JUDICIARY COMMITTEE REPORT ON 24 CS FOR HOUSE BILL NO. 249

24 CS for HB 249 requires that a national or international labor organization having one hundred or more members residing or working in Alaska to have at least one local or subsidiary organization in Alaska. Each violation of this requirement may result in the labor organization being fined from $1,000 to $10,000. This bill contains the exact language of Chapter 164 of the Kentucky Acts of 1952.

An international union brought action against the Attorney General of Kentucky seeking a declaration of rights concerning the meaning and validity of the Kentucky statute. The lower court held against the Attorney General and the case was appealed to the Court of Appeals. On appeal, the court said in Hamilton et al. v. International Union of Operating Engineers et al., 252 S. W. 2d 695 (Court of Appeals of Kentucky, 1953) that it was the purpose of the statute to give all union members the opportunity for membership in a Kentucky local or subsidiary organization that has jurisdiction to represent them in Kentucky. The court said that the Kentucky statute was a valid exercise of the police power of the state and that it does not invade constitutional freedoms of speech and assembly, and does not conflict with federal labor laws guaranteeing freedom of choice in selection of bargaining agents.

almost even with the east curb line of Fifteenth Street.

[1, 2] The trial court, in directing verdicts for the defendant, stated that plaintiffs had failed to show any negligence on the part of defendant's driver. We agree. Since the car struck the side of the bus after the bus had almost cleared the intersection, the conclusion is inescapable that the bus entered the intersection first. That being so, the bus driver had the right to assume that plaintiffs' driver would yield the right of way. There is no material dispute about the facts, and the only inference which reasonably can be drawn is that the accident was caused solely by the negligence of plaintiffs' driver. Consequently, there was no issue to submit to the jury. The cases cited by plaintiffs are not applicable to this situation.

The judgment is affirmed.

DICKISON et al. v. SHUMATE.

Court of Appeals of Kentucky.

Dec. 4, 1953.

Action was brought involving question of alleged illegal arrest. The Carter Circuit Court, John A. Keck, J., entered judgment, and motion was made for an appeal. The Court of Appeals held that there was sufficient evidence on question of an illegal arrest to warrant submission of case to jury.

Judgment affirmed.

False Imprisonment ⇐39

Evidence on question of illegal arrest was sufficient to warrant submission of case to jury.

H. R. Wilhoit, Grayson, R. T. Kennard, Olive Hill, for appellants.

O. F. Duval, Olive Hill, R. C. Littleton, Grayson, for appellee.

PER CURIAM.

Motion for an appeal from the Carter Circuit Court. John A. Keck, Judge.

There was sufficient evidence on the question of an illegal arrest to warrant the submission of the case to the jury. We find no errors on the trial which were prejudicial to the appellants' substantial rights.

Judgment affirmed.

HAMILTON et al.

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS et al.

Court of Appeals of Kentucky.

Dec. 4, 1953.

International union brought action against the Commonwealth's Attorney of Jefferson County and the Attorney General of Kentucky seeking a declaration of rights concerning the meaning and validity of statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state. The Jefferson Circuit Court, Chancery Branch, First Division, Macauley L. Smith, J., entered judgment adverse to Commonwealth's Attorney and Attorney General, and they appealed. The Court of Appeals, Cullen, C., held that statute is not unconstitutional.

Judgment reversed with directions.

1. Labor Relations ⇐141

Branch offices in Louisville, Kentucky and Paducah, Kentucky of local union, which had its headquarters in Evansville, Indiana, were not "subsidiary organizations" within meaning of Kentucky statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or "subsidiary organizations" in the state, since word "organization" contemplates an organizational unit with a governmental structure of its own, and something that is capable of some degree of independent existence as an entity. KRS 336.170.

See publication Words and Phrases, for other judicial constructions and definitions of "Organization" and "Subsidiary Organization".

2. Labor Relations ⇐141

Where international union had a large number of members residing and working in Kentucky, and most of them were under jurisdiction of local unions with headquarters outside the state, and the only local maintained was one with headquarters in Louisville and which had jurisdiction only over members residing or working in Louisville area, Louisville local did not constitute compliance with statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing who reside or work in Kentucky not to have at all times one or more duly chartered and established local or subsidiary organizations in the state. KRS 336.170.

3. Labor Relations ⇐141

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established "local" or subsidiary organizations in the state, means not merely a "local organization" from standpoint of union terminology and custom, but an organization that is localized in Kentucky. KRS 336.170.

See publication Words and Phrases, for other judicial constructions and definitions of "Local Organization".

4. Labor Relations ⇐141

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, means that there must be a local organization available for all members of the union in Kentucky. KRS 336.170.

5. Evidence ⇐6(1)

Statutes ⇐215

The Court of Appeals is entitled to recognize matters of common knowledge and to give consideration to contemporaneous circumstances throwing light on legislature's intent when Court of Appeals construes a statute.

6. Evidence ⇐11

The Court of Appeals, in construing a statute, may take judicial notice of the historical setting and conditions out of which statute was promulgated.

7. Evidence ⇐11

The Court of Appeals, in construing a statute, may take notice of the economic conditions existing at the time of enactment of the statute.

8. Statutes ⇐181(2)

Statutes must be given a practical construction.

9. Statutes ⇐181(2)

A statute will not be construed so as to lead to an absurd conclusion.

10. Statutes ⇐212.3

It will not be presumed that the legislature, in enacting a statute, intended a useless or futile thing.

11. Labor Relations ⇐141

Purpose of statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, is to require that all members of union have opportunity for membership in a Kentucky local or subsidiary organization that has jurisdiction to represent them in Kentucky. KRS 336.170.

12. Labor Relations ⇐141

A national or international union, which establishes one local union with state-wide jurisdiction, or several locals which, collectively, have state-wide jurisdiction, does not violate statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state. KRS 336.170.

13. Labor Relations ⇐141

If a national or international union carries on activities in Kentucky, through its locals and membership, without having the kind of local organizations required by statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, the national or international union has violated the statute. KRS 336.170.

14. Labor Relations ⇐1057

Under statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, and that any national or international labor organization which violates the statute shall for each offense be fined not less than $1,000 nor more than $10,000, there may be one prosecution, for period covered by indictment, in each county in which the offense is committed. KRS 336.170.

15. Criminal Law ⇐13

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, and that any national or international labor organization which violates the statute, shall, for each offense, be fined not less than $1,000 nor more than $10,000 is not void for uncertainty, on ground that it does not define with sufficient certainty what constitutes an offense. KRS 336.170.

16. Constitutional Law ⇐277(1)
Labor Relations ⇐83

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, did not deprive local unions, which were located outside Kentucky, and which had members in Kentucky, of property rights without due process of law. KRS 336.170.

17. Constitutional Law ⇐277(1)

The due process clause of the constitution is not designed to protect monopolies.

18. Labor Relations ⇐83

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, is a valid exercise of the police power. KRS 336.170.

19. Constitutional Law ⇐90

Labor Relations ⇐45, 83

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, does not invade constitutional freedoms of speech and assembly, and does not conflict with federal labor laws guaranteeing freedom of choice in selection of bargaining agents. KRS 336.170.

A. Scott Hamilton, Louisville, J. D. Buckman, Atty. Gen., H. D. Reed, Jr., Asst. Atty. Gen., for appellants.

Hubert T. Willis, John L. Richardson, Jr., Louisville, for appellees.

CULLEN, Commissioner.

The International Union of Operating Engineers brought this action against the Commonwealth's attorney of Jefferson County and the Attorney General of Kentucky, seeking a declaration of rights concerning the meaning and validity of Chapter 164 of the Acts of 1952 KRS 336.170, which reads as follows:

> "Section 1. It shall be unlawful for any national or international labor organization having one hundred or more members in good standing who reside or work in Kentucky not to have at all times one or more duly chartered and established local or subsidiary organizations in this State.
>
> "Section 2. Any national or international labor organization which violates section 1 of this Act, shall for each offense, be fined not less than one thousand dollars nor more than ten thousand dollars."

The circuit court adjudged that the Union was complying with the Act, as interpreted by the court, and therefore did not pass upon the question of whether the Act would be constitutional if so interpreted as to place the Union in the status of noncompliance. The Commonwealth's attorney and the Attorney General have appealed.

The first question before us is whether the Union is complying with the Act, as correctly construed. If that question is answered in the negative, we must determine whether the Act as we construe it, is valid and enforceable.

The Union has a large number of members residing and working in the vicinity of Paducah, Kentucky. These workers are under the jurisdiction of Local No. 181, which has its headquarters at Evansville, Indiana, but which has branch offices at Louisville and Paducah. Local 181 has jurisdiction over stationary, hoisting, and portable engineers residing or working in southern Indiana and in all counties of Kentucky except four northern counties. These four counties are under the jurisdiction of Local No. 18, which has its headquarters in Cincinnati, Ohio. The Union also has Local No. 930, with headquarters in Louisville, which has jurisdiction only over stationary engineers residing or working in the Louisville area.

The lower court found that Local No. 930 was a local chartered and established in this state, within the meaning of the 1952 Act, and therefore adjudged that the Union, by maintaining this local, was complying with the Act. The Union contends that not only does Local No. 930 constitute a compliance with the Act, but that the branch offices of Local No. 181, in Paducah and Louisville, constitute "subsidiary organizations" in Kentucky within the meaning of the Act. The Commonwealth's attorney and the Attorney General maintain that a reasonable interpretation of the Act requires the Union to establish in Kentucky one or more autonomous locals of such character that each Kentucky member of the union could have membership in a Kentucky local which would have jurisdiction to represent its membership in labor matters in Kentucky.

[1] We have no difficulty in concluding that the branch offices of Local No. 181 in Paducah and Louisville are not "subsidiary organizations" within the meaning of the statute, for the simple reason that they are not "organizations". We think it is clear that the word "organization" as used in the statute contemplates an organizational unit with a governmental structure of its own—something that is capable of some degree of independent existence as an entity.

[2] Whether Local No. 930 constitutes a compliance with the Act is a question somewhat more troublesome. However, it is our opinion that a reasonable construction of the Act requires something more than is supplied by this local.

