

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

1531.2 SCOMM•56A: JNT. SPEC. MENTAL HEALTH•TRUST LAND, 1987

The state law analysis necessarily begins with article IX, section 7, of the Alaska Constitution, which provides:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [relating to the Alaska Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

(Emphasis added.)

There is no question that some dedication of the proceeds from mental health lands is "required by the federal government for state participation" in a federal program, the state participation in this case being the receipt of lands under the Act. As we have seen, § 202(e) requires, as a condition of the state's acceptance of the land grant, that the income and the proceeds from mental health lands first be applied to funding Alaska's mental health program. 1/

1/ Once the "necessary expenses" of that program have been met, the federal legislation permits any remaining income and proceeds to be spent for other public purposes. See, e.g., S. Rep. No. 2053, 84th Cong., 2nd Sess. 3-4, reprinted in 1956 U.S. Code Cong. & Ad. News 3637, 3639-40 (emphasis added):

The income and proceeds from disposition of these lands must be administered as a public trust, with the expenses of the mental health program having first call on such funds. Amounts not needed for the mental health program can be used for other public purposes as the legislature may determine.

....

The purpose of the grant is to afford revenues to the Territory [of Alaska] for the support of its mental-health program. If such revenues are in excess of needs for the program, they may be used, as a public trust, for other public purposes.

The problem with seeking to preserve proceeds from sales of mental health lands in perpetuity -- i.e., establishing a permanent mental health trust fund -- is that such preservation is not required by the Alaska Mental Health Enabling Act as a condition of the state's acceptance of the land grant. As a result, such preservation is not (in the language of article IX, section 7, of the Alaska Constitution) "required by the federal government for state participation in federal programs."

Where dedication in perpetuity is not required by federal law, the prohibition on dedicated funds in the Alaska Constitution prohibits such dedication as a matter of state law. Cf. 1986 Inf. Op. Att'y Gen. 5 (May 28; 883-86-0126) (once federal condition satisfied, provisions of state law control remaining funds). Under the federal law, the federal condition would be satisfied once the income and proceeds are first applied to the state's mental health program. After the "necessary expenses" of that program have been met, any income and proceeds remaining could (under the federal law) be used for other public purposes. Under the article IX, section 7, prohibition on dedicated funds in the Alaska Constitution, those other public purposes cannot include dedication in perpetuity into a mental health permanent fund. In short, where dedication in perpetuity of "proceeds" from the sale or other disposal of mental health lands is not "required" by federal law, it is not permitted under the prohibition on dedicated funds contained in article IX, section 7, of the Alaska Constitution.

At the same time, arguments can be made that the establishment of a permanent mental health trust fund is, or at least ought to be, constitutionally permissible. First, § 202(e) of the Act requires that the state administer mental health lands and the proceeds therefrom, including the proceeds of mental health land sales, as a "public trust." It is an axiom of private trust law that "[t]he trustee is under a duty to the beneficiary to use reasonable care and skill to preserve the trust property." Restatement (Second) of Trusts § 176 (1959). If the state has the authority to sell the land but lacks the authority to preserve the proceeds of such sales in perpetuity, it might be argued that the state would not be exercising "reasonable care and skill" by selling the land.

However, that duty generally relates to protecting the trust property from loss or damage; it does not mean that trust property cannot be sold and the proceeds of such sales used for purposes authorized by express provisions of the trust itself. Compare Restatement (Second) of Trusts § 128 comment i (1959) (trustee may be authorized, expressly or by implication, to spend

George Rogers, Chairman
Interim Mental Health Trust Commission
File No. 663-87-0093

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part of principal)). Again, it undoubtedly was in recognition of this authority that the Alaska Supreme Court authorized the set-off for state mental health expenditures when the state's liability for previous mental health land sales is calculated.

A stronger argument in this regard is that it elevates form over substance to acknowledge that the state permissibly may refuse to sell mental health lands and authorize only leases, a mechanism by which the mental health trust could be preserved in perpetuity, but may not sell the lands and deposit the sales proceeds in a permanent mental health trust fund. Nonetheless, because such dedication in perpetuity is not required by the federal Act, the prohibition on dedicated funds in article IX, section 7, of the Alaska Constitution precludes that approach.

The foregoing represents our best analysis of the question presented. Of course, we encourage members of the commission or other interested parties to provide additional analysis for our consideration.

GTK:md

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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MEMORANDUM

September 24, 1986

SUBJECT: Limitations on expenditures of the income from
mental health land (Work Order No. 15-0071)

TO: Senator Rick Halford
Co-Chairman, Mental Health Land Committee

FROM: Richard A. Bradley
Legislative Counsel

Roger Porter has asked that we comment on the possibility that the proceeds from the management of Alaska mental health trust land might be managed in such a way that the income is protected from legislative appropriation. The suggestion is that this might be done through the vehicle of a permanent fund; implicitly, then, your request is that we comment on the legislative power to establish a dedicated fund for the income from mental health trust land. The legislature may generally take action unless a constitutional provision prohibits such a result.

In our view, several constitutional provisions are germane to the question.

The provisions of the Alaska Constitution prohibiting the establishment of a dedicated fund is found in art. IX, sec. 7. The provision provides:

SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

As we comment on this question, you have asked that we consider the September 10, 1986 opinion of the attorney general

to George Rogers as chairman of the Interim Mental Health Trust Commission on this same question.

The attorney general concluded that the Alaska Constitution precludes the establishment by statute of a permanent fund in this situation because there is nothing in the Alaska Mental Health Enabling Act that requires the establishment of such a fund. Since it is a requirement of state constitutional law (art. IX, sec. 7) that such a fund not be established by law unless it is required by Federal law for state participation in a federal program, it necessarily follows that the fund may not be established by law.

We have carefully reviewed the opinion and we join in it. We believe that it states the present view of the Alaska Supreme Court on the question.

Some years ago, this office read the introductory phrase: "proceeds of a state tax or license" fairly narrowly and we would then have concluded that state income not fairly described as a "state tax or license" was outside the prohibition. The Supreme Court's decision in State v. Alex, 646 P.2d 203 (Alaska 1982) resolved this matter. In our view, it is clear now that the "sources of any public revenues" [Alex, at 210], including the proceeds from leases or sales of state mental health land are within the prohibition.

One other point raised in your request to us merits comment. The suggestion was that the funds derived from the lease or sale of the mental health trust land be protected from legislative appropriation. I take this suggestion to mean, particularly in the context of your question apropos a dedicated fund, that the income be managed without the need for legislative appropriations by some as yet unestablished board or commission for the purposes stated in the Alaska Mental Health Enabling Act: the support, "first", of the "mental health program of Alaska" and then after these needs have been met, "other public purposes as the legislature may determine." See sec. 202(e), P.L. 84-830 and its legislative history at 1956 USCC&AN 3637, 3639-3640.

I see no suggestion in the federal law that the legislature not participate in the management of the funds. I believe that affirmative language in an Act of Congress would be required to deprive the legislature of its constitutionally required obligation to approve expenditures. The provisions of art. IX, sec. 13 provide, in part, that "No money shall

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be withdrawn from the treasury except in accordance with appropriations made by law."

To the contrary, the Enabling Act provides that "the income . . . shall be managed and utilized in such manner as the legislature of Alaska may provide, . . ." [Sec. 202(3) of the Enabling Act, P. L. 84-830].

However, having said all this, I believe that it is possible for the legislature to appropriate to a separate fund an amount to be ascertained by reference to receipts from the sale or lease of mental health trust land. We have advised the legislature of this option in different contexts in the past and we note that the attorney general apparently agrees; see the opinion of the attorney general of November 30, 1982 to that effect.

If I may be of further assistance, please advise.

RAB:mk
m6/114

**ALTERNATIVE D
COURT ORDERED SETTLEMENT PROVIDING FOR MINIMUM MENTAL HEALTH
FUNDING LEVELS**

REPRESENTS A RETURN TO A SCHEME SIMILAR TO THAT ESTABLISHED BY STATUTE IN 1978. PROVIDES FOR A COURT SETTLEMENT WHEREBY THE STATE AGREES TO APPROPRIATE A PERCENTAGE OF STATE LAND REVENUES TO MENTAL HEALTH PROGRAMS.

Lands to be in Trust
None.

Compensation for Lands Removed From Trust.

The state would agree to a court-approved schedule of minimum expenditures for increasing funding for mental health programs:

FY 88	\$10 million
FY 89	\$ 8 million
FY 90	\$ 5 million
FY 91	\$ 5 million

The state would also agree that an amount equal to 1.5% of revenues of all state lands would be expended on mental health programs if that amount exceeds the above minimum schedule.

Enforcement

1. Establishment of a mental trust health board to ensure compliance.
2. Legislation enacted by the state legislature.
3. Consent decree entered in Alaska federal district court.
4. Board empowered to seek court enforcement if the state does not comply with the court settlement. Remedies available would specifically include; (1) contempt of court, (2) the court could appoint a receiver to manage the state mental health program similar to the enforcement procedure the Alabama federal district court has used to manage that state's prison system when the state officials refused to obey court orders, (3) other available legal remedies. The statute could also provide additional remedies.

Land Management
Not applicable.

Funding Management

The mental health board will establish guidelines to determine qualifying mental health expenditures and prioritization between mental health programs. The mental health board will also review revenue production from state lands and make recommendations to the Legislature on an annual basis.

Legislative Intent

To maintain state compliance with the court settlement.

The duties and appointment of a Mental Health Board.

1. Mental Health Board duties shall include:
 - a. Creating and amending guidelines to determine which mental health programs funded by the state apply to the minimum expenditures agreed to in the mental health land trust settlement.
 - b. Ensure that the state complies with the terms of the mental health settlement, seeking court enforcement if necessary.
 - c. Creating and amending guidelines for prioritization between state funded mental health programs.
 - d. Review income production from state lands and report to the legislature on a yearly basis.
2. Changes in the way that board members are appointed include:
 - a. Nomination by the mental health community.
 - b. Appointments by the Governor limited to mental health community nominees.
 - c. Appointments subject to approval by the state legislature in joint session.
3. Full time staff provided.

SCOMM

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1. Definitions
2. Lands - ^{fund} return (combine)
- B. a - lands still with the state
b - lands in parks etc.
c - 3rd party lands
1 - return or pay for -

CHRONOLOGY

Jerry Schneider -

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MENTAL HEALTH ANNOTATED CHRONOLOGY

- 1) 1956 - Mental Health Enabling Act
[1956 Public Law 830, Title II, Sec. 202, July 28, 1956]
 - a. Granted 1 million acres of land, including mineral rights, to Territory of Alaska as base for a public trust.
 - b. Established a public trust for the mentally ill in Alaska of the above lands and any income generated by these lands. Monies left over after mental health program costs were met could be used for other public needs. (A 12/7/68 memo from Peter Froelich, Assistant AG, states that this statute "neither required a dedicated or permanent fund nor created a true trust as did the statutes when granted school land.")
- 2) 1958 - Alaska Statehood Act, Sec. 6 (k) [1958 Public Law 85-508], reconfirmed the grant and transferred the grant from the territory to the state.
- 3) 1964 - "Selection of Mental Health School and University Lands by Boroughs", 1964 Opinions of the Attorney General No. 7, (Warren C. Colver), concluded that mental health and university lands were not unappropriated and unreserved (having been appropriated and reserved to support the designated programs) and therefore could not be selected by boroughs.
- 4) 1967 - An informal attorney general's opinion (memorandum) was issued by Deputy Attorney General Edward Reasor on "Mental Health Lands Exchange". This memorandum concluded that the state could exchange mental health lands for general grant lands as long as the exchange was for legitimate state purpose, the integrity of the trust was preserved, and the exchange supported the mental health program (it did not deal with the severance of estate issue).
- 5) 1976 - The legislature created a Mental Health Land Board composed of the Director of the Division of Mental Health, Chairman of Mental Health Advisory Council and the Commissioner of Revenue to oversee the disposal of mental health land (AS 38.05.035(a)(13)).
- 6) 1978 - New state legislation dealing with redesignation of mental health, school and university lands was passed. (Chapters 180, 181 and 182, Alaska Session Law 1978). Chapter 180 allowed for the municipal selection of mental health land subject to "DNR-led" land exchange. Chapters 181 and 182 redesignated mental health land as general grant land effective July 1, 1978 (the bill was signed July 18, 1978). The effect of chapters 181 and 182 was that exchanges of mental health land to allow for municipal selections were no longer necessary.

An accounting of income produced from mental health land was required for the pending legislation: the total was \$25,110,430 from 1959 thru 1977.

In order to comply with the intent of the original trust legislation, the legislature set up:

- A. A Mental Health Fund,
 - B. A Mental Health Fund Advisory Board within the Department of Revenue (members: Director, Division of Mental Health; Chair, Mental Health Advisory Council; Commissioner, Department of Revenue), and
 - C. The funding source for the fund: 1.5% of total revenue derived from the management of (all) state land.
- 7) 1979-1981 - No money deposited in the Mental Health Fund; no meeting of the Mental Health Fund Advisory Board held. However, money was appropriated by the legislature for the purpose of mental health treatment (e.g. DHSS, Div of Mental Health).
- 8) 1981 - House Bills 151 and 152 were introduced to appropriate \$84,000,000 to the Mental Health Fund (i.e., the amount owed to the fund from 1978-1981), and provide for oversight of the fund and income. Senate Bills 710 and 711 were also introduced to satisfy the Mental Health Fund requirements.

An article by Dr. Jerry Schrader appeared in "Coping" magazine calling for litigation if the legislation was not passed (it did not).

- 9) 1982 - (Feb) Ms. Laura Davis, Assistant AG, did an analysis of the Mental Health Trust Fund (J66-534-81A) at the request of Hugh Malone, state legislator. This analysis points out the following:
- a. That the 1.5% funding established in 1978 legislation was not based on an appraisal of mental health land, therefore, it is not possible to judge its fairness. The funding will exceed the value of the trust land at some future time (prohibited by Article IX Section 7 of the Alaska Constitution);
 - b. Although the legislature has not transferred money to a mental health fund, it has made mental health appropriations;
 - c. Money from the fund established by the Mental Health Enabling Act were not to be used exclusively for mental health. Mental health funding is simply the first priority.
 - d. If the substitution of revenue for the trust imposed by the 1978 legislation was not equal to the fair market value of the trust lands, then the trust has been breached (the failure to appropriate may also be a breach).
 - e. There existed three alternative courses of legislative action:
 - 1. Do nothing to fund the Mental Health Trust Fund. Litigation was likely with the course, but the state may be immune from enforcement as the MH Enabling Act didn't provide for enforcement. Also, the case can be made that past appropriations have taken care of reasonable mental health needs in Alaska.

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).
3. Seek the repeal of the Alaska Mental Health Enabling Act by congress.

(Nov.) Lawsuit filed (Weiss v. State) in State Superior Court claiming that the state violated the terms of the MH Enabling Act. That suit sought:

- a. To void AS 37.14.070 claiming it was illegal to redesignate the land;
- b. To establish a trust because the state has, or will, realize revenue from redesignated mental health land that is not being placed in trust;
- c. To have the court direct the state to administer the land in accordance with trust principles. The litigants felt the state violated public trust by disposing of mental health land at less than fair market value.

The Assistant AG on the case, Mr. G. Thomas Koester, asked DNR to provide information regarding:

- a. The land obtained under the MH Enabling Act.
- b. The disposition of those lands, and
- c. The value of those lands.

DHSS is asked to provide documentation on state expenditures for mental health purposes.

- 10) 1983 - (June) Memorandum Decision (partial summary judgement) entered against the state. Requires the state to account for the value of land removed from the MH Trust. States that the remedy might be monetary rather than a invalidation of 1978 legislation.

(July) Appeal and cross appeal entered and denied.

(Aug) Mr. Stephen Cowper, the Weiss attorney, stated that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Dec) Court ordered the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

11) 1984 - (Feb) Mr. Koester drew up a judgment to be entered in the court which specifies that:

- a. The 1978 legislation is constitutional, and
- b. The MH public trust is entitled to be reimbursed for value of land redesignated as of July 19, 1978

(Judgement not signed).

(April) A resume' (survey) of mental health land activities was completed by the Division of Land & Water Management (DLWM).

(May) Mr. Cowper filed a motion to levy a sanction against the state (restraining the state from disposing of mental health land) for non-compliance with the discovery request. The hearing was held in Fairbanks the next day (June 1). At the hearing the motion was divided into two parts: sanctions and a temporary restraining order. Mr. Frank Mielke (DLWM) testified about our compliance with the discovery request and Mr. Koester made a case for the state's solvency. The motions were denied.

(August) Notice of Lis Pendens was filed August 1, 1984 by Cowper against all mental health land selected by the state.

The Department of Natural Resources issued an appraisal contract for 183 parcels of mental health land near Anchorage and Kenai.

Mr. Koester drew up a stipulation stating that the state will:

- a. Draw up a legal description of all land selected by the state to fulfill the MH land grant;
- b. Provide a listing of the current acquisition status of the MH selections;
- c. Note whether the MH land had been alienated or conveyed and if so, how;
- d. Estimate the fair market value of the interests conveyed or alienated based on appraisals, done at the time of conveyance and revenues derived from the conveyance;
- e. Appraise the fair market value of all mental health land remaining in the MH trust on July 19, 1978; and
- f. Compute the value of all mental health land converted to general grant land by adding simple interest of 10.5% per year to the appraised value (a, b, c, e and f are due by March 15, 1985; d is due May 15, 1985).

The stipulation was signed by Mr. Koester August 30, 1984; was signed and filed with the court by Mr. Cowper on September 4, 1984.

At the same time, Mr. Koester drew up a judgement that stated:

- a. The mental health enabling act created a public trust for which the state is trustee.
- b. The redesignation of mental land to GG land was constitutional.
- c. The public trust shall recover the value of land conveyed from the trust as of the date of conveyance plus prejudgement interest (the redesignation is considered a conveyance).
- d. The state will receive credit for mental health expenditures when calculating the final judgement.

The judgement was filed September 14, 1984.

(September) - The state moved to have the Lis Pendens expunged. Plaintiffs filed an opposing motion. The state counter filed.

On September 18, 1984 the state filed a notice of appeal to the Alaska Supreme Court of the above judgement. The appeal is based on the following:

- a. The mental health trust land is not for the exclusive benefit of mental health.
- b. The redesignation of mental health land was not a breach of the public trust.
- c. The mental health trust fund is not entitled to be reimbursed for the full value of all mental health land received by the state.

A cross appeal was also filed. The appeal challenged the constitutionality of the 1978 redesignation.

The appraisals contracted for in August were completed. This group of 188 parcels (11,272.344 acres) is valued at \$13,895,600.00.

(October) After examining the number and location of mental health parcels remaining for appraisal and estimating the time and cost of traditional appraisals, plans were finalized for completing "appraisals" of the converted land by using a "valuation panel" consisting of three senior designated appraisers.

A motion to intervene (plaintiffs) was brought by Mr. James Gottstein, representing the Alaska Mental Health Association, Mary C. Nanuwak and John Martin. The motion sought to bring up other issues in the case:

- a. Is the state deliberately creating barriers to the enforcement the MH trust?
- b. Have third parties receiving MH land been notified of the trust status of the land?

