



NO. 3

SB

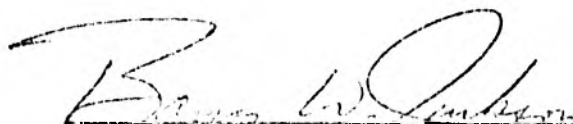
Judiciary Committee Report

on

HCS for SENATE BILL NO. 364

This bill establishes a system of compensating victims of bodily crimes for their out-of-pocket expenses incurred as a result of the crime. One of the most fundamental functions of a government is the protection of its citizens; therefore, when the various statutory deterrents, law enforcement activities and conditions of the society fail to provide this protection, it is only reasonable that the government compensate the victims of that failure. Under present law, when the person who commits the crime is not financially responsible, the innocent victim who suffers the personal injury is left to his own resources. This obviously works an especial hardship on the poor and the elderly.

The bill is limited to personal injuries and to out-of-pocket expenses in order to avoid the likelihood of collusion. The total amount payable is limited, and the bill specifies additional limitations on and factors to be considered in awarding compensation. Information presented in an August 1969 report of the Arkansas Legislative Council indicates a rather low cost for such a system. In California, with a population of approximately 19,103,000, the 1967-68 fiscal year budget for the system was \$22,411; in the 1968-69 fiscal year the budget was \$105,374; and the proposed budget for the 1969-70 fiscal year was \$127,000. The costs rise as more people become aware of the availability of compensation for their injuries. According to the Arkansas report, as of early 1969, at least five states had enacted victim compensation systems such as this one, and at least six others and Congress (for the District of Columbia) were considering similar legislation. In the preparation of this bill, the relevant provisions in the law of Hawaii, California, Massachusetts, and Maryland were reviewed.



Barry W. Jackson

Chairman

House Judiciary Committee



ALASKA NATIONAL BANK of Fairbanks

NORTHWARD BUILDING "The Friendly Bank" FAIRBANKS, ALASKA - 99701

April 20, 1970

To the Honorable Representatives Anderson,
Bradner, Holm, Jackson, Miller, Orbeck and Young
Alaska State House of Representatives
Juneau, Alaska 99801

Gentlemen:

Senate Bill No. 403 "An Act Providing for the Collection and Deposit of State Money and the Collateralization of Deposits of State Funds; and Providing for an Effective Date" contains sections which would be extremely detrimental to the State of Alaska and to the banking institutions located within the State.

Section 1 (e) which states in part "the following, while not in default, if issued, made or created after January 1, 1970, constitute eligible collateral" is not only an untenable restriction but one that could be dangerous to the State and the banking institutions operating therein. We recommend that the State outline the types of collateral acceptable and establish a percentage of deposits to be covered thereby but completely eliminate any reference to date of origin of collateral meeting those requirements. Alaska National Bank, for example, holds \$5,385,000 of State deposits against which are pledged \$5,686,000 of U. S. Direct and Agency Obligations, State and Municipal Bonds, and FHA mortgages. Senate Bill 403 if passed would make ineligible every penny of the collateral which we currently have pledged and would require substitution as State Time Certificates mature starting May 26, 1970.

Included in Alaska National Bank's collateral are \$345,000 of State and Municipal bonds issued by the State of Alaska or by municipalities within the State of Alaska. Some of these were purchased, as for example Nome Bonds, at the request of the State. Is our State Administration now saying that Alaskan bonds are not acceptable quality. "Outside" investors would take a dim view of this attitude. Orderly and healthy expansion of Alaska's financial institutions is essential if the State is to continue to properly expand. No doubt most of the Alaskan banks are in the same position as Alaska National and to render all of Alaskan bank's collateral ineligible as State Time C.D.'s mature and are removed would create a catastrophic



PLEASE SEND ALL CORRESPONDENCE TO ALASKA VIA AIR MAIL

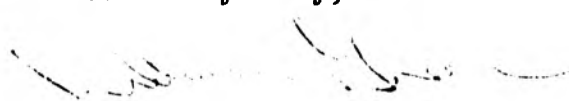


To the Honorable Representatives Anderson,
Bradner, Holm, Jackson, Miller, Orbeck and Young
Alaska State House of Representatives
April 20, 1970
Page 2

situation. We are in sympathy with the aims of the Administration to put to work for Alaskans deposits given to Alaskan banks but this is not the way to do it and in fact defeats the purpose as it could result in a withdrawal of State funds from Alaskan banks, not an increase. Dropping the collateral requirements to 35 per cent is the best approach to putting State money to work for Alaskans. The amount of collateral to be pledged should be based upon the dollar value of State deposits in each bank not on the total deposits held by each bank. Until the State allows banks to use 65 per cent of the State Time Certificate deposits without requiring back-up collateral the people of Alaska will not see the true benefit from those deposits. Every dollar of State deposits which a bank is required to tie up in collateral is in effect a sterile deposit as far as benefiting the people of Alaska.

We, therefore, recommend complete removal of any reference to issue date of acceptable collateral, and a reduction in percentage of collateral required to 35 per cent of State deposits.