[3,4] As we construe the Act, when it requires a "local" organization "in this State" it means not merely a "local" from the standpoint of union terminology and custom, but an organization that is *localized* in Kentucky. And we think the Act means that there must be a local organization available for all members of the union in Kentucky.

[5-7] As has been said, the Court is not required to act in a vacuum. We are entitled to recognize matters of common knowledge, and to give consideration to contemporaneous circumstances throwing light on the legislature's intent. Baker v. White, 251 Ky. 691, 65 S.W.2d 1022. The court may take judicial notice of the historical setting and conditions out of which an Act was promulgated. Martin v. Louisville Motors, 276 Ky. 696, 697, 125 S.W.2d 241. It may take notice of the economic conditions existing at the time of enactment of a statute. Grieb v. National Bank of Ky.'s Receiver, 252 Ky. 753, 68 S.W.2d 21.

In Green v. Moore, 281 Ky. 305, 135 S.W.2d 682, 683, we said:

"In the search for the legislative will, we start with the pertinent conditions existing when the law was enacted, with their background and development, and look toward the object intended to be reached or accomplished. * * * Those attendant circumstances, the context of the act and its consequences are controlling, even though it may be necessary to modify the language used in order to make it consistent. * * *"

[8-10] Other pertinent rules of construction are: Statutes must be given a practical construction. Commonwealth v. Randolph, 277 Ky. 724, 127 S.W.2d 398; Reeves v. Fidelity & Columbia Trust Co., 293 Ky. 544, 169 S.W.2d 621; a statute will not be construed so as to lead to an absurd conclusion. Reeves v. Fidelity & Columbia Trust Co., 293 Ky. 544, 169 S.W.2d 621; Swift v. Southeastern Greyhound Lines, 294 Ky. 137, 171 S.W.2d 49; it will not be presumed that the legislature intended a useless or futile thing. Washburn v. Paducah Newspapers, 275 Ky. 527, 121 S.W.2d 911.

The situation that existed in the Paducah area, with respect to foreign control of union affairs, was a matter of common knowledge at the time of enactment of the statute here in question. It had received wide newspaper publicity and was a subject of general public discussion. In addition, some of the problems connected with this situation were brought before this Court in International Union of Operating Engineers v. J. A. Jones Const. Co., Ky., 240 S.W.2d 49, and in International Union of Operating Engineers v. Bryan, Ky., 255 S.W.2d 971. The big issue was local representation and voice in union affairs.

[11,12] To so construe the 1952 Act as contended by the union would be to render the Act completely useless and futile. No conceivable purpose could be accomplished by requiring a union merely to maintain a local in one small area of Kentucky, with its membership limited to those who worked in one branch of the craft in that area. The obvious purpose of the Act was to require that all members of the union have the opportunity for membership in a Kentucky local or subsidiary organization that would have jurisdiction to represent them in Kentucky. Since the Act refers to "one or more" such organizations, it appears that

the union might establish one local with state-wide jurisdiction, or several locals which, collectively, would have state-wide jurisdiction. To so construe the Act does no violence to its language, and we do so construe it.

[13–15] The union contends that, in providing a penalty for "each offense," the Act does not define with sufficient certainty what constitutes an offense, and the Act therefore is void for uncertainty. It is true that the Act itself does not define what constitutes "each" offense, but it does make clear what constitutes a *violation*, and the rule governing the number of penalties that may be imposed, and the places in which prosecutions may be maintained, is well established by our case law. It is clear from the Act that if a national or international union carries on activities in this state, through its locals and membership, without having the kind of local organizations required by the Act, it has committed a violation of the Act. See International Union of Operating Engineers v. J. A. Jones Construction Co., Ky., 240 S.W.2d 49. Under the rule defined in International Harvester Co. of America v. Commonwealth, 144 Ky. 403, 138 S.W. 248, there may be one prosecution, for the period covered by the indictment, in each county in which the offense is committed. The claim of uncertainty cannot be maintained.

[16, 17] The union further maintains that Locals Nos. 18 and 181 have property rights in or by virtue of their present membership, and the Act will deprive them of these property rights without due process of law. As we interpret the Act, it does not of itself deprive these locals of any of their membership. It merely requires that one or more Kentucky locals be established to which Kentucky workers will have the privilege of transferring their membership, if they so desire. Certainly the due process clause was not designed to protect monopolies.

[18] It also is argued that the Act is not a valid exercise of the police power, because there is no public evil or abuse sought to be remedied, but only the conferring of private benefits. We think that the public has a protectable interest in the accessibility of labor organizations to the processes of law of this state. Furthermore, it has long been recognized that the protection of labor is a proper objective for exercise of the police power, since the economic interests of the public are directly and substantially affected by labor disputes. It would seem that the public should have as great an interest in the protection of labor from labor, as in the protection of labor from capital.

[19] Finally, it is contended that the 1952 Act invades the constitutional freedoms of speech and assembly, and conflicts with federal labor laws guaranteeing freedom of choice in the selection of bargaining agents. We find no basis for these arguments. The Act does not purport in any way to restrict the activities of any labor organization, or to impose conditions upon the free exercise of the rights of speech and assembly. It does not limit any worker in the selection of a bargaining agent of his own choice. Locals Nos. 18 and 181 may continue to function in Kentucky just as they have in the past, the only restriction being that a union member cannot be *compelled by the union* to choose any of them as his bargaining agent, but must be given the choice of selecting a Kentucky local as his bargaining agent. As we view it, the Act promotes rather than impedes, the exercise of those rights guaranteed by the Constitution and by the federal labor laws.

The judgment is reversed, with directions to enter a judgment in conformity with this opinion.

JUDICIARY COMMITTEE REPORT ON CS FOR HB 304

CS for HB 304 requires that the Alaska State Development Corporation maintain public records which contain the names of the business concerns to whom contracts are let and for whom financing is arranged by the corporation and the nature of the business and the amount involved.

JUDICIARY COMMITTEE -- MINUTES -- FEBRUARY 22, 1966

Chairman Cross called the meeting to order. Present were members Stevens, Metcalf, Taylor, Josephson and Hillstrand.

The committee took up HB 299 and the requested report on the bill by committee counsel. After discussion, Mr. Stevens moved that the bill be amended to (1) amend AS 09.43.070 to allow application for issuance of subpoenas to be made to the superior court; and (2) exclude from the application of the bill contracts of insurance and agreements between employers and employees, as set out in sec. 7.04.010 of the Wash. Revised Statutes, and that the amended bill "Do Pass". Seconded by Mr. Josephson and passed.

The committee then considered HB 374. After discussion, the committee agreed to delete "work" from page 2, line 5 and to insert "under sec. 10 or 20 of this chapter or" at the end of line 11, page 2 and after "restricted" on page 2, line 15. Mr. Taylor moved that HB 374 as amended "Do Pass". Mr. Stevens seconded and the motion passed.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON HB 299

HB 299 is the Uniform Arbitration Law adopted by the National Conference of the Commissioners on Uniform State Laws and approved by the House of Delegates of the American Bar Association. It has been adopted in five states according to the "Book of the States", 1964-65. They are Arizona, Illinois, Massachusetts, Minnesota and Wyoming. Approximately 20 other states also have a modern arbitration law.

If a state does not have an arbitration law, as is the case in Alaska at this time, a voluntary contract provision to arbitrate subsequent controversies between the parties can be ignored by one party and the other party has no legal remedy for enforcement of that contract provision.

Amendment No. 1 amends Sec. 09.43.010 of HB 299 to make this Act inapplicable to (1) contracts of insurance, and (2) agreements between employers and employees or employers and associations of employees. The language relating to (2) was taken from sec. 7.04.010 of the Washington Revised Statutes.

Amendment No. 2 amends sec. 09.43.070 of HB 299 to allow the court and not the arbitrators to issue subpoenas.

JUDICIARY COMMITTEE REPORT ON HB 374

HB 374 requires that a government agency responsible for the operation of a public building shall notify the public by the posting of a sign when and under what conditions the building is open to the public, what areas are not open, and who can be contacted about entering on a day or time when the building is not open to the public.

The government agency may prohibit or restrict access by the public so that the health and safety of the public will not be endangered or where the presence of the public would obstruct the efficient performance of duties by the employees of the agency. However, public access to or public activities in the public corridors may not otherwise be prohibited or restricted by the government agency except under a statute or ordinance.

The last section of the bill defines "government agency" and "public building".

JUDICIARY COMMITTEE -- MINUTES -- FEBRUARY 23, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Members present were Messrs. Stevens, Taylor, Hillstrand and Metcalf.

The committee discussed CS for HB 311 which the committee had adopted at the February 18th meeting and asked that a new committee substitute be prepared by the committee counsel.

The committee discussed HB 378 and Mr. Stevens moved that it "Do Pass" and asked unanimous consent. There were no objections and 378 was reported out of committee.

The committee took up HB 359 and Mr. Taylor moved "Do Pass". Seconded and passed.

The committee discussed HB 52 and Mr. Taylor moved "Do Pass. Seconded and passed.

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON CSHB 311

CSHB 311 allows the court to impound a vehicle for not more than 30 days if it is owned by a person under 21 years of age who is in possession, control, etc. of the motor vehicle at the time he violates a law, ordinance or regulation relating to being under the influence of intoxicating liquor or to possession, control or consumption of alcoholic beverages.

ALASKA
STATE LEGISLATURE
LEGISLATIVE COUNCIL
BOX 2199-JUNEAU

TO: House Judiciary Committee, Chairman Guess

FROM: Jane Asher

RE: House Bill No. 311

California has a law somewhat similar to HB 311. Under the California law, the vehicle may be impounded if it it owned by the minor. The California law is as follows:

§ 23123.5. Possession by Minor.

(a) No person under the age of 21 years shall knowingly possess, transport, or have under his control in any motor vehicle any alcoholic beverage, unless such person is accompanied by a parent or legal guardian or is employed by a licensee under the Alcoholic Beverage Control Act (Division 9, commencing with Section 23000, of the Business and Professions Code), and is possessing, transporting or has such alcoholic beverage in a motor vehicle under his control during regular hours and in the course of his employment.

