of authorized but unissued shares;
15 treasury shares are "issued" shares, but not "outstanding" shares.

16 Sec. 10.50.650. SHORT TITLE. This chapter may be cited as the
17 Alaska General Stock Ownership Corporation Act.

18 * Sec. 2. AS 37.10.070(a)(6) is amended to read:

19 (6) other securities, including [CORPORATE] securities of
20 corporations other than general stock ownership corporations;

21 * Sec. 3. AS 45.55.130 is amended by adding a new subsection to read:

22 (b) A copy of all annual reports, ballots, consent authorizations
23 and other materials relating to the shareholder ballots, published or
24 made available by any person to the shareholders of a general stock
25 ownership corporation, shall be filed with the administrator concu-
26 rently with its distribution to the shareholders. The administrator
27 shall have authority to review all documents submitted and make regula-
28 tions regarding content of shareholder materials to insure fairness,
29 completeness, and nondiscrimination.

1 * Sec. 4. (a) The Alaska General Stock Ownership Corporation shall be
2 created in accordance with this section. This section constitutes the char-
3 tering legislation for the Alaska General Stock Ownership Corporation as the
4 term is defined in AS 10.50.645(4).

5 (b) The governor, the speaker of the house of representatives, and the
6 president of the senate, shall each appoint one person to act as incorpora-
7 tors of the Alaska General Stock Ownership Corporation which shall be formed
8 in accordance with subchapter U, chapter 1, of the Internal Revenue Code of
9 1954, as amended (26 U.S.C. secs. 1391 - 1397) and AS 10.50. The incorpora-
10 tors shall select nine persons to act as the initial board of directors of
11 the corporation and shall submit their names to the governor, to the speaker
12 of the house of representatives, and to the president of the senate. A
13 majority of the governor, the speaker of the house of representatives, and
14 the president of the senate may disapprove a candidate for the initial board
15 of directors within 15 days of receipt of the incorporators' nominations.

16 (c) The articles of incorporation of the Alaska General Stock Ownership
17 Corporation shall provide that all shareholders of the corporation shall be
18 residents of the state as defined in AS 10.50.645(11), and that if a share-
19 holder ceases to be a resident of the state or his shares pass by operation
20 of law to a nonresident,

21 (1) within five years of the date of issuance of his shares the
22 corporation shall purchase the shares at book value;

23 (2) more than five years after the date of issuance of his shares
24 the shareholder or his executor, administrator or guardian shall have the
25 right to sell the shares to the corporation at book value.

26 (d) There is a special fund of the state known as the "Alaska General
27 Stock Ownership Corporation loan guarantee fund", which may not exceed
28 \$5,000,000, which shall be completely segregated from all other funds of the
29 state, and which shall be used by the commissioner of revenue to guarantee

1 loans made to the Alaska General Stock Ownership Corporation by lenders other
2 than the state solely for initial costs of the corporation and not for the
3 acquisition by the corporation of major investments. In guaranteeing a loan,
4 the commissioner of revenue shall review the loan for the purposes of ascer-
5 taining the general soundness of the proposed loan and guarding against fraud
6 and misrepresentation. The guarantee of a loan may not be for an amount in
7 excess of the unobligated balance of the fund at the time the guarantee is
8 made.

9 * Sec. 5. In sec. 1 of this Act, AS 10.50.300 has the effect of changing
10 Rule 23.1, Rules of Civil Procedure, with respect to shareholder derivative
11 suits brought by the shareholders of a general stock ownership corporation.
12 The changes

13 (1) make provision for notification of shareholders in the event
14 of dismissal or settlement of the suit;

15 (2) require that the plaintiff account to the corporation for
16 proceeds received by him if the suit is successful; and

17 (3) provide that the court may require the plaintiff to furnish
18 security for the suit.

19 * Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-
20 070(c).

WILMER & PICKERING

1666 K STREET, N. W.

WASHINGTON, D. C. 20006

CABLE ADDRESS: WICRING WASH., D. C.

INTERNATIONAL TELEX: 440-239

TELEX: 89-2402

TELEPHONE 202 872-6000

EUROPEAN OFFICE

1 COLLEGE HILL

LONDON, EC4R 2RA, ENGLAND

TELEPHONE 01-236-2401

CABLE ADDRESS: WICRING LONDON

JOHN H. PICKERING
HUGH R. H. SMITH
J. ROGER WOLLENBERG
CHARLES C. GLOVER, III
MARSHALL HORNBLOWER
HENRY T. RATHBUN
REUBEN CLARK
SAMUEL J. LANAHAN
WILLIAM R. PERLIK
SAMUEL A. STERN
ARNOLD M. LERMAN
ROBERT P. STRANAHAN, JR.
MAX O. TRUITT, JR.
JOEL ROSENBLUM
HOWARD F. WILLEMS
ANDREW T. A. MACDONALD
ROBERT A. HAMMOND, III
ARTHUR Z. GARDINER, JR.
DANIEL K. MAYERS
TIMOTHY B. DYK
DAVID R. ANDERSON
J. RODERICK HELLER, III
ARTHUR F. MATHEWS
JAMES S. CAMPBELL

DENNIS M. FLANNERY
JAMES ROBERTSON
RAYMOND C. CLEVINGER, III
LOUIS R. COHEN
MICHAEL R. KLEIN
STEPHEN A. WEISWASSER
TIMOTHY N. BLACK
F. DAVID LAKE, JR.
PAUL J. MOSE, JR.
WILLIAM C. GIFFORD
STEPHEN F. BLACK
C. BOYDEN GRAY
RONALD J. GREENE
JAY F. LAPIN
GARY D. WILSON
C. LORING JETTON, JR.
WILLIAM T. LAKE
MICHAEL L. BURACK
MICHAEL S. HELFER
NEIL J. KING
ROBERT B. McCAW
A. DOUGLAS MELAMED
RICHARD W. CASS
WILLIAM J. KOLASKY, JR.

EZEKIEL G. STODDARD
DONALD F. TURNER
COUNSEL

JUDITH BAILEY
DAVID M. BECKER
SHEILA BIHARY
ALAN H. BLANKENHEIMER
SUSAN LOW BLOCH
ALAN H. BRAVERMAN
LYNN BREGMAN
WILLIAM D. BRIGHTON
JAMES E. COLEMAN, JR.
BRUCE E. COOLIDGE
JOHN F. COONEY
MARY CAROLYN COX
JUANITA A. CROWLEY
SETH A. DAVIDSON
MARIE N. DOLAND
PATRICIA D. DOUGLASS
STEPHEN R. DOYLE
CAROL H. FISHMAN
NANCY C. GARRISON
MARK L. GERCHICK
EDWARD T. HAND
ALLEN H. HARRISON, JR.
JOHN H. HARWOOD II
BARRY M. HELLER
A. STEPHEN HUT, JR.
DAVID R. JOHNSON
JAMES T. KILBRETH III
WAYNE A. KOONCE
CANDACE S. KOVACIC
GERALD J. LAPORTE

J. STEPHEN LAWRENCE, JR.
HENRY D. LEVINE
CHRISTOPHER R. LIPSETT
ROBERT A. MAJOR, JR.
BRUCE MAKHOV
JOHN B. McNEECE III
MAURY J. MECHANICK
LOWELL B. MILLER
WILLIAM J. PERLSTEIN
JOAN S. POWERS
CLAUDIA RIBET
WILLIAM R. RICHARDSON, JR.
JOHN ROUNSAVILLE, JR.
MICHAEL S. SCHOOLER
GAIL F. SCHULZ
KAREN KOSER SCHWARTZ
ELIZABETH A. SNYDER
ARTHUR B. SPITZER
LYMAN F. SPITZER
ALAN B. STERNSTEIN
STUART S. TAYLOR, JR.
ANDREW H. VOLLMER
ARTHUR M. WEISSBURD
ANDREW B. WEISSMAN
BARBARA S. WELLSBERG
ANN O. WILLIAMS
ROBERT G. WILSON
JUDITH BARRY WISH
ROGER M. WITTEN

October 31, 1979

Mr. Dale E. Staley
Legislative Budget and Audit Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Dear Dale:

Enclosed is a copy of the IRS Ruling
request as filed today.