- c. Are the conveyances in b. null and void?
- d. Should the 1.5% of land revenue dedicated to the MH trust by the 1978 legislation be automatically deposited?
- e. Are MH expenditures inadequate or misallocated?
- f. Should the state be replaced as trustee?
- g. Should punitive damages be awarded?
- h. Should the court appoint an independent board to oversee the land?

The prospective interveners were associated with Mr. Cowper, but apparently disagree with his tactics and strategy. An opposing motion was filed by Mr. Koester. The motion to intervene was denied October 31, 1984 because it was not timely filed.

(November) An order expunging Lis Pendens was signed November 15, 1984.

(December) The Opinion of Value (appraisal) Panel was chosen. The panel consists of three senior designated appraisers each representing a geographic area of the state. They are tasked with evaluating approximately 4,600 parcels of mental health land as of July 19, 1978.

The Mental Health Association announced that it would file a separate lawsuit in federal court, but did not.

- 12) 1985 - (Jan.) The Opinion of Value Panel began to work evaluating all parcels of land remaining in state ownership on July 19, 1978.

House Bill No. 128 was introduced by Representatives Pignalberi, Gruenberg, Rowden, Jenkins, Koponen and Taylor. The bill proposed to prevent the state from disposing of mental health lands. (It did not pass.)

The Division of Geological & Geophysical Surveys (DGGS) completed reports on the coal and oil and gas reserves underlying mental health land.

(March) The Opinion of Value Panel completed the evaluation of 4,146 parcels of state land. The total value of these parcels was estimated to be \$234,407,870.00 (973,098.229 acres).

(April) Reports were completed concerning the subsurface market value of mental health land (\$691,946) and the value of land removed from the public domain (e.g. for parks) before July, 1978 by the legislature (166 parcels equalling 164,385.7 acres valued at \$33,002,388.93).

Combined total estimated value of all mental health land retained in state ownership on July 19, 1978 is \$281,997,804.93. Brought forward to July, 1985 at 10.5% compounded annual interest, the total is \$567,259,354.20.

The first attempts were made to reach an out-of-court settlement. Mr. Koester suggested that the state accept the projected liability (plus interest accrued at a rate equal to the income earnings of the Alaska Permanent Fund) and place funds in a mental health trust over a period of years.

(May) DNR reviewed records concerning the 2,787 disposals of mental health land or resources occurring between statehood and July, 1978. The total receipts equaled \$25,955,647.79 (excluding the \$1,480,355.60 interest accruing on land sale contracts). Thus, the state's total projected liability in the lawsuit is estimated at \$593,215,001.99.

(June) Oral argument by both sides was heard by the Alaska Supreme Court.

(July) The results of the March and May DNR reports were released from attorney/client confidential status, and placed in the public record.

(October) On October 4, the State Supreme Court issued its opinion (No. 2987) in the case of Weiss v. State of Alaska. That opinion declared the redesignation act invalid, and stated that the trust must be reconstituted as nearly as possible to its 1978 status. As part of this reconstitution, the trust is to be reimbursed for lands sold since the date of the redesignation. This amount is to be off set by mental health expenditures made by the state during the same period. The case was then remanded to State Superior Court for further definition.

That same day, Commissioner Esther C. Wunnicke directed the Department of Natural Resources to cease all formal activities on mental health land.

Governor Sheffield established an informal working group of state officials to begin working on solutions to the problems associated with Weiss v. Alaska.

Mr. Cowper resigned the case in order to pursue his political career. Mr. William Council of Juneau took his place.

(November) Commissioner Wunnicke adopted an emergency regulation (11 AAC 06.010) closing all mental health land to mineral entry (November 5, 1986).

The Department of Natural Resources began the work of auditing all actions on mental health land between July 20, 1978 and October 5, 1985, and establishing the status of mental health land as of October 5, 1985.

Two mental health fund colocation codes were established within the department: a corpus "account" (150) to hold funds obtained from the sale of mental health land, an earnings "account" (155) to hold funds earned from mental health land.

(December) Commissioner Wunnicke issued Department Order 121 "Mental Health Land Interim Management" on December 11, 1985. That order establishes criteria for interim management of mental health land based on receipt of fair market value for all transactions or full reimbursement for the trust in land or money for other transactions executed for the general public good.

- 13) 1986 - (January) The Alaska State Legislature began work on resolution of mental health lands issues. A decision was made to table all bills containing mental health land during the 1986 session. (Bills creating various legislative designations [e.g. parks, forests] containing approximately 56,000 acres of mental health land were left pending at the end of the 1985 session).

(February) The motion to intervene brought by the Alaska Mental Health Association, et. al. was allowed by the State Supreme Court.

Mr. William Council resigned as attorney for the plaintiffs. Mr. David Walker, also of Juneau, took his place.

The department agreed to provide notice of newly occurring actions occurring on mental health land to the litigants.

Commissioner Wunnicke imposed a temporary suspension on certain types of actions on mental health land while Department Order 121 underwent revision. Those actions were: less than fair market value rights-of-way; actions on land sale discounts; further actions on land conveyance decisions made prior to the Weiss decision; and the conversion of remote parcels to homesteads.

The United States District Court handed down a decision in the case of Tyonek Native Corporation vs. Secretary of the Interior which affected Tyonek's ability to select state mental health lands under ANCSA (the court found that they could not).

(March) The State Superior Court issued an order continuing the mineral closure of mental health lands (the emergency regulation expired two days later).

(April) DNR's Land Title Section completed its audit of state land selected by the state, approved for conveyance to the state and patented to the state under the Mental Health Enabling Act. The report showed that 1,005,884 acres have been approved or patented to the state with expected adjustments (deletions) of approximately 27,600 acres. If the adjustments are made, the state would have a remaining entitlement of 21,700 acres.

(May) Department Order 121 was substantially revised and reissued.

One bill and one resolution involving mental health trust lands passed the legislature. HCS CSSCR 36 established a Joint Special Committee on Mental Health Trust Land. HCS CSSB 472 established an Interim Mental Health Trust Commission.

The Tyonek decision was appealed.

(June) The joint special committee legislative members were named: House - Pat Pourchot (co-chair), Max Gruenberg, Marco Pignalberi; Senate - Rick Halford (co-chair), Bettye Fahrenkamp, Paul Fisher (the two public members have yet to be named).

(July) Governor Sheffield appointed the members of the Interim Mental Health Trust Commission: For plaintiffs - Dr. George Rogers, member, Mr. K. J. Metcalf, alternate; for intervenor - Dr. Lidia Selkregg, member, Dr. Dennis Scholl, alternate; for the Governor's Mental Health Advisory Council - Ms. Sharon Lobaugh, member, Ms. Barbara Wihlborg, alternate. The two exofficio members are the Commissioner of the Department of Health and Social Services, John Pugh, who has designated Karen Perdue, Assistant Commissioner, to represent him; and the Commissioner of the Department of Natural Resources, Esther Wunnicke, who has appointed Robert Arnold, Deputy Commissioner, to represent her.

Last update July, 1986

SUPREME
COURT
OPINION

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,

Appellant/Cross-Appellee,)

v.)

VERN T. WEISS, et al.,)

Appellee/Cross-Appellant.)

File Nos. S-653/678

OPINION

[No. 2987 - October 4, 1985]

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: G. Thomas Koester, Assistant Attorney General, Norman C. Gorsuch, Attorney General, Juneau, for Appellant/Cross-Appellee. Stephen C. Cowper, Fairbanks, for Appellee/Cross-Appellant. Russ Winner, McGrath & Associates, Anchorage, for Amicus Curiae Cook Inlet Region, Inc.

Before: Rabinowitz, Chief Justice, Burke, Matthews and Compton, Justices. [Moore, Justice, not participating]

COMPTON, Justice.

The State of Alaska ("state") appeals from a judgment of the superior court holding that the state breached its duty as trustee of federal mental health grant lands when the legislature redesignated the property as "general grant land." For the reasons set forth below, we

affirm the holding to this extent, but reverse the superior court's conclusion that the redesignation legislation was valid.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act (AMHEA) which, insofar as it concerns this case, granted the Territory of Alaska one million acres of federal land to be held in public trust to help effectuate the creation and operation of mental health care facilities in Alaska. Pub. L. No. 84-830, 70 Stat. 709 (1956). Section 202(e) of the Act specifically provides:

All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide in order to obtain funds or other property to be invested, expended or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act. (emphasis added)

The state managed these lands without maintaining a separate account until 1978. The Alaska State Legislature made its practice law in 1978 when it passed the following statutory provision:

REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND

(a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

Ch. 181, § 3(a), SLA (1978).

Alaska has provided continuous mental health care since statehood. The record indicates that between 1959 and 1982 the state spent over \$222,000,000 on mental health care. Generally speaking, there has been a constant increase from 1959 to the present in mental health expenditures: slightly less than \$1,200,000 was expended in 1959, and slightly more than \$29,000,000 was expended in 1982. The record does not indicate how much of the trust land at issue has been disposed of, nor the total value of such disposed land. In the state's answer to the complaint, it alleges that "state expenditures for mental health purposes exceeded revenues from mental health grant lands in all years for which revenues from those lands were tabulated

separately." The record does indicate that as of 1973, total revenues from these mental health trust lands amounted to \$19,555,582. The state's total expenditures to that point amounted to \$66,726,176.

Weiss et al. filed a class action in 1982 alleging that the state breached the public trust by 1) failing to account for revenues realized, 2) using revenues for purposes other than mental health care and 3) passing legislation redesignating the property "general grant land." Plaintiffs sought declaratory relief invalidating the redesignation legislation; injunctive relief compelling the state to administer the trust according to the law; general relief establishing a trust account "for the receipt of funds generated from all lands selected by the State of Alaska under the aforesaid mental health land grant"

The superior court ruled that invalidation of the redesignation legislation was not an available remedy, based on State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981). However, the court did hold that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that

[t]he public trust established by P. L. 84-830, 70 Stat. 709, shall recover from the defendant State of Alaska an amount equal to the fair market value of all lands conveyed from the trust as of the date of conveyance, plus prejudgment interest from the date of each conveyance. For the purposes of this judgment, all lands remaining in the trust as of July 19, 1978, shall be considered

as having been removed from trust status
by the State of Alaska on that date . .

The court also ordered a set-off for all monies spent by the state on mental health care.

The state appeals from the judgment, except the holding that the redesignation legislation was valid. Weiss et al. cross-appealed the trial court's failure to rule the legislation invalid.

II. DID THE STATE BREACH THE PUBLIC TRUST
CREATED BY CONGRESS WHEN IT REDESIGNATED
PROPERTY IN THE TRUST AS "GENERAL
GRANT LAND?"

A. Nature of the Trust.

The state argues, essentially, that the redesignation is of no legal consequence because the state has always provided public mental health programs in the past and, implicitly, will provide them in the future. The state maintains that providing such programs fulfills its obligations according to AMHEA, freeing the grant lands for other public purposes. Textual support for this position comes from the portion of Section 202(e) which states that "proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska." It is suggested that this language means Congress intended that the land grant serve as a revenue base guarantee. Great emphasis is placed on the legislative history of AMHEA

which establishes that Congress did not wish to limit the use of grant lands exclusively to mental health programs.¹

Despite these observations, we think it irrefutable that Congress intended to create a trust, to be based on a corpus of one million acres of federal land. It is a commonplace of the law that without trust property there can be no trust. Restatement (Second) of Trusts § 74 (1959).² When the state, through the legislature, altered the status of the property grant the trust was thereby effectively terminated. The state, as trustee, had no power to do this

1. The debates in the House and Senate are too lengthy to reproduce in their entirety here, but certain remarks are representative of the discussions. Senator Jackson commented that "[t]he income from sales or leases will be used to support the mental health program in Alaska. The income will be held in trust for that purpose. Any money received over and above the need for the mental health program may be used for other public purposes." He further noted that the language change was not of a fundamental nature, and thus said that, "[t]he purpose of granting 1 million acres is the same as in all other similar grants, such as the public school land-grant program." 102 Cong. Rec. 9761 (June 7, 1956).

We note that the language in the federal grant was changed from designating the proceeds of the land grant to be used as a public trust for Alaska's mental health program, to saying that the proceeds "shall first be applied to meet the necessary expenses of the mental health program" only because of worry among members of Congress that the land may actually have a value far in excess of the necessary health care expenses. The record in this case shows that income from the land grant was actually less than state expenditures for mental health programs.

2. Section 74 provides: "A trust cannot be created unless there is trust property."

and consequently breached its duty to preserve the corpus.³ The fact that the state has provided mental health care in the past and will most likely do so in the future is no justification for termination of the trust. Whether a beneficiary can rely on the bona fides of a trustee to continue voluntarily to uphold the terms of a defunct trust is quite beside the point. We decline the opportunity to encourage the state, or any trustee for that matter, to determine unilaterally when to terminate a trust without specific authority to do so.

B. Remedy.

Having concluded that the state breached the trust, we find it necessary on the facts of this case to invalidate the redesignation statute, Ch. 181, § 3(a), SLA (1978). State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981) does not compel a different result. In that case, the federal government had granted 100,000 acres to the state "for the exclusive use and benefit" of the

3. Our reliance upon basic trust law principles finds ample support in the precedents of this court and the United States Supreme Court. See Lassen v. Arizona, 385 U.S. 458, 17 L.Ed.2d 515 (1967); State v. University of Alaska, 624 P.2d 807 (Alaska 1981). Both Lassen and University of Alaska involved federal grants to be used by states for school purposes. Those cases stand for the proposition "that the same private trust law principles are to apply to federal land granted to the states for school purposes." University of Alaska, 624 P.2d at 813. There is no reason to treat federal lands granted for mental health purposes differently.

University. Id. at 811. Years after the grant, the state included 5,040 acres of the trust land in a state park. This action was not in itself a breach of the trust so long as the University was paid fair market value for the land. We inferred that the legislature intended to pay the University for this disposition, stating:

It is also logical to assume that the legislature intended to compensate the University for the loss of its land. This view gives the statute creating [the park] a reading that is in accord with the well recognized canon of statutory construction that, when possible, legislation should be construed in a way that upholds its validity.

524 P.2d at 816.

Unlike the situation in University of Alaska, the present case does not involve a disposition of a portion of trust lands for a specific use. Instead, the entire corpus of the trust is intermingled with the general grant lands of the state. No particular use of the trust lands is specified and it may be years before much of the land is used. While it was reasonable to infer a legislative intent to pay for 5,040 acres for which there was a present park land use in University of Alaska, it is not reasonable to infer that the legislature meant to pay for a quantity of trust land approaching one million acres for which in large part there is no present use. Thus, the payment remedy imposed in University of Alaska is not appropriate here. Because the state in passing the redesignation act went

beyond the power which had been granted it with respect to the trust lands by Congress, the redesignation act must be declared invalid.

It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective. The case is remanded so that requisite findings can be made. We take this opportunity to provide some guidance to the trial court to simplify its task.

Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its

position just prior to the conveyance effected by the redesignation legislation.⁴

AFFIRMED in part, REVERSED in part and REMANDED for further proceedings consistent with this opinion.

4. Amicus raises questions regarding the title held by conveyances and bona fide purchasers of mental health lands. In view of our disposition of this case, we deem it unnecessary to address those issues at the present time.

ENABLING ACT

Enabling Act

TITLE I—AUTHORITY OF THE TERRITORY OF ALASKA IN THE FIELD OF MENTAL HEALTH

POWERS OF THE TERRITORIAL GOVERNMENT

Sec. 101. For the purpose of vesting in the Territory of Alaska authority comparable in scope to that of the States and other Territories of the United States in the field of mental health, the Territorial legislature is hereby authorized to enact such laws on the subject of mental health as it may deem appropriate, and such legislation may supersede any of the Acts cited in section 301.

FUNCTIONS OF COURTS

Sec. 102. In carrying out section 101, the Territorial legislature is authorized to confer upon United States commissioners, as ex officio probate judges, and upon the United States District Court for the Territory of Alaska, such jurisdiction, functions, and duties as it may deem appropriate for such purpose.

EFFECTIVE DATE

Sec. 103. This title shall become effective on the date of enactment of this Act.

TITLE II—GRANTS

SPECIAL GRANTS TO ALASKA FOR MENTAL HEALTH

Sec. 201. Title III of the Public Health Service Act, as amended, is hereby amended by adding thereto a new part as follows:

58 Stat. 691.
42 USC 201 note.

"PART H—GRANTS TO ALASKA FOR MENTAL HEALTH

"GRANTS FOR ALASKA MENTAL HEALTH PROGRAM

"Sec. 371. (a) There are hereby authorized to be appropriated the following sums to be available to the Surgeon General of the Public Health Service for the purpose of making grants to the Territory of Alaska to assist it to carry out plans, submitted by the Governor of the Territory or his designee and approved by the Surgeon General, for an integrated mental health program for the Territory, including outpatient and inpatient care and treatment: For each of the fiscal years ending June 30, 1958, and June 30, 1959, the sum of \$1,000,000; for each of the fiscal years ending June 30, 1960, and June 30, 1961, the sum of \$800,000; for each of the fiscal years ending June 30, 1962, and June 30, 1963, the sum of \$600,000; for each of the fiscal years ending June 30, 1964, and June 30, 1965, the sum of \$400,000; and for each of the years ending June 30, 1966, and June 30, 1967, the sum of \$200,000.

Appropriations.

Estimates: pay-
ments.

"(b) The Surgeon General shall, prior to the beginning of each calendar quarter or such shorter period as the Surgeon General may find necessary, estimate the cost of carrying out the approved plan, on the basis of estimates furnished by the Territory, including estimates of the amount of contractual obligations for hospitalization, and on the basis of such further investigations as he may find necessary. From the amounts appropriated for any fiscal year, the Surgeon General shall pay to the Territory the amount requested by it but not to exceed the amount so estimated by the Surgeon General for each such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that the amount paid for any prior period was greater or less than the amount which should have been paid. The amount of any balance of payments made to the Territory under this section and remaining unobligated on July 1, 1967, shall be repaid to the Treasury of the United States.

"(c) Whenever the Surgeon General finds, after affording opportunity for hearing, that the Territory has failed to comply substantially with any provisions of the approved plan, he shall notify the Governor that no further payments will be made under this section (or that further payments will not be made for parts of the plan affected by such failure) until he is satisfied that there will no longer be any such failure.

"(d) For the purpose of facilitating the administration of the Territory's mental health program, the Surgeon General is authorized to enter into arrangements with the Territorial government to provide for the care and treatment, in hospitals operated by the Service, of patients requiring hospitalization. Such arrangements shall be subject to the availability of suitable facilities therefor and shall provide for charges to the Territorial government in amounts determined by the Surgeon General which shall be sufficient to cover the full cost of such care and treatment. Upon payment by the Territory the amount of such charges shall be credited to the appropriation from which such costs were incurred: *Provided*, That, during the period of grants under this section, payment may be effected by deductions from the amount of such grants otherwise payable to the Territory, with such deductions to be credited to the appropriation from which such costs were incurred.