(b) If the vehicle used in any violation of subdivision (a) is registered to such person under the age of 21 years, the vehicle may be impounded at the owner's expense for not less than one day nor more than 30 days for each violation.

(c) Any such person under 21 years of age found guilty under this section shall also have his driver's license suspended for not less than 15 days nor more than 30 days. [Added by Stats 1965 ch 1662 § 2.]

JUDICIARY COMMITTEE REPORT ON HB 378

HB 378 includes in the Public Employees' Retirement System any deputy magistrate whose annual salary is at least $1,500.

The salaries of deputy magistrates are prescribed by the supreme court and are governed by the duties and responsibilities involved as to the particular office (AS 22.15.220(b); Court Rules of Administration No. 34). There are presently 39 deputy magistrates receiving annual salaries of $1,500 or more.

JUDICIARY COMMITTEE REPORT ON HB 359

Under present law, a person may bring an action for injury to personal property for six years after the injury occurs. HB 359 requires that the action be brought within two years.

JUDICIARY COMMITTEE REPORT ON HB 62

Under AS 29.10.456 - 29.10.540, a municipal corporation may enforce a lien for delinquent taxes on real property by the sale of the property in the special foreclosure proceeding set out in those sections. The present law requires notice of the proceeding by publication, or if there is no newspaper in the municipality by posting and notice by mail. There must be publication or posting in two instances, (1) when the petition for foreclosure is filed (AS 29.10.465); and (2) shortly before the expiration of the period of redemption (AS 29.10.522).

HB 62 amends the law to require that notice be given to the last-known owner of the property by registered or certified mail, in addition to the publication or posting in the above two instances. H. B. 62 further requires that notice be given in the same manner of any intended sale by the municipal corporation of the foreclosed property and that the notice contain the fact that the record owner of the property at the time of tax foreclosure has a right of re-purchase under AS 29.10.528.

In sec. 3 of the bill, obsolete references to school district and public utility districts are deleted.

JUDICIARY COMMITTEE MINUTES FEBRUARY 24, 1966

The committee met with the Senate Judiciary Committee and the Board of Governor's of the Alaska Bar Association at 2:30 p.m. Present were Chairman Guess and members Stevens, Taylor, Metcalf and Josephson.

The Board of Governors gave the Judiciary Committees their views on legislation affecting the Alaska Bar. The Board felt many provisions of Ch 47 SLA 1965 would not improve the Bar. They did not think that a person should be admitted without examination simply because they had done legal work in Alaska for three years as set out in AS 08.08.130(6) (D). They were not in favor of the clerkship provisions and stated further that the law provided no standards for the work to be accomplished or method of reporting, etc. and required no background education such as a high school diploma. They felt that the reason for clerkship, as advanced by those in favor of it, was not justified by those applying under the clerkship provisions. Those in favor of it feel that since we have no law school in Alaska, there should be a way for a person to study law in this state if they are not financially able to do so otherwise. The Board says that the people applying under the clerkship provisions are persons coming here from other states and wives, children and secretaries of attorneys.

The Board said that approximately 18 persons a year have been admitted to the Bar since statehood. They said that an average of 62.4 per cent of those taking the bar have passed since statehood. The national average is under 67 per cent which includes some states which nearly always pass 100 per cent of their applicants.

It was suggested that the attorney who supervises the law clerk be licensed by the Bar, and that they cannot supervise anyone employed in their office or related to them.

The Board also said that the Anchorage Bar has taken no position on HB 329 giving another superior court judge to the Juneau area. They are in favor of HB 317 which amends the law relating to bail, and HB 306 relating to comparative negligence; although they pointed out that it was not a true comparative negligence statute. The Anchorage Bar supports HB 279 relating to disqualification of judges, but the Supreme Court is not in favor of it because of the additional travel and per diem which will be required if the bill passes.

HB 275 relating to young adult advisory panels in certain misdemeanor cases was discussed. Some Board members were in favor of it and others were not. The general consensus was that it was a good bill.

There was discussion of election of magistrates. The Supreme Court is not in favor of it and no conclusion was reached by the Board. However, the Board felt that magistrates should be members of the Alaska Bar and particularly so if their salaries are increased.

Meeting was adjourned.

JUDICIARY COMMITTEE MINUTES MARCH 1, 1966

Chairman Guess called the meeting to order at 3 p.m. Present were Messrs. Taylor, Metcalf and Tillion.

The committee discussed SB 17 and without objection the bill passed out of committee "Do Pass".

HB 408 was discussed by the committee and passed from the committee "Do Pass".

The committee discussed HB 300 which changes the date of the primary election. It was decided to refer it to State Affairs since that committee has CSSB 50 which also changes the date of the primary election so that the two bills may be considered together.

Meeting adjourned.

AS 09.10.010 says that a civil action must be commenced within the periods prescribed by statutes of limitation and Rule 3 of the Rules of Civil Procedure says that a civil action is commenced by the filing of a complaint. AS 09.10.020, which is repealed by SB 17, says that an action is commenced by the filing of a complaint and the issuance of a summons.

In Silverton v. Marler, Sup. Ct. Op. No. 196, January 30, 1964, the court held that AS 09.10.020 was in conflict with and superseded by Rule 3 of the Rules of Civil Procedure since the section contained procedure.

SB 17 repeals AS 09.10.020, which the Supreme Court has declared invalid, so that the statutes will not mislead persons as to what constitutes commencement of a civil action.

JUDICIARY COMMITTEE REPORT ON HB 408

HB 408 amends the law of vagrancy to include a person who, without legitimate reason, loiters about a school where children are in attendance, or who loiters about a nearby public place frequented by school children.

JUDICIARY COMMITTEE MINUTES MARCH 2, 1966

Chairman Guess called the meeting to order at 2 p.m. Members present were Stevens, Tillion, Taylor and Metcalf.

Mr. McCombe, the sponsor of HB 419, appeared and spoke in favor of the bill. Rev. Boesser spoke against the bill. Mr. Stevens moved that HB 419 "Do Not Pass". Seconded by Mr. Guess and passed.

The committee discussed HB 279. Mr. Stevens suggested several amendments to the bill. Mr. Stevens was asked to prepare them for the next meeting.

HB 487 was discussed by the committee. Mr. Tillion moved that HB 487 "Do Pass". Seconded by Mr. Taylor and passed.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON HB 419

HB 419 establishes an Alaska Lottery Authority in the Department of Revenue. Under the terms of the bill, there will be three or more drawings a year. One half of the gross proceeds from each drawing shall be paid out as prizes. The other half of the gross proceeds goes into the general fund as unrestricted receipts. The cost of the lottery is paid out of the general fund.

The Alaska Lottery Authority is composed of five members appointed by the Governor for overlapping terms of five years including one member from the Senate and one from the House of Representatives. Members are entitled to the usual travel and per diem for members of boards. The Authority will promulgate regulations to carry out the provisions of the Act.

Ticket sellers must comply with the provisions of AS 43.17.080, such as having resided in the state for a year, filing a bond to cover tickets received, etc.

HB 419 would take effect on January 1, 1967, if in the general election of 1966, the voters vote in favor of the establishment of a state-operated lottery in Alaska.

JUDICIARY COMMITTEE REPORT ON HB 467

Under HB 467, a person who provides financial programming or marketing assistance to the state or a political subdivision in connection with the issuance or sale of general obligation bonds may not bid on those bonds or negotiate for their purchase. If such a person purchased the bonds, the sale would be void as against public policy.

JUDICIARY COMMITTEE

MINUTES OF

March 3, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Present were Stevens, Taylor, Josephson, Hillstrand, and Metcalf.

The committee considered the three amendments to HB 279 offered by Mr. Stevens. Mr. Taylor moved "do pass" with the amendments; seconded and passed. The committee agreed to refer it to the Finance Committee with the Supreme Court comments on the cost of the bill.

HB 302 was considered by the committee. The committee counsel was asked to draft a committee substitute based on the discussion.

The committee took up HB 402. Mr. Guess moved that HB 402 "do pass". Mr. Taylor seconded and the motion passed.

HB 418 was discussed by the committee. Mr. Taylor moved "do not pass"; Mr. Stevens seconded; the motion passed.

Mr. Stevens moved that House Resolution No. 6 "do pass"; seconded and carried.

Mr. Guess moved that House Concurrent Resolution No. 42 "do pass"; seconded and carried.

Meeting was adjourned.

JA/mh

JUDICIARY COMMITTEE REPORT ON HB 279

HB 279 changes the present law relating to the disqualification of a judge in the following manner:

Page 1, line 18: A new reason for disqualification is added.

Page 1, lines 21 - 23: Compare (5) with AS 22.20.020(4) to see how this reason for disqualification has been changed.

Page 1, between lines 23 and 24: Amendment No. 1 allows the judge to disqualify himself.

Page 1, lines 27 - 29 and page 2, lines 1 - 5: This is a new subsection which requires that another judge determines the matter of disqualification and not the one who may be disqualified.

Page 2, lines 7 - 19: This subsection is approximately the same as AS 22.20.020(5). However, under present law, the bias or prejudice must be proved to the judge who is considered biased or prejudiced. Under this bill, the action is immediately transferred to another judge. Under present law and under this bill only one affidavit of bias or prejudice is allowed. This approach is similar to a preemptory challenge to a juror.

Page 2, lines 20 - 22: This is a new subsection which is taken from the Arizona law.

Page 2, lines 23 - 27: This is a similar provision to the one presently in the law in AS 22.20.020(5). Compare the two for the slight differences.

Page 2, lines 28 - 29: This is the exact language now found in AS 22.20.020(5).

Page 3, lines 1 and 2: This bill might be considered to affect only those suits filed after it became law. This section applies it to actions pending on the date it becomes law.

You will note that the word "action" was used throughout the bill. Under AS 01.10.060(1) in the laws of this state "action" includes any matter or proceeding in a court, civil or criminal.