Yours very truly,


William J. Green
Vice President and Comptroller

WJG:js

MEMORANDUM**State of Alaska**
DEPARTMENT OF NATURAL RESOURCES

TO: The Honorable Barry Jackson
Chairman
House Judiciary Committee

DATE : May 20, 1970

FROM: Thomas E. Kelly
Commissioner

SUBJECT: SB 444

Pursuant to your request of May 19, the following list enumerates violations of park regulations that we have experienced and which are not enforceable under present statutes, thereby making passage of the captioned bill of utmost importance.

- (1) TRAFFIC VIOLATIONS - Excessive speed, reckless driving and other moving vehicle violations.
- (2) DURATION OF STAY - Camping in State wayside and recreation areas for periods in excess of the two week limitation. This deprives visiting tourists and Alaskan citizens of the opportunity to find room for camping in our parks. It is a particular problem in view of the influx of migrant, jobless workers and hippies who seek parks as their haven.
- (3) ILLEGAL USE -
 - (a) Camping and day use facilities which are not designed for overnight stay. These include picnic areas which are not set up for pitching tents or parking camp trailers.
 - (b) Erection of shacks and lean-tos which constitutes environmental intrusion.
 - (c) Misuse including sites for rallies. Regulations provide for permits to be issued under specific conditions for big gatherings. Abuse of this privilege in the absence of enforcement laws increases deterioration in our parks.
 - (d) Driving off of gravel paths and walkways or around barricades which we set up for safety purposes.
 - (e) Violations of water safety including driving power boats through swimming areas.
- (4) RESIDENTIAL GARBAGE - Accumulation of refuse and garbage in the parks as a result of nearby residents using trash barrels for their garbage disposal. The barrels and trash cans are placed in the parks for individuals using the park facilities. We do not have the means to provide residents garbage pickup and it is particularly onerous to have a dump site surrounding filled trash barrels.

The above list summarizes some of the problems we are continually faced with in park administration and maintenance. It is our desire and goal to provide the finest in park facilities for Alaskan residents and tourists. We believe that adoption of the captioned bill in the law will go a long way in achieving this goal.

The Honorable Barry Jackson
May 20, 1970
Page 2

The Legislature has recently adopted a similar law (Chapter 95 SLA 1970) to protect historic sites which I feel is analogous to the protection sought by this bill.

SB446

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M—JUNEAU 99801

April 14, 1970

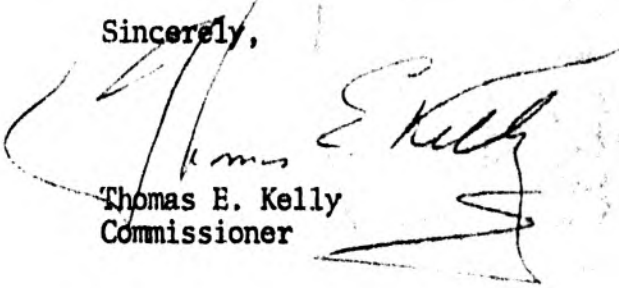
The Honorable Irwin Metcalf
House of Representatives
State of Alaska

Dear Representative Metcalf:

In response to your request regarding Senate Bill 446, this Department urges the passage of this bill as we feel the historic and scientific sites of interest in Alaska are valued by the public and measures should be taken to protect them from damage and abuse. The increase in fine from \$500 to \$1,000 is in order as this will more closely cover the cost of any damage to the sites and possibly prevent some future damage.

If any further information is required please advise as the enactment of this bill is needed.

Sincerely,


Thomas E. Kelly
Commissioner

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

May 6, 1970

Barry,

Your CS for SB 475 is attached. However, at the point where you suggested changing "consider" to read "give due consideration to", I left "consider" in. First of all, the drafting manual (at p. 19) states "Use finite verbs instead of corresponding noun-or-adjective forms denoting action as: 'consider' instead of 'give consideration to'; 'know' instead of 'have knowledge of'." Secondly, the word "due", as an adjective, is quite inadequate. It is either used for its legalistic sound (in which case it should be dropped) or it is used as a more-or-less synonym for such words as "serious", "formal", "appropriate", "weighty", "lengthy", "proper", etc., (in which case the more accurate word should be used). It seems to me that the phrase "give due consideration to", in the instant situation, places no greater requirement on the court than the simple, direct word "consider".

Regarding sec. 4 in this final version, cf. AS 47.10.020(a), which allows for informal adjustment or disposal.

A.

Art

SB 475

43 Mile Steese Highway
Box 5-309
College, Alaska 99701
April 17, 1970

Hon. Tury Anderson, Mike Bradner, John Holm, Barry Jackson,
Gene Miller, Ed Orbeck and Don Young
Alaska State House of Representatives
Juneau, Alaska 99801

Dear Sirs:

SB 475

I feel so strongly about the "Christian Science Bill" that I am prompted to write you all as my Representatives from the 16th District.

