

SCOMM

#52:9

OUTLINE FOR
ALASKA STATE LEGISLATURE
JOINT SPECIAL COMMITTEE ON LOCAL OPTION LAWS
CONSIDERING A LOCAL OPTION TO BAN POSSESSION OF ALCOHOL

- I. INTRODUCTION - Considering that the Alaska Supreme Court in Ravin v. State, 537 P.2d 497 (Alaska 1975) has held a complete ban on possession of marijuana in the home to be unconstitutional under Alaska's constitutional right to privacy (Art. 1, sec. 22), any ban on possession of alcohol could suffer the same fate. The way to prevent that result is to convince the court of the danger inherent in the consumption of alcohol, particularly in certain areas of the state, and that a decision by a majority of voters to protect themselves from that danger outweighs any single individual's right to private possession of alcohol.

Because a ban on possession more directly affects consumption of alcohol in the home than the existing option of a ban on sale and importation, special emphasis needs to be placed on the danger presented as a result of possession and consumption of alcohol in the home. The following outline will provide a guide on how to establish such a record, point out the issues which need to be addressed, and point out the problems which will inevitably be encountered. The outline necessarily focuses on the issue of possession in the home.

- II. PUBLIC HEARINGS - One of the best methods of establishing a credible factual record is to hold public hearings where expert testimony can be presented and where members of the community can testify to their personal experiences and their recommendations. The following basic considerations should be taken into account before the public hearing process is commenced:
- A. STANDARD OF PROOF - The Supreme Court in Ravin established a high standard of review in deciding whether to validate the ban on the possession of marijuana. It would be advisable for the legislature to keep in mind that same standard in its hearings. The standard of review for a ban on alcohol possession would probably seek to determine (1) whether there is a proper state interest in banning alcohol possession; and (2) whether the means chosen bear a close and

substantial (not merely reasonable) relationship to the ends sought to be achieved by the legislature. Cf., Ravin, 537 P.2d at 498.

As to the first question, whether there is a valid state interest in banning possession, there must be evidence of the harmful effects of alcohol, particularly in rural Alaska where most local option elections are held. This is the easiest hurdle to overcome.

The second question, whether the ends justify the means, is more difficult. The ends (the legislative purpose) is to protect the individual and the public. The means chosen to carry out this legislative purpose would permit the voters of each community to impose upon themselves a ban on possession of alcohol, even within the home. There must be evidence (1) that current state efforts, including the present local option scheme which permits possession, are not doing enough to protect the public; and (2) that even small amounts of alcohol in the home can have harmful effects. The legislature should take the approach that each community should be the sole judge of whether any expectation of privacy in possession of alcohol is one that their society is prepared to recognize as reasonable. In other words, the balance between one person's right to possess and consume alcohol and the public's right to safety and security should be made on a village-by-village basis by the voters in each village.

- B. TYPE OF EVIDENCE DESIRED - In general, testimony should be gathered from persons such as law enforcement personnel, social workers, physicians, ministers, mental health counsellors, alcohol counsellors, and community and family members who have had experience with the social problems caused by alcohol. Special emphasis should be put on the consequences of alcohol in homes (even small amounts) and the belief that the present local option laws are not as effective as needed because of the possession of alcohol in homes. Some ideas follow.

1. Community members should testify about:

- a. Specific instances of alcohol-related violence in the home:
 - 1. domestic violence between spouses
 - 2. violence between family members in general

3. sexual abuse of minors in home
4. abuse and neglect of children in home
5. crimes committed in homes by non-family members

b. Specific instances of alcohol-related violence in the community:

1. murders
2. assaults
3. rapes
4. robberies
5. vandalism

c. Specific instances of burglaries in homes committed to obtain stored alcohol.

d. The effects of isolation on rural area residents' consumption of alcohol and the commission of violent acts; the feelings of frustration and anger created by having nowhere to go and nothing to do.

e. The close proximity of homes in the rural areas and the interdependence of the residents upon each other; the trust and interdependence that is violated when residents commit violent acts against each other. (Show pictures of the close proximity of homes and pictures of bullet holes in walls.)

f. The fact that existing laws which ban the sale and importation of alcohol do not work.

g. The fact that possession of even small amounts in the home causes problems; when alcohol is consumed, the drinking patterns are such that intoxication is almost inevitably the result.

h. The fact that possession in the home engenders a disrespect for the spirit and purpose behind the local option for a "dry" community. Possession now is a loophole not covered by the ban on sale and importation.

i. The fact that allowing possession in the home gives teenagers more access to alcohol--the group that is most likely to abuse alcohol and to commit alcohol-related violent acts and suicide.