Sincerely,

Sam

Samuel A. Stern

cc: Mr. Jay Hogan
Mr. Jerry Gauche

RECEIVED
NOV 6 1979

BUDGET/AUDIT
COMMITTEE

WILMER & PICKERING

1666 K STREET, N. W.
WASHINGTON, D. C. 20006

CABLE ADDRESS: WICRNG WASH, D. C.

INTERNATIONAL TELEX: 440-239

TELEX: 89-2402

TELEPHONE 202 872-6000

EUROPEAN OFFICE

1 COLLEGE HILL

LONDON, EC4R 2RA, ENGLAND

TELEPHONE 01-236-2401

CABLE ADDRESS: WICRNG LONDON

JUDITH BAILEY
DAVID M. BECKER
SHEILA BISHART
ALAN H. BLANKENHEIMER
SUSAN LOW BLOCH
ALAN N. BRAVERMAN
LYNN BREDMAN
WILLIAM D. BRIGHTON
JAMES E. COLEMAN, JR.
BRUCE E. COOLIDGE
JOHN F. COONEY
MARY CAROLYN COX
JUANITA A. CROWLEY
BETH A. DAVIDSON
MARIE N. DOLAND
PATRICIA S. DOUGLASS
STEPHEN R. DOYLE
CAROL M. FISHMAN
NANCY D. GARRISON
MARK L. GERCHICK
EDWARD T. HAND
ALLEN H. HARRISON, JR.
JOHN H. HARWOOD II
BARRY M. HELLER
A. STEPHEN HUT, JR.
DAVID R. JOHNSON
JAMES T. KILBRETH III
WAYNE A. KOONCE
CAROLACE S. KOVACH
GERALD J. LAPORTE

J. STEPHEN LAWRENCE, JR.
HENRY D. LEVINE
CHRISTOPHER R. LIPSETT
ROBERT A. MAJOR, JR.
BRUCE MAKIMOV
JOHN B. MENECE III
MAURY J. MECHANICK
LOWELL S. MILLER
WILLIAM J. PERLSTEIN
JOAN S. POWERS
CLAUDIA RIBET
WILLIAM R. RICHARDSON, JR.
JOHN ROUNSAVILLE, JR.
MICHAEL S. SCHOOLER
DAIL F. SCHULZ
KAREN ROBER SCHWARTZ
ELIZABETH A. SNYDER
ARTHUR S. SPITZER
LYMAN F. SPITZER
ALAN S. STERNSTEIN
STUART S. TAYLOR, JR.
ANDREW N. VOLLMER
ARTHUR M. WEISSBURG
ANDREW S. WEISSMAN
BARBARA S. WELLSBERY
ANN D. WILLIAMS
ROBERT G. WILSON
JUDITH BARRY WISH
ROGER M. WITTEN

JOHN W. PICKERING
RUGH B. M. SMITH
J. ROGER WOLLENBERG
CHARLES C. GLOVER, III
MARSHALL HORNBLOWER
HENRY T. RATHBUN
REUBEN CLARK
SAMUEL J. LANAHAN
WILLIAM R. PERL
SAMUEL A. STERN
ARNOLD M. LERMAN
ROBERT P. STRANAHAN, JR.
MAX G. TRUITT, JR.
JOEL ROSENBLUM
HOWARD P. WILLENS
ANDREW T. A. MACDONALD
ROBERT A. HAMMOND, III
ARTHUR Z. GARDINER, JR.
DANIEL R. MATERS
TIMOTHY B. OYA
DAVID R. ANDERSON
J. RODERICK HELLER, III
ARTHUR F. MATHEWS
JAMES S. CAMPBELL

DENNIS H. FLANNERY
JAMES ROBERTSON
RAYMOND C. CLEVELAND, III
LOUIS R. COHEN
MICHAEL R. KLEIN
STEPHEN A. WEISWASSER
TIMOTHY N. BLACK
F. DAVID LAKE, JR.
PAUL J. MOORE, JR.
WILLIAM C. GIFFORD
STEPHEN F. BLACK
C. BOYDEN GRAY
RONALD J. GREENE
JAY F. LAPIN
GARY D. WILSON
C. LORING JETTON, JR.
WILLIAM T. LAKE
MICHAEL L. BURACK
MICHAEL S. HELFER
NEIL J. KING
ROBERT S. MCGAW
A. DOUGLAS MELAMED
RICHARD W. CASS
WILLIAM J. KOLASKY, JR.

EZEKIEL G. STODDARD
DONALD F. TURNER
COUNSEL

October 31, 1979

Internal Revenue Service
Assistant Commissioner (Technical)
1111 Constitution Avenue, N. W.
Washington, D. C. 20224

Attention T:FP:T

Re: Alaska General Stock Ownership Corporation

Dear Sir:

On behalf of the state of Alaska and its residents, rulings are requested under sections 61, 1391-97, and related provisions of the Internal Revenue Code, with respect to the federal income tax consequences of the transaction hereinafter described.

Facts

It is proposed to form Alaska General Stock Ownership Corporation (AGSOC) pursuant to an Act of the Legislature of Alaska. This Act will be enacted by the Legislature as a result of, and in conformity with, Title VI of the Revenue Act of 1978, which added Subchapter U (sections 1391 through

1397) to Chapter 1 of the Internal Revenue Code, as well as making conforming amendments to other sections of the Code. In general, these sections provide that a corporation created and operated in accordance with their rules is not subject to federal income tax. Instead, each of its shareholders is subject to tax on his proportionate share of corporate taxable income. Under section 1391 the original shareholders of AGSOC must be individuals who are residents of Alaska at the time of the issuance of the shares. Additional rules prevent transferability of shares (except where the shareholder leaves Alaska or dies) for a period of 5 years from the date of issuance. When shares do become transferable, they may be transferred only to another individual who resides in Alaska. In any event, no individual is allowed to own more than 10 shares of AGSOC.

The principal office and place of business of AGSOC will be established in Alaska. AGSOC will not have any paid-in capital but will acquire business assets by the use of the proceeds of loans to it. The loans may be made by commercial lenders with or without the guarantee of the state. It is expected that any loans will be at commercial rates of interest. Section 1391(d) states that for purposes of federal

income taxes, a corporation qualifying for the special treatment described in sections 1391 through 1397, shall not be treated as a governmental unit. Accordingly, any interest payable by AGSOC on loans to it will be fully subject to tax.

Under the rules of section 1391, it has broad investment authority subject only to the limitations that -

1. it cannot own as much as 20 percent of the voting stock or non-voting common stock of another corporation; and
2. it cannot invest in properties acquired by it or for its benefit by eminent domain.

At the present time, the investments which AGSOC will make have not been specifically identified. By way of an example, an investment which has been considered appropriate for AGSOC is the acquisition of a participating interest in the Alaska pipeline. In the event that such an acquisition of an interest is deemed desirable, the interest would be acquired by purchase in an arms-length transaction from one of the consortium of companies that now owns the pipeline. As yet, no negotiations have been undertaken with a view to the purchase of any interest in pipeline property or in any other asset.

It is proposed to issue one share of AGSOC voting common stock (the only class of stock to be authorized) to every resident of the state of Alaska. Such share will be issued without cost to any recipient. It is estimated that there are now approximately 400,000 individuals who are residents of Alaska and who will be eligible to receive an AGSOC share.

Rulings Requested

It is respectfully requested that the following rulings be issued -

1. Where a corporation is created and operated in accordance with the proposed legislation now pending before the state of Alaska, the corporation and its shareholders will qualify for the federal income tax treatment described in subchapter U of Chapter 1 of the Internal Revenue Code. Sections 1391-97.
2. The recipients of the initial distribution of stock of AGSOC will not be considered to have received income for federal income tax purposes upon the distribution of such stock by AGSOC.
3. The cost basis in the hands of the recipients of the initial distribution of stock by AGSOC will be zero. Section 1012.

The first ruling requested herein is necessary in order to determine whether the legislation pending before the Alaska legislature (Exhibit A) which provides for the creation and operation of AGSOC is in conformity with the rules of Subchapter U so that the federal income tax consequences at both the corporate and shareholder levels which may be expected to occur after AGSOC has begun to operate are those which are prescribed in such Subchapter. In the event that there be defects in such proposed legislation which could prevent application of Subchapter U treatment to AGSOC and its shareholders, it is clearly more efficient and economical that there be an opportunity to remedy those defects before enactment.