Please consider this bill most carefully. To permit its passage, with the rider which states that a court could order medical care for a child whose parents refused because of religious convictions, would be a staggering blow to our religious freedom- a freedom that our forefather's emigrated here to achieve. It is contrary to the First Amendment to the Constitution of the United States. It is contrary to the spirit of freedom under which our country has developed and prospered for so many years.

Both religion and medicine have been free to try and gain; they have been free to try and lose. Because of the popularity of one system is the other automatically to be judged wrong because it is in a minority? Are we to prevent a minority from the full and free expression of their faith? Our country founded upon a spirit of fairness, how can this spirit survive when one's freedom of religion has been restricted?

Why not let time be the judge? Is the State of Alaska going to start judging a person's religion? It would seem that way by the court in effect saying, "you as parents because of your religious convictions, which the State finds archaic,

April 17, 1970

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superstitious and totally ineffectual, are not mentally capable of caring for your child in a manner which the State regards as proper, therefore we are issuing a court order that the child be placed under medical care." In effect, the State is setting up a religion that all must follow.

Is medicine such an exact science that all men should now be forced to practice it? If medicine is such a science why are not all who go to a hospital healed? How many of those in graves today are there as the result of a mistake, a wrong diagnoses, or a wrongly prescribed cure? We continually hear about the successes of medicine, seldom its failures. It is the opposite with a healing religion- we hear about the failures, seldom the successes.

Human progress cannot have reached the point where the Alaska Legislature can now say, "Medicine and surgery are the only reliable remedial agents. Therefore, we will see that all citizens follow its dictates and practices, even if it conflicts with one's deepest religious convictions."

I sincerely urge you to consider your vote on this bill and in the spirit of freedom for trial and error, of freedom for the progress and improvement that our founding fathers guaranteed us in the Constitution vote against the restrictive rider to the bill.

Sincerely yours,

H. Wesley Redhead

H. Wesley Redhead
Box 5-309
College, Alaska 99701

*sent night letter
4-29-70 - P H May 4
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HOUSE JOURNAL

Judiciary Committee Report

on

HCS for SENATE BILL NO. 481

This bill is similar to Sec. 2015.5 of the California Code of Civil Procedure. It allows a person to "certify under penalty of perjury" certain documents required or authorized to be made upon oath, thus eliminating the need to have the document signed by a notary or other person empowered to administer oaths. The House Committee Substitute follows the California version more closely than the original bill, making clearer which documents are covered and which are not. The Senate amendment to the original bill restricts this certification to situations in which no notary or other authorized official is available, and this provision is retained in the House Committee Substitute; the bill, either with or without that amendment, would be of particular benefit to the outlying areas of the State.

Barry W. Jackson
Chairman
House Judiciary Committee

LAW OFFICES OF
FAULKNER, BANFIELD, BOOCHEVER & DOOGAN
ROOM 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

HERBERT L. FAULKNER
NORMAN C. BANFIELD
ROBERT BOOCHEVER
FRANK M. DOOGAN
DONALD L. CRADDICK
AVRUM M. GROSS
MICHAEL M. HOLMES

TEL. 586-2210
AREA CODE 907

June 5, 1970

Mr. Barry W. Jackson, Chairman
House Judiciary Committee
State Legislature
Juneau, AK 99801

re: SB 497 Am.
Relating to Conveyances of Real Property

Dear Mr. Chairman:

The Juneau Bar Association has considered the above mentioned bill and has endorsed it. The members find there are many deeds of record made to married couples who intended or expected that the property would go to the survivor of them in case of death of one of them, whereas in fact it will not happen because they failed to specify that they took the property as tenants by the entirety. We do not believe this bill will have retrospective effect as to such deeds because we have a statute stating that no bill has retroactive effect unless it so states. Moreover, there have been many deeds purposely made to man and wife without the specification of tenants by the entirety because they wanted it that way for various reasons, the most common of which is to get a stepped-up tax basis by administration of the half interest of the deceased. We therefore object to any amendment making the bill retroactive.

As for future conveyances we approve the bill as we believe it will be better to make these poorly drafted conveyances create a tenancy by the entirety, and to state otherwise when the intention is otherwise.

The Juneau Bar has asked me to convey this information to you.

Yours very truly,

N. C. Banfield
N. C. Banfield

NCB:rp
cc: Shirley Kohls, Pres.



TELEPHONE
586-1325

MUNICIPAL BUILDING
JUNEAU, ALASKA 99801

March 16, 1970

The Honorable Barry Jackson
Chairman, House Judiciary Committee

Dear Mr. Chairman:

Last Friday, SB 507, pertaining to powers of a 4th class city, was given a special referral to your Committee. Basically, this was done as a courtesy to the League in order that we could have the opportunity to clarify a couple of problems which we think the bill poses.

The League is 100% in favor of what the bill is trying to do insofar as 4th class cities are concerned. However, we recommend that the title of SB 507 be changed to read: "An Act relating to the powers of general law cities including but not limited to 4th class cities within 3rd class and unorganized boroughs". It is our opinion that the bill as presently titled is in direct conflict with the areawide platting concept of Title 7.