2. Some witnesses and evidence to be considered:

- a. An authority on local option laws to testify to the fact that there was, in the beginning, a misconception amongst the villages that the local option prohibiting sale and importation of alcohol actually did prohibit possession, which could explain part of the immediate results felt after local option laws went into effect.
- b. Testimony by police, prosecutors, community members, to explain why existing local options are not enough. Explain that initial improvements stemmed from decreased importation and sale and also the misconception that there was a ban on "possession". Now that persons understand that importation/sale cases are very difficult to enforce and that "possession" alone of alcohol is not illegal, problems--violent crime, domestic violence, etc., have increased (if this is the case).
- c. Alaska State Troopers who can testify that the initial results of the 1980 local option laws in St. Mary's were the significant reduction of complaints of trespass, assault, minors consuming, vandalism, criminal mischief, and felony cases. (See Nome Nugget, June 18, 1981). Enter the newspaper article into the hearing record.
- d. A resident of Chevak, preferably the Chief of Police Michael Selvester, (if he is still there) who can testify to the fact that once Chevak banned "sale and importation" of alcohol in 1980, the number of alcohol-related crimes and disturbance reports in Chevak dropped significantly. Chevak was the first community in Alaska to vote for alcohol prohibition (100 to 12 vote). The number of alcohol related assaults and thefts decreased by roughly one-half. Alcohol-induced suicides also cut in half. (Nome Nugget, September 17, 1981). Enter the newspaper article into the hearing record.
- e. A representative from the State Division of Elections to testify as to the number of towns and villages that immediately went

ption laws were
any have gone "dry"
type of testimony
to be as "dry" as
soon as possible.
sire from the State Office on
Drug Abuse (SOADA) to testify to
Alaska statistics of alcohol
in children, rapes, sexual abuse of children, neglect
available). areas (if such statistics are
Representatives from the mental health and
social work community in to testify as to the
effects of alcohol in to rural violent acts
ties--how it is related to family members, children,
against and to mental health problems.
etc., and physicians who have worked in the bush areas
Physicians who have worked in the bush areas
and can testify as to the violent alcohol-
related injuries as to the number of corpses,
should also provide pictures of corpses,
ounds and bruises, as a result of alcohol-
lated violence.
Police chiefs and VPSO's in the
es who can testify to the number of
related crimes, especially in the
Troopers who are assigned to
reas or have had significant
n those areas, such as
Godfrey, head of the Village
Officer (VPSO) program.
was quoted in an April
Daily News article to
get (in the Bethel
t nature, generally
cohol related."
every homicide
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ated." four a

3. "Other types of serious crimes--stabbing, rapes, shootings--are almost always committed in the company of liquor."
4. "We don't have very many of your violent crimes out here ... People don't take their frustrations out on other people, unless they've been drinking."

In addition have Lieutenant Godfrey show pictures of alcohol-related violent crime scenes, especially those which occurred in the home. Enter newspaper article into the hearing record.