"Judicial officer" is defined in AS 22.20.010 as a supreme court justice, including the chief justice, a judge of the superior court, a district magistrate, and a deputy magistrate.

California (CCP 170), Arizona (ARS 12-409-411), and Oregon (ORS 14.210 - 270) law was used in the preparation of this bill.

HB 279

Supreme Court

State of Alaska

941 FOURTH AVENUE

ANCHORAGE, ALASKA

99501

February 21, 1966

Honorable W. E. Guess, Chairman
House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: H.B. #279, Disqualification of Judicial Officers. Discussion of Undesirable Aspects - Estimate of Annual Cost Approximately $22,000.00.

Dear Representative Guess:

In accordance with your request we have prepared a statement of views on the effects H.B. #279, re the disqualification of judges, would have on the operation of the superior court if enacted.

The net effect of this measure would be to remove the control of court calendars from the presiding judges of the superior court and actually to make impossible any orderly regulation of the court calendars. It would have a seriously damaging impact on the availability of judges for the trial of cases and a like impact on the court budget as it relates to travel and per diem for judges.

The bill allows any party or attorney in any action to disqualify a judge peremptorily. This means that in every case there are at least four peremptory challenges that can be made to disqualify a judge, and as many more as there are additional parties or attorneys involved. It is obvious that in every case there is a potential for every resident judge in each of the superior court locations to be summarily prevented from hearing the case and that a judge from another district or location may have to be brought in to hear the case. The seriousness of this problem can be recognized only when it is realized that in many instances there are either attorneys or litigants who are disgruntled with relation to one or more judges before whom they have lost a previous case or whose judicial reputation or other attributes are disliked. On the other hand there are some judges simply

more "popular" than others, and attorneys or parties can be expected to exercise peremptory disqualifications solely in order to have their cases heard by such judges when no substantial basis for disqualification of another actually exists.

With all of these factors at work in determining the assignment of cases, it is apparent that some judges may have very few cases to hear, and others may have so many that they cannot possibly keep up with the workload. The inefficiency and wasted use of available judicial manpower under such a system would create impossible working conditions for the superior court judges and their clerical assistants. This would be particularly true in the multi-judge courts at Anchorage and Fairbanks, but the problems would also exist in the single-judge courts, where the arrangements for bringing in other judges would become extremely complicated if disqualifications were made with any appreciable frequency.

The high cost of providing visiting judges is also apparent, and a great deal more money for their travel and per diem would have to be provided if this bill were enacted. It is impossible to determine how much more should be provided when there is no basis of experience on which to estimate the number of cases in which disqualifications as allowed by the bill would result in the necessity of travel. In the initial year we could be sure of meeting the needs only if sufficient per diem funds were appropriated for every judge to travel the limit of 90 days, and this would require $17,000. The transportation costs would be in addition to this sum in the approximate amount of $5,000.

Until recently the calendars in the largest multi-judge court, at Anchorage, were prepared by the presiding judge keeping a continuing check on the caseload of each judge and assigning new cases and other duties to judges as appropriate to maintain an equitable load for all. Under this system different judges were often assigned different phases of the proceedings in any given case, and this can create problems in obtaining consistent results. Recently this system has been altered to a plan under which, in general, each new case is assigned to the respective judges in turn, and each judge thereafter handles all aspects of all cases assigned to him. Under either of these systems the workload is fairly evenly established among all the judges, and the presiding judge can make adjustments as necessary where disparities appear.

No such methods for control of calendars could operate under the proposals of H.B. #279. On the contrary, AS 22.20.020(c) and .022(a) as proposed in the bill provide a positive method by which counsel could cooperate to pick their judge and thus circumvent the assignment judge and calendar clerk who are responsible for the orderly assignment of cases and scheduling of all matters to be heard.

In our view chaotic calendaring conditions would result under a system where individual attorneys and parties can effect the assignment of cases according to their individual desires and without regard to the workload already borne by the judges. The harm that would result to the public interest in securing the speedy handling of cases would be a severe blow to efficient and effective administration of justice.

Very truly yours,

Buell A. Nesbett

Buell A. Nesbett
Chief Justice

cc: Representative Kerttula
Representative Gravel
Senator Ziegler
Senator Bradshaw
Senator McNealy

JUDICIARY COMMITTEE REPORT ON HB 418

HB 418 allows the state or a first or second class city to use a declaration of taking in acquiring property for off-street parking.

JUDICIARY COMMITTEE REPORT ON HB 402

HB 402 was introduced at the request of the governor, and his letter of explanation which fully describes the bill is found in the February 10th supplement to the House Journal.

"February 10, 1966

HB 402

Honorable Warren A. Taylor
Chairman, House Rules Committee
Alaska State Legislature
Juneau, Alaska

Dear Mr. Chairman:

Pursuant to State law and the Uniform Rules of the Legislature, I am submitting a bill which would bring agencies of the State and its political subdivisions under coverage of the Human Rights Act of 1963.

The Federal Civil Rights Commission has advised the Department of Health and Welfare that our Human Rights Act is not sufficiently inclusive of the State agencies in providing a hearing procedure for those who are served by public agencies in the disbursement of Federally-assisted welfare funds. In order to comply with Federal requirements, the State may either amend the Human Rights Act so that it will be available to members of the public for the purposes of registering and obtaining a hearing on their complaints of discrimination, or establish a separate and independent hearing procedure to provide these services for those who obtain Federally-assisted welfare payments from the agencies. The former is the most efficient means of satisfying the Federal requirement.

Since State personnel rules already furnish protection against discrimination in employment practices, it is only in the area of dealing with the general public that an amendment is needed. We believe that this new section will complete the Civil Rights protection now required by the Federal Government.

Sincerely,

/s. William A. Egan

William A. Egan
Governor"

" February 9, 1966

HB
401

Honorable Warren A. Taylor
Chairman, House Rules Committee
Alaska State Legislature
Juneau, Alaska

Dear Mr. Chairman:

Pursuant to State law and the Uniform Rules of the Legislature, I am submitting a bill which would provide a pay increase of three per cent for permanent employees assigned to duty stations located over 100 miles from the key cities of Anchorage, Fairbanks, Juneau and Ketchikan and which are connected by road, railroad or ferry to these key cities. It provides a pay increase of six per cent for permanent employees assigned to any duty station which is not connected to one of the key cities by surface transportation.

The increased cost in operating programs, if this bill is adopted, is estimated at $161,000 from the State General Fund, $2,400 from State Special Funds and $8,000 from federal funds. These amounts have been included in the appropriation bill for Fiscal 1967. It is proposed to make this increase effective July 16, 1966, the beginning of the first pay period in Fiscal 1967.

This bill recognizes the lack of community facilities which exist at many of the duty stations affected, the isolation factor present and the cost of living in the more remote areas of the State.

Sincerely,

/s/ William A. Egan

William A. Egan
Governor"

JUDICIARY COMMITTEE -- MINUTES -- MARCH 4, 1966

The meeting was called to order at 3:00 p.m. by Chairman Guess. Present were members Stevens, Josephson, Taylor and Hillstrand.

Mr. Jackson, the sponsor of HB 462, appeared and spoke in favor of the bill. The committee decided to ask the bar and the Judicial Council for their comments on the bill before taking further action.

Mr. Norman Banfield representing American Mutual Insurance Alliance appeared and spoke on HB 373. Mr. Banfield will draft a bill covering his proposals and Commissioner Underwood will be asked to appear before the committee takes further action on the bill.

The committee considered HB 309. Mr. Taylor moved that HB 309 "Do Pass". Mr. Stevens seconded. Motion passed.

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON HB 309

If a court has jurisdiction over the subject matter in an action, then under HB 309 the court can obtain jurisdiction over a person who is served in the manner set out in the court rules of procedure provided that the action and person served are as set out in (a)(1) --(11) of the bill. Subsection (b) states that when an action is brought in reliance upon (a)(2)--(10) of the section, that there can be no joining of any other claim or cause in the same action against the defendant unless grounds exist under (a) for personal jurisdiction over the defendant as to the claim or cause to be joined.

HB 309 is taken from Sec. 262.05 of the Wisconsin Statutes (1963) and beginning on page 1228 of the 1960 Wisconsin Annotations there is set out the objectives, scope, and annotations on Sec. 262.05. It is stated therein that the primary objective sought in the section is to expand the exercise of personal jurisdiction over nonresidents in cases having substantial contacts with Wisconsin. It is further stated that "Revised Chapter 262, relying upon these legislative and judicial materials from other states, attempts to provide a means for trying in Wisconsin all personal actions which, in a due process sense, it is reasonable to try here against the named defendant."

JUDICIARY COMMITTEE -- MINUTES -- MARCH 5, 1966

Chairman Guess called the meeting to order at 10:00 a.m. All members were present.

The committee took up HB 383 - 387 and 389 and 390 which are bills introduced by the Legislative Council as a result of the recommendations in the January 1966 Council report "Legislative Oversight of the Administration of Statutes". Mr. Kent Edwards of the Council staff who prepared the Council report described each bill to the committee. Commissioner Holdsworth of the Department of Natural Resources appeared on HB 383 - 387 to answer committee questions as to how the bills would effect the present procedure of his department.

Mr. Stevens moved that HB 383 and 385 "Do Pass" and Mr. Taylor seconded. Both bills passed out of committee.

Mr. Stevens moved that HB 387 "Do Pass" with the following amendment:

> On page 1, line 17, after "by" insert "puchase, exchange, condemnation,"

Mr. Taylor seconded and motion passed.

Mr. Guess moved that HB 389 "Do Pass". Motion passed without objection.

Mr. Taylor moved that HB 390 "Do Pass". Motion passed without objection.

The committee asked Mr. Edwards to prepare drafts of committee substitutes for HB 384 and 386 and asked that Mr. Edwards and Commissioner Holdsworth return on Monday, March 7th at 3:00 p.m. to discuss them.

Meeting was adjourned.

JUDICIARY REPORT ON HB 383

HB 383 amends AS 38.05.150(c) by adding the requirement that "a satisfactory mining plan for the coal's recovery" be submitted to the Department of Natural Resources before a coal prospecting permit may be changed into a lease. Presently the law simply requires a showing that the land contains coal in commercial quantities.