In addition, we are respectfully submitting a further proposed amendment to SB 507. This amendment has been endorsed by both the city and borough members of the League as a means of eliminating one area of conflict which has occurred in the past under the planning and zoning statute in Title 7.

We certainly wish to thank you for your courteous consideration of this matter and if we can be of further help, please call on us at any time.

Sincerely,

A handwritten signature in cursive script that reads "Don M. Berry".

Don M. Berry
Executive Director

DB/mm

ALASKA MUNICIPAL LEAGUE

PROPOSED AMENDMENT TO

SENATE BILL 507

For an Act entitled: "An Act relating to vacation of public ways."

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

*Section 1. AS 07.15.340 is amended by adding a new section to read:

(d) No street, alley, or public thoroughfare may be vacated under the borough planning, platting and zoning authority in its entirety or in part unless vacation is approved by resolution of the governing body of the city or organized borough, or both, in which the public way is located, except that vacation of a street, alley or public thoroughfare located entirely within a city shall require approval of the city governing body only.

*Sec. 2. AS 40.15.160 is amended to read:

Sec. 40.15.160. HEARING AND DETERMINATION. At the hearing, the platting authority shall inquire into and determine the merits of the relief prayed for and make such order as justice and the public welfare require. Vacations ordered by the platting authority shall not be effective unless approved by the local governing body having jurisdiction as provided in AS 07.15.340(d).

March 20, 1970

Mr. Gregory Machyowsky
Legislative Affairs Agency
Pouch "Y", Capitol Building
Juneau, Alaska 99801

Dear Greg:

SB-507 has been referred to the House Judiciary Committee and I am researching this bill.

Enclosed is a copy of a letter and a proposed amendment of the Alaska Municipal League. Would you please review this material and the bill and be prepared to review it with me at an early date? I see a number of problems with the bill.

With respect to vacating streets, a fourth class city should also have the power to close streets and use them for other public purposes, otherwise vacation may simply cause the property to pass to the adjoining property owners.

In the area of bonding, it is difficult to see how a fourth class city could issue general obligation bonds since the power to levy a property tax seems to be, by definition, a part of the concept of government obligation bonding.

As city attorney of Fort Yukon, I wrote Local Affairs Agency on the bonding problem, laying out a number of problems. That letter may also be of assistance to you in reviewing this bill.

Sincerely,

Barry W. Jackson, Chairman
House Judiciary Committee

Enclosures - AML correspondence
Proposed amendment for SB-507

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH 7 - STATE CAPITOL
JUNEAU, ALASKA 99801

March 18, 1970

MEMORANDUM

TO: Representative Barry Jackson
FROM: Hayden Kaden
SUBJECT: Abortion

AS 11.15.060 provides Alaska's abortion law in these terms: "A person who administers to a woman pregnant with a child any medicine, drug, or substance whatever, or who uses an instrument or other means, with intent to destroy the child, unless the action is necessary to preserve the life of the mother, is, if the death of the child or mother is thereby produced, guilty of manslaughter, and is punishable accordingly."

This statute was adopted by the Congress for the Territory of Alaska in the 1880's. It was taken from the Oregon Criminal Code and, but for minor wording changes, is identical to the present Oregon law, (ORS 163.060). The Oregon Supreme Court interpreted the term "death of the child" in the case of State v. Atwood, 102 P. 295 (1909). The court stated:

"The term 'in case of death of such child,' which constitutes the consummation of the crime equally with the death of the mother, would seem to mean the death of the foetus, either before or after quickening."

The court also stated that an interpretation of the term "pregnant with child" was not necessary to its decision. However, according to the revisor's notes on the Oregon statute, the court in Atwood and in State v. Ausplund, 167 P. 1019 (1917), said that the term "pregnant with child" designates the fetus throughout the period of gestation.

The courts of the states are not in harmony concerning the interpretation of "pregnant with child" (Accord, 1 Alaska 2d, sec. 6, p. 191.) Some have held with the Oregon court and others, including the Alaskan courts, have held that the fetus must be "quick" in order to be a child.

Thomas Aquinas, in the 13th Century, defined the soul as the first principle of life in those things that live, and life is signalized by two actions: knowledge and movement. Hence the rule of the common law framed by Bracton, a 13th Century jurist, that life does not commence at a certain number of days after conception, but at the moment of "quickening". Therefore Bracton said that killing the fetus after "quickening" was murder, before "quickening", no crime. Previous to

1803, abortion appears to have been largely regarded as a Church offense and was in actuality punishable only by religious penalties, at least in England. ("The Legal and Moral Status of Therapeutic Abortion", by Alan F. Guttmacher, M.D., from Progress in Gynecology, Vol. IV.)