- k. A resident of Elim familiar with the 1981 case of a man, Wilfred Murray, who murdered his wife and two children, and then killed himself. Alcohol was found to be involved and the incident occurred in the home. (See Nome Nugget, Thursday, May 28, 1981). Show pictures of murder scene. Admit 1981 newspaper article into evidence, as well as other articles since 1981 reporting similar cases.
- l. City leaders and spokespersons, such as the editor of the Nome Nugget, who wrote on May 28, 1981, a scathing editorial demanding that something be done to stop the alcohol-related crime. Admit 1981 editorial into evidence, as well as any other editorials and articles written on the subject since 1981. This type of testimony would demonstrate how strongly the communities feel about regulating alcohol, even to the point of banning its possession.
- m. Attorneys and legal aides who have dealt with the problem of alcohol and its effects on the community--district attorneys, public defenders, attorneys with Alaska Legal Services.
- n. Community members who can testify to how simple it is to make home brew, to the quantities in which it is produced, to the way in which it is consumed (binge-drinking), and to how potentially dangerous it can be. Have persons relate

their personal knowledge of instances where bad home brew was produced and where bad consequences resulted.

- o. Thomas D. Lonner Ph.D and/or J. Kenneth Duff M.S.W., authors of Village Alcohol Control and the Local Option Law--A Report to the Alaska State Legislature; June 24, 1983 from Center of Alcohol and Addiction Studies, School of Health Sciences, University of Alaska, Anchorage. Have their testimony include the following findings made in their report:

1. Villages see alcohol as a dangerous substance. Due to their cultural, social, and economic origins Alaska villages operate as very large family units. Their populations are so small, inter-related, and interdependent that they become vulnerable to the negative effects associated with excessive drinking, such as suicide, domestic violence, and loss of economic opportunity. Therefore, the alcohol-related social impacts severely impair family and community morale and perpetuate a cycle of negative events.
2. Many villages wanted totally "dry" communities--meaning the prohibition of "home brew" and the ability to exercise what we know as unconstitutional police powers (searches of luggage at airports, e.g., with no probable cause that banned alcohol was present). When villagers found that the 1980 local option laws did not ban possession, they were very disappointed and frustrated.
3. Consumption of alcohol is related to rising mortality rates.
4. Alcohol is almost always involved in personal injury, property damage, break-up of families, wife abuse, tragic deaths, suicides, jeopardizing the stability of businesses.
5. The recently enacted local option laws (1980) affected communities in that

there have been fewer health aide emergency calls, less demand for magistrates, more privatization of drinking, less public binge drinking, more quiet community, less fear of others, fewer people hurt, decline in drunken sprees.

6. Villages choose the strictest local option--a ban on sale and importation--most frequently by far.
- p. The author of or a person familiar with the DRAFT Feasibility Study on the Effects of the Local Option Law on Local Communities, SOADA, 1985, which concludes, among other things, that local option has created a decline in public drunkenness and alcohol-related interpersonal violence and demonstrated major improvements in the appearance and the school performance of the children of drinking parents. Enter the document into the hearing record.
- q. Former Senator Mike Colletta, other senators on the Senate Special Committee on Alcoholism and Alcohol, and Jerry Abramczyk, aide to the committee, on their impressions of the 1977 hearings held in 35 Alaskan communities prior to enactment of the Local Option Laws in 1980. This will help show that the problem is a longstanding one which is not getting better, despite other approaches taken by the legislature. In the Committee's report to the Legislature, Senator Mike Colletta said: "In all my years of legislative experience and all the public hearings I have conducted or in which I have participated, I have never witnessed such an outpouring of public comment and concern ... alcoholism and alcohol abuse is truly the greatest human needs problem facing Alaskans today." Enter the document into the hearing record.
- r. Take legislative notice that in Harrison v. State, 687 P.2d 332 (Alaska 1984) the Alaska Court of Appeals held that there is an unmistakable correlation between alcohol use and violence, etc., and that marijuana and cocaine are less dangerous than alcohol.

Enter the court decision into the hearing record.