As noted above, AGSOC proposes to issue its shares at no charge to recipient shareholders. It is believed that the recipients will not have income by reason of the issuance of the stock. Again, it is important to have advance assurance of this fact. Thus if the Internal Revenue Service should rule adversely on this question, or be unwilling to rule, it will be necessary to consider alternatives to the method of issuance now proposed - perhaps requiring a shareholder to make a nominal contribution to the capital of AGSOC. A

favorable response by the Internal Revenue Service to the second ruling requested would put this matter to rest.

The third requested ruling is simply a corollary of the second.

Discussion

The first and third rulings follow directly from the statutory sections cited. The second requested ruling should be granted pursuant to the statutory provisions, legislative history, and precedents discovered below.

Section 102 of the Internal Revenue Code provides that "gross income does not include the value of property acquired by gift" The Supreme Court has held that the issue of whether a transfer of property constitutes a gift for the purposes of Section 102 is a question of fact to be determined in the circumstances of each case. Commissioner of Internal Revenue v. Duberstein, 363 U.S. 278 (1960). "What controls is the intention with which payment, however voluntary, has been made." Id. at 286, quoting Commissioner of Internal Revenue v. Bogardus, 302 U.S. 34, 45 (1937) (dissenting opinion). The inquiry in each case is directed towards determining "the dominant reason that explains his

[the donor's] action in making the transfer." Id. In the Duberstein opinion the Court considered two distinct transfers of property each made in the context of a business relationship. In the first case, the Court upheld a finding of the Tax Court that the transfer of a Cadillac from one businessman to another was actually in the nature of compensation for past services and an inducement for the continued provision of those services in the future and, therefore, not a gift. And, in the second case, the Court remanded for further findings on the question of whether a bonus payment from an employer to a departing employee was a gift or compensation for past services. /*

As the Court's opinion in the Duberstein cases makes clear, the term "gift" in § 102 has never been restricted to transfers among family members and personal friends. /**
Rather "gift" broadly encompasses transfers of property, even those with business overtones, that proceed from a "'detached and disinterested generosity' . . . 'out of affection, respect,

/* On remand the lower court found that the payment was a gift and hence not taxable. Stanton v. United States, 186 F. Supp. 393 (E.D.N.Y. 1960), aff'd per curiam 287 F.2d 876 (2d Cir. 1964).

/** The Supreme Court in Duberstein rejected the Government's suggestion that it adopt a "new 'test' in this area" that would have specifically limited the gift exclusion to such "personal" transfers. 363 U.S. at 284.

admiration, charity or like impulse.'" Id. at 285 (citations omitted). As a result, payments between business associates, employers and employees, labor unions and workers may be considered gifts in appropriate circumstances. Id.;

United States v. Kaiser, 363 U.S. 299 (1960) (payments from labor union to striking workers held "gifts"); Bogardus v. Commissioner of Internal Revenue, 302 U.S. 34 (1937) (payments to present and former employees of a corporation by its former stockholders held "gifts"). In particular, the IRS and the federal courts have recognized that governments are capable of bestowing "gifts" on their citizens, within the meaning of § 102 (and its predecessors). See Rev. Rul. 68-158, 1968-1 C.B. 47 ("bonuses" paid by a State government to its veterans who served in the Armed Forces during certain wars are non-taxable gifts); Rev. Rul. 57-233, 1957-1 C.B. 60 (grants made by federal government to members of certain Indian tribes for relocation and vocational training are gifts).

In the instant case, a detailed exegesis of the subtle and often difficult distinctions between compensation and inducements on the one hand and gifts on the other is not necessary, since the transfer of one share of AGSOC stock to each Alaskan citizen cannot in any sense be construed as "compensation" or an "inducement." There simply is no quid pro quo associated with this transaction. The recipients of the shares are not

required to do anything in order to be entitled to participate in AGSOC. They need only be residents of Alaska, which they already are and will be. It cannot reasonably be argued that the purpose of the Alaska legislature in creating AGSOC is to induce anyone to move to or remain in Alaska; nor is there any realistic possibility that the prospect of becoming the holder of a share of AGSOC stock will in fact induce anyone who is otherwise inclined to become or remain an Alaskan resident. /*

/* This distinguishes the distribution of AGSOC stock from payments made under the Alaska Longevity Bonus Act. Revenue Ruling 76-131, 1976-1 C.B. 16 held that benefit payments under the latter Act are taxable. Those payments are available to all Alaskans 65 years of age and over who have maintained a continuous domicile in the territory or state of Alaska for 25 years. As the Revenue Ruling noted: "The purpose of the statute as stated therein is to provide an incentive to continue uninterrupted residence in the state" In other words, the explicitly stated purpose of the longevity bonus payments is to induce certain persons to change their behavior in a particular direction desired by the State of Alaska. In the language of Duberstein, supra, the dominant reason that explains the transferor's

Moreover, the requirement of state residence is not an invention of the Alaska Legislature, but rather a condition established in the federal legislation with which Alaska must comply in order that the corporate entity it establishes qualify as a general stock ownership corporation and receive the special tax treatment provided in Subchapter U of the Internal Revenue Code.^{/*} It cannot

(Footnote continued from Page 9:

(in this case, the State of Alaska's) action in making those "bonus" payments is to influence long-term residents of Alaska to remain in the State; and the payments of \$100 per month were presumably set high enough to provide a realistic incentive for a large number of eligible persons to remain in Alaska rather than move elsewhere. There is no such changed behavior or foregone activity associated with the issuance of shares of stock in AGSOC. Furthermore, the longevity bonus payments are transfers of cash. To the extent the AGSOC generates income for its shareholders, such income will be taxed as the ordinary income of the shareholders. 26 U.S.C. §§ 1393, 1394. In that respect, the tax treatment of the longevity bonuses and of any AGSOC income actually distributed to Alaskan citizens will essentially be the same.

In substance, the incorporation of AGSOC and distribution of its shares will not be a "transfer" of anything from one person to another, but simply a change in the form of rights which already belong to all the residents of Alaska. The transaction is most analogous to a partition or other termination of concurrently-owned property -- transactions long held non-taxable by the Service. See Rev. Rul. 56-437, 1956-1 C.B. 507; Rev. Rul. 76-83, 1976-1 C.B. 213.

^{/*} See 26 U.S.C. § 1391(a), (c).

reasonably be argued that the intent of Congress in enacting the federal legislation authorizing GSOCs was to induce residents of states establishing GSOC's to continue to reside in those states.

Rather, in amending the Internal Revenue Code to provide for the establishment of GSOC's, Congress' purposes were civic, educational, and charitable in nature as clearly indicated in the legislative history. For example, the report of the Senate Committee on Finance states:

The committee believes that many citizens should have a greater ownership stake in the private enterprise system, and that this would lead to better understanding of the system and would encourage individuals to invest in other business enterprises. Also, in the case of individuals now receiving various forms of transfer payments from Federal, State, or local governments, the receipt of dividend income from a General Stock Ownership Corporation (GSOC) would, to some extent, reduce the need for such payments. The committee believes that an experimental program permitting States to form such private corporations for the benefit of their citizens may enable the Congress to study a method of replacing transfer payments with dividend income.

S. Rep. No. 95-1263, 95th Cong., 2d Sess. 107 (1978).

In order to fulfill these congressional goals, states have been authorized to establish GSOC's which, if they comply with the various requirements set down in Subchapter U, will be entitled to the special tax treatment provided therein. In

creating AGSOC pursuant to the federal legislation and providing for the distribution of one share of its stock to each citizen of Alaska without requiring any payment, compensation, or action in return, the State of Alaska will be bestowing a gift on its citizens, an act which should not provide the occasion for the imposition on those citizens of a federal tax liability.

At the time of the initial distribution, AGSOC will be a corporate shell with no assets. Even though its shares will have negligible value, if any, it would frustrate the intention of Congress if the IRS were to take the position that recipients of the stock have income upon receiving a share.

Senator Gravel, the chief sponsor and architect of GSOC provisions of the bill, made the following statement on this issue during the Senate debates on the conference Report:

There are a number of questions [concerning GSOC's) which my colleagues have put to me over the past few months and I would like to include some explanation of these issues for the Record.