The first English abortion statute, the law of 1803, removed the legal requirement that to be a crime abortion must be performed after "quickening." It made a distinction, however, between the "unquickened" and "quickened" fetus. Abortion was a felony in every instance, but punishable by death only after "quickening". (Guttmacher)

The first state in the United States dealing directly with abortion was Connecticut, which in 1821 passed a statute punishing any attempt to abort a fetus by poison after "quickening." In 1860, the law was extended to all pregnancies irrespective of "quickening" and for the first time an exception was made for acts necessary to preserve the life of the mother. (Guttmacher)

Quoting from retired Supreme Court Justice Tom Clark in the Loyola University Law Review (Vol. II, No. 1, 1969) in answering the question of whether abortion is murder, he says, based on legal precedent, "To say that life is present at conception is to give recognition to the potential rather than the actual..." "No prosecutor has ever returned a murder indictment charging the taking of the life of a fetus. This would not be the case if the fetus constituted human life."

While it is not known what interpretation of the term "pregnant with child" would be adopted by the Alaska Supreme Court if that issue were presented, an instruction was rendered in State v. Boswell, 61-109, Superior Court, 4th Jud. Dist. (1961) to the following effect:

"'Pregnant with child' as used in our law means an unborn child so far developed as to be quick, that is, so far developed as to be capable of independent moving or stirring in the mother's womb to a degree perceivable by the mother. The law does not require that the mother in fact identified the movement or stirring; quickening is attained when movement, however slight, could be made to said degree by the foetus independent of any other force."

In another case, in 1958, an indictment for abortion against a doctor in Anchorage was dismissed because the foetus existed for only one month when it was aborted by the doctor and therefore the woman was not pregnant with "child".

The Alaska Attorney General's office has stated in an informal opinion that "since 'quickening' normally does not take place until approximately the fourth month of pregnancy, this interpretation emasculates the abortion law of this state. It is foreseeable that this instruction (that given in Boswell) will continue to be given, and, while the Department of Law would advocate a contrary position, the state could not appeal the issue to the Supreme Court and a binding interpretation may never be made." (Letter to John Sackett, April 25, 1969).

In regard to the possible constitutional problems with Alaska's abortion law, assuming its applicability to all abortions, there have been several recent cases of importance bearing on the constitutional issues. Two decisions are of particular importance.

In State v. Belous, 458 P. 2d 194 (1969), the California Supreme Court held, under a statute similar to Alaska's, that the phrase, "unless the same is necessary to preserve her life," is unconstitutionally vague. The court said that the requirement of a reasonable degree of certainty in legislation, especially in the criminal law, is a well established element of the guarantee of due process of law. No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids.... a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

The problem caused by the vagueness of the statute is accentuated because under the statute the doctor is, in effect, delegated the duty to determine whether a pregnant woman has the right to an abortion and the physician acts at his peril if he determines that the woman is entitled to an abortion. Rather than being impartial, the physician has a direct, personal, substantial, pecuniary interest in reaching the conclusion that the woman should not have an abortion. The delegation of decision-making power to a directly involved individual violates the 14th Amendment. The statute assumes to confer legislative authority upon those who are directly interested in the operation of the regulatory rule. The inevitable effect of such delegation may be to deprive a woman of an abortion when under any definition of the relevant section of the penal code, she would be entitled to such an operation, because the state, in delegating the power to decide when an abortion is necessary, has skewed the penalties in one direction: no criminal penalties are imposed when the doctor refuses to perform a necessary operation, even if the woman should in fact die because the operation was not performed.

The U. S. District Court in the District of Columbia, in U.S. v. Vuitch, 305 F. Supp. 1032 (1969), struck down the D.C. abortion statute. The court said that the statute making the inducing of an abortion a felony, unless done to preserve the mother's life or health, is invalid for failure to give that certainty which due process of law considers essential in criminal statutes and for impinging to an appreciable degree on significant constitutional rights of individuals. The statute does not prohibit all abortions. An abortion is permitted where done as necessary for the preservation of the mother's life or health and under the direction of a competent licensed practitioner of medicine.

The word "health" is not defined and in fact remains so vague in its interpretation and the practice under the act that there is no indication whether it includes varying degrees of mental as well as physical health. The jury's nonacceptance or acceptance of an individual doctor's interpretation of the ambivalent and uncertain word "health" should not determine whether he stands convicted of a felony, facing imprisonment. There is no clear standard to guide either the doctor, the jury or the court. No body of medical knowledge delineates what degree of mental or physical health or combination of the two is

required to make an abortion conducted by a competent physician legal or illegal under the code.

Two other cases are of interest in light of the constitutional issues, both of which were relied upon by the Attorney General's office, in an informal opinion to Terry Miller and to Lowell Thomas, Jr., to conclude concerning Alaska's law that, "there are adequate legal arguments and decisions supporting the constitutionality of Alaska's current abortion law", and the Attorney General "would not be hesitant to carry out our statutory duty of defending its constitutionality if the issue should ever be raised in court."