- s. C. Earl Albrecht M.D., author of Alcohol Abuse in Alaska: Prevention's Time Has Come (prepared for the State Office of Alcoholism (March 1982)) which stated: "Abuse of alcohol is often regarded as the single most significant threat to the health of contemporary Alaskans." Enter the document into the hearing record.
- t. The author of or someone familiar with the report to the Twelfth Legislature (1981) from the House Task Force on Violent Crime--which found a relationship between violent crime and alcohol abuse. (Listen to Task Force tapes of testimony from police, prosecutors, judges, community leaders saying that alcohol abuse and violent crime are inseparable). Enter the report into the hearing record.
- u. The author of or someone familiar with the 1980 Alaska Judicial Council report on "Alaska Felony Sentences: 1976-1979" which found (1) there to be a significant relationship between the use of alcohol and criminal behavior; (2) that this association was most significant in rural areas of the state where 77.9% of violent crimes and 55.6% of property crimes were committed under the influence of alcohol. (pp. 45-48, 65-67) Enter the document into the hearing record and obtain more current statistics.
- v. The author of or someone familiar with the 1976 Governor's Commission on the Administration of Justice, "Standards and Goals for Criminal Justice", which concluded that (1) the crime in Alaska is significantly related to excessive and unregulated consumption of alcohol; (2) that one out of every ten Alaskans is an alcoholic; and (3) rural villages should be allowed to control alcoholic beverages. Enter the document into the hearing record and obtain more current statistics.
- w. The author of or someone familiar with "Analysis of Alcohol Problems Project, 'Working Papers: Descriptive Analysis of

the Impact of Alcoholism and Alcohol Abuse in Alaska," 1975, vol. V at 14 (1977) which states that: (1) from 1959 to 1975, Alaska's rate of annual consumption increased at almost twice the rate of the national average. Id. at 42; (2) total economic cost of alcoholism and alcohol abuse in 1975 was \$131.2 million dollars. Id. at 32; (3) impact of alcohol-related problems was greater in rural areas; (4) Alaska Natives are significantly overrepresented in alcohol-related mortality. (pp. 4, 7, 32) Enter the document into the hearing record and obtain more current statistics.

- x. The author of or someone familiar with the 1977 "Analysis of Alcohol Problems Project" which cited death due directly to alcoholism increased 153% from 1959 to 1975; also Alaska's alcoholism rate in 1975 was 418% higher than the national average. Hopefully, there will be more current statistics available. Enter the document into the hearing record.
3. Other publications to be entered into the hearing record:
- a. The Journal of Studies on Alcohol, published by the Center of Alcohol Studies at Rutgers University--chapters on "Medical Complications," "Social and Cultural Aspects," "Crime and Alcohol." Enter the documents into the hearing record.
 - b. The Fourth Special Report to the U.S. Congress on Alcohol and Health from the Secretary of Health and Human Services, p. 86 (January 1981). Enter the document into the hearing record.
 - c. Kraus and Buffler, Sociocultural Stress and the American Native in Alaska: An Analysis of Changing Patterns of Psychiatric Illness and Alcohol Abuse Among Alaska Natives, Culture Medicine and Psychiatry 3 pp. 111-115 (1979). Enter the document into the hearing record.
 - d. Crime in Alaska, Criminal Justice Planning Agency, Office of the Governor, State of

Alaska (published annually from 1976).
Enter the document into the hearing record.

- e. The Biology of Alcoholism Vol. 4, pp. 351-444, Kissin and Begleiter ed., Plenum Press, N.Y. (1976). Enter the document into the hearing record.
- f. Drinking and Crime, Collins, ed., The Guilford Press, N.Y. (1981). Enter the document into the hearing record.
- g. The State Health Plan which reports at pp. 4-17 that 57% of all suicide attempts recently treated by the Indian Health Service on an ambulatory basis were alcohol related. Enter the document into the hearing record.
- h. Blackwood, Health Problems of Alaska Natives, Suicide Mortality and Morbidity, Alaska Area Native Health Service (December 1978). Enter the document into the hearing record.
- i. Grinspoon and Bakalar, Cocaine: A Drug and Its Social Evolution, Basic Books (1976), where it says: "Cocaine is probably less dangerous in this respect (in respect to criminal activity) than alcohol." Enter the document into the hearing record.

C. FACTUAL RECORD WHICH WOULD UNDERCUT THE LEGITIMACY OF AN ARGUMENT THAT A COMPLETE BAN OF POSSESSION OF ALCOHOL IS CONSTITUTIONAL.