* * * *

Seventh. What about distributions of the stock itself. Will the shareholder be taxed upon receipt of the stock and will he receive a basis in his share at the time of receipt?

If the shares are distributed before any investment has been made by the GSOC, the shares will be treated as having a zero value as of the date of receipt. Therefore, no income would accrue to the shareholder upon receipt and no tax liability would be generated. If investments have been made, the valuation of the shares should be made on a net asset basis so that if the GSOC investment were 100 percent leveraged, the shares distributed would have zero value and no income would accrue. If the shareholder receives his shares free of tax, he would have a zero basis at the time of receipt.

124 Cong. Rec. S19168-69 (daily ed. Oct. 14, 1978)

The recipients of the initial stock distribution would be most surprised if they were advised that the transaction creates income. It is outside the experience of the overwhelming majority of taxpayers to have received income in any form other than cash. It is thus consistent with the expectations of Congress and the citizens of Alaska and with the case law and IRS rulings to tax the shares of stock initially distributed by AGSOC only when sold. At that time, it is appropriate to tax the full proceeds of sale.

Other Information

To the best knowledge of the taxpayer and the taxpayer's representatives, there are no laws, regulations, treaties, court decisions, revenue rulings or revenue procedures which are contrary to the taxpayer's position in this ruling request.

To the best knowledge of the taxpayer and the taxpayer's representatives, the issue presented in this ruling request:

(1) is not under examination by a District Director in a return of the taxpayer (or of a related taxpayer within the meaning of section 267 of the Code or a member of an affiliated group of which the taxpayer is also a member within the meaning of section 1504) or in a return of another client of the taxpayer's representatives;

(2) has not been examined by a District Director for a tax year not closed by the statute of limitations or a closing agreement;

(3) is not under consideration by an Appeals Office in connection with a return of the taxpayer for a prior period, nor has been under consideration by an Appeals Office for a year not closed by the statute of limitations or a closing agreement;

(4) is not pending in litigation; and

(5) has not been ruled on by the Internal Revenue Service to the taxpayer or a predecessor taxpayer.

If it appears that the requested ruling cannot be granted, a conference is requested.

Enclosed is a power of attorney on Form 2848 authorizing the undersigned, among others, to represent the taxpayer in connection with this request.

If further information is required, or a conference is necessary, please contact the undersigned at the telephone number set forth below.

Respectfully submitted,

Samuel A. Stern
William C. Gifford

Samuel A. Stern
William C. Gifford
Wilmer & Pickering
(202) 872-6414

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct and complete.


James Duncan
Chairman, Legislative Budget
and Audit Committee
Alaska Legislature

Power of Attorney
(See the separate instructions for Forms 2848 and 2848-D.)

Name, identifying number, and address including ZIP code of taxpayer(s)

James W. Duncan

SS# 353-34-5896

Pouch V

Juneau, Alaska 99811

hereby appoints (Name, address including ZIP code, and telephone number of appointee(s)) (See Treasury Department Circular No. 230 as amended (31 C.F.R. Part 10), Regulations Governing the Practice of Attorneys, Certified Public Accountants, and Enrolled Agents before the Internal Revenue Service, for persons recognized to practice before the Internal Revenue Service.)

Samuel A. Stern, Esq.
William C. Gifford, Esq.
Wilmer & Pickering
1666 K Street, N.W.
Washington, D.C. 20006
Tel.: (202) 872-6038

as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Internal Revenue Service for the following Internal Revenue tax matters (specify the type(s) of tax and year(s) or period(s) (date of death if estate tax)):

To seek ruling under sections 61, 1391 et seq. and related provisions of the Internal Revenue Code.

The attorney(s)-in-fact (or either of them) are authorized, subject to revocation, to receive confidential information and to perform on behalf of the taxpayer(s) the following acts for the above tax matters:

(Strike through any of the following which are not granted.)

To receive, but not to endorse and collect, checks in payment of any refund of Internal Revenue taxes, penalties, or interest. (See "Refund checks" on page 2 of the separate instructions.)

To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

To execute consents extending the statutory period for assessment or collection of taxes.

To execute closing agreements under section 7121 of the Internal Revenue Code.

To delegate authority or to substitute another representative.

Other acts (specify) _____

Send copies of notices and other written communications addressed to the taxpayer(s) in proceedings involving the above matters to (Name, address including ZIP code, and telephone number):

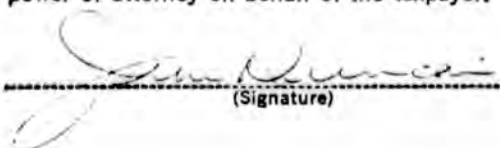
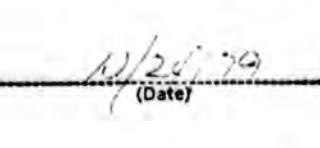
and Same as above

This power of attorney revokes all earlier powers of attorney and tax information authorizations on file with the same Internal Revenue Service office for the same matters and years or periods covered by this form, except the following:

(Specify to whom granted, date, and address including ZIP code, or refer to attached copies of earlier powers and authorizations.)

Signature of or for taxpayer(s)

If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

  
(Signature) (Title, if applicable) (Date)

(Signature) (Title, if applicable) (Date)

(The applicable portion of the back page must also be completed.)

[EXHIBIT A OMITTED]

SB 170 or Draft 9-10-79 CS35 HB240

WILMER & PICKERING

1666 K STREET, N. W.

WASHINGTON, D. C. 20006

CABLE ADDRESS: WICRIN WASH., D. C.

INTERNATIONAL TELEX: 440-239

TELEX: 89-2402

TELEPHONE 202 872-6000

EUROPEAN OFFICE

1 COLLEGE HILL

LONDON, EC4R 2RA, ENGLAND

TELEPHONE 01-236-2401

CABLE ADDRESS: WICRIN LONDON

JOHN H. PICKERING
HUGH R. H. SMITH
J. ROGER WOLLENBERG
CHARLES C. GLOVER, III
MARSHALL HORNBLOWER
HENRY T. RATHBUN
REUBEN CLARK
SAMUEL J. SANAHAN
WILLIAM R. PERLIN
SAMUEL A. STERN
ARNOLD H. LERMAN
ROBERT P. STRANAHAN, JR.
MAX G. TRUITT, JR.
JOEL ROSENBLUM
HOWARD P. WILLENS
ANDREW T. A. MACDONALD
ROBERT A. HAMMOND, III
ARTHUR Z. BARDINER, JR.
DANIEL A. MATTERS
TIMOTHY B. DYK
DAVID R. ANDERSON
J. RODERICK HELLER, III
ARTHUR F. MATHEWS
JAMES S. CAMPBELL

DENNIS M. FLANNERY
JAMES ROBERTSON
RAYMOND C. CLEVELANDER, III
LOUIS R. COHEN
MICHAEL R. KLEIN
STEPHEN A. WEISWASSER
TIMOTHY N. BLACK
F. DAVID LAKE, JR.
PAUL J. MOORE, JR.
WILLIAM C. GIFFORD
STEPHEN F. BLACK
C. BOYDEN GRAY
RONALD J. GREENE
JAY F. LAPIN
GARY D. WILSON
C. LORING JETTON, JR.
WILLIAM T. LAKE
MICHAEL L. BURACK
MICHAEL S. HELPER
NEIL J. KING
ROBERT B. MCMAW
A. DOUGLAS MELAMED
RICHARD W. CASS
WILLIAM J. KOLASKY, JR.