"PAYMENTS FOR CONSTRUCTION OF HOSPITAL FACILITIES

"SEC. 372. (a) There is hereby authorized to be appropriated an amount not exceeding the total sum of \$6,500,000, to remain available until expended, to enable the Surgeon General to make payments to the Territory of Alaska as the total contribution of the Federal Government to be used in defraying the cost of construction of hospital and other facilities in Alaska needed for the carrying out of a comprehensive mental health program.

"(b) Such facilities shall be scheduled for construction in accordance with a comprehensive construction program, developed by the Territory in consultation with the Public Health Service and approved by the Surgeon General. Projects shall be constructed in accordance with such approved program and in accordance with plans and specifications for the project approved by the Surgeon General.

"(c) Upon certification by the Territory, based upon inspection by it, that work has been performed upon a project, or purchases have been made in accordance with approved plans and specifications, and that payment of an installment is due, the Surgeon General shall certify such installment for payment: *Provided, however*,

That the Surgeon General may cause the project to be inspected at any time, and if such inspection indicates that the project is not being constructed in accordance with approved plans and specifications, he may, after notice and affording opportunity for hearing, withhold further payment until he finds that adequate corrective measures have been taken.

"(d) The term 'cost of construction' means the amount found necessary by the Surgeon General for the construction of a project and includes the construction and initial equipment of buildings (including medical transportation facilities), architects' and engineering fees, the cost of land acquired specifically for the purpose of the project, and on-site improvements.

"(e) If, within twenty years from the date of completion of construction, any hospital or other medical facility constructed with the aid of grants under this section shall cease to be a publicly owned facility operated for the care or treatment of patients under the Territory's mental health program, the United States shall be entitled to recover from the Territory the then value of the hospital or other medical facility, reduced, however, proportionately to the extent to which the Territory may have contributed to the cost of construction thereof."

Recovery of
value of facility.

LAND GRANT

Sec. 202. (a) The Territory of Alaska is hereby granted and shall be entitled to select, within ten years from the effective date of this Act, not to exceed one million acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing rights. All lands duly selected by the Territory of Alaska pursuant to this section shall be patented to the Territory by the Secretary of the Interior.

(b) The lands authorized to be selected by the Territory of Alaska by subsection (a) of this section shall be selected in such manner as the laws of the Territory may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective during which period the Territory of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U. S. C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

(c) All grants made or confirmed under this section shall include mineral deposits: *Provided, however*, That mineral deposits in lands which on January 1, 1956, were subject to public land order numbered 62 of January 22, 1943, shall not be included in said grants, but shall continue to be reserved to the United States.

Mineral deposits.

Leases: sales.

(d) Following the selection of lands by the Territory pursuant to subsection (b), but prior to the issuance of final patent, the Territory shall be authorized to lease and to make conditional sales of such selected lands.

(e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act.

EFFECTIVE DATE

SEC. 203. This title shall become effective on the date of enactment of this Act.

TITLE III—TRANSITIONAL AND GENERAL PROVISIONS

AMENDMENTS AND REPEALS

SEC. 301. (a) Such of the following Acts or parts thereof as the Governor by proclamation shall declare to be superseded by a law or laws hereafter enacted by the Territorial legislature are repealed as of the effective date (specified in such proclamation) of such superseding law or laws, or as of the two hundred and tenth day after the date of enactment of this Act, whichever is later:

(1) Section 8 of the Act of January 27, 1905 (33 Stat. 616, 619; 48 U. S. C. 47);

(2) The first sentence of section 7 of the Act of February 6, 1909 (33 Stat. 600, 601), as amended by section 2 of the Act of October 14, 1942 (56 Stat. 782; 48 U. S. C. 46);

(3) The Act of June 25, 1910 (36 Stat. 852; see 48 U. S. C. 46b);

(4) The Act of April 24, 1926 (44 Stat. 522), as amended by sections 4 and 5 of the Act of October 14, 1942 (56 Stat. 782, 783; 48 U. S. C. 50, 50a); and

48 USC 46c, 47a,
47b, 47c, 48, 48a.

(5) Sections 1, 3, 6, 7, 8, and 9 of the Act of October 14, 1942 (56 Stat. 782, 783-785; 48 U. S. C. 46c, 47a, 47b, 47c, 48, 48a).

(b) (1) The Acts and parts of Acts listed in subsection (a), except the Act of June 25, 1910, are, pending their repeal as provided in subsection (a), amended (A) by striking out the words "Secretary", "United States", "Congress", and "Department of the Interior" wherever these words appear, and inserting in lieu thereof the words "Governor of Alaska or his designee", "Territory of Alaska", "the Legislature of Alaska", and "Territory of Alaska", respectively; (B) by inserting immediately before the word "Treasury", wherever it appears, the word "Territorial"; (C) by striking out the word "Federal"; and (D) by amending section 1 (a) of the Act of October 14, 1942, to read as follows: "Governor means the Governor of Alaska or his designee;" *Provided*, That the words "United States" where

STATEHOOD Act

Alaska Statehood Act

Public Law 85-508
85th Congress, H. R. 7999
July 7, 1958
(72 Stat. 339)
As Amended

Cross references. — For sections implementing this act, see Act of December 2, 1980, P.L. 96-487, Title IX, 94 Stat. 2430-2448, set out at the end of this pamphlet.

Editor's notes. — The individual sub-

ject-matter headings, shown in brackets, were added by the publisher, based on marginal notations in the original.

The provisions of the Alaska Statehood Act may be found in the notes preceding 48 U.S.C. 21.

NOTES TO DECISIONS

Statehood Act fails to deal with native use of land. — The legislative history of the Statehood Act fails to clarify congressional intent with respect to native use and occupancy of Alaska lands. In fact, there is very little reference to native land claims in the legislative history on the Statehood Act. This is so because Congress was principally concerned with achieving statehood for Alaska, not with settlement of native land claims. Given the difficulty of winning congressional approval for Alaska statehood, Congress undertook to bypass, rather than to resolve, the complex and difficult questions arising out of native claims. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

But is part of background of

settlement act. — The Alaska Statehood Act is important insofar as it is a significant part of the background of the Alaska Native Claims Settlement Act and contributes to an understanding of legislative intent in the settlement act. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

Applied in *Edwardsen v. Morton*, 369 F. Supp. 1359 (D.D.C. 1973).

Cited in *File v. State*, Sup. Ct. Op. No. 1827 (File Nos. 3482, 3537), 593 P.2d 268 (1979); *DeBoer v. United States*, 470 F. Supp. 1137 (D. Alas. 1979); *United States v. Atlantic Richfield Co.*, 612 F.2d 1132 (9th Cir. 1980); *Marrone v. State*, Ct. App. Op. No. 156 (File No. 5368), P.2d (1982).

Collateral references. — 72 Am. Jur. 2d, States, § 72.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 8 (c) of this Act, the State of Alaska is hereby declared to be

a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska entitled, "An Act to provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska; to submit the constitution to the people for adoption or rejection; to prepare for the admission of Alaska as a State; to make an appropriation; and setting an effective date", approved March 19, 1955 (Chapter 46, Session Laws of Alaska, 1955), and adopted by a vote of the people of Alaska, 1955), and adopted by a vote of the people of Alaska in the election held on April 24, 1956, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

[TERRITORY]

SEC. 2. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska.

NOTES TO DECISIONS

Evidence was insufficient to establish that Cook Inlet is an historic bay. *United States v. Alaska*, 422 U.S. 184, 95 S. Ct. 2240, 45 L. Ed. 2d 109, rehearing denied, 423 U.S. 885, 96 S. Ct. 159, 46 L. Ed. 2d 116 (1975).

Thus, the United States, as against

the state, has paramount rights to the subsurface lands of the lower, or seaward, portion of the inlet. *United States v. Alaska*, 422 U.S. 184, 95 S. Ct. 2240, 45 L. Ed. 2d 109, rehearing denied, 423 U.S. 885, 96 S. Ct. 159, 46 L. Ed. 2d 116 (1975).

[CONSTITUTION]

SEC. 3. The constitution of the State of Alaska shall always be republican in form and shall not be repugnant to the Constitution of the United State and the principles of the Declaration of Independence.

NOTES TO DECISIONS

Quoted in *Delahay v. State*, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970).

[COMPACT WITH UNITED STATES]

SEC. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: *Provided*, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: *And provided further*, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation. (Amended June 25 1959, P.L. 86-70 § 2(a), 73 Stat. 141)

Opinions of attorney general. — Congress only intended the disclaimer clause to leave unimpaired possible future rights of the Alaskan natives to compensation from the United States. 1969 Op. Att'y Gen., No. 6.

This section does not constitute authority in Congress to legislate in derogation of the Statehood Act. 1969 Op. Att'y Gen., No. 6.

The "plenary" Indian power of the United States does not recognize in Congress the authority to abrogate the Statehood Act. 1969 Op. Att'y Gen., No. 6.

As to whether the United States may compensate Alaskan natives by taking a royalty out of lands already granted in fee to the State of Alaska, see 1969 Op. Att'y Gen., No. 6 (Supp.).

NOTES TO DECISIONS

This section has been substantially incorporated into the Alaska Constitution as art. XII, § 12. *Aguilar v. Kleppe*, 424 F. Supp. 433 (D. Alas. 1976).

Eleventh amendment bar not waived. — This section and Alaska Const., art. XII, § 12, do not expressly waive the 11th amendment bar, and while Alaska disclaimed any interest in property rights held by Alaska Natives or the federal government, it is not overwhelmingly implied that the state consented to suits involving conflicting claims to land previously held by the federal government but later patented to the state. *Aguilar v. Kleppe*, 424 F. Supp. 433 (D. Alas. 1976).

Nothing in this act indicates that the state consented to be sued in the federal courts over such disagreements. *Aguilar v. Kleppe*, 424 F. Supp. 433 (D. Alas. 1976).

Immunity from state or local taxation of land in native townsite or allotment. — The beneficial interest of the natives in the land within a restricted native townsite or a native allotment cannot be taxed by the state or local government. *People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870 (D. Alas. 1979).

The United States has preempted the power of an Alaskan borough to tax the land, homes or other permanent improvements on Alaska Native allotments or restricted lots in native townsites. *People of S. Naknek v. Bristol Bay Borough*, 466

F. Supp. 870 (D. Alas. 1979).

When immunity on allotments arose. — The immunity on an allotment would arise at the time of the first use and occupancy that is the basis of the native's allotment claim. *People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870 (D. Alas. 1979).

Tax immunity on the land and improvements on native allotments and native townsite lots commenced operation when the native residents of the area petitioned for native townsite status. *People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870 (D. Alas. 1979).

But personal property may be taxed.

— The "absolute jurisdiction" language in this section has been interpreted not to mean "exclusive jurisdiction," and therefore is not a prohibition on state and local taxation of personal property in a native townsite or on an allotment. *People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870 (D. Alas. 1979).

A borough is not prohibited from taxing personal property associated with either an Alaska Native allotment or an Alaska Native townsite. *People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870 (D. Alas. 1979).

Applied in *Rowe v. United States*, 464 F. Supp. 1060 (D. Alas. 1979), *aff'd in part*, 633 F.2d 799 (9th Cir. 1980), *cert. denied*, 451 U.S. 970, 101 S. Ct. 2047, 68 L. Ed. 2d 349 (1981).

[TITLE TO PROPERTY]

SEC. 5. The State of Alaska and its political subdivisions, respectively, shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions. Except as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public lands.

(SELECTION FROM PUBLIC LANDS; FISH AND WILDLIFE RESOURCES; PUBLIC SCHOOL SUPPORT; MINERAL PERMITS, LICENSES, OR CONTRACTS; MINERAL LAND GRANTS; SCHOOLS AND COLLEGES; CONFIRMATION OF GRANTS; INTERNAL IMPROVEMENTS; SUBMERGED LANDS)

SEC. 6. (a) For the purposes of furthering the development of and expansion of communities, the State of Alaska is hereby granted and shall be entitled to select, within thirty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land, and from the other public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection not to exceed another four hundred thousand acres of land, all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas. Such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other public lands: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied: *Provided further*, That for the purposes of this section the term "public lands of the United States in Alaska which are vacant, unappropriated, and unreserved" shall include, without limiting the use thereof, the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

(b) The State of Alaska, in addition to any other grants made in this section, is hereby granted and shall be entitled to select, within thirty-five years after the admission of Alaska into the Union, not to exceed one hundred and two million five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the lands so occupied: And provided further, That no selection hereunder shall be made in the area north and west of the line described in section 10 without approval of the President or his designated representative.

(c) Block 32, and the structures and improvements thereon, in the city of Juneau are granted to the State of Alaska for any or all of the

for the purposes or a combination thereof: A residence for the Governor, a State museum, or park and recreational use.

(d) Block 19, and the structures and improvements thereon, and the interests of the United States in blocks C and 7, and the structures and improvements thereon, in the city of Juneau, are hereby granted to the State of Alaska.

(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U.S.C., secs. 192-211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478; 48 U.S.C., secs. 230-239 and 241-242), and June 6, 1924 (43 Stat. 465; 48 U.S.C., secs. 221-228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: *Provided*, That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety calendar days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest: *Provided*, That such transfer shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. Sums of money that are available for apportionment or which the Secretary of the Interior shall have apportioned, as of the date the State of Alaska shall be deemed to be admitted into the Union, for wildlife restoration in the Territory of Alaska, pursuant to section (8) (a) of the Act of September 2, 1937, as amended (16 U.S.C., sec. 669g-1), and for fish restoration and management in the Territory of Alaska, pursuant to section 12 of the Act of August 9, 1950 (16 U.S.C., sec. 777k), shall continue to be available for the period, and under the terms and conditions in effect at the time, the apportionments are made. Commencing with the year during which Alaska is admitted into the Union, the Secretary of the Treasury, at the close of each fiscal year, shall pay to the State of Alaska 70 per centum of the net proceeds, as determined by the Secretary of the Interior, derived during such fiscal year from all sales of sealskins or sea-otter skins made in accordance with the provisions of the Fur Seal Act of 1966. In arriving at the net proceeds, there shall be deducted from the receipts from all sales all costs to the United States in carrying out the provisions of the Fur Seal Act of 1966, including, but not limited to, the costs of handling and dressing the skins, the costs of making the sales, and all expenses incurred in the administration of the Pribilof Islands, and the

payments made to any municipal corporation established pursuant to section 206 of the Fur Seal Act of 1966 and to the civil service retirement and disability fund pursuant to section 208 of the Fur Seal Act of 1966. In administering the Pribilof Islands fund established by section 407 of the Fur Seal Act of 1966, the Secretary shall consult with the State of Alaska annually. Nothing in this Act shall be construed as affecting the rights of the United States under the provisions of the Fur Seal Act of 1966 and the Northern Pacific Halibut Act of 1937 (16 U.S.C. 772-772i).

(f) Five per centum of the proceeds of sale of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to such sales, shall be paid to said State to be used for the support of the public schools within said State.

(g) Except as provided in subsection (a), all lands granted in quantity to and authorized to be selected by the State of Alaska by this Act shall be selected in such manner as the laws of the State may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved, and each tract selected shall contain at least five thousand seven hundred and sixty acres unless isolated from other tracts open to selection or, in the case of selections under subsection (a) of this section, one hundred and sixty acres. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the State. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective, if subsequent to the admission of Alaska into the Union, during which period the State of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U.S.C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. Where any lands desired by the State are unsurveyed at the time of their selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any interior subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey; where any lands desired by the State are surveyed at the time of their selection, the boundaries of the area requested shall conform to the public land subdivisions established by the approval of the survey. All lands duly selected by the State of Alaska pursuant to this Act shall be patented to the State by the Secretary of the Interior. Following the selection of lands by the State and the tentative approval of such

selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands. As to all selections made by the State after January 1, 1979, pursuant to section 6(b) of this Act, the Secretary of the Interior, in his discretion, may waive the minimum tract selection size where he determines that such a reduced selection size would be in the national interest and would result in a better land ownership pattern.

(h) Any lease, permit, license, or contract issued under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 and the following), as amended, or under the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741; 30 U.S.C. 432 and the following), as amended, shall have the effect of withdrawing the lands subject thereto from selection by the State of Alaska under this Act, unless an application to select such lands is filed with the Secretary of the Interior within a period of ten years after the date of the admission of Alaska into the Union. Such selections shall be made only from lands that are otherwise open to selection under this Act. When all of the lands subject to a lease, permit, license, or contract are selected, the patent for the lands so selected shall vest in the State of Alaska all the right, title, and interest of the United States in and to that lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all the rentals, royalties, and other payments accruing after that date under that lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of that lease, permit, license, or contract: *Provided*, That nothing herein contained shall affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder. Where only a portion of the lands subject to a lease, permit, license, or contract are selected, there shall be reserved to the United States the mineral or minerals subject to that lease, permit, license, or contract, together with such further rights as may be necessary to the full and complete enjoyment of all rights, privileges, and benefits under or with respect to that lease, permit, license, or contract; upon the termination of the lease, permit, license, or contract, title to the minerals so reserved to the United States shall pass to the State of Alaska.

(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral

lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided*, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

(j) The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

(k) Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, section 1 of the Act of March 4, 1915 (38 Stat. 1214; 48 U. S. C., sec. 353), as amended, and the last sentence of section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U. S. C., sec. 191), as amended, are repealed and all lands therein reserved under the provisions of section 1 as of the date of this Act shall, upon the admission of said State into the Union, be granted to said State for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license, or contract issued under said section 1, as amended, or any rights or powers with respect to such lease, permit, license, or contract, and shall not affect the disposition of the proceeds or income derived prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter from any disposition of the reserved lands or an interest therein made prior to such repeal.

(l) The grants provided for in this Act shall be in lieu of the grant of land for purposes of internal improvements made to new States by section 8 of the Act of September 4, 1841 (5 Stat. 455), and sections 2378 and 2379 of the Revised Statutes (43 U. S. C., sec. 857), and in lieu of the swamp land grant made by the Act of September 28, 1850 (9 Stat. 520), and section 2479 of the Revised Statutes (43 U. S. C., sec. 982), and in lieu of the grant of thirty thousand acres for each Senator and Representative in Congress made by the Act of July 2, 1862, as amended (12 Stat. 503; 7 U. S. C., secs. 301-308), which grants are hereby declared not to extend to the State of Alaska.

(m) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder. (Amended June 25 1959, P.L. 86-70 § 2(b), 73 Stat. 141; August 18 1959, P.L. 86-173, 73 Stat. 395; September 14 1960, P.L.

86 AS 4, 74 Stat. 1025; October 8 1963, P.L. 88-135, 77 Stat. 223 March 25 1964, P.L. 88-289, 78 Stat. 169; November 2 1966, P.L. 89-702, Title IV, § 408(b), 80 Stat. 1098; December 2 1980, P.L. 96-487, Title IX, § 906(a), (f)(3), 94 Stat. 2437, 2440)

Cross references. — See note to AS 38.05.180; for state law applicable to rights in and to mineral deposits on state lands which on January 3, 1959, were subject to location under the mining laws of the United States, see 38.05.185; for recognition of mining locations made on state lands, including shorelands, tidelands or submerged lands, or state selected lands, see 38.05.275.