- 1. Evidence that existing local option laws are sufficient; that violent crime statistics have gone down, including violence in the home.
- 2. Evidence that, if it is the general feeling that existing local option laws, e.g., laws banning sale and importation, are not working, it is because of problems with enforceability. And, enforcement of a ban on possession of any amount of alcohol, especially in the home, will be even more difficult. Instead of enacting a new and unenforceable law, perhaps more effort should be put into enforcing existing laws.
- 3. Evidence from troopers, VPSO's, and prosecutors explaining why a ban on possession will be very

difficult to enforce. Also, evidence that failure to enforce the law creates a general disregard for the law amongst the residents of the community. It also engenders frustration and anger amongst residents who are very adamant about controlling alcohol consumption in the community.

4. Evidence from troopers, VPSO's, prosecutors, magistrates, and judges that investigations will be time-consuming and costly--especially investigations required to justify a court-issued search warrant to search a private home for alcohol. Evidence that the constitutional prohibition against unreasonable search and seizure will be taken very seriously in the decision whether or not to issue a search warrant.
5. Evidence that banning possession of alcohol would create additional danger because of an increase in the manufacture of "home brew" (even though home brew would also be banned) which creates concern about potential toxic effects.
6. Evidence that banning possession of alcohol will increase substitution of other recreational substances (e.g., cocaine, marijuana, lysol, gasoline fumes, listerine, etc.) amongst 18-25 year olds especially.
7. Evidence showing that banning possession from moderate users of alcohol, as well as abusers, is too overbroad. Apparently, 15% of the customers buy 62% of the liquor. Therefore, 85% of the customers purchase a much more moderate amount and can presumably use alcohol without harmful effects.
8. Evidence that residents of dry communities will just go and drink in wet communities--the regional hubs--and commit violent acts there.
9. Testimony which would advocate that there only be a ban on possession of large amounts of alcohol--that a person should be allowed to have small quantities for home use (similar to marijuana laws).
10. Evidence that there is less danger from wine and beer, thus possession of wine and beer should be

allowed, thus only banning the possession of hard liquor.

11. Evidence that there are other effective and less-intrusive methods of controlling alcohol consumption and associated violence such as:
 - a. more detoxification centers;
 - b. more alcohol and drug abuse counselling, mental health counselling;
 - c. creation of more things for villagers to do; that is, they have too much leisure time which is filled in by idle use of television and alcohol. Build community centers, provide jobs, provide feeling of self worth.
12. Testimony to the effect that "binge drinking" is the main problem, not drinking in moderation, particularly in the home. Methods should be considered to focus on stopping "binge drinking" rather than banning all drinking altogether.
13. Evidence that state efforts should be focused on the root of the problem. Why do Natives drink?--It's called "poverty drinking"--drinking because of demoralization, loss of control, loss of roles, intermittent access to money--all characteristics indistinguishable from drinking and drug abuse in urban ghettos. That is, improve the life of Natives, find them jobs, enhance community activities, etc. Find alternate ways to solve problem besides banning possession altogether.
14. Evidence that increased bootlegging will occur. Residents of dry towns will be using money to buy expensive alcohol that should be used to pay for their families' daily survival needs.
15. Evidence that a ban on possession of alcohol will make drinking a perversely attractive but prohibited social event.
16. Evidence that, in general, "prohibition did not work in the 1920's, why should we think that it would work in the villages." The flagrant violation of such a law only engenders a community-wide disregard for all laws and law enforcement efforts.

- D. LOCATIONS AND SCHEDULE OF PUBLIC HEARINGS - Hearings should be held throughout the state, both in rural areas and in urban areas. In 1977, the Alaska State Senate formed the "Special Committee on Alcoholism and Alcohol-Related Legislation" in a response to pleas from rural and urban Alaska communities for a revision of all state alcohol and drug laws. For the planning purposes of the 1985 legislative interim committee, the following is the complete hearing schedule of the 1977 special committee:

September 16, 1977	Anchorage
September 17, 1977	McGrath
	Ruby
	Galena
	Anvik
September 18, 1977	Holy Cross
	Hooper Bay
	Akiachak
	Napaskiak
	Bethel
September 19, 1977	Unalakleet
	Nome
	Kotzebue
September 20, 1977	Kiana
	Fort Yukon
	Fairbanks
September 21, 1977	Fairbanks
October 16, 1977	Seward
October 17, 1977	Homer
	Kenai
October 18, 1977	Kodiak
October 19, 1977	Anchorage
October 20, 1977	Palmer
	Dillingham
November 14, 1977	Petersburg
	Sitka
November 17, 1977	Angoon
	Juneau
November 18, 1977	Hydaburg
	Craig
	Klawock
November 19, 1977	Wrangell
	Ketchikan
November 20, 1977	Hoonah

At each of these meetings, residents of the state were asked to submit comments and model legislation. On January 4, 1978, the special committee held a final statewide hearing at which all locations were connected through the Public Broadcasting Network.

For more information on the organization of these 1977 hearings, contact Jerry Abramczyk at 276-8307. He was the staff member to the "Special Committee on Alcoholism and Alcohol-Related Legislation."

III. OTHER POTENTIAL LEGAL CHALLENGES

A. The following legal challenges, on grounds other than the right to privacy, have been put forth in similar cases (Harrison, Ravin, Erickson):

1. Local option laws, including a ban on possession, could constitute impermissible racial classification. Harrison held that local option law would not be unconstitutional on that basis because it permits any municipal government or established village to enact local option laws, and once enacted, applies to all persons in the municipality or village, regardless of race.
2. Possession and consumption of alcohol in the home is a fundamental right. Harrison held there was no fundamental right to possess or consume alcohol in the home. Ravin held the same for marijuana, as did Erickson for cocaine.
3. Consumption of alcoholic beverages is a protected privacy right under the Federal Constitution. Harrison held that it is not.
4. A local option law, which prohibits possession of alcohol, would violate equal protection because moderate consumers could not possess alcohol and because individual communities are given discretion to determine level of alcohol availability permitted within their boundaries. Harrison held that such laws do not violate equal protection because differences in treatment of citizens from different communities resulting from extent to which individual communities elect to implement law are not constitutionally significant and similarly situated people are treated alike. Furthermore, Harrison held that when a state attacks a complex problem, like alcohol abuse, it need not choose between attacking every aspect of that problem and doing nothing at all.
5. The right to ingest a particular substance and the right to autonomy in the home is absolute. Erickson held that such rights are not absolute and each must yield to the interest of other

societal members in health and safety. Furthermore, Ravin held that no one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely; and the state is under no obligation to allow otherwise "private" activity which will result in numbers of people becoming public charges or otherwise burdening the public welfare'. But note that in Harrison, the court stated that while consumption of alcoholic beverages in the home is not a fundamental right, it touches on a privacy interest that is manifested in terms of personal autonomy, thus under this rationale the state bears a heavy burden of justifying a regulation banning possession of alcohol in the home as a legitimate health and welfare measure.

6. Proscribing and imposing criminal penalties for personal consumption of alcohol is cruel and unusual punishment. Neither Ravin nor Harrison addressed this issue.
7. A local option proscribing possession of alcohol is violative of equal protection because other commonly used recreational drugs, such as tobacco are not proscribed. Ravin held that a statute proscribing marijuana is not violative of equal protection on the same grounds, even though other drugs, such as alcohol and tobacco, may inflict more damage than marijuana.

IV. OTHER ISSUES WHICH NEED TO BE ADDRESSED IN REGARD TO A BAN ON POSSESSION OF ALCOHOL

- A. Home Brew - If a ban on possession of alcohol is put into effect, it should include the manufacture and possession of "home brew". Under existing law, "home brew" is not included under the definition of "alcoholic beverage" (AS 04.21.080(b)(1)). Since binge drinking of "home brew" has been found to be just as harmful as the consumption of commercial liquor, the possession of "home brew" should be prohibited under the ban on possession as well.
1. Alaska Law - Alaska's existing definition of alcoholic beverage reads as follows:

AS 04.21.080(b)(1) -- "alcoholic beverage" includes, but is not limited to, whiskey, brandy, rum, gin, wine, ale, porter, beer,

and all spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption and containing more than one percent alcohol by volume.