EZEKIEL G. STODDARD
DONALD F. TURNER
COUNSEL

JUDITH BAILEY
DAVID M. BECKER
SHEILA BINARY
ALAN H. BLANKENHEIMER
RUSAN LOW BLOCH
ALAN H. BRAVERMAN
LYNN BREGMAN
WILLIAM D. BRIGHTON
JAMES E. COLEMAN, JR.
BRUCE E. COOLIDGE
JOHN F. COONEY
MARY CAROLYN COX
JUANITA A. CROWLEY
SETH A. DAVIDSON
MARIE W. DOLAN
PATRICIA D. DOUGLASS
STEPHEN P. DOYLE
CAROL H. FISHMAN
NANCY C. GARRISON
MARK L. GERCHICK
EDWARD T. HAND
ALLEN H. HARRISON, JR.
JOHN H. HARWOOD, II
BARRY M. HELLER
A. STEPHEN HUT, JR.
DAVID R. JOHNSON
JAMES T. KILBRETH, III
WAYNE A. KOONCE
CANDACE S. KOVACIC
GERALD J. LAPORTE

J. STEPHEN LAWRENCE, JR.
HENRY D. LEVINE
CHRISTOPHER R. LIPSETT
ROBERT A. MAJOR, JR.
BRUCE MAXIMOV
JOHN B. McNEECE, III
HAURY J. MECHANICK
LOWELL B. MILLER
WILLIAM J. PERLSTEIN
JOAN S. POWERS
CLAUDIA RIBET
WILLIAM R. RICHARDSON, JR.
JOHN ROUNSAVILLE, JR.
MICHAEL S. SCHODLER
GAIL F. SCHULZ
KAREN ROSE SCHWARTZ
ELIZABETH A. SNTDER
ARTHUR B. SPITZER
LYMAN F. SPITZER
ALAN B. STERNSTEIN
STUART S. TAYLOR, JR.
ANDREW N. VOLLMER
ARTHUR M. WEISSBURD
ANDREW B. WEISSMAN
BARBARA S. WELLBERY
ANN O. WILLIAMS
ROBERT G. WILSON
JUDITH BARRY WISH
ROGER M. WITTEN

October 26, 1979

Mr. Dale E. Staley
Legislative Budget and Audit Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Dear Dale:

Here is our proposed Memorandum to the Staff of the Securities and Exchange Commission regarding possible exemption of the GSOC from full application of the securities laws. For the most part, the memorandum takes the position that the GSOC legislation itself provides adequate protection to GSOC shareholders, at least during the initial five-year period when trading of shares is prohibited. However, you will note that, in a few instances, we have represented that certain protection not presently embodied in the legislation either can be included in the bill if the SEC insists, or will be included in the GSOC's by-laws.

For example, on page 16, we represent that the GSOC will agree, as a condition to exemption from the Securities Exchange Act of 1934, to distribute, and file with the SEC, an annual report to shareholders containing substantially all the information required in annual reports under that Act. (These requirements are set forth in Attachment A.) And, on page 17, we indicate the GSOC's willingness also to distribute information to shareholders regarding director candidates and other matters to be voted upon at shareholder meetings, as would be required by § 14(c) of the 1934 Act. (These requirements are set forth in Attachment B.) On page 18, we state that the GSOC is prepared to accept a limited exemption, under which it will not be exempted from the antifraud provisions of the 1934 Act. (These provisions are set forth in Attachment C.)

RECEIVED
OCT 29 1979
BUDGET/AUDIT
COMMITTEE

Finally, Section 10 of the Investment Company Act of 1940 requires that no more than 60 percent of the board of directors of an investment company consist of "interested persons," (The definitions of "interested persons" and of "affiliated persons" are set forth in Attachment D.) and that no investment banker serve as director, officer or employee of the company unless the majority of the Board consists of persons who are neither investment bankers nor affiliated with investment bankers. On page 26, we argue that there is no need to apply such restrictions to the GSOC, but that, in any event, the bylaws of the GSOC "will undoubtedly provide full adequate protections against" the conflict-of-interest dangers for which Section 10 was designed.

In reviewing the draft, please give special attention to the above-mentioned representations and concessions. In each instance, it was our judgment that the arguments for complete exemption from the specific statutory requirement were weak, that our overall position would be stronger and more credible if we agreed to certain conditions, and that the sponsors and management of the GSOC would probably wish to incorporate these features in any event. Please make certain that these conditions are acceptable.

We await your comments on these points and on the entire draft. In the meantime, we will continue to refine and edit the memorandum with the expectation that it will be completed and transmitted to the Commission in the near future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sam".

Samuel A. Stern

Encl.

cc: Mr. Jerry Gauche

WILMER, CUTLER & PICKERING

1666 K STREET, N. W.
WASHINGTON, D. C. 20006

CABLE ADDRESS: WICRING WASH., D. C.

INTERNATIONAL TELEX: 440-239

TELEX: 89-2402

TELEPHONE 202 872-6000

EUROPEAN OFFICE

5 CHEAPSIDE

LONDON, EC2V 5AA, ENGLAND

TELEPHONE 01-236-2401

TELEX: 851 883242

CABLE ADDRESS: WICRING LONDON

LLOYD N. CUTLER
JOHN H. PICKERING
HUGH R. H. SMITH
J. ROGER WOLLENBERG
CHARLES C. GLOVER, III
MARSHALL HORNBLOWER
HENRY T. RATHBUN
REUBEN CLARK
SAMUEL J. LANAHAN
WILLIAM R. PERLIN
SAMUEL A. STERN
ARNOLD M. LERMAN
ROBERT P. STRANAHAN, JR.
MAX O. TRUITT, JR.
JOEL ROSENBLUM
HOWARD F. WILLENS
ANDREW T. A. MACDONALD
ROBERT A. HAMMOND, III
ARTHUR Z. GARDINER, JR.
DANIEL R. MAYERS
TIMOTHY B. DYK
DAVID R. ANDERSON
J. RODERICK HELLER, III
ARTHUR F. MATHEWS

EZERIEL G. STODDARD
WILLIAM C. GIFFORD
DONALD F. TURNER
COUNSEL

JUDITH BAILEY
DAVID M. BECKER
SHEILA B. BARRY
ALAN H. BLANKENHEIMER
SUSAN LOW BLOCH
ALAN N. BRAVERMAN
LYNN BREGMAN
DANIEL L. BRENNER
JAMES E. COLEMAN, JR.
JOHN F. COONEY
MARY CAROLYN COX
JUANITA A. CROWLEY
SETH A. DAVIDSON
MARIE N. DOLAND
PATRICIA D. DOUGLASS
STEPHEN R. DOYLE
CAROL H. FISHMAN
NANCY C. GARRISON
MARK L. GERCHICK
CORNELIUS J. GOLDEN, JR.
EDWARD T. HAND
ALLEN H. HARRISON, JR.
JOHN H. HARWOOD, II
BARRY M. HELLER
A. STEPHEN HUT, JR.
DAVID R. JOHNSON
JAMES T. KILBRETH, III
WAYNE A. KOONCE
CANDACE S. KOVACIC
GERALD J. LAPORTE

J. STEPHEN LAWRENCE, JR.
HENRY D. LEVINE
CHRISTOPHER R. LIPSETT
ROBERT A. MAJOR, JR.
BRUCE MAXIMOV
JOHN S. MAXECCO, III
MAURY J. MECHANICK
LOWELL S. MILLER
WILLIAM J. PERLSTEIN
JOAN S. POWERS
CLAUDIA RIBET
WILLIAM R. RICHARDSON, JR.
JOHN ROUSAVILLE, JR.
MICHAEL S. SCHOLLER
DALE F. SCHULZ
KAREN ROSE SCHWARTZ
ELIZABETH A. SNYDER
ARTHUR B. SPITZER
LYMAN F. SPITZER
ALAN B. STERNSTEIN
STUART S. TAYLOR, JR.
ANDREW N. VOLLMER
ARTHUR N. WEISBURD
CAROL DRESCHER WEISMAN
ANDREW S. WEISSMAN
BARBARA S. WELLS
ANN C. WILLIAMS
ROBERT G. WILSON
JUDITH BARRY WISH
ROGER M. WITTEN

September 19, 1979

Mr. Dale E. Staley
Legislative Budget and Audit Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Dear Dale:

As we agreed, I have drafted and enclose herewith three copies of a draft contract, executed on behalf of our firm, to cover the work contemplated for the six-month period commencing October 1, 1979. I have listed in Article I the specific services we agreed would be provided, but included as Item 5 a basis for the Committee to add any additional tasks it desires.

Since the scope and amount of work are indefinite, I have provided, as we discussed, a provision for billing at our present hourly time charges (and have maintained the rates quoted by David Lake in his proposed draft contract II even though our rates are due to increase on October 1st). We would propose to render bills on a monthly basis so that you will have full control of the amounts involved.