Effect of amendments. — Act of December 2, 1980, P.L. 96-487, Title IX, § 906(a), 94 Stat. 2437, in subsections (a) and (b) substituted "thirty-five years" for "twenty-five years."

Opinions of attorney general. — The grants by the federal government of school and university lands and mental health lands were confirmed and transferred to the State of Alaska upon its admission to the Union under this subsection, with the express proviso that they be used for the purposes for which they were reserved. 1964 Op. Att'y Gen., No. 7.

Use of the words "is hereby granted" signifies a present grant of lands to be thereafter identified by selection. By virtue of that grant the state became at once vested with the right of property in selected lands. It cannot be thereafter divested of such right. The United States Supreme Court has so held. 1969 Op. Att'y Gen., No. 6 (Supp.).

As to whether the United States may compensate Alaskan natives by taking a royalty out of lands already granted in fee to the State of Alaska, see 1969 Op. Att'y Gen., No. 6 (Supp.).

Since the Alaska Statehood Act did not authorize execution by the state of third-party leases and sales on lands not tentatively approved, those lands which are merely selected by the state and which

thus remain under administration by the Bureau of Land Management appear to be subject to § 2 of P.L. 94-204, 89 Stat. 1146, Jan. 2, 1976, *as a federal, and not state, obligation.* June 14, 1979, Op. Att'y Gen. See also, June 28, 1979, Op. Att'y Gen. and July 3, 1979, Op. Att'y Gen.

The knowing relinquishment of an existing state selection so that another party might make a claim to the land would appear to be the "alienation" of the state's right to select land which it wishes to own. March 26, 1982, Op. Att'y Gen.

When the state claims title under subsection (m) to the bed of a river it asserts to be navigable, it can assert management authority over the riverbed prior to a judicial determination of navigability. June 10, 1982, Op. Att'y Gen.

Lands underlying navigable waters must be managed in accordance with the common-law public trust doctrine so that paramount rights of the public to use the river for navigation and recreation are not substantially impaired. June 10, 1982, Op. Att'y Gen.

Where the state has selected and received tentative approval to a riverbed under subsections (a) or (b) of this Act, the leasing requirement of subsection (i) for mineral lands applies unless and until the state successfully adjudicates navigability to establish state ownership of the riverbed under subsection (m). June 10, 1982, Op. Att'y Gen.

The production license requirements of AS 38.05.207 apply to riverbeds that the state claims to own under subsection (m) of this Act as well as to lands tentatively approved to the state under subsections (a) and (b) of this Act. June 10, 1982, Op. Att'y Gen.

NOTES TO DECISIONS

- I. General Consideration.
- IV. Construction With Alaska Native Claims Settlement Act.
- V. Lands Available For Selection.
- VI. Fish and Wildlife Resources.
- VII. Mineral Land Grants.
- VIII. Submerged Lands.

I. GENERAL CONSIDERATION.

The Alaska Statehood Act only created in the state the same authority as that given to other states. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

The purpose of land grants under the Alaska Statehood Act is to serve Alaska's overall economic and social well-being. Some of the lands so selected will probably be used to protect mineral deposits. Others will safeguard wildlife. Still others will be used to protect domestic water supplies. *Udall v. Kalerak*, 396 F.2d 746 (9th Cir. 1968), *cert. denied*, 393 U.S. 1118, 89 S. Ct. 990, 22 L. Ed. 2d 123 (1969).

This section authorized the state to select 102,500,000 acres from public lands that were "vacant, unappropriated, and unreserved at the time of their selection." The intent of Congress was, of course, to provide the new state with a solid economic foundation. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

Applicability of last sentence of subsection (g). — The "equitable claims" phrase in the last sentence of subsection (g) may have scope where there was physical possession or improvement by the equitable claimant or someone acting in his behalf, but it cannot be extended to a lease applicant merely because he has incurred expense in support or defense of his application. *Schraier v. Hickel*, 419 F.2d 663 (D.C. Cir. 1969).

Applied in *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981); *Inupiat Community of Arctic Slope v. United States*, 680 F.2d 122 (Ct. Cl. 1982).

Cited in *McCubbins v. Keenan*, Sup. Ct. Op. No. 645 (File No. 1165), 475 P.2d 696 (1970).

IV. CONSTRUCTION WITH ALASKA NATIVE CLAIMS SETTLEMENT ACT.

Subsection 4(a) of the Alaska Native Claims Settlement Act requires dismissal of claims for entries under state leases pursuant to this subsection of the Alaska Statehood Act or entries pursuant to valid federal leases or conveyances. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

Congress chose a specific language used in subsection of the Native Claims Settlement Act by Congressional intent was to make that any prior grant of land under law or tentative approval under sub 6(g) of the Alaska Statehood Act to extinguish aboriginal title at the conveyance was made or the a given. In short, Congress intended conveyance or approval to be the of fact extinguishing aboriginal title construction is consistent with and reported by other provisions settlement act. *United States v. Richfield Co.*, 435 F. Supp. 1009 (D. 1977), *aff'd*, 612 F.2d 1132 (9th Cir. denied, 449 U.S. 888, 101 S. Ct. 24 Ed. 2d 113 (1980).

V. LANDS AVAILABLE FOR SELECTION.

Indian trapping, hunting camping could constitute a claim which would deprive the selected the status of being "unappropriated, and unreserved." *v. Udall*, 420 F.2d 938 (9th Cir. 1969), *denied*, 397 U.S. 1076, 90 S. Ct. 152 Ed. 2d 811 (1970).

Application for oil and gas lease "valid existing claim". — The phrase in subsection (b) is inapplicable to an application for an oil and gas lease under the Mineral Leasing Act, 30 U.S.C. § 181 which provides that lands subject position under the act, which are to contain oil or gas deposits, "leased by the Secretary of the Interior." *Schraier v. Hickel*, 419 F.2d 663 (D. 1969).

An applicant under the Mineral Leasing Act, 30 U.S.C. § 181 et seq., may have further right to a lease where he is to a lease over anyone else under the act and the Secretary of the Interior has exercised his discretion to execute a lease his proposal does not rise to the level of a "claim" or "right" within the clause of the Statehood Act when has been no such determination to *Schraier v. Hickel*, 419 F.2d 663 (D. 1969).

Lease rights are subordinate to rights-of-way legally exercised. *v. Yutan Constr. Co.*, Sup. Ct. Op. No. 631, 420 P.2d 323 (1966).

VI. FISH AND WILDLIFE RESOURCES.

State wolf hunt program. — 43 § 1732(a), 43 U.S.C. § 1732(b) &

U.S. (c), taken together, clearly provide the Secretary of the Interior with the power to halt the state wolf hunt program. Under 43 U.S.C. § 1732(a), the Secretary is commanded to manage the public lands under principles of multiple use. Multiple use includes the management of wildlife. 43 U.S.C. § 1702(c). Finally, the Secretary may close the lands to hunting for purposes of "administration" which on the face of the statute includes wildlife management. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

The Secretary of the Interior has the authority under the "BLM Organic Act," 43 U.S.C. § 1701 et seq., Pub. L. 94-579, to halt the wolf kill program, instituted by the Alaska Department of Fish and Game to help protect the Western Arctic caribou herd, which was taking place entirely on federally controlled land. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

There is no requirement of an environmental impact statement for wolf hunt program under the Alaska Native Claims Settlement Act. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

Even if the Alaska Native Claims Settlement Act can be construed as authorizing an independent authority to close the wolf hunt program, there is still no federal action involved. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

Under the property clause of the United States Constitution the federal government retains the right to control wildlife management on federal lands. By passage of the BLM Organic Act the Congress has implemented the property clause on federally controlled lands where a state instituted wolf hunt program was taking place and any state authority to the contrary has been divested by virtue of the supremacy clause. Accordingly, the Secretary of the Interior had the authority to issue an order prohibiting the hunt. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

A substantial portion of the wolf hunt program instituted by the Alaska Department of Fish and Game was to occur on "d-2" lands (referring to § 17(d)(2) of the Alaska Native Claims Settlement Act). These are tracts of land which have been

withdrawn by the Secretary of the Interior for possible inclusion in the National Parks, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq. Under that act the Secretary is to administer d-2 lands under applicable laws and regulations. 43 U.S.C. § 1616(d)(3). The Secretary has the authority to halt hunting on the lands pending resolution of their status because the BLM Organic Act is one of the applicable laws under which these lands are administered. 43 U.S.C. § 1616(d)(3). Hence, the requirement of an environmental impact statement under the ANCSA § 17(d)(3) is precisely the same as it is under the BLM Organic Act. The ANCSA imposes no independent duty on the Secretary to require licenses or permits to hunt on these lands and cannot be the basis for a determination that there is federal action involved in these hunts. The power of the Secretary on these lands is totally derivative from other acts. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

VII. MINERAL LAND GRANTS.

Alaska Constitution not amended to include terms and conditions set forth in subsection (i). — Although included in Alaska Statehood Act, § 8(b) was the provision that in the event that three propositions to be submitted to the voters, one of which required the consent by the state and its people to provisions of the Alaska Statehood Act reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the state of Alaska, were adopted by a majority vote, "the proposed constitution of the proposed State of Alaska . . . shall be deemed amended accordingly," and although the propositions were adopted, the Alaska Constitution was not thereby amended to include "the terms or conditions of the grants of land" set forth in subsection (i) of this section. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

There was no state legislature in existence at the time of passage of the Statehood Act, and the territorial legislature never approved an amendment incorporating the restrictions of subsection (i) of this section, which relates to mineral land grants, into the Alaska Con-

stitution. Nor was any constitutional convention called to act on the matter. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Rather, compact formed as to federal restrictions on alienability of land. — Alaskans by ratification of the constitution including the provisions of Alaska Const., art. VIII, § 9 and art. XII, § 13; and again, separately, by approving proposition 3 of Alaska Statehood Act, § 8(b), agreed to be bound by restrictions on alienability of land imposed by the federal government. This constituted a compact. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Congressional restraints intended to be binding to limited extent. — The congressional restraints on alienation were intended by Congress to be binding only to the extent required by that body. This also was the intent of those who agreed upon and adopted the Alaska Constitution by vote. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

All that was required to release the restrictions required by Congress was congressional consent. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

And state constitutional amendment not mandated. — After Congress has given its consent to a change in terms, a state constitutional amendment is not mandated to alter the compact. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Since constitution did not contain specific restrictions on alienation. — The Alaska Constitution did not contain any specific restrictions on alienation but merely a consent to be bound by such reservations as would be required by Congress. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Chapter 19, SLA 1976, not violative of Alaska Constitution. — Once congressional consent to release its restrictions was secured, the Alaska legislature, in agreeing to the disposition of the land and mineral rights by ch. 19, SLA 1976, was

not violating any specific provision of the Alaska Constitution. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

State's ownership of resource as basis for law discriminating against non-residents. — Rather than placing a statute completely beyond the privileges and immunities clause, a state's ownership of the property with which the statute is concerned is a factor — although often the crucial factor — to be considered in evaluating whether the statute's discrimination against non-citizens violates the clause. *Hicklin v. Orbeck*, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

Alaska has little or no proprietary interest in much of the activity swept within the ambit of the Alaska hire law, and the connection of the state's oil and gas with much of the covered activity is sufficiently attenuated so that it cannot justifiably be the basis for requiring private employers to discriminate against non-residents. *Hicklin v. Orbeck*, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

The fact that a state owns a resource, of itself, does not completely remove a law concerning that resource from the prohibitions of the privileges and immunities clause. *Hicklin v. Orbeck*, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

VIII. SUBMERGED LANDS.

Applicability of Submerged Lands Act. — Since "... all lands expressly retained by or ceded to the United States when the State entered the Union . . . and any rights the United States has in lands presently and actually occupied by the United States under claim of right" are specifically excluded from the operation of the Submerged Lands Act, 43 U.S.C. § 1301 et seq., and the provisions of § 6(e) of this act specifically exclude all land and water previously withdrawn, the Submerged Lands Act had no application in an action to quiet title to lands under a lake located in lands withdrawn prior to statehood for establishment of the Kenai National Moose Range. *United States v. Alaska*, 423 F.2d 764 (9th Cir.), cert. denied, 400 U.S. 967, 91 S. Ct. 363, 27 L. Ed. 2d 388 (1970).

The state owns or controls the land beneath navigable waters. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

The court takes judicial notice of the fact that Alaska lies westward of the 98th meridian. Thus, under federal law

owner's control of the land under navigable waters is confirmed in the state. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

The people of the state have the right to use the water itself on nonnavigable rivers and streams. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

The ownership of ground and surface waters is to be determined according to state law. Under the Alaska Constitution and state law the right to use such waterways is placed in the people of the state. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

The purpose of the easements along the courses of major waterways is to provide a place for docks, campsites and such facilities to service those who are properly using the public waters. This purpose is apparently accommodated by the reservation of site easements under the order of the Secretary of the Interior. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

Thus, the United States, as against the state, has paramount rights to the subsurface lands of the lower, or seaward, portion of the inlet. United States v. Alaska, 422 U.S. 184, 95 S. Ct. 2240, 45 L. Ed. 2d 109, rehearing denied, 423 U.S. 885, 96 S. Ct. 159, 46 L. Ed. 2d 116 (1975).

Title remaining in United States. — The United States, as the sovereign at the time, had the power, prior to Alaskan statehood, to withhold, withdraw or convey the land and water of the Kenai Peninsula, Alaska, for any valid purpose, and in such case, the property withdrawn would not pass to the state. United States v. Alaska, 423 F.2d 764 (9th Cir.), cert. denied, 400 U.S. 967, 91 S. Ct. 363, 27 L. Ed. 2d 388 (1970).

Where the Alaska Railroad Act (Act

March 12, 1914, 38 Stat. 305; Act July 7, 1958, 72 Stat. 339), implemented by Presidential Order of August 31, 1915, empowered the President to "build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such railroad or railroads," and authorized him to perform any and all acts in addition to those specifically set out in the statutory language which were necessary to accomplish the purposes and declared objects of the Act; more precisely, to reserve such lands as might be useful for furnishing the materials for the construction of stations, terminals and docks in connection with the operation and construction of the railroad lines, such act, by necessary implication, reserved for the use of the Alaska railroad as a terminal the tide and submerged lands immediately adjacent to and contiguous with the ordinary highwater mark on the eastern shore of Knik Arm and also the tidelands and bed of Ship Creek within the exterior boundaries of the terminal reserve; and title to these lands remained therefore in the United States after the admission of Alaska into the Union on January 3, 1959. United States v. City of Anchorage, 437 F.2d 1081 (9th Cir. 1971).

Alaska's ownership of tidelands same as other states. — By this subsection, Alaska was given the same ownership of tidelands and lands beneath navigable waters as other states of the Union. State v. A.J. Indus., Inc., Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964); City of Juneau v. Copley, Sup. Ct. Op. No. 415 (File No. 752), 429 P.2d 21 (1967).

Evidence was insufficient to establish that Cook Inlet is an historic bay. United States v. Alaska, 422 U.S. 184, 95 S. Ct. 2240, 45 L. Ed. 2d 109, rehearing denied, 423 U.S. 885, 96 S. Ct. 159, 46 L. Ed. 2d 116 (1975).

(CERTIFICATION BY PRESIDENT)

SEC. 7. Upon enactment of this Act, it shall be the duty of the President of the United States, not later than July 3, 1958, to certify such fact to the Governor of Alaska. Thereupon the Governor, on or after July 3, 1958, and not later than August 1, 1958, shall issue his proclamation for the elections, as hereinafter provided, for officers of all elective offices and in the manner provided for by the constitution of the proposed State of Alaska, but the officers so elected shall in any event include two Senators and one Representative in Congress.

(ELECTION OF OFFICERS; DATE, ETC.; CERTIFICATION OF VOTING RESULTS BY GOVERNOR; PROCLAMATION BY PRESIDENT; LAWS SUBJECT)

SEC. 8. (a) The proclamation of the Governor of Alaska required by section 7 shall provide for holding of a primary election and a general election on dates to be fixed by the Governor of Alaska: *Provided*, That the general election shall not be held later than December 1, 1958, and at such elections the officers required to be elected as provided in section 7 shall be, and officers for other elective offices provided for in the constitution of the proposed State of Alaska may be, chosen by the people. Such elections shall be held, and the qualifications of voters thereat shall be, as prescribed by the constitution of the proposed State of Alaska for the election of members of the proposed State legislature. The returns thereof shall be made and certified in such manner as the constitution of the proposed State of Alaska may prescribe. The Governor of Alaska shall certify the results of said elections to the President of the United States.

(b) At an election designated by proclamation of the Governor of Alaska, which may be the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, by separate ballot on each, the following propositions:

"(1) Shall Alaska immediately be admitted into the Union as a State?

"(2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved

(date of approval of this Act)

and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

"(3) All provisions of the Act of Congress approved

(date of

. reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people."

In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. In the event any one of the foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall thereupon cease to be effective.

The Governor of Alaska is hereby authorized and directed to take such action as may be necessary or appropriate to insure the

submitted said propositions to the people. The return of the votes cast on said proposition shall be made by the election officers directly to the Secretary of Alaska, who shall certify the results of the submission to the Governor. The Governor shall certify the results of said submission, as so ascertained, to the President of the United States.

(c) If the President shall find that the propositions set forth in the preceding subsection have been duly adopted by the people of Alaska, the President, upon certification of the returns of the election of the officers required to be elected as provided in section 7 of this Act, shall thereupon issue his proclamation announcing the results of said election as so ascertained. Upon the issuance of said proclamation by the President, the State of Alaska shall be deemed admitted into the Union as provided in section 1 of this Act.

Until the said State is so admitted into the Union, all of the officers of said Territory, including the Delegate in Congress from said Territory, shall continue to discharge the duties of their respective offices. Upon the issuance of said proclamation by the President of the United States and the admission of the State of Alaska into the Union, the officers elected at said election, and qualified under the provisions of the constitution and laws of said State, shall proceed to exercise all the functions pertaining to their offices in or under or by authority of the government of said State, and officers not required to be elected at said initial election shall be selected or continued in office as provided by the constitution and laws of said State. The Governor of said State shall certify the election of the Senators and Representative in the manner required by law, and the said Senators and Representative shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States.

(d) Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term "Territorial laws" includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the admission of the State of Alaska into the Union, (2) are not "Territorial laws" as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act.

Opinions of attorney general. — The only constitutional method by which there can be enacted legislation which is in direct conflict with the Statehood Act is the approval by the people of the State of Alaska of such federal legislation. 1969 Op. Att'y Gen., No. 6.

Congress does not have the authority to enact Indian legislation which will override the Statehood Act because of the "supremacy clause" principle. 1969 Op. Att'y Gen., No. 6.