A careful reading of both of these opinions cited by the Attorney General does little to dispel the notions of unconstitutionality raised by Belous and Vuitch, regardless of the Attorney General's opinion. In State v. Elliott, 383 P.2d 382 (Ore. 1963), the Supreme Court of Oregon reversed for a new trial the conviction of an abortionist. Reversal was on the basis of an erroneous jury instruction and that portion of the decision is not cogent to this discussion. The Attorney General's office relied for its above stated conclusions on a one sentence statement by the court that, "the defendant's arguments are so lacking in merit that we decline to consider them, except to state that, construing the acts together, they do not violate any requirements or provisions of either the state or federal constitutions." On what specific grounds the defendant argued the constitutional issues is not clear. He merely contended that because the Manslaughter by Abortion Act and the Medical Practice Act have been construed in pari materia when a physician is involved, the Abortion Act as applied to him, violates the 14th Amendment of the U. S. Constitution and Article I, Sec. 20, Article IV, Sec. 23(2) of the Oregon Constitution. It is presumed that he relied on an equal protection argument because one of the Oregon Constitutional sections deals with equality of privileges and immunities of citizens and the other prohibits the legislature from passing local or special acts for the punishment of crimes. Neither of these arguments were at issue in Belous or Vuitch and the abortionist raised none of the vagueness or privacy questions which were raised in those cases. Another distinction here is that Elliott was not a physician, as was the case in Belous and Vuitch, and thus could not take advantage of the Medical Practice Act exceptions to abortion prosecution, i.e., to preserve the health of the mother.

The other case relied on by the Attorney General's office was State v. Moretti, 244 A.2d 499 (N.J. 1968). The Supreme Court of New Jersey upheld the conviction of two defendants, neither of whom were physicians, for conspiracy to commit abortion. Once again, the relevancy of this case to a disposition of the constitutional issues raised by Alaska's abortion law, is highly in doubt. The New Jersey abortion statute reads as follows:

"Any person who, maliciously or without lawful justification, with intent to cause or procure the miscarriage of a pregnant woman, administers or prescribes or advises or directs her to take or swallow any poison, drug, medicine or noxious thing, or uses any instrument or means whatever, is guilty of a high misdemeanor."

The defendants claimed that the law was so vague and indefinite that it suffers a constitutional infirmity. This is based on the language, "without lawful justification," which, it is argued, is so indefinite a concept that no one could tell when an abortion would be justified. The court said that a construction of the phrase which confined the meaning to the preservation of the mother's life would avoid any constitutional attack based on vagueness. The court then briefly discussed the fact that this construction had been upheld in previous New Jersey cases and it discussed several dissenting opinions as well. In so doing, the court said, regarding Chief Justice Weintraub, who dissented here also, that only he "expressed doubts as to the constitutionality of the statute, but his discussion related solely to the statute's application to eugenic abortions." The court then said that "the concern for a re-examination of the values represented by the law of criminal abortion is reflected in the recent creation by the legislature of a commission to re-evaluate the abortion statute. However, in the circumstances of the case before us, the ascertainment of the perimeter of lawful justification is not presented and we need not concern ourselves with the questions...." Thus the court stated that it would not even reach the broader constitutional issues presented by the phrase "lawful justification."

However, the court did say that the only inquiry in this case was "whether the defendants had sufficient warning that their conduct was criminal". "(A) defendant whose conduct was such that he clearly could tell that it was prohibited will not be heard to say that the statute is overly broad and that another, in some hypothetical case, could be misled." (emphasis mine.) "If, therefore, the statute gave sufficient warning to these defendants that the abortion they contemplated was not lawfully justifiable and thus was criminal, the statute is constitutional as applied to them." (emphasis mine) "That in some other case where the facts require it, we might be called upon to determine the specific limits of the statutory exception for abortions performed with lawful justification -- or to deal with a constitutional challenge made by a defendant claiming he was not adequately warned of the criminality of his conduct -- is of no aid to these defendants if their conduct was such as clearly fell within the prohibition of the statute."

The court then concludes that the defendants could not fail to be aware that the abortion would violate the statute. The defendants also offered no argument of lawful justification before the lower appellate court. In this court the defendants contended that they believed the abortion lawfully justified because it was to terminate an allegedly unwanted pregnancy. The court stated that if this was a lawful ground the statute was rendered meaningless because any abortion would be justified. It further stated that if there were any doubt that the defendants knew their actions were unlawful, it would be dissipated by their surreptitious actions revealed by the record.

Thus the court begs the larger constitutional issues because they are not presented for determination and because they can uphold the defendants' convictions and uphold the validity of the statute on narrower grounds. This is hardly good precedent for upholding the constitutionality of the New Jersey abortion law, much less Alaska's, under a broad-based constitutional attack in the proper circumstances (such as those in Belous and Vuitch), and the court so much as admits it.

Barry Jackson

-6-

March 18, 1970

Logic and good precedent, I believe, are on the side of any person, especially a physician, who would attack Alaska's law on void for vagueness and even right to privacy grounds.