The purpose of the amendment is explained in detail on page 1 of the Legislative Council's Legislative Oversight of the Administration of Statute's" report.

JUDICIARY REPORT ON HB 385

Presently "agricultural and grazing lands" is a single classification for land. HB 385 would enable the division of lands to treat "agricultural lands" and "grazing lands" as two separate types of land classifications.

HB 385 also amends the homestead provision of the Alaska Land Act (AS 38.05) so that homestead entry may be permitted on either agricultural land or grazing land.

The proposal contained in HB 385 is a product of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" and a more detailed explanation of its purpose is contained on page 4 of that report.

JUDICIARY REPORT ON HB 387

The Statehood Act requires that Alaska reserve the mineral rights to all lands which it obtains from the federal government by selection. Failure to do so results in forfeiture of the land to the federal government. AS 38.05.125 was designed to protect the state from the possibility of losing land to the federal government through such forfeiture by making the mineral right reservation contained in AS 38.05.125 automatically a part of every contract involving the sale of state land which has been selected from the federal government. However, through an apparent oversight, the present wording of AS 38.05.125 fails to protect the state where the Department of Natural Resources has failed to place a mineral reservation in a contract involving the sale of land which was acquired by escheat or foreclosure after having been originally acquired from the federal government and later sold. Insertion of the word "originally" into AS 38.05.125, as proposed by HB 387, would remedy the department's oversight in such a situation.

The Statehood Act does not require that mineral rights be reserved in sales of state land acquired by means other than selection from the federal government. However, under the present wording of AS 38.05.125 only land acquired by escheat or foreclosure can be sold with mineral rights. HB 387 would expand the power to sell mineral rights to include land acquired by gift. By way of amendment the Judiciary Committee also proposes to add lands acquired by "purchase, exchange or condemnation" to the category of lands which may be sold with mineral rights.

The proposal contained in HB 387 is a product of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" and a more detailed explanation of its purpose is contained on page 8 of that report.

JUDICIARY REPORT ON HB 389

In Liberty National Insurance Co. v. Eberhart, Sup. Ct. Op. No. 281 (February 8, 1965) the state supreme court declared that AS 21.10.160 "attempts to regulate a matter of procedure which is within the province of this court, and is therefore ineffective".

Since there is a supreme court rule containing a provision substantially similar to that in AS 21.10.160, HB 389 proposes a repeal of the statutory provision.

A detailed explanation of the Liberty National Insurance case and the reason for repealing AS 21.10.160 can be found on page 17 of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" report.

JUDICIARY REPORT ON HB 390

In Thrift Shop v. Alaska Mutual Savings Bank, Sup. Ct. Op. No. 277, (January 29, 1965) the Alaska supreme court concluded that AS 09.45.070(b) attempts to regulate a matter of practice and procedure governed by Civil Rule 18(a) of the supreme court.

Since there is a supreme court rule containing a provision substantially similar to that in AS 09.45.070(b), HB 390 proposes a repeal of the statutory provision.

A detailed explanation of the Thrift Shop case can be found on page 19 of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" report.

JUDICIARY COMMITTEE MINUTES March 7, 1966

Chairman Guess called the meeting to order at 10:00 a.m. All members were present.

Mr. Banfield appeared with a draft of a committee substitute for HB 373. Commissioner Underwood also appeared at the request of the committee. The committee discussed the draft and by agreement made some changes. Mr. Stevens moved that the committee substitute as agreed upon by the committee "Do Pass". Motion passed without objection.

The committee discussed HB 436. Mr. Stevens moved that HB 436 be prepared as a committee substitute with an effective date of January 1, 1967 and that the language be clarified by changing "it" to "ordinance" in both paragraphs of the bill. Motion passed without objection.

The committee discussed drafts of committee substitutes for HB 384 and 386 with Mr. Edwards and Commissioner Holdsworth. It was decided to continue work on the two committee substitutes and take them up at a later meeting.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON CSHB NO. 373.

Under present law, no accident report may be used in evidence in a criminal or civil action arising out of the accident that is the subject of the report. Under CSHB 373, an accident report may be used in any court or other proceeding subject to the rules of the court (1) by the person who submitted the report while testifying to refresh his recollection of matters contained in the report; (2) to impeach the credibility of the person who submitted the report; and (3) in evidence subject to all valid objections to the admissibility of the report.

It would be unconstitutional to allow an accident report to be used in evidence in a criminal action against the person who made the report and this exception is noted in (b) of the bill.

Under (c) a person involved in the accident, including the insurers or attorneys of those persons, may inspect and copy the reports. The department shall furnish these persons with copies or certified copies of the reports on demand and a reasonable charge can be made for the copies.

JUDICIARY COMMITTEE REPORT ON CSHB 436

When laws are codified, they are brought together and arranged according to subject matter in one or more books, either under an alphabetical arrangement or some other plan of classification. CSHB 436 requires that all cities codify their ordinances and have copies of the ordinances available to the public or they cannot impose criminal penalties for violation of the ordinances.

Many cities have already codified their ordinances but in order that there will be time for the other cities to do so, the effective date of this bill is January 1, 1967.

JUDICIARY COMMITTEE MINUTES MARCH 8, 1966

Chairman Guess called the meeting to order at 2:00 p.m. All members were present.

The committee discussed SB 267. Mr. Josephson moved "Do Pass". Motion passed without objection.

The committee considered House Resolution No. 2. Mr. Taylor moved "Do Pass". Motion passed without objection.

The committee discussed a draft of a bill to have coroners decide to what mortuary a body shall be sent if there are no instructions from the next of kin. The committee counsel was asked to draft the bill for introduction by the committee based on the discussion.

The committee considered HB 353 on which they had previously held a public hearing. Mr. Guess moved "Do Pass" and the motion passed without objection. Mr. Josephson signed "Do Pass" with attached amendment.

The committee discussed HB 263. Mr. Stevens moved that the bill be amended to state that it would only take effect when the U. S. or Alaska Supreme Court extended the rule in Gideon v. Wainwright, 372 U.S. 335, to misdemeanors and that HB 263 as amended "Do Pass". Motion passed without objection.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON HB 263 as Amended

The United States Supreme Court has ruled (Gideon v. Wainwright, 372 US 335) that indigent defendants charged with felonies must be provided counsel by the states. This doctrine has been extended at the lower federal court level to include the defense of indigents charged with misdemeanors.

HB 263 as amended will not take effect unless the United States or the Alaska Supreme Court extends the rule of Gideon v. Wainwright to cover misdemeanors. If this extension of the rule takes place, then under HB 263 as amended an Agency for Public Defense will be established in the Office of the Governor. The agency will provide legal counsel to an indigent accused of committing a misdemeanor.

The agency will be administered by the public defender and two assistant attorneys. Their qualifications are set out in Sec. 44.19.740 of the bill.

The bill does not preclude a court, either on its own motion or upon application of the agency or an indigent defendant, from appointing an attorney other than an Agency attorney to represent or to assist in representing an indigent defendant at any stage of the proceedings or on appeal.

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 353

1. GENERAL.

HB 353 is concerned with what is commonly called wiretapping or eavesdropping. Section 280 pertains to the misuse, interception, and divulgence of messages sent by wire or radio and Section 290 is concerned with the recording or listening to oral conversations without the consent of at least one of the parties to the conversation. A violation of any one of the sections of the bill is made a misdemeanor with a maximum penalty of $1,000 fine or imprisonment for one year, or both.

Under the federal act, in order to obtain a conviction, both interception and divulgence must be proved. This facet of the federal act has been extensively criticized by the U. S. Attorney General's office. Also, it is not clear under the federal act whether an innocent interception is a crime and the federal courts have split on the question. Section 280 of HB 353 avoids those problems.

2. SECTIONAL ANALYSIS.

Section 280(a) applies to the employees of a common carrier communications system. It prohibits the employee who takes the message for transmission, the employee receiving the message and any employees assisting in those operations, from divulging or releasing in any manner the meaning of the message, except to the persons listed in this section, through authorized channels. It is to be noted that a court may order the divulgence of a message.

Section 280(b) deals with the initial acquisition of a message by persons through the interception of the message at any time. The section contemplates an intentional interception. It should be noted that under this section, the interception alone constitutes a prohibited activity. There is no need to prove interception and divulgence, although the latter activity is also prohibited by this section.

Section 280(c) prohibits a person for whom the message is not intended, regardless of the means by which that person received the message, from using the information he has received for his own or another's benefit.

Section 280(d) prohibits a person from disclosing the meaning of the message when the person has actual knowledge or should reasonably be expected to know that the communication originally was obtained in violation of section 280. In this case, the person would, of course, also be violating section 280(c) if the person used the information obtained for his own or another's benefit.

Section 280(e) prohibits a person who is not entitled to information, but becomes aware of the contents of a message although not actually in physical receipt of a message, from in any way divulging the meaning of the contents of the message, or from using the information for his own or another's benefit.

ORIGIN OF SECTION 280. Sec. 280 is based primarily on section 605 of the Federal Communications Act. The bill does not make innocent interception a crime except in the case of a person using information obtained for his own or another's benefit or the person divulges any information he has obtained.

Section 290 makes it a criminal offense to listen to or record any oral conversation without the consent of one of the parties to the conversation. It covers not only a telephone conversation, but any oral conversation in an office, home, car, boat, or any other place a conversation might be held. It prohibits the illegal use of any type of eavesdropping device, electronic or otherwise.

Section 290(2) prohibits a person from using information obtained through illegal use of an eavesdropping device for his own or another's benefit.

Section 290(3) prohibits a person from revealing the meaning of any conversation heard by means of the illegal use of an eavesdropping device; and

Section 290(4) prohibits a person who becomes aware of the contents of a conversation from revealing the meaning of the conversations if he knows or reasonably should know that the information he has received was originally obtained by the illegal use of an eavesdropping device.