NOTES TO DECISIONS

This section does not hold state agencies bound by federal regulations extant as of statehood. *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

This section made it clear that federal legislative enactments were to be carried over unless overruled by the state constitution or the state legislature. *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Alaska Constitution not amended to include terms and conditions of § 6(i) of this act. — Although included in subsection (b) of this section was the provision that in the event that three propositions to be submitted to the voters, one of which required the consent by the state and its people to provisions of the Alaska Statehood Act reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the state of Alaska, were adopted by a majority vote, "the proposed constitution of the proposed State of Alaska . . . shall be deemed amended accordingly," and although the propositions were adopted, the Alaska Constitution was not thereby amended to include "the terms or conditions of the grants of land" set forth in Alaska Statehood Act, § 6(i). *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

There was no state legislature in existence at the time of passage of the Statehood Act, and the territorial legislature never approved an amendment incorporating the restrictions of Alaska Statehood Act, § 6(i), which relates to mineral land grants, into the Alaska Constitution. Nor was any constitutional convention called to act on the matter. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Rather, compact formed as to federal restrictions on alienability of land. — Alaskans by ratification of the constitution including the provisions of Alaska Const., art. VIII, § 9 and art. XII, § 13, and again, separately, by approving proposition 3 of subsection (b) of this section, agreed to be bound by restrictions on alienability of land imposed by the federal government. This constituted a compact. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Congressional restraints intended to be binding to limited extent. — The congressional restraints on alienation were intended by Congress to be binding only to the extent required by that body. This also was the intent of those who agreed upon and adopted the Alaska Constitution by vote. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

All that was required to release the restrictions required by Congress was congressional consent. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

And state constitutional amendment not mandated. — After Congress has given its consent to a change in terms, a state constitutional amendment is not mandated to alter the compact. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Since constitution did not contain specific restrictions on alienation. — The Alaska Constitution did not contain any specific restrictions on alienation but merely a consent to be bound by such reservations as would be required by Congress. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Chapter 19, SLA 1976, not violative of Alaska Constitution. — Once congressional consent was secured, the Alaska legislature, in agreeing to the disposition of the land and mineral rights by ch. 19, SLA 1976, was not violating any specific provision of the Alaska Constitution. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Congress cannot limit supreme court's power to discipline Alaskan lawyers either directly or by continuing in force the provision of a territorial statute claimed to have that effect. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1966), rehearing denied, 385 U.S. 890 (1966).

[HOUSE OF REPRESENTATIVES MEMBERSHIP]

SEC. 9. The State of Alaska upon its admission into the Union shall be entitled to one Representative until the taking effect of the next reapportionment, and such representative shall be in addition to the membership of the House of Representatives as now prescribed by law; *Provided*, That such temporary increase in the membership shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13) nor shall such temporary increase affect the basis of apportionment established by the Act of November 15, 1941 (55 Stat. 761; 2 U. S. C., sec. 2a), for the Eighty-third Congress and each Congress thereafter.

[NATIONAL DEFENSE WITHDRAWALS; JURISDICTION]

SEC. 10. (a) The President of the United States is hereby authorized to establish, by Executive order or proclamation, one or more special national defense withdrawals within the exterior boundaries of Alaska, which withdrawal or withdrawals may thereafter be terminated in whole or in part by the President.

(b) Special national defense withdrawals established under subsection (a) of this section shall be confined to those portions of Alaska that are situated to the north or west of the following line: Beginning at the point where the Porcupine River crosses the international boundary between Alaska and Canada; thence along a line parallel to, and five miles from, the right bank of the main channel of the Porcupine River to its confluence with the Yukon River; thence along a line parallel to, and five miles from, the right bank of the main channel of the Yukon River to its most southerly point of intersection with the meridian of longitude 160 degrees west of Greenwich; thence south to the intersection of said meridian with the Kuskokwim River; thence along a line parallel to, and five miles from the right bank of the Kuskokwim River to the mouth of said river; thence along the shoreline of Kuskokwim Bay to its intersection with the meridian of longitude 162 degrees 30 minutes west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 57 degrees 30 minutes north; thence east to the intersection of said parallel with the meridian of longitude 156 degrees west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 50 degrees north.

(c) Effective upon the issuance of such Executive order or proclamation, exclusive jurisdiction over all special national defense withdrawals established under this section is hereby reserved to the United States, which shall have sole legislative, judicial, and executive power within such withdrawals, except as provided hereinafter. The exclusive jurisdiction so established shall extend to all lands within the exterior boundaries of each such withdrawal, and shall remain in effect with respect to any particular tract or parcel of land only so long as such tract or parcel remains within the exterior boundaries of such a withdrawal. The laws of the State of Alaska shall not apply to areas within any special national defense withdrawal established under this section while such areas remain subject to the exclusive jurisdiction hereby authorized: *Provided, however*, That such exclusive jurisdiction shall not prevent the execution of any process, civil or criminal, of the State of Alaska, upon any person found within said withdrawals: *And provided further*, That such exclusive jurisdiction shall not prohibit the State of Alaska from enacting and enforcing all laws necessary to establish voting districts, and the qualification and procedures for voting in all elections.

(d) During the continuance in effect of any special national defense withdrawal established under this section, or until the Congress otherwise provides, such exclusive jurisdiction shall be exercised within each such withdrawal in accordance with the following provisions of law:

(1) All laws enacted by the Congress that are of general application to areas under the exclusive jurisdiction of the United States, including, but without limiting the generality of the foregoing, those provisions of title 18, United States Code, that are applicable within the special maritime and territorial jurisdiction of the United States as defined in section 7 of said title, shall apply to all areas within such withdrawals.

(2) In addition, any areas within the withdrawals that are reserved by Act of Congress or by Executive action for a particular military or civilian use of the United States shall be subject to all laws enacted by the Congress that have application to lands withdrawn for that particular use, and any other areas within the withdrawals shall be subject to all laws enacted by the Congress that are of general application to lands withdrawn for defense purposes of the United States.

(3) To the extent consistent with the laws described in paragraphs (1) and (2) of this subsection and with regulations made or other actions taken under their authority, all laws in force within such withdrawals immediately prior to the creation thereof by Executive order or proclamation shall apply within the withdrawals and, for this purpose, are adopted as laws of the United States: *Provided, however*, That the laws of the State or Territory relating to the organization or powers of municipalities or local political subdivisions, and the laws or ordinances of such municipalities or political subdivisions shall not be adopted as laws of the United States.

(4) All functions vested in the United States commissioners by the laws described in this subsection shall continue to be performed within the withdrawals by such commissioners.

(5) All functions vested in any municipal corporation, school district, or other local political subdivision by the laws described in this subsection shall continue to be performed within the withdrawals by such corporation, district, or other subdivision, and the laws of the state or the laws or ordinances of such municipalities or local political subdivision shall remain in full force and effect notwithstanding any withdrawal made under this section.

(6) All other functions vested in the government of Alaska or in any officer or agency thereof, except judicial functions over which the United States District Court for the District of Alaska is given jurisdiction by this Act or other provisions of law, shall be performed within the withdrawals by such civilian individuals or civilian agencies and in such manner as the President shall from time to time, by Executive order, direct or authorize.

(7) The United States District Court for the District of Alaska shall have original jurisdiction, without regard to the sum or value of any matter in controversy, over all civil actions arising within such withdrawals under the laws made applicable thereto by this subsection, as well as over all offenses committed within the withdrawals.

(e) Nothing contained in subsection (d) of this section shall be construed as limiting the exclusive jurisdiction established in the United States by subsection (c) of this section or the authority of the Congress to implement such exclusive jurisdiction by appropriate legislation, or as denying to persons now or hereafter residing within any portion of the areas described in subsection (b) of this section the right to vote at all elections held within the political subdivisions as prescribed by the State of Alaska where they respectively reside, or as limiting the jurisdiction conferred on the United States District Court for the District of Alaska by any other provision of law, or as continuing in effect laws relating to the Legislature of the Territory of Alaska. Nothing contained in this section shall be construed as limiting any authority otherwise vested in the Congress or the President.

[MOUNT MCKINLEY NATIONAL PARK; MILITARY, NAVAL, ETC., LANDS;
CIVIL AND CRIMINAL JURISDICTION]

SEC. 11. (a) Nothing in this Act shall affect the establishment, or the right, ownership, and authority of the United States in Mount McKinley National Park, as now or hereafter constituted; but exclusive jurisdiction, in all cases, shall be exercised by the United States for the national park, as now or hereafter constituted; saving, however, to the State of Alaska the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said

State, but outside of said park; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park; and saving also to the persons residing now or hereafter in such area the right to vote at all elections held within the respective political subdivisions of their residence in which the park is situated.

(b) Notwithstanding the admission of the State of Alaska into the Union, authority is reserved in the United States, subject to the proviso hereinafter set forth, for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels or land as, immediately prior to the admission of said State, are owned by the United States and held for military, naval, Air Force, or Coast Guard purposes, including naval petroleum reserve numbered 4, whether such lands were acquired by cession and transfer to the United States by Russia and set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Alaska for the use of the United States, or were acquired by the United States by purchase, condemnation, donation, exchange, or otherwise: *Provided*, (i) That the State of Alaska shall always have the right to serve civil or criminal process within the said tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the said State but outside of the said tracts or parcels of land; (ii) that the reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid shall not operate to prevent such lands from being a part of the State of Alaska, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority; and (iii) that such power of exclusive legislation shall rest and remain in the United States only so long as the particular tract or parcel of land involved is owned by the United States and used for military, naval, Air Force, or Coast Guard purposes. The provisions of this subsection shall not apply to lands within such special national defense withdrawal or withdrawals as may be established pursuant to section 10 of this Act until such lands cease to be subject to the exclusive jurisdiction reserved to the United States by that section.

Opinions of attorney general. — Alaska's fish and game laws are applicable as federal law on military reservations, except for the licensing of military personnel who hunt on military reservations. 1964 Op. Att'y Gen., No. 2. Any hunting or fishing at a military

reservation must be in accord with Alaska laws regulating seasons, bag limits, methods of taking, etc., even though military personnel are not required to comply with Alaska's licensing requirements while on the reservation. 1964 Op. Att'y Gen., No. 2.

Alaska federal government have concurrent jurisdiction over federal military reservations by the terms of (ii) of this subsection. 1964 Op. Att'y Gen., No. 2.

Subsection (b) (ii) grants to Alaska and the federal government concurrent jurisdiction to enforce Alaska's fish and game laws and regulations on federal military reservations. 1964 Op. Att'y Gen., No. 2.

Only on a military reservation under the exclusive legislative jurisdiction of the federal government could enforcement of

game and fish laws be in the hands of the federal government exclusively. 1964 Op. Att'y Gen., No. 2.

The state has subject matter jurisdiction over sewage disposal in Petroleum Reserve No. 4. June 28, 1977, Op. Att'y Gen.

Until Congress expressly exercises its latent power of exclusive jurisdiction, the state has concurrent jurisdiction over Petroleum Reserve No. 4. June 28, 1977, Op. Att'y Gen.

[JUDICIAL AND CRIMINAL PROVISIONS]

SEC. 12. Effective upon the admission of Alaska into the Union —

(a) The analysis of chapter 5 of title 28, United States Code, immediately preceding section 81 of such title, is amended by inserting immediately after and underneath item 81 of such analysis, a new item to be designated as item 81A and to read as follows:

"81A. Alaska";

(b) Title 28, United States Code, is amended by inserting immediately after section 81 thereof a new section, to be designated as section 81A, and to read as follows:

"§ 81A. Alaska

"Alaska constitutes one judicial district.

"Court shall be held at Anchorage, Fairbanks, Juneau, and Nome.";

(c) Section 133 of title 28, United States Code, is amended by inserting in the table of districts and judges in such section immediately above the item: "Arizona *** 2", a new item as follows: "Alaska *** 1";

(d) The first paragraph of section 373 of title 28, United States Code, as heretofore amended, is further amended by striking out the words: "the District Court for the Territory of Alaska,"; *Provided*, That the amendment made by this subsection shall not affect the rights of any judge who may have retired before it takes effect;

(e) The words "the District Court for the Territory of Alaska," are stricken out wherever they appear in sections 333, 460, 610, 753, 1252, 1291, 1292, and 1346 of title 28, United States Code;

(f) The first paragraph of section 1252 of title 28, United States Code, is further amended by striking out the word "Alaska," from the clause relating to courts of record;

(g) Subsection (2) of section 1294 of title 28, United States Code, is repealed and the later subsections of such section are renumbered accordingly;

(h) Subsection (a) of section 2410 of title 28, United States Code, is amended by striking out the words: "including the District Court for the Territory of Alaska,";

(i) Section 3241 of title 18, United States Code, is amended by striking out the words: "District Court for the Territory of Alaska, the";

(j) Subsection (e) of section 3401 of title 18, United States Code, is amended by striking out the words: "for Alaska or";

(k) Section 3771 of title 13, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "the Territory of Alaska,";

(l) Section 3772 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "the Territory of Alaska,";

(m) Section 2072 of title 28, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "and of the District Court for the Territory of Alaska";

(n) Subsection (q) of section 376 of title 28, United States Code, is amended by striking out the words: "the District Court for the Territory of Alaska,"; *Provided*, That the amendment made by this subsection shall not affect the rights under such section 376 of any present or former judge of the District Court for the Territory of Alaska or his survivors;

(o) The last paragraph of section 1963 of title 28, United States Code, is repealed;

(p) Section 2201 of title 28, United States Code, is amended by striking out the words: "and the District Court for the Territory of Alaska"; and

(q) Section 4 of the Act of July 28, 1950 (64 Stat. 380; 5 U. S. C., sec. 341b) is amended by striking out the word: "Alaska".

[CONTINUATION OF SUITS]

SEC. 13. No writ, action, indictment, cause, or proceeding pending in the District Court for the Territory of Alaska on the date when said Territory shall become a State, and no case pending in an appellate court upon appeal from the District Court for the Territory of Alaska at the time said Territory shall become a State, shall abate by the admission of the State of Alaska into the Union, but the same shall be transferred and proceeded with as hereinafter provided.

All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no suit, action, or prosecution shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Alaska in like manner, to the same extent, and with like right of appellate review, as if said State had been created and said courts had been established prior to the accrual of said causes of action or the commission of such offenses; and such of said criminal offenses as shall have

been committed against the laws of the Territory shall be tried and punished by the appropriate courts of said State, and such as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Alaska.

Cross references. — See note to AS 33.15.240.

[APPEALS]

SEC. 14. All appeals taken from the District Court for the Territory of Alaska to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit, previous to the admission of Alaska as a State, shall be prosecuted to final determination as though this Act had not been passed. All cases in which final judgment has been rendered in such district court, and in which appeals might be had except for the admission of such State, may still be sued out, taken, and prosecuted to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit under the provisions of then existing law, and there held and determined in like manner; and in either case, the Supreme Court of the United States, or the United States Court of Appeals, in the event of reversal, shall remand the said cause to either the State supreme court or other final appellate court of said State, or the United States district court for said district, as the case may require: *Provided*, That the time allowed by existing law for appeals from the district court for said Territory shall not be enlarged thereby.

Cross references. — See note to AS 33.15.240.

NOTES TO DECISIONS

This section was obviously an expedient provided by Congress while the State court system was being organized. *Moody v. State*, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964).

[SUCCESSION OF COURTS]

SEC. 15. All causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State which are of such nature as to be within the jurisdiction of a district court of the United States shall be transferred to the United States District Court for the District of Alaska for final disposition and enforcement in the same manner as is now provided by law with reference to the judgments and decree in existing United States district courts. All other causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State shall be transferred to the appropriate State court of Alaska. All

final judgments and decrees rendered upon such transferred cases in the United States District Court for the District of Alaska may be reviewed by the Supreme Court of the United States or by the United States Court of Appeals for the Ninth Circuit in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts.

Cross references. — See note to AS 33.15.240.

[TRANSFER OF CASES]

SEC. 16. Jurisdiction of all cases pending or determined in the District Court for the Territory of Alaska not transferred to the United States District Court for the District of Alaska shall devolve upon and be exercised by the courts of original jurisdiction created by said State, which shall be deemed to be the successor of the District Court for the Territory of Alaska with respect to cases not so transferred and, as such, shall take and retain custody of all records, dockets, journals, and files of such court pertaining to such cases. The files and papers in all cases so transferred to the United States district court, together with a transcript of all book entries to complete the record in such particular cases so transferred, shall be in like manner transferred to said district court.

Cross references. — See note to AS 33.15.240.

[CASES PENDING IN DISTRICT COURT FOR TERRITORY OF ALASKA]

SEC. 17. All cases pending in the District Court for the Territory of Alaska at the time said Territory becomes a State not transferred to the United States District Court for the District of Alaska shall be proceeded with and determined by the courts created by said State with the right to prosecute appeals to the appellate courts created by said State, and also with the same right to prosecute appeals or writs of certiorari from the final determination in said causes made by the court of last resort created by such State to the Supreme Court of the United States, as now provided by law for appeals and writs of certiorari from the court of last resort of a State to the Supreme Court of the United States.

Cross references. — See note to AS 33.15.240.

[JURISDICTION OF DISTRICT COURT; TERMINATION DATE]

SEC. 18. The provisions of the preceding sections with respect to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of rights of litigants in suits before such courts, shall not be effective until three years after the effective date of this Act, unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the provisions of this Act, is prepared to assume the functions imposed upon it. During such period of three years or until such Executive order is issued, the United States District Court for the Territory of Alaska shall continue to function as heretofore. The tenure of the judges, the United States attorneys, marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function as provided in this section.

Cross references. — See note to AS 33.15.240.

[FEDERAL RESERVE SYSTEM]

SEC. 19. The first paragraph of section 2 of the Federal Reserve Act (38 Stat. 251) is amended by striking out the last sentence thereof and in inserting in lieu of such sentence the following: "When the State of Alaska is hereafter admitted to the Union the Federal Reserve districts shall be readjusted by the Board of Governors of the Federal Reserve System in such manner as to include such State. Every national bank in any State shall, upon commencing business or within ninety days after admission into the Union of the State in which it is located, become a member bank of the Federal Reserve System by subscribing and paying for stock in the Federal Reserve bank of its district in accordance with the provisions of this Act and shall thereupon be an insured bank under the Federal Deposit Insurance Act, and failure to do so shall subject such bank to the penalty provided by the sixth paragraph of this section."

[REPEAL]

SEC. 20. Section 2 of the Act of October 20, 1914 (38 Stat. 742; 48 U. S. C., sec. 433), is hereby repealed.

[UNITED STATES NATIONALITY]

SEC. 21. Nothing contained in this Act shall operate to confer United States nationality, nor to terminate nationality heretofore lawfully acquired, nor restore nationality heretofore lost under any law

the United States or under any treaty to which the United States may have been a party.

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

SEC. 22. Section 101 (a) (36) of the Immigration and Nationality Act (66 Stat. 170, 8 U. S. C., sec. 1101 (a) (36)) is amended by deleting the word "Alaska,".

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

SEC. 23. The first sentence of section 212 (d) (7) of the Immigration and Nationality Act (66 Stat. 188, 8 U. S. C., sec. 1182 (d) (7)) is amended by deleting the word "Alaska,".

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

SEC. 24. Nothing contained in this Act shall be held to repeal, amend, or modify the provisions of section 304 of the Immigration and Nationality Act (66 Stat. 237, 8 U. S. C., sec. 1404).

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

SEC. 25. The first sentence of section 310 (a) of the Immigration and Nationality Act (66 Stat. 239, 8 U. S. C., sec. 1421 (a)) is amended by deleting the words "District Courts of the United States for the Territories of Hawaii and Alaska" and substituting therefor the words "District Court of the United States for the Territory of Hawaii".