2. Oklahoma Law - In Oklahoma, the definition of "alcoholic beverage" includes "home brew" in the following way:

- a. "Alcoholic beverage" is defined as:

"alcohol, spirits, beer, and wine as those terms are defined herein and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by human beings."

- b. "Alcohol" is defined as including:

"hydrated oxide of ethyl, ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced. It does not include wood alcohol or alcohol which has been denatured or produced as denatured in accordance with Acts of Congress and regulations promulgated thereunder.

3. Mississippi Law - In Mississippi, the definition of "alcoholic beverage" includes "home brew" in the following way:

- a. "Alcoholic beverage" is defined as:

"any alcoholic liquid, including wines of more than four percent (4%) of alcohol by weight, capable of being consumed as a beverage by a human being, but shall not include wine containing four percent (4%) or less of alcohol by weight and shall not include beer containing not more than four percent (4%) of alcohol by weight, as provided for in section 67-3-5, but shall include native wines. The words "alcoholic beverage" shall not include ethyl alcohol manufactured or distilled solely for fuel purposes."

- b. "Alcohol" is defined as:

"the product of distillation of any fermented liquid, whatever the origin thereof, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol."

4. Alabama Law - In Alabama, the definition of "prohibited liquors and beverages" includes "home brew" in the following way:

a. "Prohibited liquors and beverages" are defined as:

a. Alcohol, alcoholic liquors, spirituous liquors and all mixed liquors any part of which is spirituous;

b. Foreign or domestic spirits or rectified or distilled spirits, absinthe, whiskey, brandy, rum and gin;

c. Vinous liquors and beverages;

d. Malt, fermented or brewed liquors of any name or description manufactured from malt wholly or in part or from any substitute therefor;

e. Beer, lager beer, porter and ale and other brewed or fermented liquors and beverages by whatever name called;

f. Hop jack, hop ale, hop weiss, hop tea, malt tonic or any other beverage which is the production of maltose or glucose or in which maltose or glucose is a substantial ingredient;

g. Any intoxicating bitters or beverages by whatever name called; and

h. All liquors, liquids, drinks or beverages made in imitation of or intended as a substitute for beer, ale, rum, gin, whiskey or for any other alcoholic, spirituous, vinous or malt liquor and any liquor, drink or liquid made or used for beverage purposes containing any alcohol.

5. Recommended Statutory Changes to Alaska law to Include "Home Brew" in a Ban on Possession of Alcoholic Beverages

- a. Definition of Alcoholic Beverage: The definition of "alcoholic beverage" under AS 04.21.080(b)(1) should be repealed and reenacted to read:

"Alcoholic beverage" - means any alcoholic liquid which is intended or capable for use as a beverage and which contains such a proportion of alcohol that it will produce intoxication when imbibed in such quantities as it is practically possible for a person to drink. This definition includes spirituous, vinous, malt and other fermented or distilled liquors, whether produced commercially or privately, such as whiskey, brandy, rum, gin, wine, ale, porter, beer, and what is commonly known as "home brew", "moonshine", and "hootch".

- b. Definition of Alcohol: Title 4 should also include a definition of "alcohol" to read as follows:

"Alcohol" - means the product of distillation of any fermented liquid, whatever the origin thereof, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol.

- c. Exemptions - the committee should consider whether it wants to exempt from the law alcohol used for particular purposes -- such as for use by physicians, pharmacists, and churches.

- d. Proof of Intoxicating Character - Under the recommended definition of "alcoholic beverage," a prosecutor need only prove that the liquor was of a kind generally recognized and known as intoxicating. State v. Mitts, 289 S.W. 935 (Missouri 1926); Brown v. State, 114 S.W.2d 879 (Texas 1938).