Please call if you have any questions. I would very much like to have the contract effective by October 1st.

I was delighted to meet you on Monday and look forward to working with you and your colleagues.

Sincerely,

Sam

Samuel A. Stern

Encl.

RECEIVED
SEP 24 1979

BUDGET/AUDIT
COMMITTEE

WILMER, CUTLER & PICKERING

1666 K STREET, N. W.
WASHINGTON, D. C. 20006

CABLE ADDRESS: WICRING WASH., D. C.

INTERNATIONAL TELEX: 440-239

TELEX: 89-2402

TELEPHONE 202 872-6000

EUROPEAN OFFICE

5 CHEAPSIDE

LONDON, EC2V 6AA, ENGLAND

TELEPHONE 01-236-2401

TELEX: 851 883242

CABLE ADDRESS: WICRING LONDON

JUDITH BAILEY
DAVID M. BECKER
SHEILA BISHART
ALAN H. BLANKENHEIMER
SUSAN LOW BLOCH
ALAN M. BRAVERMAN
LYNN BREGMAN
DANIEL L. BRENNER
JAMES E. COLEMAN, JR.
JOHN F. COONEY
MARY CAROLYN COX
JUANITA A. CROWLEY
SETH A. DAVIDSON
MARIE N. DOLAND
PATRICIA D. DOUGLASS
STEPHEN P. DOYLE
CAROL H. FISHMAN
NANCY C. GARRISON
MARK L. GERCHICK
CORNELIUS J. GOLDEN, JR.
EDWARD F. HAND
ALLEN H. HARRISON, JR.
JOHN H. HARWOOD II
BARRY M. HELLER
A. STEPHEN HUT, JR.
DAVID B. JOHNSON
JAMES T. KILBRETH, III
WAYNE A. KOONCE
CANDACE S. KOVACIC
GERALD J. LAPORTE

J. STEPHEN LAWRENCE, JR.
HENRY D. LEVINE
CHRISTOPHER R. LIPBETT
ROBERT A. MAJOR, JR.
BRUCE MAXIMOV
JOHN B. MCNEECE III
MAURY J. MECHANICK
LOWELL B. MILLER
WILLIAM J. PERLSTEIN
JOAN S. POWERS
CLAUDIA RIBET
WILLIAM R. RICHARDSON, JR.
JOHN ROUNSAVILLE, JR.
MICHAEL S. SCHOOLER
GAIL F. SCHULZ
KAREN ROSE SCHWARTZ
ELIZABETH A. SNYDER
ARTHUR B. SPITZER
LYMAN F. SPITZER
ALAN B. STERNSTEIN
STUART S. TAYLOR, JR.
ANDREW N. VOLLMER
ARTHUR M. WEISBURD
CAROL DRESCHER WEISMAN
ANDREW B. WEISSMAN
BARBARA S. WELLBERY
ANN O. WILLIAMS
ROBERT G. WILSON
JUDITH BARRY WISH
ROGER H. WITTEN

LLOYD N. CUTLER
JOHN H. PICKERING
HUGH R. H. SMITH
J. ROGER WOLLENBERG
CHARLES C. GLOVER, III
MARSHALL HORNBLLOWER
HENRY T. RATHBUN
REUBEN CLARK
SAMUEL J. LANAHAN
WILLIAM R. PERLIN
SAMUEL A. STERN
ARNOLD M. LERMAN
ROBERT P. STRANAHAN, JR.
MAX O. TRUITT, JR.
JOEL ROSENBLUM
HOWARD P. WILLENS
ANDREW T. A. MACDONALD
ROBERT A. HAMMOND, III
ARTHUR Z. GARDINER, JR.
DANIEL K. MAYERS
TIMOTHY B. DYE
DAVID R. ANDERSON
J. RODERICK HELLER, III
ARTHUR F. MATHEWS
JAMES S. CAMPBELL
DENNIS M. FLANNERY
JAMES ROBERTSON
RAYMOND C. CLEVINGER, III
LOUIS R. COHEN
MICHAEL R. KLEIN
STEPHEN A. WEISWASSER
TIMOTHY N. BLACK
F. DAVID LAKE, JR.
PAUL J. MOSE, JR.
STEPHEN F. BLACK
C. ROYDEN GRAY
RONALD J. GREENE
JAY F. LARIN
GARY D. WILSON
C. LORING JETTON, JR.
WILLIAM T. LAKE
MICHAEL L. BURACK
MICHAEL S. HELFER
NEIL J. KING
ROBERT B. MCCAW
A. DOUGLAS MELAMED
RICHARD W. CASS
WILLIAM J. KOLASKY, JR.

EZEKIEL G. STODDARD
WILLIAM C. GIFFORD
DONALD F. TURNER
COUNSEL

September 19, 1979

Mr. Jay Hogan
Director of Legislative Finance
Pouch WF
Juneau, Alaska 99811

Dear Mr. Hogan:

Pursuant to the requirement of the Contract effective June 1, 1979 between the Legislative Budget and Audit Committee of the State of Alaska and our firm, I am pleased to enclose herewith a copy of our memorandum of September 14, 1979 which we have sent to the Committee.

Sincerely,



Samuel A. Stern

cc: Mr. Dale Staley

PROFESSIONAL SERVICES CONTRACT II

This Contract, effective the 1st day of October, 1979, between the LEGISLATIVE BUDGET AND AUDIT COMMITTEE, STATE OF ALASKA, Pouch V, Juneau Alaska 99811 (hereinafter called the COMMITTEE), and WILMER & PICKERING, 1666 K Street, N. W., Washington, D. C. 20006 (hereinafter called the CONTRACTOR),

WITNESSETH THAT:

WHEREAS, the Legislature of the State of Alaska is considering proposed legislation relating to general stock ownership corporations and the creation of an Alaska General Stock Ownership Corporation (hereinafter called the AGSOC); and

WHEREAS, the COMMITTEE is desirous of obtaining further review of certain technical aspects of the proposed legislation and certain additional features that might be included in any such legislation; and

WHEREAS, the CONTRACTOR has performed professional contractual services with respect to the AGSOC under PROFESSIONAL SERVICES CONTRACT I, effective June 1, 1979 and has delivered to the Committee:

(a) A memorandum dated September 14, 1979 proposing a course of action to deal with federal tax and securities laws issues

(b) A draft ruling application to the Internal Revenue Service

(c) A draft briefing memorandum to the Securities and Exchange Commission; and

WHEREAS, the State requires certain additional professional contractual services in connection with the proposed AGSOC, and

WHEREAS, the CONTRACTOR is willing to undertake the performance of this contract under the terms of this contract; and

WHEREAS, the COMMITTEE may enter into contracts for professional services:

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I

The CONTRACTOR shall provide for the COMMITTEE and report thereon in writing the following services:

1. Submit the ruling request to the Internal Revenue Service, pursue the ruling request and provide such other legal opinions and advice as may be appropriate to assure favorable federal tax consequences to the AGSOC and its shareholders.

2. Submit the briefing memorandum to the Securities and Exchange Commission, carry on discussions as necessary with the staff of the SEC, submit such formal requests for rulings or assurances as may be appropriate and provide such other opinions and advice as may be appropriate to assure favorable federal securities laws consequences to the AGSOC and its shareholders.

3. Assist in drafting a final version of the proposed AGSOC legislation to respond to the views of the IRS and SEC or as may be deemed appropriate by the COMMITTEE.

4. Review the experience of the British Columbia Resources Investment Corporation for precedents that may be useful in the establishment and operation of the AGSOC.

5. Provide such other legal consulting services with respect to the AGSOC as may be requested by the COMMITTEE.

All reports, correspondence, graphs, computer programs, and other documents prepared under this contract are the property of the COMMITTEE and it shall have the full right to use these documents for its purposes, or otherwise, when and where the COMMITTEE may designate without any claim on the part of the CONTRACTOR for additional compensation. Copies of all reports, correspondence, graphs, computer programs and other documents shall be sent to Jay Hogan, Director of Legislative Finance (the DIRECTOR), Pouch WF, Juneau, Alaska 99811, who shall act as the contracting officer on behalf of the COMMITTEE.