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

SEC. 26. Section 344 (d) of the Immigration and Nationality Act (66 Stat. 265, 8 U. S. C., sec. 1455 (d)) is amended by deleting the words "in Alaska and".

[TRANSPORTATION BY WATER]

SEC. 27. (a) The third proviso in section 27 of the Merchant Marine Act, 1920, as amended (46 U. S. C., sec. 883), is further amended by striking out the word "excluding" and inserting in lieu thereof the word "including".

(b) Nothing contained in this or any other Act shall be construed as depriving the Federal Maritime Board of the exclusive jurisdiction heretofore conferred on it over common carriers engaged in transportation by water between any port in the State of Alaska and other ports in the United States, its Territories or possessions, or as conferring upon the Interstate Commerce Commission jurisdiction over transportation by water between any such ports.

SEC. 28. (a) The last sentence of section 9 of the Act entitled "An Act to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes", approved October 20, 1914 (48 U. S. C. 439), is hereby amended to read as follows: "All net profits from operation of Government mines, and all bonuses, royalties, and rentals under leases as herein provided and all other payments received under this Act shall be distributed as follows as soon as practicable after December 31 and June 30 of each year: (1) 90 per centum thereof shall be paid by the Secretary of the Treasury to the State of Alaska for disposition by the legislature thereof; and (2) 10 per centum shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts."

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U. S. C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

Opinions of attorney general. — Neither the state nor federal government may unilaterally amend the Statehood Act. 1969 Op. Att'y Gen., No. 6.

The United States may not constitutionally enact effective legislation in direct conflict with compact provisions of the Statehood Act unless there is an amendment to the Constitution of the State of Alaska, because a Statehood Act constitutes a compact in the nature of a contract between two sovereign governments. 1969 Op. Att'y Gen., No. 6.

Royalty legislation on state oil and gas leases is a matter within the paramount jurisdiction of the state. The conservation of oil and gas is a matter within the authority of the states. 1969 Op. Att'y Gen., No. 6.

The royalty provisions of a mineral leasing act are related to conservation of natural resources. 1969 Op. Att'y Gen., No. 6.

The United States, under the 10th amendment to the federal constitution, has no authority to legislate on state royalty provisions and state oil and gas leases. 1969 Op. Att'y Gen., No. 6.

An overriding gross royalty of 2% of all proceeds from any state and federal lands conflicts with the Statehood Act and the province of the Alaska state legislature. 1969 Op. Att'y Gen., No. 6.

The United States cannot unilaterally amend the Statehood Act to the state's detriment without the state's consent or acquiescence. April 2, 1981, Op. Att'y Gen.

NOTES TO DECISIONS

Legislative intent. — It was the intent of Congress in the Statehood Act to provide the new state with a solid economic foundation. *Rowe v. United States*, 464 F. Supp. 1060 (D. Alas. 1979), *aff'd in part*, 633 F.2d 799 (9th Cir. 1980), *cert. denied*, 451 U.S. 970, 101 S. Ct. 2047, 68 L. Ed. 2d 349 (1981).

Applied in *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

SEC. 29. If any provision of this Act, or any section, subsection, sentence, clause, phrase, or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase, or individual word to other persons and circumstances shall not be affected thereby.

[REPEAL OF CONFLICTING LAWS]

SEC. 30. All Acts or parts of Acts in conflict with the provisions of this Act, whether passed by the legislature of said Territory or by Congress, are hereby repealed.

Approved July 7, 1958.

1978

LEGISLATION



LAWS OF ALASKA

1978

Source

FCCS CSSB 159

Chapter No.

182

AN ACT

Relating to state land; and providing for an effective date.

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

* Section 1. REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND. (a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed consistent with applicable provisions of law.

(b) Redesignation of mental health land in (a) of this section does not affect the validity of a deed, contract for sale, lease, easement, right-of-way, permit, mineral lease disposal, or a reservation for public use of that land by statute, in effect before July 1, 1978 or land management actions including use classifications under AS 38.05.300, and interagency land management assignments of that land made by the Department of Natural Resources before July 1, 1978.

* Sec. 2. REDESIGNATION AND DISPOSAL OF SCHOOL LAND. (a) Land granted to the state in sections 16 and 36 in each township surveyed before January 3, 1959 under the Act of March 4, 1915, 48 U.S.C. 353, and patented to or approved for patent to the state on July 1, 1978 and land designated as school land which was received in exchange for land granted under that federal land grant and land granted to the state as lieu or indemnity land is redesignated as general grant land and shall be managed consistent with applicable provisions of law.

(b) The redesignation of school land in (a) of this section does not affect the validity of a deed, contract for sale, lease, easement, right-of-way, permit, mineral lease disposal, or a

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reservation for public use of that land by statute, in effect before July 1, 1978 or land management actions including use classifications under AS 38.05.300, and interagency land management assignments of that land made by the Department of Natural Resources before July 1, 1978.

* Sec. 3. REDESIGNATION AND DISPOSAL OF UNIVERSITY LAND.

(a) Land granted to the state under 38 Stat. 1214, as amended, 48 U.S.C. 353, and the Act of January 21, 1929, 48 U.S.C. 354(a) which is held in the name of the University of Alaska on July 1, 1978 and land designated as university land which was received in exchange for land granted under those federal land grants is redesignated as general grant land and shall be managed consistent with applicable provisions of law.

(b) The redesignation of university land in (a) of this section does not affect the validity of a deed, contract for sale, lease, easement, right-of-way, permit, mineral lease disposal, or a reservation for public use of that land by statute, in effect before July 1, 1978 or land management actions including use classifications under AS 38.05.300, and interagency land management assignments of that land made by the Department of Natural Resources before July 1, 1978.

(c) Land in Section 6, Township 1 South, Range 1 West, Section 31, Township 1 North, Range 1 West, Section 1, Township 1 South, Range 2 West, and Section 36, Township 1 North, Range 2 West, Fairbanks Meridian granted under the Act of March 4, 1915, 48 U.S.C. 353, and all land used or occupied by the university and its associated facilities, community colleges, or subordinate campuses on or before July 1, 1978 shall be held in the name of the University of Alaska and shall be reserved and dedicated to use for the University of Alaska and title to that land shall be held by the university.

* Sec. 4. AS 37 is amended by adding a new chapter to read:

CHAPTER 14. TRUST FUNDS.

ARTICLE 1. MENTAL HEALTH FUND.

Sec. 37.14.010. MENTAL HEALTH FUND ESTABLISHED. (a) There is established as a separate fund the mental health fund.

(b) The principal of the fund established in (a) of this section consists of sums transferred under sec. 99 of this chapter.

(c) The income of the fund established in (a) of this section consists of the interest and dividends earned from investments of the principal of that fund under sec. 170 of this chapter.

Sec. 37.14.020. MENTAL HEALTH FUND ADVISORY BOARD CREATED. (a) There is created in the Department of Revenue the Mental Health Fund Advisory Board composed of the director of the division of mental health, the chairman of the Mental Health Advisory Council, and the commissioner of the Department of Revenue.

(b) The board created in (a) of this section shall elect a chairman from the membership of that board. Members

serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards.

Sec. 37.14.030. POWERS AND DUTIES OF BOARD. The board created in sec. 20 of this chapter has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the total principal and income of the fund established in sec. 10 of this chapter; and

(3) to prepare long-range investment plans for the fund established in sec. 10 of this chapter.

Sec. 37.14.040. FUND UTILIZATION. The principal of the fund established in sec. 10 of this chapter shall be retained in that fund for investment as specified in sec. 170 of this chapter. The income of the fund may not be appropriated for a purpose other than the support of the state mental health program.

Sec. 37.14.050. CONTRIBUTIONS. During each fiscal year, subject to legislative appropriation of sufficient funds, the commissioner of the Department of Revenue shall transfer to the fund established in sec. 10 of this chapter a sum equal to one and one-half per cent of the total revenue derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses.

ARTICLE 2. UNIVERSITY FUND.

Sec. 37.14.060. UNIVERSITY FUND ESTABLISHED. (a) There is established as a separate fund the university fund.

(b) The principal of the fund established in (a) of this section consists of

(1) the balance of the trust fund established in AS 14.40.400 on July 1, 1978; and

(2) sums transferred under sec. 100 of this chapter.

(c) The income of the fund established in (a) of this section consists of the interest and dividends earned from investments of the principal of that fund under sec. 170 of this chapter.

Sec. 37.14.070. UNIVERSITY FUND ADVISORY BOARD CREATED. (a) There is created in the Department of Revenue the University Fund Advisory Board composed of two members appointed by the Board of Regents of the University of Alaska from the membership of the Board of Regents, and the commissioner of the Department of Revenue.

(b) The board created in (a) of this section shall elect a chairman from the membership of that board.

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Members serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards.

Sec. 37.14.080. POWERS AND DUTIES OF BOARD. The board created in sec. 70 of this chapter has the following powers and duties:

- (1) to hold regular meetings and special meetings considered necessary;
- (2) to have prepared an annual accounting of the total principal and income of the fund established in sec. 60 of this chapter; and
- (3) to prepare long-range investment plans for the fund established in sec. 60 of this chapter.

Sec. 37.14.090. FUND UTILIZATION. (a) The principal of the fund established in sec. 60 of this chapter shall be retained in the fund for investment as specified in sec. 170 of this chapter.

(b) The income from the fund established in sec. 60 of this chapter may not be appropriated for a purpose other than the support of programs of the University of Alaska.

(c) No part of the principal and income of the fund established in sec. 60 of this chapter may be used for the support of a sectarian or denominational college or school.

Sec. 37.14.100. CONTRIBUTIONS. During each fiscal year the commissioner of the Department of Revenue shall transfer to the fund created in sec. 60 of this chapter a sum equal to one-half of one per cent of the total receipts derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses.

ARTICLE 3. PUBLIC SCHOOL FUND.

Sec. 37.14.110. PUBLIC SCHOOL FUND ESTABLISHED. (a) There is established as a separate fund the public school fund.

(b) The principal of the fund established in (a) of this section consists of

(1) the balance of the public school permanent fund on July 1, 1978; and

(2) sums transferred under sec. 150 of this chapter.

(c) The income of the fund created in (a) of this section consists of the interest and dividends earned from investments of the principal of that fund under sec. 170 of this chapter.

Sec. 37.14.120. PUBLIC SCHOOL FUND ADVISORY BOARD CREATED. (a) There is created in the Department of Revenue the Public School Fund Advisory Board composed of

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the commissioner of the Department of Education, three members elected by the Board of Education from among its membership, and the commissioner of the Department of Revenue.

(b) The board created in (a) of this section shall elect a chairman from the membership of the board. Members serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards.

Sec. 37.14.130. POWERS AND DUTIES OF BOARD. The board created in sec. 120 of this chapter has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the principal and income of the fund established in sec. 110 of this chapter; and

(3) to prepare long-range investment plans for the fund established in sec. 110 of this chapter.

Sec. 37.14.140. FUND UTILIZATION. The principal of the fund established in sec. 110 of this chapter shall be retained in the fund for investment as specified in sec. 170 of this chapter. The income of the fund may not be appropriated for a purpose other than for the support of public education programs.

Sec. 37.14.150. CONTRIBUTIONS. During each fiscal year the commissioner of the Department of Revenue shall transfer to the fund created in sec. 110 of this chapter a sum equal to one-half of one per cent of the total receipts derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses.

ARTICLE 4. CUSTODY AND INVESTMENT OF TRUST FUNDS.

Sec. 37.14.160. DUTIES OF COMMISSIONER OF REVENUE. The commissioner of revenue is the treasurer of the funds created in secs. 10, 60, and 110 of this chapter and shall

(1) act as official custodian of the cash and securities belonging to those funds and provide adequate safe deposit facilities for each of them;

(2) receive cash belonging to those funds;

(3) collect the principal on securities acquired for each fund established under secs. 10, 60, and 110 of this chapter and credit each fund accordingly;

(4) collect interest and dividends earned on investments of the funds established under secs. 10, 60, and 110 of this chapter and credit the income reserve account of each fund accordingly;

(5) invest and reinvest the principal of each

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fund in accordance with sec. 170 of this chapter.

Sec. 37.14.170. INVESTMENTS. (a) The commissioner of revenue, with the approval of each advisory board created in secs. 20, 70, and 120 of this chapter, may invest the principal of the funds created in secs. 10, 60, and 110 of this chapter in the same manner as specified for the investment of surplus pension funds under AS 39.35.110.

(b) The commissioner of revenue may

(1) invest and reinvest the principal of the funds;

(2) sell, exchange, convey, transfer, or otherwise dispose of investments of the funds by private contract or at public auction;

(3) vote upon a stock, bond, or other security; give a general or special proxy or power of attorney with or without power of substitution; exercise a conversion privilege, subscription right, or other option and make payments incidental to it; consent to or participate in a corporate reorganization or other change affecting corporate securities, delegate discretionary power, pay an assessment or charge in connection with the delegation; and generally exercise any of the powers of an owner with respect to stocks, bonds, securities, or other investments held in the funds;

(4) make, execute, acknowledge, and deliver documents of transfer and conveyance and instruments necessary or appropriate to carry out the powers granted;

(5) register investments held in a fund in the name of the board having the power to approve investments for a fund;

(6) do all acts whether or not expressly authorized which are considered proper for the protection of the investments held in the funds.

* Sec. 5. AS 38.05.030(c) is amended to read:

(c) In addition to the requirements specified in AS 38.50.090, the agencies referred to in (b) of this section and other state agencies with authority to acquire or dispose of land shall give written notification of the fact of acquisition, lease or exchange to the division of lands within three months after the date that they make the acquisition, lease or exchange.

* Sec. 6. AS 38.05.030(d) is amended to read:

(d) Real property acquired by, and under the management of, the agencies referred to in (b) of this section, which is no longer needed for its intended use, shall be returned to the jurisdiction of the division of lands, except that the Department of Transportation and Public Facilities may dispose of real property acquired by it under AS 19.05.040(2) and AS 19.05.080 - 19.05.120.

* Sec. 7. AS 38.05.C35(b) is amended by adding a new

paragraph to read:

(6) dispose of land which is held in the name of the University of Alaska except land granted under the Act of March 4, 1915, 48 U.S.C. 353 which is reserved as the site of the University of Alaska and all land used or occupied by the university and its associated facilities, community colleges, or subordinate campuses.

* Sec. 8. AS 38.05.085(b) is repealed and re-enacted to read:

(b) When it becomes necessary to determine the fair market value of property as required by (a) of this section, the director shall have the property appraised by a qualified appraiser. If the lessee disagrees with the appraisal obtained by the director, he may appoint a qualified appraiser to make an appraisal of the property in question. If the two appraisers agree upon the fair market value, the determination is binding on the parties. In the event the two appraisers are unable to agree, they shall appoint a third qualified appraiser who shall then make his appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resultant sum shall be the fair market value of the property in question and absolutely binding on the parties. All costs incurred in making the appraisals provided for in this subsection shall be borne by the state and the lessee equally.

* Sec. 9. AS 38.05.085(g) is amended by adding a new paragraph to read:

(3) "qualified appraiser" means a senior member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, a person meeting the requirements for certification as an appraiser II by the division of personnel, Department of Administration, or a person qualified according to regulations adopted by the commissioner under the Administrative Procedure Act (AS 44.62).

* Sec. 10. AS 38.05.095 is amended to read:

Sec. 38.05.095. SUBLEASES. (a) Except as provided in (b) of this section, a lessee may sublease or assign the land or portion of it upon which he has a lease if, after application to the director, the director issues a permit. The director may issue a permit if he finds that it is in the best interests of the state to do so.

(b) A nonprofit organization that is exempted from paying rent on state land under sec. 97 of this chapter may not sublease or assign the land or a portion of it on which it has a lease.

* Sec. 11. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.097. EXEMPTION FROM RENTAL PAYMENTS ON LAND LEASED BY NONPROFIT ORGANIZATIONS. (a) A nonprofit organization using state land leased by it under secs. 70 - 105 of this chapter for a youth encampment or similar

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recreational purpose is exempt from lease rental payments on that land. The nonprofit organization shall meet all other terms and conditions of the lease specified under secs. 70 - 105 of this chapter.

(b) In this section, "nonprofit organization" means nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes or for the promotion of social welfare and which has received an exemption from the payment of federal income tax.

(c) A nonprofit organization which satisfies the requirements of this section that is using land under a lease in effect before July 1, 1978 may convert its lease to a new lease with terms exempting it from the payment of rent by submitting a written request to the director.

* Sec. 12. AS 38.05.105(b)(1) is amended to read:

(1) subject to the provisions of (c) of this section, changes in property value due to governmental actions, including zoning reclassifications, shall be included; and

* Sec. 13. AS 38.05.105 is amended by adding a new subsection to read:

(c) Changes or adjustments of annual rent on land under lease and used for single-family residential purposes in an area zoned for commercial or other nonresidential uses shall be based on an adjusted fair market value determined by reference to the actual use of the property and not by reference to the other uses permissible under the zoning ordinance.

* Sec. 14. AS 38.05.310 is amended to read:

Sec. 38.05.310. APPRAISAL. No land may be sold or leased, or a renewal lease issued, except in the case of an oil or gas or mineral lease, unless it has been appraised within 120 days before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, no reappraisal is required unless the director considers that a change in value of the lands may have occurred. A grazing lease may be granted to a lessee of federal grazing lands without prior appraisal, if his federal lease was cancelled to allow the state to select the lands under lease. No land may be sold or leased for less than the approved, appraised market value, except as provided in secs. 315 and 320 of this chapter, secs. 75 - 85 and sec. 97 of this chapter.

* Sec. 15. AS 38.05.340 is amended to read:

Sec. 38.05.340. ASSIGNMENT. (a) Except as provided in (b) of this section, all contracts of purchase or lease of lands or interest in lands may be, on the affirmative approval of the director, assigned or subleased in whole or in part in writing by the contract holder or lessee, and the assignee or sublessee is subject to the provisions of laws and regulations applicable to the contract or lease.

(b) A nonprofit organization that is exempted from paying rent on state land under sec. 97 of this chapter may not assign or sublease the land or a portion of it on which it has a lease.

* Sec. 16. AS 38.35.140(a) is amended to read:

(a) The lease price for a right-of-way lease shall be the annual fair market rental of the state lands included in the right-of-way based on the appraised fair market value of the land. The lease price is payable annually in advance on or before the anniversary of the lease. The appraised fair market rental value shall be adjusted at five-year intervals and charges or adjustments shall be based on a reappraised annual rental value. Rental may not be charged for any land acquired by the lessee under sec. 130(b) of this chapter and conveyed without cost to the state.

* Sec. 17. AS 38.50.040 is amended to read:

Sec. 38.50.040. LAND SUBJECT TO EXCHANGE. Except as otherwise provided in this chapter, the director is authorized to convey for purposes of exchange any state land or interest in land regardless of the authority under which the land or interest was obtained by the state. The conveyance of university land shall be approved in the manner prescribed in AS 38.05.030.

* Sec. 18. AS 38.50.040 is amended to read:

Sec. 38.50.040. LAND SUBJECT TO EXCHANGE. Except as otherwise provided in this chapter, the director is authorized to convey for purposes of exchange any state land or interest in land regardless of the authority under which the land or interest was obtained by the state.