SUPPLEMENTARY COMMENT - EFFECT OF BILL ON POLICE AND ADMISSIBILITY OF EVIDENCE. Neither section 290 or section 300 (the exemption section) makes any exception for law enforcement officers. A law enforcement officer is subject to the same penalties as a private citizen who violates the provisions of

the bill. Law officers would be permitted under section 290(1) to record and listen to a conversation with the consent of one of the parties to the conversation. The most common examples of when this provision would be applicable would be in the case of a kidnapper who has told the victim's family he will call them or obscene phone calls.

Along this line, it is to be noted that only six states permit, by statute, law enforcement officers to obtain evidence by wiretap or other means. They are Maryland, Massachusetts, Louisiana, Nevada, New York and Oregon. Of these six states, only Louisiana does <u>not</u> specifically require a judicial order preceding the tap.

Six states prohibit, by statute, the admission of any evidence obtained in violation of a wiretap or eavesdropping statute. They are Maryland, Nevada, Illinois, Rhode Island, Oregon and Pennsylvania. Overall, 39 states, by statute, prohibit wiretapping or electronic eavesdropping, while 11 states prohibit only physical interference with wires. In regard to evidence obtained by wiretap or other eavesdropping devices being used in a court proceeding, the bill does not in any way change the existing law of Alaska. The admittance or rejection of such evidence is left to case law and the rules governing the admissibility of evidence as interpreted by the court.

Sec. 300 of the bill simply lists the activities which are not to be considered criminal under the provisions of the statute and is self-explanatory.

3. REPEALS.

Sec. 2 of the bill will repeal provisions in the present law that will duplicate provisions of the proposed bill if enacted. Sec. 2 amends AS 42.20.050 by deleting subsection 1 which makes it a crime for one to divulge the contents of a message to any person other than the party for which it was intended, his attorney, or agent. This is covered by section 280 of the proposed bill.

Sec. 3 repeals AS 42.20.100 which deals with persons taking messages from a telegraph wire or intercepting a message to which they are not entitled. This activity is covered in section 280 of the bill.

4. AMENDMENT.

The amendment offered by Mr. Josephson is almost identical to secs. 141.720 - 141.990 of the Oregon Revised Statutes. The amendment allows the presiding judge for the judicial district

in which the interception will take place to allow an interception of telecommunications, radio communications or conversations by peace officers if there are reasonable grounds to believe that a crime directly and immediately affecting the safety of human life or the national security has been committed or is about to be committed. Also, there must be reasonable grounds to believe that evidence will be obtained essential to the solution of the crime, or which may enable the prevention of the crime and there must be no other means readily available for obtaining the information.

The order must be applied for by the district attorney with the approval of the attorney general whether the interception is to be made by peace officers of the state or a political subdivision. The court may examine under oath the district attorney, a witness he produces, or anyone the court wishes to question. If the court issues the order for interception, it is effective for 10 days under this amendment. The Oregon law allows 60 days. The order may be renewed for 10 days at a time.

The amendment makes it a misdemeanor to use an expired order or to release any information about the application or any supporting documents or testimony. The presiding judge shall, however, report to the legislature the number of orders and renewals issued and also the nature of the reasons for issuance.

A M E N D M E N T

Offered in the HOUSE By Mr. Josephson

To HB 353

Page 4, between lines 7 and 8 insert new sections to read:

Sec. 11.60.320. ORDER FOR INTERCEPTION OF TELECOMMUNICATIONS, RADIO COMMUNICATIONS OR CONVERSATIONS.

(a) An ex parte order for the interception of telecommunications, radio communications or conversations by peace officers of the state or of a political sub-division, may be issued by the presiding judge for the judicial district in which the interception will take place, upon application of a district attorney with the approval of the Attorney General, setting out fully the facts and circumstances upon which the application is based and stating that:

(1) there are reasonable grounds to believe that a crime directly and immediately affecting the safety of human life or the national security has been committed or is about to be committed;

(2) there are reasonable grounds to believe that evidence will be obtained essential to the solution of such crime, or which may enable the prevention of such crime;

(3) there are no other means readily available for obtaining such information.

(b) Where statements are solely upon the information and belief of the applicant, the precise source of the information and the grounds for the belief must be given.

(c) The applicant must state whether any prior application has been made to obtain telecommunications, radio communications or conversations on the same instrument or from the person and, if such prior application exists, the applicant shall disclose

the current status thereof.

(d) The application and any order issued under this section shall identify fully the particular telephone or telegraph line, or other telecommunication or radio communication carrier or channel from which the information is to be obtained and the purpose thereof.

(e) The court shall examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.

(f) Orders issued under this section shall not be effective for a period longer than 10 days, after which period the court which issued the warrant or order may, upon application of the officer who secured the original warrant by application, in its discretion, renew or continue the order for an additional period not to exceed 10 days. All further renewals thereafter shall also be for a period not to exceed 10 days.

Sec. 11.60.330. PROCEEDING UNDER EXPIRED ORDER PROHIBITED. An officer who knowingly proceeds under an order which has expired and has not been renewed as provided in sec. 320 of this chapter is considered to act without authority under sec. 320 of this chapter and shall be subject to the penalties provided in sec. 350 of this chapter, as though he had never obtained the order or warrant.

Sec. 11.60.340. RECORDS CONFIDENTIAL. The application for any order under sec. 320 of this chapter and any supporting documents and testimony in connection with it shall remain confidential in the custody of the court, and these materials shall not be released or information concerning them in any manner disclosed except upon written order of the court. No person having custody of any records maintained under

s ~s. 320 - 340 of this chapter may disclose or release any materials or information contained therein except upon written order of the court.

Sec. 11.60.350. PENALTY FOR VIOLATION OF SECS. 330 or 340. Violation of sec. 330 or 340 of this chapter is punishable, upon conviction, by a fine of not more than $3,000 or by imprisonment in the penitentiary for not more than three years, or by both.

Sec. 11.60.360. REPORT TO LEGISLATURE. Each presiding judge shall make a report to the legislature at the beginning of each session giving the number of orders issued under sec. 320 of this section and any renewals of those orders and the nature of the reasons for issuance.

Page 4, line 3 - Insert after section number "PENALTY FOR VIOLATION OF SECS. 280 and 290."

Page 4, line 8 - Change "Sec. 11.60.320" to "Sec. 11.60.370."

JUDICIARY COMMITTEE MINUTES MARCH 9, 1966

Chairman Guess called the meeting to order at 3:00 p.m. All members were present.

The committee considered three senate bills, SB 234, 209 and 310. After discussion of the bills, Mr. Stevens moved that they "Do Pass" and asked unanimous consent. There were no objections.

The committee then considered HB 490 and the bill was moved "Do Pass" without objection.

The committee discussed HB 450. The committee amended the bill in the following manner:

Page 1, line 19 and 20: add "minority" before "member" on both lines.

Page 2, delete lines 5 and 6 and renumber accordingly.

Page 6, delete lines 24 - 28 and insert:

Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. After a reasonable time has elapsed, the public examiner shall present his opinion and recommendations in writing to the governor. If the situation is not remedied within a reasonable time, the public examiner shall submit his opinion and recommendations in writing to the members of the legislature. The public examiner shall include with his opinion any reply made by the agency.

Mr. Stevens moved that it "Do Pass" as amended. There were no objections.

Meeting adjourned.

JUDICIARY COMMITTEE MINUTE ON SB 234

AS 09.35.090 exempts a homestead from judicial sale for the satisfaction of any liability or judgment up to $5,000 and AS 34.15.140(b) exempts a homestead up to $5,000 from the debts of either or both tenants when it is held by tenants by the entirety. SB 234 changes the $5,000 to $8,000 so that the two homestead exemptions will be in the same amount.

JUDICIARY COMMITTEE REPORT ON SB 309

Under AS 20.10.020 written consent to adopt a minor of illegitimate birth who has not been legitimatized shall be filed before a hearing on the petition by the mother but the consent of the natural father need not be obtained or notice given him. AS 20.10.040 says "Consent for adoption of a minor is not required" from an insane parent, a parent who abandoned the child, etc. SB 309 adds to AS 20.10.040 the exact language from AS 20.10.020 that consent is not required by the natural father so that the two sections are consistent.

JUDICIARY COMMITTEE REPORT ON HB 450

HB 450 creates in the legislative branch the office of public examiner. The examiner is selected by a committee composed of the president of the senate, a minority member of the senate appointed by him, the chairman of the senate judiciary committee and the same members from the house. The name of the person selected is placed before the legislature for appointment.

The public examiner cannot be a candidate for or hold any other state office or be engaged in any other occupation for reward or profit. His term is four years but he can be removed by a two-thirds vote in each house of the legislature for neglect of duty, misconduct or disability. He receives $20,000 a year.

The public examiner may investigate the administrative acts of agencies as set out in Sec. 24.55.150 of the bill. He shall investigate any complaint which is an appropriate subject for investigation under that section unless there is a reason why he should not as set out in Sec. 24.55.110 or he may investigate on his own motion.

The concept of the public examiner is modeled after the Swedish ombudsman. Ombudsman legislation has also been adopted in Denmark, Norway, Finland and New Zealand. A bill to establish an office similar to that of the ombudsman at the federal level was introduced in Congress last session by Rep. Reuss of Wisconsin. Because of the tremendous growth in scope and power of administrative agencies at both the state and federal levels, the ombudsman concept is currently receiving much attention and study. The concept is based upon the premise that an indeptendent investigator, with access to official information, may, by acting upon citizen complaints, improve the fairness and efficiency of government operations by bringing to official and public attention the errors and weaknesses of agencies.

Sec. 2 of this bill sets out that there is a rule change in this bill. The section containing the change must be approved by a two-thirds vote.

JUDICIARY COMMITTEE REPORT ON SB 310

Under the Alaska Business Corporation Act, there is a procedure for registering a corporate name. (AS 10.05.033--042) SB 310 sets out that the registration of a corporate name gives the exclusive right to the use of the name and that the use by another of the same or a deceptively similar name may be enjoined and a cause of action for damages exists.