B. Mental State Required to Commit the Crime of Possession of Alcohol

When drafting the local option of banning possession of alcohol, the language of the statute should make it clear what "mental state" is required for conviction. There are four mental states to choose from: intentionally, knowingly, recklessly or with criminal negligence. For this type of crime, the mental state

of "recklessly" is recommended. The definition of "recklessly" reads as follows:

a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk. AS 11.81.900(a)(3)

For your information, the definitions for the other mental states are also found in AS 11.81.900.

In practical terms, a person would "recklessly" possess alcohol if he receives a gift from a friend which is contained in a decorated container normally associated with packaged liquor and which appears to have the weight and feel of a bottle of liquor. That person is aware of the risk that liquor may be contained in the "R&R" whiskey container and is consciously disregarding that such a circumstance exists, if he claims he did not know alcohol was in the container.

C. Other States "Dry County" Laws - Do Other States Ban "Possession?"

It is common knowledge that there are still "dry counties," especially in some of the southern states of the United States. It would be interesting to find out whether the laws of those "dry" counties ban possession of alcohol, or if they just ban the sale and importation of alcohol. Considering the fact that Alaska has one of the strongest constitutional "right to privacy" provisions, if it is found that other states have not dared to ban possession because of privacy concerns, such a finding would weaken the argument upholding a ban on possession in Alaska. That is, if the other states do not have such a strong privacy provision as Alaska has, and their laws do not dare to ban possession, then the law in Alaska must be supported by findings that the problems created by alcohol in rural Alaska are much more serious.

1. Other states' laws:

- a. Alabama Law - Alabama bans possession of alcohol in dry counties (Alabama Code § 28-4-20) but allows possession of certain quantities of state tax-paid alcoholic beverages for private use. (Alabama Code § 28-4-200) (See Hughes v. State, 291 So.2d 331 (Alabama 1974))
- b. Mississippi Law - Mississippi bans possession of alcoholic beverages (which does not include wine or beer with 4% alcohol or less) except for use by pharmacists, physicians, and churches. (Mississippi Code § 67-1-9)
- c. Oklahoma Law - Oklahoma law bans possession of alcoholic beverages, except that it allows possession for personal use of the possessor and his family and guests, or possession for medical or religious purposes. It should be noted that Oklahoma courts have long held it is beyond the power of the legislature to make unlawful the possession of intoxicating liquor for personal use and that doing so would be unconstitutional as an unreasonable exercise of the police power. Ex parte Wilson, 119 P. 596 (Oklahoma 1911). See also Johnson v. Yellow Cab Transit Co., 137 F.2d 274, 277 (1943).

D. "Possession" by Consumption

The public hearings and the legislature should address the question of whether a person would be in violation of the ban on possession if he is found to be walking down the street in a state of intoxication from alcohol--even though he may not otherwise be in possession of alcohol. Would an intoximeter result showing presence of alcohol in his breath be a presumption of possession of alcohol?

E. Effective Enforcement of a Ban on Possession - In order to give meaning to a ban on possession, the prohibition must be enforced.

1. Adequate Enforcement Personnel and Facilities. The following resources should be assessed in considering a ban on possession:

- a. Availability of police resources - State Troopers and VPSO's - to investigate offenses, obtain search warrants, apprehend offenders.
- b. Availability of prosecution resources - district attorneys, clerical staff - to counsel law enforcement personnel, aid in obtaining search warrants, aid in investigations, process persons through court, prosecute cases.
- c. Availability of prison resources - local prison facilities and regional prison facilities - to hold offenders temporarily until they make bail and to incarcerate convicted offenders for lengths of time.
- d. Availability of court resources - magistrates, judges, and courtrooms - to process offenders through the judicial system, to review and issue search warrants, and to preside over cases prosecuted.

It must be recognized that existing enforcement resources are already overloaded with other priorities such as drug crimes, drunk driving, violent crimes, and property crimes. More money will be needed to broaden their scope of coverage.

2. Community Member Self-Enforcement - Thought should be given to whether the use of peer pressure and community member social control should be encouraged as a way to enforce the laws.

V. LEGISLATIVE FINDINGS

The interim committee should do a complete report to the legislature or, at the very least, come up with findings that will satisfy the court's standard of review.