* Sec. 19. AS 14.40.280 is amended to read:

Sec. 14.40.280. ENDOWMENTS AND DONATIONS. All monetary gifts, bequests or endowments which are made to the university for the purpose of the separate fund created under AS 37.14.110 shall be transferred to the Department of Revenue. The Department of Revenue shall manage that money in accordance with AS 37.14.060 - 37.14.100. Title to and control or possession of land, personal property, and all money other than that transferred to the Department of Revenue, which is devised, bequeathed or given to the university shall be taken by the university in its corporate capacity acting by and through the regents or an authorized agent, and shall be entered in the perpetual inventory of the university.

* Sec. 20. The following laws are repealed: AS 14.40.350, 14.40.360, 14.40.400; AS 34.10.010 - 34.10.160, 34.10.180 - 34.10.240; AS 38.05.030(a) and (e), 38.05.032, 38.05.035(a)(8) and (13), 38.05.365(8), (14) and (20); and AS 38.50.110(a)(6).

* Sec. 21. Sec. 12, ch. 138, SLA 1977 is amended to read:

Sec. 12. CONVERSION OF LEASES. The provisions of secs. 9 - 11 of this Act are applicable to state leases which are in existence on or before the effective date of this Act if a lessee under a lease elects, in writing, to

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be bound by this Act. When a lessee elects to be bound by the provisions of this Act, the state shall enter into an amended lease with the lessee for a term equal to the remaining period of the original lease which is being converted, and that amended lease shall be consistent with the provisions of this Act but shall not otherwise alter the terms of the original lease. However, for purposes of determining the annual rent by the state, the fair market value of the property which is used to establish the fixed base annual rent for the initial period of the lease may not exceed the fair market value as it was last appraised on or before January 1, 1975, brought forward to the date of the first day of the quarter following the date of a request for conversion at the rate of 10 per cent a year, or, if the lease was entered into after January 1, 1975, the fair market value used to establish the annual rent for the initial period of the new lease is the fair market value of the last appraisal brought forward to the date of conversion at the rate of 10 per cent per year.

* Sec. 22. A request for conversion permitted under sec. 12, ch. 138, SLA 1977, given before the effective date of this Act remains in effect.

* Sec. 23. Chapter 144, SLA 1961 is amended by adding new sections to read:

Sec. 4. The director of the division of lands of the Department of Natural Resources is empowered and directed to offer, by noncompetitive sale, to Alyeska Ski Corporation, an Alaska corporation or to a sublessee, under the lease provided for in sec. 1 of this chapter, the following described real property or any portion of it lying in the vicinity of Girdwood, in the Anchorage Recording District: Beginning at a point vicinity of Girdwood, in the Anchorage Recording District: Beginning at a point being the southwest corner, Cor. #4, of U.S. Survey 3569, thence West 20 chs., North 60 chs., East 65 1/2 chs. m/1 to the Chugach National Forest boundary line, thence South 60 chs. along the Chugach National Forest boundary line, thence West 5 1/2 chs. m/1, to the southeast corner, Cor. #3, of U.S. Survey 3569, thence North 40 chs. along the east boundary of U.S. Survey 3569 to the northeast corner of the survey, Cor. #2, thence West 40 chs. along northern boundary of U.S. Survey 3569 to the northwest corner of the survey, Cor. #1, thence South 40 chs. along western border of U.S. Survey 3569 to point of beginning, containing approximately 233 acres.

Sec. 5. The sale price of land offered under sec. 4 of this chapter shall be the fair market value of the land on July 1, 1978 which shall be determined in the same manner as specified for the determination of adjusted market value for leased land in AS 38.05.105(b).

* Sec. 24. ELECTION BY BOARD OF REGENTS. The Board of Regents shall hold a special meeting not later than September 1, 1978 to determine whether it is in the best interests of the University of Alaska to relinquish the authority to approve of the management and disposal of university land by the Department of Natural Resources, and to accept the benefits of the university fund established in AS 37.14.060 - 37.14.100 contained in sec. 4 of this Act. The Act of approval or disapproval shall be

recorded by resolution of the Board of Regents. A majority of the whole board shall determine whether the matter under consideration is approved or disapproved.

* Sec. 25. The Department of Natural Resources may not initiate any foreclosure action under AS 34.10 after the effective date of this section.

* Sec. 26. A right of repurchase created by former AS 34.10.-220 and existing on the effective date of this section may be exercised only if it is exercised under that statute within three years following the effective date of this section. The division of lands shall publish notice of the expiration of all such repurchase rights in the manner provided by AS 38.05.345 before January 1, 1979 and again before January 1, 1980 and before January 1, 1981.

* Sec. 27. Sections 3, 5 - 7, 18, 19, and AS 37.14.060 - 37.14.100 contained in sec. 4 of this Act, and the repeal of AS 14.40.350, 14.40.360, 14.40.400; AS 38.05.030(a) and 38.05.365-(20) contained in sec. 20 of this Act, take effect on the date that the Board of Regents votes to approve the matters under consideration as provided in sec. 24 of this Act.

* Sec. 28. Sections 1, 2, 8 - 16, and AS 37.14.010 - 37.14.-050 and 37.14.110 - 37.14.170 contained in sec. 4 of this Act, and the repeal of AS 38.05.030(e), 38.05.032, 38.05.035(a)(13), 38.05.365(8) and (14) contained in sec. 20 of this Act take effect July 1, 1978.

* Sec. 29. Section 17 of this Act takes effect on the date that the Board of Regents votes to disapprove the matters under consideration as provided in sec. 25 of this Act.

* Sec. 30. Sections 22 and 24 - 26 of this Act and the repeal of AS 34.10.010 - 34.10.160, 34.10.180 - 34.10.240 and AS 38.-05.035(a)(8) contained in sec. 20 of this Act take effect immediately in accordance with AS 01.10.070(c).

* Sec. 31. Section 21 of this Act takes effect immediately in accordance with AS 01.10.070(c) and is retroactive to September 21, 1977.

Approved by the Governor: July 18, 1978
Actual Effective Date: Secs. 1, 2, 8-16, 22 and 24-26 take effect July 1, 1978, secs. 3, 5-7, 18 and 19 take effect as provided in sec. 27 of this Act; sec. 17 takes effect as provided in Sec. 29 of this Act; sec. 4 takes effect as provided in secs. 27 and 28, and repeals provided in sec. 20 take effect as provided in secs. 27, 28, and 29. Sec. 21 takes effect July 19, retroactive to September 21, 1977.

SB 472

Offered: 5/10/86
Referred: Rules

Original sponsor: Health, Education and
Social Services Committee

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 472 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the interim management of the
7 mental health trust; and providing for an effective
8 date."

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

10 * Section 1. INTERIM MENTAL HEALTH TRUST COMMISSION ESTABLISHED. (a)
11 The interim mental health trust commission is established in the Department
12 of Natural Resources.

13 (b) The commission established under (a) of this section consists of
14 five members, including the commissioner of natural resources and the
15 commissioner of health and social services, or their designees, and three
16 members and three alternates appointed by the governor as follows:

17 (1) a member and an alternate representing the plaintiffs,
18 appointed by the governor from a list of three names submitted to the
19 governor by the plaintiffs in Weiss v. State, 4 FA 82-2208 Civil;

20 (2) a member and an alternate representing the intervenors,
21 appointed by the governor from a list of three names submitted to the
22 governor by the intervenors in Weiss v. State, 4 FA 82-2208 Civil; and

23 (3) a member and an alternate representing the Governor's Mental
24 Health Advisory Council, appointed by the governor from a list of three
25 names submitted to the governor by the Governor's Mental Health Advisory
26 Council.

27 (c) The members of the commission shall elect a presiding officer. A
28 majority of the commission constitutes a quorum. The affirmative vote of
29 three members is required to take official action. A vacancy does not

1 impair the power of the remaining members to exercise the powers of the
2 commission.

3 (d) In the absence of the member, an alternate appointed under (b) of
4 this section may vote and has all the powers of a member.

5 (e) Members of the commission serve without compensation but are
6 entitled to per diem and travel expenses authorized by law for other boards
7 under AS 39.20.180.

8 (f) The commission shall meet at least quarterly and may meet more
9 frequently, either in person or by teleconference.

10 (g) The commission shall prepare a budget allocating the funds appro-
11 priated to it for the performance of its responsibilities and may contract
12 with parties or individuals for the performance of functions it considers
13 necessary, including the services of an executive director and staff.

14 * Sec. 2. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND
15 THE COMMISSION. (a) The commissioner of natural resources shall inventory
16 and catalog the mental health trust land of the state, shall audit and
17 appraise each transaction involving land that has been part of the mental
18 health trust land of the state, and determine the status of mental health
19 trust land on October 4, 1985, under procedures and guidelines established
20 by the commissioner of natural resources with the approval of the commis-
21 sion. In the exercise of the commission's responsibilities under this
22 section, the commission and its staff may review the records of the Depart-
23 ment of Natural Resources that are made confidential by law or regulation.

24 (b) An individual who acquires information made confidential by law
25 or regulation in the performance of functions authorized by this Act and
26 discloses it without proper authority violates AS 11.56.860.

27 (c) The commissioner of natural resources shall, with the approval of
28 the commission, retain an appraiser or appraisers to appraise all or a
29 portion of land that, at any time, was part of the mental health trust land

1 of the state. The commissioner shall provide an appraiser conducting an
2 appraisal with written procedures and instructions that have been approved
3 by the commission.

4 (d) The commissioner of natural resources is responsible for the
5 management of the mental health land of the state as a public trust under
6 P.L. 84-830, 70 Stat. 709. Except as provided in (e) of this section, the
7 commissioner of natural resources may not sell, lease, or exchange mental
8 health trust land of the state or an interest in the mental health trust
9 land of the state without the prior approval of the commission. In review-
10 ing a proposal for the sale, lease, or exchange of mental health trust land
11 from the commissioner of natural resources, the commission may approve the
12 proposal of the commissioner on its determination that the proposal is
13 consistent with the terms of the trust established by the Alaska Mental
14 Health Enabling Act.

15 (e) The commissioner of natural resources may transfer trust land to
16 the federal government under AS 38.05.035(b)(9) without approval of the
17 commission. The commissioner of natural resources shall advise the commis-
18 sion of an intention to transfer trust land to the federal government and,
19 after the transfer, shall make every effort to acquire replacement land to
20 fulfill the state's remaining entitlement based on a prioritization, ap-
21 proved by the commission, of existing valid mental health selection.

22 (f) The proceeds from the management of the mental health trust land
23 of the state shall be deposited in a special trust account in the general
24 fund of the state and shall first be applied to meet the necessary expenses
25 of the mental health program of the state.

26 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL
27 SERVICES AND THE COMMISSION. (a) The commissioner of health and social
28 services, with the approval of the commission, shall

29 (1) establish the procedures and guidelines for the audit of the

1 state's mental health program; and

2 (2) propose the guidelines and procedures to be used in de-
3 termining a range of expenditures for mental health programs necessary to
4 comply with the state's comprehensive mental health plan.

5 (b) The legislative auditor shall audit the state's mental health
6 program under the procedures and guidelines established in (a) of this
7 section.

8 * Sec. 4. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commis-
9 sion shall submit a report to the legislature by the 10th day of the First
10 Session of the Fifteenth State Legislature on matters of concern to the
11 commission. The report shall include its recommendations for amendment of
12 the laws relating to the management of the mental health trust account, the
13 mental health trust land, and the mental health program of the state.

14 * Sec. 5. DEFINITION. In this Act "commission" means the interim
15 mental health trust commission established in sec. 1 of this Act.

16 * Sec. 6. This Act is repealed July 1, 1987.

17 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
18 10.070(c).

ferred to the commissioner for "returned to the jurisdiction of the division of lands" and "Transportation and Public Facilities" for "Highways" and made a series of technical changes; and repealed former subsection (a), relating to the sale, lease, or other disposal of university land.

Legislative history reports. — For report on ch. 267, SLA 1976 (FCCS SCSHB 139), see 1976 Senate Journal, p. 1461.

Opinions of attorney general. — The interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to deter-

mine (1) which agency of the state had authority to accept title to land transferred by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Department of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

Scope of subsection (a). — Subsection (a) of this section only covers disposals of land by the commissioner of natural resources. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Creation of state park including university lands. — Since creation of a state park which included university lands was a disposal by the legislature, not by administrative action, subsection (a) of this section was inapplicable. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

By enacting AS 41.20.210 (now see AS 41.21.121), creating Chugach State Park, the legislature did not impliedly repeal subsection (a) of this section, which prevents disposal of university lands by the commissioner of natural resources without the approval of the Board of

Regents of the University of Alaska. AS 41.20.210 withdrew the particular university land involved from the operation of the management mechanism created by subsection (a) and AS 14.40.170(a)(4), which grants certain management powers to the Board of Regents. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Construction of state lease provision reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, Division of Lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed to include an interagency transfer of a right-of-way to the Department of Transportation and Public Facilities. *Wessells v. State*, Dep't of Hwys., Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Sec. 38.05.032. School land disposition procedures. [Repealed, § 20 ch 182 SLA 1978.]

Sec. 38.05.035. Powers and duties of the director. (a) The director shall

(1) have general charge and supervision of the division and may exercise the powers specifically delegated to the director; may employ and fix the compensation of assistants and employees necessary for the operations of the division; and is the certifying officer of the division, with the consent of the commissioner, and may approve vouchers for disbursements of money appropriated to the division;

(2) manage, inspect and control state land and improvements on it belonging to the state and under the jurisdiction of the division;

(3) execute laws, rules, regulations and orders adopted by the commissioner;

(4) prescribe application procedures and practices for sale, lease or other disposition of available land, resources, property, or interest in them;

(5) prescribe fees or service charges, with the consent of the commissioner, for any public service rendered;

(6) under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available land, resources, property or any interests in them;

(7) have jurisdiction over state land, except that land acquired by the Alaska World War II Veterans Board and the Agricultural Loan Board or the departments or agencies succeeding to their respective functions through foreclosure or default; to this end the director possesses the powers and, with the approval of the commissioner, shall perform the duties necessary to protect the state's rights and interest in state land, including the taking of all necessary action to protect and enforce the state's contractual or other property rights;

(8) [Repealed, § 20 ch 182 SLA 1978.]

(9) maintain such records as the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information:

(A) the name of the person nominating or applying for the sale, lease, or other disposal of land by competitive bidding;

(B) before the announced time of opening, the names of the bidders and the amounts of the bids;

(C) all geological, geophysical and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases and similar items;

(E) applications for rights-of-way or easements;

(F) requests for information or applications by public agencies for land which is being considered for use for a public purpose;

(10) account for the fees, licenses, taxes or other money received in the administration of this chapter including the sale or leasing of land, identify their source, and promptly transmit them to the proper fiscal department after crediting them to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(11) select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel the director considers necessary for the proper operation of the division;

(12) be the certifying agent of the state to select, accept and secure by whatever action is necessary in the name of the state, by deed, sale

gift, devise, assignment, operation of law, or other means any land, of whatever nature or interest, available to the state; and be the certifying agent of the state, to select, accept or secure by whatever action is necessary in the name of the state any land, or title or interest to land available, granted, or subject to being transferred to the state for any purpose;

(13) [Repealed, § 15 ch 181 SLA 1978; § 20 ch 182 SLA 1978.]

(14) [Repealed, § 88 ch 152 SLA 1984.]

(b) The director may

(1) delegate the administrative duties, functions or powers imposed upon the director to a responsible employee in the division;

(2) grant preference rights for the lease or purchase of state land without competitive bid in order to correct errors or omissions of a state or federal administrative agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control; the exercise of this discretionary power operates only to divest the state of its title to or interests in land and may be exercised only

(A) with the express approval of the commissioner; and

(B) if the application for the preference right is filed with the director within three years from

(i) the occurrence of the error or omission;

(ii) the date of acquisition by the state of the land; or

(iii) the date of a court decision or settlement nullifying a disposal of state land;

(3) grant a preference right to a claimant who shows bona fide improvement of state land or of federal land subsequently acquired by the state and who has in good faith sought to obtain title to the land but who, through error or omission of others occurring within the three years before (A) the application for the preference right, (B) the date of acquisition by the state of the land, or (C) the date of a court decision or settlement nullifying a disposal of state land, has been denied title to it; upon a showing satisfactory to the commissioner, the claimant may lease or purchase the land at the price set on the date of original entry on the land or, if a price was not set at that time at a price determined by the director to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration including survey; the error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right;

(4) sell land by lottery for less than the appraised value when, in the judgment of the director, past scarcity of land suitable for private ownership in any particular area has resulted in unrealistic land values;

(5) when the director determines it is in the best interest of the state and will avoid injustice to a person or the heirs or devisees of a person, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959 or to the heirs or devisees of the person; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner for its fair market value a remnant of land that the director considers unmanageable or a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

(A) the director determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal land use plans;

(8) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under this chapter if reasonable penalties and interest set by the director are paid;

(9) quitclaim land or an interest in land to the federal government on a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state.

(c) A parcel of land may be conveyed under (b) of this section without classification or reclassification under AS 38.05.300.

(d) A parcel of land described in (b) (7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.840. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land.

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. A contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the

commissioner approves the contract but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner. Before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based. A written finding is not required before the approval of

- (1) a contract for a negotiated sale authorized under AS 38.05.115;
- (2) a lease of land for a shore fishery site under AS 38.05.082;
- (3) a permit or other authorization revocable by the commissioner;
- (4) a mineral claim located under AS 38.05.195;
- (5) a mineral lease issued under AS 38.05.205; or
- (6) a production license issued under AS 38.05.207.

(f) The director shall grant a preference right to the purchase or lease without competitive bid of up to five acres of state land to an individual who has erected a building on the land and used the land for bona fide business purposes for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered. (§ 5 art II ch 169 SLA 1959; am § 1 ch 57 SLA 1960; am §§ 2 — 4 ch 61 SLA 1960; am § 1 ch 55 SLA 1962; am § 1 ch 56 SLA 1964; am § 1 ch 98 SLA 1964; am § 1 ch 5 SLA 1965; am § 1 ch 58 SLA 1965; am § 1 ch 194 SLA 1968; am § 1 ch 164 SLA 1972; am §§ 2, 3 ch 257 SLA 1976; am §§ 1, 2 ch 176 SLA 1978; am § 15 ch 181 SLA 1978; am § 20 ch 182 SLA 1978; am § 1 ch 61 SLA 1980; am §§ 9 — 13 ch 113 SLA 1981; am §§ 19, 20, 88 ch 152 SLA 1984)

Revisor's notes. — In 1981, in subsection (b) (7), the word "convey" was substituted for "dispose" at the beginning of the

paragraph and in subsection (d), the words "of land" were added following "parcel" under AS 01.05.031.

Effect of amendments. — The 1980 amendment added "except as provided in AS 38.05.036" at the beginning of subparagraph (a)(9)(D).