JUDICIARY COMMITTEE REPORT ON HB 490

At the present time, we cannot have workmen's compensation hearings outside the state. HB 490 allows the Alaska Workmen's Compensation Board to arrange to have hearings in other states or territories of the U.S. or the District of Columbia. The hearing would be conducted by the board or officer having authority to hear workmen's compensation cases in that state, etc. The testimony and proceedings would be reported to the Alaska board and be a part of the record in the case. Evidence taken at the hearing outside the state would be subject to rebuttal upon final hearing before the Alaska Board.

JUDICIARY COMMITTEE MINUTES MARCH 10, 1966

Chairman Guess called the meeting to order at 3:00 p.m. All members were present.

The committee discussed CSSB 213 and HB 363. The committee asked that a committee substitute be prepared for HB 363 to incorporate the following amendments:

Page 1, line 15, delete ", when considered advisable,"

Page 1, delete lines 19 and 20 and insert "installment. If the employer agrees, the installment is forwarded by the employer to the clerk of the superior court which entered the judgment or the court trustee, if there is one, and the amount of the installment is exempt from execution."

Mr. Stevens moved that CSSB 213 and CSHB 363 "Do Pass". There were no objections.

The committee discussed a bill to have coroners decide to what mortuary a body should be sent which was prepared according to the committee instructions of March 8th. Mr. Stevens moved that the committee introduce the bill. There were no objections.

The committee discussed CSHB 302 which they had instructed be prepared at the meeting of March 3rd. Mr. Guess moved that CSHB 302 "Do Pass". There were no objections.

The committee then considered HB 220. Mr. Guess moved "Do Pass". Motion passed without objection.

The committee discussed HB 424 and Mr. Stevens moved "Do Pass". Motion passed without objection.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON CS FOR SB NO. 213

Under present law there is some confusion about the meaning of AS 09.38.080 (1) which sets out what property is exempt from execution. It says that the earnings of a person received for his personal services rendered at any time during the 30 days preceding the levy on the earnings are exempt from execution up to a set amount. Does this mean that if the person has earned the money but not actually received it, that it is not exempt under this section? In order to improve and clarify this law on exemptions, sec. 1 of CS for SB No. 312 exempts all income of a person which is due to him or received by him from any source at any time during the 30 days before the levy up to a set amount. The exempt amount is not changed by this bill. The result is that any income, not just earnings, which has been received by the person or which is due to the person in the 30 day period preceding the levy is all considered and when the person has received the exempt amount, the rest is subject to the execution.

Sec. 2 of the bill sets out a new exemption for child support payments which a person has been ordered to pay to a court trustee.

JUDICIARY COMMITTEE REPORT ON CS FOR HB 363

Under CS for HB 363, if the court orders a person to pay child support, the court may also order the party to arrange with his or her employer for an automatic payroll deduction. If the employer agrees to the automatic deduction, he forwards the sum to the clerk of the court which entered the judgment or to the court trustee, if there is one. If this procedure is followed, the amount of the child support is exempt from execution.

HB 363 was discussed by the four Anchorage superior court judges at a meeting January 24th and they felt that the bill "would accomplish the purpose intended".

REPORT OF JUDICIARY COMMITTEE ON CSHB 302

Under present law, a person under 21 years of age cannot enter premises licensed to sell alcoholic beverages unless he is accompanied by his parent or guardian or spouse who has attained the age of 21 years.

CSHB 302 would allow a nineteen or twenty year old to enter a restaurant for dining even though the restaurant was licensed to sell alcoholic beverages. The Alcoholic Beverage Control Board would designate the premises which could be considered as restaurants under this bill. If the premises were inside a city, the designation would have to have the approval of the city council and if the premises were outside a city but within a borough, then the borough assembly would have to give their approval.

JUDICIARY COMMITTEE

REPORT

Under this bill the coroner must keep a list of all morticians within a radius of 20 miles from his court. If a person dies and there is a police investigation or pending notification of next of kin, the coroner shall assign the body to a mortician who is chosen from the area list in rotation.

A mortician owning more than one mortuary shall be listed only once on the area list. If there are no morticians within the area, the coroner shall make other suitable arrangements.

JUDICIARY COMMITTEE REPORT ON HB 220

HB 220 deletes the word "proposed" on page 1, line 10, because there are no provisions for proposing the standards to anyone. The commission creates the standards, it does not propose them.

HB 220 relates to step annexation. The bill requires that the local boundary commission obtain voter approval from the area to be annexed before beginning step annexation. Under the present regulations of the commission (Title 6, Sec. 2051) relating to step annexation, the commission may allow the vote proposed by HB 220 but the commission is not bound by the vote.

JUDICIARY COMMITTEE REPORT ON HB 424

A person who is accused of violating certain laws and regulations relating to motor vehicles may have his vehicle impounded. This results in an impounding fee and perhaps storage costs. Regardless of whether or not the accused person is found innocent or guilty of the charges, he is still required to pay the cost of impounding and storage. Under HB 424, if the person is found innocent of the charge, he is not liable for these costs.

JUDICIARY COMMITTEE MINUTES MARCH 12, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Members present were Metcalf, Tillion, Taylor, Josephson and Stevens.

Mr. Don Kane, Assistant Attorney General, and Mr. Bruce Campbell representing the Department of Highways appeared on HB 368, 369 and 370.

Mr. Stevens moved that HB 370 "Do Pass" with the word "condemnation" removed on page 1, line 23 and with the words "on the state highway system" changed to read "under the federal aid primary and secondary system as defined in Title 23 of the United States Code" on page 1, lines 25 and 26, and with the definition of state highway system deleted from page 2, lines 4 - 7. Motion passed without objection. The committee recommended referral to the Finance Committee.

The committee discussed HB 368 but decided to hold the bill until such time as it obtained additional information relating to the necessity for the bill, a comparison with existing law on the subject in AS 08.60 and its effect on city and borough powers now existing under AS 08.60.

The committee then considered HB 369. Committee counsel was asked to draft a committee substitute on the basis of the discussion.

Meeting was adjourned.

Public Law 89-285
89th Congress, S. 2084
October 22, 1965

An Act

79 STAT. 1028

To provide for scenic development and road beautification of the Federal-aid highway systems.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Highway Beautification Act of 1965.

TITLE I

SEC. 101. Section 131 of title 23, United States Code, is revised to read as follows: 72 Stat. 904.

"§ 131. Control of outdoor advertising

"(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

"(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State. 72 Stat. 889.

"(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder which standards shall contain provisions concerning the lighting, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

"(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the

purposes of this Act. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

"(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

"(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

"(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices—

"(1) those lawfully in existence on the date of enactment of this subsection,

"(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

"(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

"(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

"(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

"(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

Information centers.

"(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

Bonus payments.

"(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement or the control required by this section, whichever control is stricter. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

"(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

"(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

Notice of final determination.

62 Stat. 928.

"(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section."

Appropriation.

SEC. 102. The table of sections of chapter 1 of title 23 of the United States Code is amended by striking out

"131. Areas adjacent to the Interstate System."

and inserting in lieu thereof

"131. Control of outdoor advertising."

TITLE II

SEC. 201. Chapter 1 of title 23, United States Code, is amended to add at the end thereof the following new section:

23 USC 101 et seq.

"§ 136. Control of junkyards

"(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

"(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made pro-

Apportioned funds, withholding.

vision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

Reapportionment of withheld funds.

"(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

Definitions.

"(d) The term 'junk' shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"(e) The term 'automobile graveyard' shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

"(f) The term 'junkyard' shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

"(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

"(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

Landscaping and screening costs.

"(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

Junkyards. Costs of relocation, etc.

"(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of the following junkyards—

"(1) those lawfully in existence on the date of enactment of this subsection,

"(2) those lawfully along any highway made a part of the interstate or primary system on or after the enactment of this subsection and before January 1, 1968, and

"(3) those lawfully established on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum.

"(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

"(l) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junk-

yards on the Federal-aid highway systems than those established under this section.

"(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section." Appropriation.

SEC. 202. The table of sections of chapter 1, title 23, United States Code, is amended by adding at the end thereof the following: 72 Stat. 917.

"136. Control of junkyards."

TITLE III

SEC. 301. (a) Section 319 of title 23, United States Code, is revised to read as follows:

"§ 319. Landscaping and scenic enhancement

"(a) The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public.

"(b) An amount equivalent to 3 per centum of the funds apportioned to a State for Federal-aid highways for any fiscal year shall be allocated to that State out of funds appropriated under authority of this subsection, which shall be used for landscape and roadside development within the highway right-of-way and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public, without being matched by the State. The Secretary may authorize exceptions from this requirement, upon application of a State and upon a showing that such amount is in excess of the needs of the State for these purposes. Any funds not used as required by this subsection shall lapse. There is authorized to be appropriated to carry out this subsection, out of any money in the Treasury not otherwise appropriated, not to exceed $120,000,000 for the fiscal year ending June 30, 1966, and not to exceed $120,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this subsection." Appropriation.

(b) The table of sections of chapter 3 of title 23 of the United States Code is amended by striking out

"319. Landscaping."

and inserting in lieu thereof

"319. Landscaping and scenic enhancement."

SEC. 302. In order to provide the basis for evaluating the continuing programs authorized by this Act, and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1967, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of carrying out the provisions of this Act, and a comprehensive study of the economic impact of such programs on affected individuals and commercial and industrial enterprises, the effectiveness of such programs and the public and private benefits realized thereby, and alternate or improved methods of accomplishing the objectives of this Estimate and study.

Report to Congress.

Act. The Secretary shall submit such detailed estimate and a report concerning such comprehensive study to the Congress not later than January 10, 1967.

Rules and regulations.

Ante, pp. 1028, 1030.

SEC. 303. (a) Before the promulgation of standards, criteria, and rules and regulations, necessary to carry out sections 131 and 136 of title 23 of the United States Code, the Secretary of Commerce shall hold public hearings in each State for the purpose of gathering all relevant information on which to base such standards, criteria, and rules and regulations.

Report to Congress.

(b) The Secretary of Commerce shall report to Congress, not later than January 10, 1967, all standards, criteria, and rules and regulations to be applied in carrying out sections 131 and 136 of title 23 of the United States Code.