So that the CONTRACTOR can effectively perform its services, the DIRECTOR will keep CONTRACTOR advised with respect to developments concerning the AGSOC legislation and will provide CONTRACTOR with copies of reports, memoranda and other pertinent information prepared by other consultants concerning the AGSOC legislation, to the extent they are available to the Director.

The work shall be done in accordance with generally recognized standards of professional consulting services.

In the event that any work does not meet these standards, the DIRECTOR may serve written notice on the CONTRACTOR and satisfactory correction shall be made within ten (10) days. Completion dates for any portion(s) of the work shall be set by mutual agreement except as otherwise set forth herein. Failure to complete the work on time shall result in liquidated damages of One Hundred Dollars (\$100) per day, except for delays due to causes beyond the control and without fault or negligence of the CONTRACTOR. Liquidated damages shall not exceed the total payments allowed under this contract and may be deducted from payments that are owing.

The COMMITTEE may terminate this contract upon written notice of the necessity for doing so and payment shall be made for satisfactory work performed prior to CONTRACTOR'S receipt of such written notice. Any dispute concerning a question of fact that relates to the CONTRACTOR'S Performance, if not disposed of by agreement between the parties, shall be decided in accordance with Appendix A hereto.

ARTICLE II

PERIOD OF PERFORMANCE

The period of performance under this contract shall commence on October 1, 1979 and expire on March 31, 1980. Performance may be extended for additional periods by the mutually written agreement of the parties.

ARTICLE III

CONSIDERATION

In full consideration of the CONTRACTOR's performance hereunder, the COMMITTEE shall pay the CONTRACTOR the customary hourly fees charged by CONTRACTOR which CONTRACTOR estimates will not exceed sixty thousand dollars (\$60,000). Such estimate is based on a number of factors outside CONTRACTOR's control and is not binding on CONTRACTOR. It is agreed that the following specific fees shall be the hourly fee for each of the respective individuals:

Samuel J. Lanahan	\$ 150 per hour
Samuel A. Stern	150 per hour
J. Roderick Heller III	130 per hour
William Gifford	125 per hour
F. David Lake, Jr.	120 per hour
Patricia Douglass	76 per hour
Thomas J. Sugrue	72 per hour

Progress reports will be required. Receipts will be required for all out-of-pocket expenses.

ARTICLE IV

ADDITIONAL CONTRACT PROVISIONS

Appendix A attached hereto and made a part hereof sets forth additional general contract provisions of this contract.

IN WITNESS WHEREOF, the parties have executed this
contract effective as of this day of 1979.

CONTRACTOR

LEGISLATIVE BUDGET AND AUDIT
COMMITTEE, STATE OF ALASKA

WILMER & PICKERING

By: Samuel A. Stern
Samuel A. Stern

By: _____
Representative James Duncan

Partner
(Official Title)

Chairman
(Official Title)

Taxpayer's ID No. 530220117

By: _____
Senator George Hohman

Vice-Chairman
(Official Title)

Approved as to Form:

Legislative Affairs Legal Counsel

APPENDIX "A" TO PERSONAL SERVICE CONTRACT II

ARTICLE A-1. Definitions:

- (a) the term "Committee" means the Legislative Budget and Audit Committee, State of Alaska;
- (b) the term "Chairman" means the Chairman of the Committee;
- (c) the term "Director" means the Legislative Auditor and any person or persons or board authorized to act for the Director.

ARTICLE A-2. Inspections and Reports:

- (a) The Director shall have the right to inspect, in such manner and at all reasonable times as it deems appropriate, all activities of the Contractor arising in the course of its undertakings under this contract.
- (b) The Contractor shall make progress and other reports in such manner and at such times as the Director may reasonably require in accordance with the contract.

ARTICLE A-3. State of Alaska Saved Harmless:

The Contractor shall hold and save the State, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of any wrongful act or omission of Contractor not specifically directed by the State or its duly authorized agents.

ARTICLE A-4. Disputes.

- (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Director, who shall reduce his

decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Director a written appeal addressed to the Chairman. The decision of the Chairman shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: Provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Director's decision.

(b) This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for in Paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative or board on a question of law.

ARTICLE A-5. Equal Employment Opportunity:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, or sex. The Contractor will take affirmative action to insure that

applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age, or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(b) The Contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age or sex.

(c) The Contractor will include the provisions of Paragraphs (a) through (c) in this Article in every contract, and will require the inclusion of these provisions in every sub-contract entered into by any of its sub-contractors, so that such provisions will be binding upon each sub-contractor, as the case may be. For the purpose of including such provisions in any construction, maintenance, or service contract or sub-contract, as required hereby, the term "Contractor" and the term "Sub-contractor" may be changed to reflect appropriately the name or designation of the parties of such contract or sub-contract.

(d) The Contractor agrees that he will fully cooperate with the office or agency of the State of Alaska which seeks to deal with the problem of unlawful or

invidious discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and said Contractor will comply promptly with all requests and directions from the State Commission of Human Rights or any of its officers or agents relating to prevention of discriminatory employment practice.

(e) Full cooperation as expressed in clause (d) shall include, but not be limited to, being a witness in any proceeding involving questions of unlawful or invidious discrimination if such is deemed necessary by any official or agency of the State of Alaska, permitting employees of said Contractor to be witnesses or complainants in any proceeding involving questions of unlawful or invidious discrimination, if such is deemed necessary by any official or agency of the State of Alaska, participating in meetings, submitting periodic reports on the equal employment aspects of present and future employment, assisting in inspection of the construction site, and promptly complying with all State directives deemed essential by any office or agency of the State of Alaska to insure compliance with all Federal and State laws, regulations and policies pertaining to the prevention of discriminatory employment practices.

(f) Failure to perform any of the above agreements pertaining to equal employment opportunities shall be deemed a material breach of the contract.

The responsible officer overseeing compliance with such fair practice and non-discrimination provision shall be the _____

_____. Such responsible officer shall report to the State Commissioner for Human Rights whenever discriminatory practices are brought to his attention.

ARTICLE A-6. Termination:

The performance of work under this contract may be terminated, in whole or from time to time in part, by the State whenever for any reason the Director shall determine that such termination is in the best interest of the State. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

ARTICLE A-7. No Assignment:

The Contractor shall not assign this contract, nor any part thereof, nor any right to any of the monies to be paid him hereunder, nor shall any part of the work done or materials furnished under said contract be sublet except with the written consent of the Director.

ARTICLE A-8. No Additional Work:

No claim for additional work or materials not specifically herein provided, done or furnished by the Contractor will be allowed by the Committee, nor shall the Contractor do any work or furnish any material not covered by the contract unless such work is ordered or confirmed in writing by the Committee.

ARTICLE A-9. Independent Contractor:

The Contractor, and any agents and employees of the Contractor, shall act in an independent capacity and not as officers or employees or agents of the State in the performance of the contract.

WILMER, CUTLER & PICKERING
1666 K STREET, N.W.
WASHINGTON, D. C. 20006

September 14, 1979

MEMORANDUM FOR THE LEGISLATIVE
BUDGET AND AUDIT COMMITTEE, STATE OF ALASKA

Subject: Proposed CSSS Senate Bill No. 170:
Federal Tax and Securities Laws Issues
and Suggested Approaches

You have asked us to review pending legisla-
tion^{1/} permitting the establishment of an Alaskan General
Stock Ownership Corporation ("AGSOC") in conformance with
the recently enacted Subchapter U of the Internal Revenue
Code.^{2/} We have considered issues which may arise under
the federal tax and securities laws in connection with
this legislation, having previously, in our memorandum of
November 2, 1978, for the Alaska Commissioner of Revenue,
treated the securities law issues. This memorandum sum-
marizes those issues, identifies optional approaches to
resolution of certain problems, and identifies sections
of S. 170 which you may wish to consider revising in order
to facilitate regulatory approvals. We also propose an

1/ CSSS Senate Bill No. 170, introduced as amended
April 27, 1979. (Hereafter "S. 170").

2/ 26 U.S.C. §§ 1391-97, eff. November 6, 1978.

approach for our presentations to the Internal Revenue Service ("IRS"), and the Securities and Exchange Commission ("SEC") to facilitate the creation and operation of AGSOC in conformity with the federal regulatory provisions administered by those agencies.