HK:ic

March 2, 1970

The Honorable Terry Miller, Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

and

The Honorable Lowell Thomas, Jr., Chairman
Senate Health, Education and Welfare Committee
Alaska State Legislature
Juneau, Alaska

Dear Senators:

In response to your request of February 24, 1970, our office has reviewed the case law pertaining to the constitutionality of abortion laws similar in language to that contained in AS 11.15.060. While there are two recent decisions which held the phrase "necessary to preserve the life" of the mother unconstitutionally vague, for the reasons noted below we do not believe it is possible to assert with any reasonable degree of certainty that Alaska's Supreme Court would concur with those decisions.

The two cases referred to are People v. Belous, 80 Cal. Rptr. 354 (1969), and United States v. Vuitch, 305 F. Supp. 1032 (1969). Each of these cases interpreted an abortion statute that for our purposes is identical to Alaska's which reads as follows:

A person who administers to a woman pregnant with a child any medicine, drug, or substance whatever, or uses an instrument or other means, with intent to destroy the child, unless the action is necessary to preserve the life of the mother, is, if the death of a child or mother is thereby produced, guilty of manslaughter, and is punishable accordingly. (Emphasis added)

Each court determined that the phrase "necessary to preserve" is unconstitutionally vague.

Muc. 100

The Honorable Terry Miller and
The Honorable Lowell Thomas, Jr.

March 2, 1970

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Belous, decided by the California Supreme Court, was a four to three opinion and Vuitch, a Washington, D. C. case, was a memorandum opinion written by one judge.

As one of the dissenting opinions in Belous pointed out, the phrase "necessary to preserve" is or has been in the abortion statutes of many states for over a century and was even employed at common law, and implicit in the countless decisions that have dealt with such language is the view that the phrase is not unconstitutionally vague. Belous at 367 (Burke J. dissenting).

In State v. Elliott, 383 P.2d 382, 384-5 (Ore. 1963), the Supreme Court of Oregon held that Oregon's abortion law, which contains the same "necessary to preserve" standard as Alaska's abortion law, does not violate the United States or Oregon constitutions. Although "vagueness" is not discussed as such, this Oregon court found the defendant's arguments relating to due process "so lacking in merit, that we decline to consider them, except to state that [the abortion law of Oregon] does not violate any requirements or provisions of either the state or federal constitutions." Id. at 384. Furthermore, a recent New Jersey opinion specifically stated that the statutory standard in abortion statutes of "necessary to preserve the mother's life" is not unconstitutionally vague. State v. Moretti, 244 A.2d 499, 504 (N.J.), cert. denied, 393 U.S. 952, 89 S. Ct. 376 (1968).

In this regard it is interesting to note that the majority in Belous was not able to cite any authority for its conclusion that the term "necessary to preserve [the woman's] life" is impermissibly vague. Belous at 370. The judge in Vuitch was able to cite only Belous. Vuitch at 1034. It should also be noted that neither of these two decisions are binding on Alaskan Courts. The United States Supreme Court has recently denied review of the Belous decision, 38 U.S.L.W. 3313, just as it had refused the year before to hear the New Jersey abortion law case of State v. Moretti, supra. Such action allows each state to decide for itself the constitutional issue in question.

In summary, this office believes there are adequate legal arguments and decisions supporting the constitutionality of Alaska's current abortion law. Thus, we would not be

The Honorable Terry Miller and
The Honorable Lowell Thomas, Jr.

March 2, 1970

- 3 -

hesitant to carry out our statutory duty of defending its
constitutionality if the issue should ever be raised in court.

Sincerely,

G. Kent Edwards
Attorney General

GKE:jt

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

STATE OF ALASKA

SB 531
WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K, STATE CAPITOL — JUNEAU 99631

October 2, 1968

M E M O R A N D U M

TO: Board of Chiropractic Examiners
Clarence O. Risch, D. C., President
Dr. Norma Godfrey, Vice President
D. L. Hammond, D. C., Secretary

FROM: G. Kent Edwards
Attorney General

By: ^{WEC} William Edward Spear
Assistant Attorney General

RE: License of one Burger

SB 531

This memorandum deals with certain questions raised by members of the Board of Chiropractic Examiners concerning their powers and duties in issuing licenses to practice chiropractic in Alaska. Letters from all members of the board reveal the following facts and lie at the basis of the opinion stated herein.

FACTS:

One Burger and one Kary applied for licenses to practice chiropractic in the State of Alaska. Said applicants both attended Western States College; said Burger graduated from the school while said Kary apparently completed his work at another school and did graduate work only at the school and postgraduated. All members of the board approved said Kary's license which is not in issue here, but one member of the board refused to sign said Burger's license because she felt that Western States College does not fall within the ambit of AS 08.20.120(4) as an "accredited" school or college of chiropractic.

Western States College is located in Oregon and is licensed in that state to award chiropractic degrees. Likewise, it is licensed to train individuals for certain laboratories and issue lab and x-ray certificates to such individuals. The institution is approved by the Veterans Administration for veterans training in the profession; likewise, the Oregon Rehabilitation and Immigration authorities approve the institution to train foreign students. Dr. V. E. Marsh, President of the Alaska Association of Chiropractic Physicians and past president of the Board of Examiners states that the Board has approved Western States for all of the 15 years he has practiced in Alaska.