Appropriation.

SEC. 304. There is authorized to be appropriated the sum of $500,000 to enable the Secretary of Commerce to carry out his functions under section 135 of title 23 of the United States Code relating to highway safety programs.

SEC. 305. Nothing in this Act or the amendments made by this Act shall be construed to authorize the use of eminent domain to acquire any dwelling (inclu ling related buildings).

TITLE IV

SEC. 401. Nothing in this Act or the amendments made by this Act shall be construed to authorize private property to be taken or the reasonable and existing use restricted by such taking without just compensation as provided in this Act.

Appropriation.

SEC. 402. In addition to any other amounts authorized by this Act and the amendments made by this Act, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Secretary of Commerce not to exceed $5,000,000 for administrative expenses in carrying out this Act (including amendments made by this Act).

Short title.

SEC. 403. This Act may be cited as the "Highway Beautification Act of 1965".

Approved October 22, 1965, 2:30 p.m.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1084 (Comm. on Public Works).
SENATE REPORT No. 709 (Comm. on Public Works).
CONGRESSIONAL RECORD, Vol. 111 (1965):
Sept. 15: Considered in Senate.
Sept. 16: Considered and passed Senate.
Oct. 7: Considered and passed House, amended.
Oct. 13: Senate concurred in House amendment.

JUDICIARY COMMITTEE MINUTES MARCH 14, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Present were members Metcalf, Tillion, Hillstrand, Taylor and Stevens.

The committee considered HB 435. The bill will be considered further when more material is available on it.

The committee discussed SB 4 and SB 238. No action was taken.

Meeting was adjourned.

February 19, 1966

M E M O R A N D U M

TO: William A. Egan
Governor

FROM: Warren C. Colver
Attorney General

RE: Nonprofit Corporation Law

Alaska's present nonprofit corporation law has remained basically unchanged since its enactment in 1913. At the urging of a number of Alaska attorneys the Department of Law made a study of the law. The Department concluded that our present law is inadequate and the State should adopt the Model Nonprofit Corporation Act drafted by the American Bar Association. The attached bill is an Alaska Nonprofit Corporation Act based on the Model Nonprofit Corporation Act, 1964 Edition.

In 1957 Alaska adopted the Model Business Corporation Act, which covers stock corporations. In that year the American Bar Association issued a revised version of its Model Nonprofit Corporation Act which had first been drafted in 1952. This model act had been revised primarily to bring it into accord with the Model Business Corporation Act. Again in 1964 the American Bar Association published a new edition of the nonprofit act. This latest edition follows as closely as possible the corresponding provisions of the business corporation act.

Adoption of the Model Nonprofit Corporation Act would result in these significant changes in Alaska law:

(1) The new law will enlarge the purposes for which nonprofit corporations may be formed. (10.20.005)

(2) It provides that a nonprofit corporation may make incidental income or profit in carrying on its primary nonprofit functions; for example, a nonprofit

hospital may run a small gift shop. This incidental profit may not be distributed to members but must be devoted to the primary purposes of the corporation. (10.20.135)

(3) The law allows a nonprofit corporation to pay reasonable compensation to its members and directors for services rendered. This is not considered a prohibited distribution of income. (10.20.135)

(4) A nonprofit corporation which holds assets subject to limitations permitting their use only for charitable or similar purposes must, upon its dissolution, transfer these assets to an organization engaged in similar activities. (10.20.295)

The Model Nonprofit Corporation Act is designed to give an organization its basic authority and corporate status and to provide a method of administering the organization. It is not a regulatory statute which imposes controls. The major purpose of the law is to provide nonprofit organizations with a clear, orderly method of conducting its internal affairs and its relations with the State.

The American Bar Association has designed a set of official forms to accompany the act. If the act is adopted, these forms will be useful both to lawyers who must draft documents in compliance with the act and to the Department of Commerce which would administer the act.

As of 1964 the Model Nonprofit Corporation Act had been adopted, either as a whole or in large part, by the following jurisdictions:

Wisconsin - 1953
Alabama - 1955
North Carolina - 1956
Virginia - 1956
Nebraska - 1959
North Dakota - 1959
Oregon - 1959
Texas - 1959
District of Columbia - 1962

In addition, Illinois, Missouri and Ohio have nonprofit laws substantially similar to the Model Act.

Attached to the bill is a chart which gives parallel sections. This may be of use to legislative committees which study the law.

WCC:jt
tef

JUDICIARY COMMITTEE MINUTES MARCH 19, 1966

Chairman Guess called the meeting to order at 10 a.m. Present were Stevens, Metcalf, Tillion and Taylor.

Vic Carlson, Assistant City Attorney of Anchorage, spoke on HB 427, HB 493 and SB 282. Mr. Don Berry, Alaska Municipal League, spoke on HB 494.

3

Meeting was adjourned.

JUDICIARY COMMITTEE MINUTES MARCH 21, 1966

Chairman Guess called the meeting to order at 10:00 a.m. Present were Messrs. Metcalf, Tillion, Taylor and Stevens. Mr. Don Berry of the Alaska Municipal League and Rep. William Moran appeared on HB 493. Mr. Moran spoke in favor of the bill and Mr. Berry against it. No action was taken on the bill.

The committee next considered HB 9 and Mr. Taylor moved "Do Pass" and asked unanimous consent. There were no objections.

The committee considered SB 66 and the following two amendments to the bill were discussed:

On page 1, beginning on line 24, insert:

(c) Any zoning done by the division of lands, Department of Natural Resources, under (b) of this section, is not final until approved by concurrent resolution at the next regular session of the legislature.

On page 1, line 19, after "power" insert "within federal lands"

Mr. Stevens moved it "Do Pass with the amendments". Motion passed.

The committee then considered HB 279. The committee decided to limit sec. 2 of the bill to superior court judges and to make the following amendments:

Page 1, line 29, delete everything after "to" and on page 2, line 1, delete everything before "the".

Page 2, line 13, delete everything after "to" and delete all of line 14 and line 15 delete "then to"

Mr. Stevens moved that it "Do Pass with amendments". Motion passed.

The committee discussed SB 4 and the committee counsel was asked to prepare a committee substitute along the lines of the discussion.

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON HB NO. 9

Since the 1960 presidential election, there have been numerous articles pointing out that many citizens, otherwise eligible to vote, were disfranchised because they changed their state of residence during the preceding year. When a person moves to a new state with the intention of taking up residence, he loses his legal residence in the state from which he has moved and usually loses the right to vote by absentee ballot in that state.

The 1963 program of Suggested State Legislation published by The Council of State Governments contains a discussion of "Loss of Voting Rights in Presidential Elections" beginning on page 212 and a "Uniform Act for Voting by New Residents in Presidential Elections" beginning on page 250. HB 9 is based on that Act.

HB 9 would allow new resident voters to vote for president and vice president of the United States if they have not been a resident of Alaska for a year if they would otherwise be qualified to vote. HB 9 contains safeguards against fraudulent and "double" voting in Sec. 15.30.140(2) and 15.30.150.

The philosophy underlying this bill is that residence in a state for a reasonable period of time might be essential to enable a voter to pass upon state and local candidates and issues, but that since the president is the representative of the entire nation, a change of residence from one state to another should not in any way detract from the voter's ability to make a choice for president.

JUDICIARY COMMITTEE REPORT ON SB 66

Under Public Law 88-608, which was passed by Congress on September 19, 1964, the Secretary of the Interior is required, 90 days before offering lands for sale, to notify the head of the government body of the political subdivision of the state having jurisdiction over zoning in the geographic areas within which the lands are located of the proposed sale so that the body has the opportunity of zoning in accordance with local land use and development. No sale may be conducted under the authority of Public Law 88-608 until zoning regulations have been enacted by the appropriate local authority.

In the absence of a political subdivision having zoning authority, the governor must be notified and the land to be sold must be zoned. In the unorganized borough outside of cities, there is presently no body having authority to zone lands. SB 66 is necessary to provide an agency with a zoning power in the unorganized borough where no political subdivision with a zoning power exists.

Under Sec. 6. of Art. X of the state constitution, the legislature "may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough". Under SB 66, the legislature delegates its power of zoning under certain circumstances. The legislature may nullify a zoning regulation promulgated under this bill in the usual manner, and the zoning which is done by the Division of Lands does not become final until approved by resolution of the Legislature under the judiciary committee amendment.

JUDICIARY COMMITTEE REPORT ON HCSSB NO. 4

Under sec. 1 of HCSSB No. 4, a candidate who loses in the primary election may not be elected to the same office by write-in votes in the general election unless the party nominee for the office has died, withdrawn, become disqualified or incapacitated.

Under sec. 2 of the bill, if an incumbent candidate for renomination dies, becomes disqualified or incapacitated between June 1 of the election year and 10 days before the primary election, his place on the ballot may be filled by party petition. If he dies, becomes disqualified or incapacitated in the 10 days before the primary election, then his name remains on the ballot and his votes are counted. If he is nominated at the party primary, then the vacancy is filled by party petition.

JUDICIARY COMMITTEE MINUTES MARCH 22, 1966

Chairman Guess called the meeting to order at 4:30 p.m. Members present were Messrs. Stevens, Josephson, Hillstrand, Metcalf and Taylor.

Rev. Richard Heacock, representing the Alaska Council of Churches, and Rev. Ernest Jones, representing the Alaska Mission of the Methodist Church, appeared and spoke against SB 282.

Meeting was adjourned.

JUDICIARY COMMITTEE MINUTES MARCH 23, 1966

Vice-Chairman Josephson called the meeting to order at 2 p.m. Present were members Tillion, Metcalf, Taylor and Hillstrand.

The following persons appeared and spoke in favor of the Labor and Management Committee Substitute for HB 296: Bruce Monroe, Deputy Commissioner of Labor; Lewis Dischner, Alaska Teamsters Local 959; Mark Hensen, Coal Operators Assoc.; and Newton Cutler, D. K. MacDonald Co. of Alaska.

Mr. Taylor moved that CSHB 296 "Do Pass". Motion carried.

Meeting was adjourned.