I. SECURITIES REGULATION OF AGSOC

Our firm's Securities Law Memorandum of November 2, 1978, indicated that AGSOC will potentially be subject to provisions of three of the federal securities laws: the registration provisions of the Securities and Exchange Act of 1933 (the "1933 Act"); the registration, reporting, and proxy rules of the Securities Exchange Act of 1934 (the "1934 Act"), and the registration, conduct regulation and disclosure requirements of the Investment Company Act of 1940 (the "1940 Act").

S. 170 poses no securities regulation problems beyond those raised in our earlier memorandum.^{3/} Because the statute is an adaptation of general corporation law,

^{3/} However, we do recommend herein minor modifications to S. 170 to facilitate conformance with the intrastate exemption to the 1933 Act.

it does not deal with most of the subject areas which are likely to concern the SEC: particularly disclosure of risks to potential shareholders, periodic reports on financial condition, the administration of the "ballot" mechanisms, and fiduciary duties of officers and directors. Moreover, our initial approach to the SEC will be made at a time when the final form of the AGSOC has not yet been determined. For example, the question of the appropriate basis for exemption from the registration requirements of the 1933 Act must await a final decision as to whether payment of consideration will be required of Alaska citizens who wish to acquire AGSOC shares.^{4/}

4/ We presume that an initial free issuance is preferred if we are able to obtain a ruling from the IRS that a tax will not be imposed upon citizens who receive shares. However, AGSOCA provides in Section 10.50.080 that

"Shares may be issued without consideration or for consideration fixed by the shareholders before issuance. Consideration for shares shall be fixed by a vote of a majority of the shares voting on the issue."

This provision appears to suggest that AGSOC may charge consideration for shares only after the initial distribution as no shareholders will exist until then to fix the consideration. This point should be clarified if an initial charge for shares is contemplated. If you wish to leave the option open, Section 10.50.075 could be amended to read: "Shares may be issued without consideration or for consideration fixed by the Board of Directors before issuance."

We propose to present to the SEC a briefing memorandum describing the proposed AGSOC as set out in the S. 170 draft offered April 27, 1979, formally requesting a 1933 Act exemption, and requesting the commencement of negotiations to develop a modified form of 1934 Act regulation and a waiver of the 1940 Act's requirements during the first five years of AGSOC existence. We plan a preliminary presentation and discussions with the SEC prior to making detailed requests for rulings on the latter points so that we may involve them in establishing a creative approach to GSOC regulation. We hope to have received preliminary feedback from the SEC before S. 170 is passed in final form.

Provisions of the
Securities Act of 1933

We believe, as we indicated in our Securities Memorandum, that AGSOC should not be subject to the registration requirements of the 1933 Act, either on the basis that an initial distribution of shares is not a "disposition . . . for value" within the meaning of Section 2(3) of the 1933 Act, or on the basis of the "intrastate exemption" provided by Section 3(a)(11) of

the same Act. We propose to argue both points to the SEC.^{5/}

Even if the AGSOC shares are sold for consideration or if the SEC deems the disposition otherwise to be for value, we anticipate that we will be able to prevail on the theory that its shares are exempt from registration under the 1933 Act by virtue of the intrastate exemption in section 3(a)(11).^{6/} The characteristics of offerings the SEC will deem as falling within

^{5/} Of course, even if the initial distribution of shares is free of charge and thus falls within a "not for value" exemption to the Securities Act of 1933, any additional issuances which are for value would fall within the registration requirement unless they are otherwise exempt. This would include exchanges of shares for property or services as provided for in S. 170 § 10.50.085.

^{6/} This section exempts from registration:

"Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory."

Section 3(a)(11) are described in non-exclusive Rule 147 (17 C.F.R. § 230.147).^{7/} The rule requires that both the purchasers of the securities and the issuer have certain characteristics to ensure that both are truly residents of the state and that sales and resales are restricted to state residents. We believe that several minor changes in S. 170 are advisable in that they will bring the AGSOC within Rule 147 and thus simplify our task if the intrastate exemption need be relied on (either for the initial or any later issues).

AGSOC will be an Alaska corporation as required by Rule 147. Its principal place of business will probably be located in Alaska (Rule 147(c)(1)(i) and (2)(iv)), although the latter is not required by S. 170.^{8/} We suggest that the legislature consider

^{7/} Issuers may avail themselves of the intrastate exemption even if they do not satisfy all the provisions of this rule. 17 C.F.R. § 230.147 (Preliminary Notes, p. 1). If an issue satisfies all of Rule 147's provisions, however, the intrastate exemption will apply.

^{8/} S. 170 § 10.50.050 requires only that the corporation maintain a "registered office" within the state.

requiring AGSOC to have its principal place of business in Alaska as this would clarify this aspect of compliance with Rule 147.

Rule 147 restrictions on sales and resales to state residents are clearly satisfied by AGSOC.^{9/} The basic purpose of Rule 147's limitations on resale is to ensure that securities do not enter the interstate marketplace. It does not appear that the fact that a few shares pass by descent after five years to out-of-state holders or that former residents may retain their AGSOC shares if they leave the state after five years is so inconsistent with those principles as to upset application of the exemption.

Rule 147 also requires that the issuer's business be conducted predominantly within the state in which the securities are distributed.^{10/} The gross revenues and

^{9/} Subchapter U and S. 170 provide that shares may only be transferred voluntarily or involuntarily to persons who are residents of the state. 26 U.S.C. § 1391(4)(D)(ii); S. 170 §§ 10.50.320(a)(6) & 8(B). The general prohibition against transfers except by descent for five years also helps to meet the Rule 147 requirement that resales in a nine-month period after the initial distribution be restricted to state residents. S. 170 also provides that if the shareholder leaves the state or shares pass by operation of law to a non-resident, the corporation shall repurchase them at book value. S.170, Section 4(c).

^{10/} The issuer must derive at least 80 percent of its gross revenues from within the State and have at least
[Footnote continued on following page]

asset provisions of the rule will only be applicable to the initial GSOC distribution if AGSOC becomes operational before its shares are distributed.^{11/}

The use of proceeds provision will only apply if AGSOC charges for the shares, and it may be satisfied easily by segregating issue proceeds to ensure that they are spent within Alaska. If AGSOC is to acquire an asset prior to share distribution we must know what the asset is to formulate arguments that the asset and its income are "within" the State within the meaning of Rule 147 and section 3(a)(11). AGSOC will presumably be acquiring a minority participation in a joint venture as an asset. If majority control of that venture is in the hands of non-Alaskans, it is arguably not an Alaska asset. Also, income may or may not be deemed derived from within the state -- e.g., sales of oil to out-of-state corporations may be deemed non-Alaska income. Even if the initial

[Footnote continued]

80 percent of its assets within the State. Rule 147 (c)(2)(i) and (ii). It must also intend to use 30 percent of the net proceeds from sales of the issues in question within the State.

^{11/} Rule 147 provides that if gross revenues for the most recent twelve-month period are less than \$5,000, the proceeds provision is not applicable.

distribution is of shares in a shell company, it will be necessary to examine whether AGSOC revenues can be deemed to arise from the "operation of a business or of real property within the state," with regard to subsequent issues of shares. The legislature may wish to consider so restricting the corporation in its enabling legislation.

S. 170 does not now specifically provide for procedures required by Rule 147 to ensure that the reality comports with the intent of the issuer.^{12/} We recommend that the legislature amend S. 170 to provide for adequate legends on share certificates;^{13/} and that

^{12/} A legend on the share certificates must identify the limitations on resale and warn of the lack of registration, stop transfer instructions must be given to the transfer agent, and purchasers must be required to make written representations as to their residence. Rule 147 (b)(1). The issuer must also restrict sales of shares which are part of the same issue and make appropriate disclosures. *Id.* § (f)(2) and (3). S. 170 does require that eligible individuals apply for shares and that their interest will become void if it is determined that they misrepresented their eligibility. § 10.50.345-360. The SEC may wish to make rules in this regard or examine AGSOC procedures for establishing residency prior to authorizing sale or distribution without registration.

^{13/} S. 170 § 10.50.105 provides for extremely limited information to be contained on the certificate. We recommend that the legislature amend this section to require disclosure on the certificate of all the restraints on transfer, including the fact that shares are not transferable to non-residents.