The 1981 amendment substituted "\$50,000" for "\$10,000" preceding "in the case of the sale of land," substituted "\$5,000" for "\$1,000" preceding "in the case of the annual rental of land," substituted semicolons for periods preceding "the written finding" and preceding "before a public hearing," added "a written finding is not required before the approval of" following "interest of the state" and added subparagraphs (A)-(C) in former subsection (a)(14). In subsection (b)(3), the amendment added "the price set on the date of original entry on the land or, if a price was not set at that time at" preceding "a price determined by the division." In subsection (b)(5), the amendment substituted "on the date that the person first entered the land" for "as of that date" preceding "as determined by the director." The amendment also added paragraphs (7) and (8) of subsection (b) and added subsections (c) and (d).

The 1984 amendment repealed former paragraph (14) of subsection (a), added subsection (e) to replace former paragraph (14) of subsection (a), and added subsection (f). The 1984 amendment also, in paragraph (2) of subsection (b), divided the language into introductory language and subparagraph (A), deleted "the past or future" following "correct" in the introductory language, added "and" at the end of subparagraph (A), and added subparagraph (B); in paragraph (3) of subsection

(b), inserted "within the three years before (A) the application for the preference right, (B) the date of acquisition by the state of the land, or (C) the date of a court decision or settlement nullifying a disposal of state land" and substituted "director" for "division"; in paragraph (4) of subsection (b), substituted "the judgment of the director" for "his judgment"; in paragraph (5) of subsection (b), substituted "the director" for "he" near the beginning of the paragraph; in paragraph (7) of subsection (b), inserted "for its fair market value a remnant of land that the director considers unmanageable or" in the introductory language and substituted "the director" for "he" in subparagraph (A); added paragraph (9) to subsection (b); and made a series of technical changes throughout subsection (b).

Opinions of attorney general. — The interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to determine (1) which agency of the state had authority to accept title to land transferred by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Department of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

The leasing of state lands is governed by regulations promulgated by the commissioner of the Department of Natural Resources, pursuant to AS 38.05.020(b)(1), and executed by the Director of the Division of Lands, pursuant to subsection (a)(3) of this section. *Swindel v. Kelly*, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 469 P.2d 291 (1972).

Construction of state lease provision reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, Division of Lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed to include an interagency transfer of a right-of-way to the Department of Transportation and Public Facilities. *Weasells v. State*, Dep't of Hwys., Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Applied in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982); *Hoblit v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 2797 (File No. 7148), 678 P.2d 1337 (1984).

Quoted in *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Cited in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982); *State v. Bering Strait Regional Educ. Attendance Area School Dist.*, Sup. Ct. Op. No. 2625 (File No. 6381), 658 P.2d 784 (1983); *Chevron U.S.A., Inc. v. LeResche*, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), 663 P.2d 923 (1983).

commits the crime of tampering with public records if he knowingly
 (1) makes a false entry in or falsely alters a public record; or
 (2) destroys, mutilates, suppresses, conceals, removes, or otherwise impairs the verity, legibility, or availability of a public record, knowing that he lacks the authority to do so.
 (b) Tampering with public records is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

For case construing former AS v. State, Sup. Ct. Op. No. 1430 (File No. 11.30.240 — 11.30.260, relating to 2433), 564 P.2d 365 (1977).
 mishandling of public records, see Larson

Sec. 11.56.830. Impersonating a public servant. (a) A person commits the crime of impersonating a public servant if he pretends to be a public servant and does any act in that capacity.

(b) It is not a defense to a prosecution under this section that
 (1) the office the defendant pretended to hold did not in fact exist; or
 (2) the defendant was in fact a public servant different than the one he pretended to be.

(c) This section does not apply to a peace officer acting within the scope and authority of his employment.

(d) Impersonating a public servant is a class B misdemeanor. (§ 6 ch 166 SLA 1978)

Cross reference. — As to criminal impersonation, see AS 11.46.570.

Am. Jur., ALR and C.J.S. references. — 22 Am. Jur., False Pretenses and Allied Criminal Frauds, § 75.

Criminal responsibility of one aiding and

abetting the offense of false personation, 5 ALR 784.

Intent as affecting offense of false personation, 97 ALR 1510.

35 C.J.S., False Personation, §§ 1 to 7.

Article 6. Abuse of Public Office.

Section

850. Official misconduct

860. Misuse of confidential information

Sec. 11.56.850. Official misconduct. (a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, he

(1) performs an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that that act is unauthorized; or

(2) knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

(b) Official misconduct is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

C.J.S. references. — 1 C.J.S., Acknowledgments, § 145; 35 C.J.S., Extortion, § 1 et seq; 67 C.J.S., Officers, § 133.

Sec. 11.56.860. Misuse of confidential information. (a) A person who is or has been a public servant commits the crime of misuse of confidential information if he

(1) learns confidential information through his employment; and
 (2) while in office or after leaving office, uses the confidential information for personal gain or in a manner not connected with the performance of his official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, "confidential information" means information which has been classified confidential by law.

(c) Misuse of confidential information is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Article 7. General Provisions.

Section

900. Definitions

Sec. 11.56.900. Definitions. As used in this chapter, unless the context requires otherwise,

(1) "improperly influence a witness" means to cause or induce a witness to

(A) testify falsely, offer misleading testimony, or unlawfully withhold testimony in an official proceeding;

(B) avoid or attempt to avoid legal process summoning him to testify in an official proceeding, regardless of whether legal process has issued;

(C) absent himself from an official proceeding to which he has been summoned; or

(D) engage in conduct described in § 610 of this chapter;

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the superior court, a district court judge, or a magistrate;

(3) "juror" means a person who is a member of an impanelled jury or a person who has been drawn or summoned to attend as a prospective juror;

(4) "physical evidence" means an article, object, document, record, or other thing of physical substance;

(5) "testimony" means oral or written statements, documents, or other material that may be offered by a witness in an official proceeding;

(6) "witness" means

(A) a witness summoned or appearing in an official proceeding; or

(B) a person who the defendant believes may be called as a witness in an official proceeding, present or future. (§ 6 ch 166 SLA 1978)

Section
50. Exclusion of compensation
60. Exclusion of governor and lieutenant governor from personnel laws
70. Subsequent legislation relating to AS 39.20.050 and 39.20.060

Section
80. Salary of executive department head and deputy
90. Salaries and expenses

Sec. 39.20.010. Monthly salary of governor. The monthly salary of the governor is equal to Step F, Range 30 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. (§ 1 ch 39 SLA 1959; am § 1 ch 115 SLA 1965; am § 4 ch 101 SLA 1969; am § 4 ch 193 SLA 1970; am § 5 ch 34 SLA 1974; am § 7 ch 148 SLA 1976; am § 9 ch 263 SLA 1976; am § 6 ch 3 SLA 1980; am § 21 ch 3 SLA 1980)

Collateral references. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 5, 360-413.
67 C.J.S., Officers, § 218 et seq.

Sec. 39.20.020. Date of entitlement of governor's salary. The governor is entitled to receive the salary established for the office effective from the date on which the oath of office is taken by the governor. (§ 2 ch 39 SLA 1959)

Sec. 39.20.030. Monthly salary of lieutenant governor. The monthly salary of the lieutenant governor is equal to Step F, Range 28 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. (§ 1 ch 40 SLA 1959; am § 2 ch 115 SLA 1965; am § 1 ch 123 SLA 1967; am § 5 ch 101 SLA 1969; am § 5 ch 193 SLA 1970; am § 6 ch 34 SLA 1974; am § 8 ch 148 SLA 1976; am § 10 ch 263 SLA 1976; am § 7 ch 3 SLA 1980; am § 22 ch 3 SLA 1980)

Revisor's notes. — In this section the 1970 Alaska constitutional amendment (SJR 2) changing the designation of "secretary of state" has been changed to "lieutenant governor" in conformity with that office.

Sec. 39.20.040. Date of entitlement of lieutenant governor's salary. The lieutenant governor is entitled to receive the salary established for the office effective from the date on which the oath of office is taken by the lieutenant governor. (§ 2 ch 40 SLA 1959)

Revisor's notes. — In this section the 1970 Alaska constitutional amendment (SJR 2) changing the designation of "secretary of state" has been changed to "lieutenant governor" in conformity with that office.

Sec. 39.20.050. Exclusive compensation. The compensation fixed by law for the governor and lieutenant governor is in full for all services rendered by each of them in any official capacity or employment whatsoever during their respective terms of office, and shall be paid throughout their respective terms of office unless the office becomes vacant. (§ 1 ch 160 SLA 1960)

Revisor's notes. — In this section the 1970 Alaska constitutional amendment (SJR 2) changing the designation of "secretary of state" has been changed to "lieutenant governor" in conformity with that office.

Sec. 39.20.060. Exclusion of governor and lieutenant governor from personnel laws. Notwithstanding the provisions of any other law, the governor and lieutenant governor are not considered employees of the state for the purpose of state personnel laws relating to hours of employment, annual leave, sick leave, overtime, compensatory time, and travel allowances. Nothing in this section shall be construed to deprive the governor and lieutenant governor of the right to participate in the state retirement system or in state group insurance plans. (§ 2 ch 160 SLA 1960)

Revisor's notes. — In this section the 1970 Alaska constitutional amendment (SJR 2) changing the designation of "secretary of state" has been changed to "lieutenant governor" in conformity with that office.

Sec. 39.20.070. Subsequent legislation relating to AS 39.20.050 and 39.20.060. AS 39.20.050 and 39.20.060 are not superseded or modified by any subsequent legislation except to the extent that the legislation does so expressly. (§ 3 ch 160 SLA 1960)

Sec. 39.20.080. Salary of executive department head and deputy. (a) The monthly salary of the head of each principal executive department of the state is equal to Step E, Range 28 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

(b) The monthly salary of a deputy head of a principal executive department of the state is not less than Step A nor more than Step F, Range 28 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

(c) Except as provided by a general law applicable to all officers of the state, the compensation of the head of each principal executive department of the state may not be reduced during the executive's tenure in office. (§ 1 ch 105 SLA 1959; am § 1 ch 128 SLA 1962; am § 3 ch 115 SLA 1965; am § 1 ch 156 SLA 1966; am § 2 ch 123 SLA 1967; am § 6 ch 101 SLA 1969; am § 6 ch 193 SLA 1970; am § 37 ch 71 SLA 1972; am § 7 ch 34 SLA 1974; am § 9 ch 148 SLA 1976; am § 11 ch 263 SLA 1976; am §§ 8, 9, 15, 23, 24 ch 3 SLA 1980)

Effect of amendments. — Section 8, ch. 3, SLA 1980, retroactive to January 1, 1979, and applicable to calendar year 1979, in subsection (a), substituted "The annual salary of the head of each principal executive department of the state is \$57,500, payable monthly in 12 equal installments" for the former provisions, which read: "The annual salary of the head of each principal executive department of

the state shall be prescribed in accordance with AS 39.23."

Section 23 of ch. 3, retroactive to January 1, 1980, substituted "The monthly salary of the head of each principal executive department of the state is equal to Step E, Range 28 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska" for the material substituted by § 8 of ch. 3.

Section 9, ch. 3, SLA 1980, retroactive to

January 1, 1979, in subsection (b), substituted "The annual salary of a deputy head of a principal executive department of the state is \$52,500, payable monthly in 12 equal installments" for the former provisions, which read: "The salary of the deputy head of each principal executive department of the state shall be prescribed in accordance with AS 39.23." Section 24 of ch. 3, retroactive to January 1, 1980, substituted "The monthly salary of a deputy head of a principal executive department

Sec. 39.20.090. Salaries and expenses. The salaries and expenses of officers, boards, commissions, and bureaus established by the laws of the state shall be paid from appropriations made for that purpose, as other expenses of the state are paid. (§ 11-3-8 ACLA 1949)

Sec. 39.20.100. Fees, mileage or compensation. [Repealed, § 75 ch 59 SLA 1982.]

Article 2. Travel Regulations.

Section

- 110. Per diem allowance
- 120. Allowable expenses
- 130. Mileage allowance
- 140. Travel costs and travel outside the state
- 150. Advances and recovery
- 160. Regulations
- 170. Construction of AS 39.20.110 — 39.20.170

Section

- 180. Transportation and per diem expenses for members of boards, commissions, etc.
- 185. State employees who are members of certain boards
- 190. Definitions

Sec. 39.20.110. Per diem allowance. Officials and employees of the state agencies, while traveling on official business and away from their designated post of duty, shall be allowed, instead of their actual expenses for subsistence and all fees or tips, a per diem allowance to be prescribed by the commissioner of administration under the regulatory authority set out in AS 39.20.160, and in consultation with the head of the agency concerned. (§ 4 ch 60 SLA 1957; am § 1 ch 99 SLA 1960; am § 1 ch 105 SLA 1970; am § 10 ch 47 SLA 1974)

NOTES TO DECISIONS

Cited in *Laborers & Hod Carriers Local 341 v. Groothuis*, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

Collateral references. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 389, 390.

67 C.J.S., Officers, § 225.
Per diem compensation, 1 ALR 276.
Power to appropriate public money for

expenses of legislators not covered by constitutional compensation, 50 ALR 1238; 60 ALR 416.

Public officer's right and duties in respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him, 81 ALR 493.

Constitutional inhibition of change in compensation as applicable to expenses, 106 ALR 779.

Allowance of mileage or traveling expenses to officer as affected by use of his own vehicle for transportation, 112 ALR 172.

Sec. 39.20.120. Allowable expenses. Except as provided in AS 39.20.110 — 39.20.170, only actual and necessary traveling expenses shall be allowed to an official or employee. (§ 5 ch 60 SLA 1957)

Sec. 39.20.130. Mileage allowance. Officials and employees of state agencies shall, under regulations adopted by the commissioner of administration, and whenever the mode of transportation is authorized or approved as more advantageous to the state, be paid an amount, instead of actual expenses of transportation, not to exceed a mileage allowance set by the commissioner of administration for the use of privately-owned automobiles or airplanes, when engaged in official travel inside or outside their designated posts of duty or places of service. In addition to the mileage allowance, there may be allowed reimbursement for the actual cost of ferry fares, and bridge, road, and tunnel tolls. When two or more officials or employees are traveling in the same direction, and it is possible to share a privately-owned automobile or airplane, the mileage permitted shall be allowed only once. (§ 6 ch 60 SLA 1957; am § 11 ch 47 SLA 1974)

Collateral references. — Public officer's right and duties in respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him, 81 ALR 493.
Allowance of mileage or traveling

expenses to officer as affected by use of the officer's own vehicle for transportation, 112 ALR 172.

Accepting excessive mileage allowance as punishable offense, 134 ALR 1258.

Sec. 39.20.140. Travel costs and travel outside the state. (a) The Department of Administration shall not pay an official or employee for per diem or transportation costs unless the travel is clearly necessary to benefit the state.

(b) The Department of Administration may not reimburse an official or employee or pay for more than the lowest tourist class fare for the most direct route unless (1) tourist class accommodation is not available; (2) waiting for tourist class accommodation would occasion a delay harmful to the state; or (3) the Department of Administration finds that travel by tourist class accommodation is not in the best interest of the state, and authorizes other accommodation.

(c) When the Department of Administration authorizes more expensive travel under (b) (3) of this section, it shall file a justification for

that a reimbursement with the travel voucher. When fares other than tourist class are authorized under (b) of this section, the Department of Administration may not reimburse the official or employee or pay for more than the lowest first class fare available.

(d) Officials and employees are authorized to travel only the least number of days necessary to transact the business involved, to secure return passage, and to return.

(e) Every official and employee shall, unless otherwise authorized by law to travel outside the state, obtain prior approval for travel outside the state from the head of the official's or employee's department or from an immediate supervisor, or from the Department of Administration if the official or employee is not within a department or is not under the direct supervision of an official or supervisor. If an employee deviates materially from the travel authorized under this section, the employee must obtain approval for the deviation from the person who approved the travel before the Department of Administration may reimburse the employee for the travel. (§ 7 ch 60 SLA 1957; am § 1 ch 83 SLA 1962)

Sec. 39.20.150. Advances and recovery. (a) An agency may advance, through proper disbursing methods, to a person entitled to per diem or mileage allowance under AS 39.20.110 — 39.20.170 the sums considered advisable considering the character and probable duration of the travel to be performed.

(b) Sums advanced and not used for allowable travel expense are recoverable by setoff against salary due, or otherwise, from the person to whom advanced, or the person's estate, by deduction from any amount due from the state, or by other legal methods of recovery that may be necessary. (§ 8 ch 60 SLA 1957)

Sec. 39.20.160. Regulations. The fixing and payment under AS 39.20.110 — 39.20.170 of travel and per diem allowances and of advances and recovery and reimbursement of travel expenses shall be in accordance with regulations adopted by the commissioner of administration. The regulations shall be uniform for all officials and employees, and all agencies and departments. The regulations shall also govern the use of public transportation facilities by officials and employees. The regulations relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act (AS 44.62). (§ 9 ch 60 SLA 1957; am § 2 ch 13 SLA 1963)

Sec. 39.20.170. Construction of AS 39.20.110 — 39.20.170. AS 39.20.110 — 39.20.170 may not be construed to modify or repeal a law providing for the travel expenses of the governor, or members of the legislature, or members of boards or commissions of the state government. (§ 10 ch 60 SLA 1957)

Sec. 39.20.180. Transportation and per diem expenses for members of boards, commissions, etc. Except as otherwise provided by law, from and after March 27, 1962, the provisions in this section relating to per diem and transportation govern exclusively and supersede all other provisions of law with respect to a member of a state board, commission, committee, judicial council, or other similar body of persons of the state organized or established under the authority of law, but excluding any other state employee other than a legislator, who is otherwise entitled by law to receive from the state payments for expenses of transportation, and for reimbursement or for per diem in lieu of reimbursement for other expenses incident to duties as such member:

(1) For transportation, the member is entitled either to the use of state transportation requests, or to be reimbursed for expenses of transportation to the same extent, in the same manner, and under the same conditions as provided for state officials and employees by the provisions of AS 39.20.110 — 39.20.170.

(2) For reimbursement for other expenses, the member is entitled to a per diem allowance prescribed by the commissioner of administration under the regulatory authority set out in AS 39.20.160 for each day or portion of a day spent in actual meeting or on authorized official business incident to duties as a member. (§ 1 ch 130 SLA 1953; am § 1 ch 34 SLA 1960; am § 1 ch 37 SLA 1962; am § 5 ch 136 SLA 1967; am § 12 ch 47 SLA 1974)

Cross references. — For coverage of state board and commission members under the Worker's Compensation Act, see AS 23.30.242.

NOTES TO DECISIONS

Quoted in *Employers Liab. Assurance Corp. v. Groothuis*, 8 Alas. L.J. No. 12, p. 334 (Nov., 1970).

Cited in *Laborers & Hod Carriers Local*

341 v. Groothuis, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

Sec. 39.20.185. State employees who are members of certain boards. A state official or employee who is a member of the judicial council or a state official or employee appointed by the governor to a state board, commission, or committee established under the authority of law is not entitled to per diem when the meeting or other business takes place in the community of which the member is a resident. (§ 1 ch 139 SLA 1968)

Sec. 39.20.190. Definitions. In AS 39.20.110 — 39.20.170

(1) "employee" or "state employee" means a person employed by a state agency;

(2) "official" or "state official" means the appointive head of a state agency;