The objecting Board member is reluctant to issue the license because Western State does not appear on a list of "accredited" schools prepared by either of two accrediting agencies, to wit: the American Chiropractic Association or the International Chiropractic Association. It is stated that these two agencies evaluate chiropractic colleges and institutions on separate lists which do not overlap. It appears that the American Chiropractic Association at one time granted a provisional accreditation which was later rescinded. Since that time neither agency has granted accreditation.

QUESTION:

From the facts stated above may the Board lawfully issue a license to practice chiropractic in the State of Alaska to one Burger?

OPINION:

"AS 08.20.090. QUORUM OF THE BOARD. A majority of the board constitutes a quorum for the transaction of business."

"AS 08.20.120. QUALIFICATIONS OF APPLICANTS. Each applicant shall

* * *

(4) be a graduate of a legally chartered accredited school or college of chiropractic, approved by the board, which requires for graduation a residence course of instruction of not less than four years of nine months each; . . ."

It is unquestioned that the legislature has the power to regulate the practice of chiropractic because of its importance to the health, welfare, and safety of the citizens of Alaska. Neither is it questioned that the legislature may delegate this power of regulation to a board of administrators and/or examiners as long as the power it grants does not exceed its own. Conversely the board so created may not overstep the powers granted it by the legislature and it is precisely this point that is here drawn into question.

The boundaries of administrative discretion which the board may exercise in the prosecution of its business and duties are drawn by the language of the statute. In determining what

latitude the legislature granted the board in determining who could qualify for a license one must turn to AS 08.20.120, since qualifications are more clearly defined than others. For instance with respect to AS 08.20.120(1) the legislature has left the board little discretionary power; each applicant must be at least 21 years of age. Should the board issue a license to someone 18 years of age, it would constitute a clear breach of discretion.

However, AS 08.20.120(4) is not as definite as (1) and leaves the board much more discretionary power. This is not because the legislature could not be more definite in determining what constitutes an accredited school. In our Integrated Bar Act, for instance, one of the qualifications of an applicant is that he must have graduated from a school "approved by the American Bar Association." AS 08.08.130(4). The legislature, we must assume, may have provided if it so wished that the applicant have graduated from a school accredited by the American Chiropractic Association or the International Chiropractic Association or any other evaluating agency or body. The fact is that it did not. The only specific requirement the legislature requires other than that it be a "legally chartered accredited school or college of chiropractic, approved by the board," is that its requirements for graduation include a residence course of instruction of not less than four years of nine months each.

Therefore, in the lack of more positive language we must assume that the board is granted some discretion in determining what a "legally chartered accredited school or college of chiropractic" might be. It would seem that the words "approved by the board," set off by commas after the descriptive phrase does not grant ultimate, unfettered, positive power of determining accreditation to the board but rather is an additional requirement to be met after the accreditation has been established. It appears from the facts presented that Western States College of Chiropractic is legally chartered by the State of Oregon, which leaves only the word "accredited" to be given meaning.

It seems that "accredited" means something more than merely licensing or chartering, for those words were both available to the legislature when it enacted the section. Moreover, under this section the school in question must be both chartered and accredited; giving separate meaning to each word, "accredited" must mean something beyond "chartered." Licensing grants permission whereas accrediting usually connotes achievement of high standards and the resulting recognition.

As previously noted herein, the legislature could have chosen to dictate that some national agency set the standards of accreditation, or they could have insisted that in order to be accredited, a school must appear on some national list. This they did not do. We do not feel that the legislature intended accreditation or the power to accredit to lie exclusively with any particular body. A more reasonable position is that "accredited" means some recognition beyond mere chartering, by any entity. "Accredited" means authoritatively approved. Certainly, a national evaluating agency could be an authority and the board would be correct in considering its approval. However, the Veterans Administration or the Oregon Rehabilitating and Immigration authorities may also be considered accrediting entities, and their approval could qualify as an act of accrediting.

The final requirement after chartering and accrediting is for the board itself to approve of the school. If the board wishes to agree with the accreditation given by another entity it will grant its approval. Here it would appear that a majority of the board does recognize Western States not only as being chartered, but sufficiently accredited as well, and has approved the institution as meeting the standards necessary for licensing a chiropractor in the State of Alaska.

GKE:WES:rw

random on the campus.

A copy of their findings, with permission to publish was sought by Dr. George Haynes, Administrative Dean of the LACC.

The following report was submitted, and is published as received from the legislative committee, in full text and with no editing.

Ed.

SUB-COMMITTEE REPORT

**Chiropractic Study Tour
December 3-9, 1967**

The following is the report of Sub-Committee No. 3 of the State Affairs Committee for the period December 3 through December 8, 1967, in the study of Chiropractic Laws and Practices. The Sub-Committee consisted of: Representatives DeForest Strang, Chairman, Federic J. Marshall, Vincent J. Pettipren, and Thomas J. Anderson.

The study consisted of a review of chiropractic instruction, at selected colleges, as to duration, entering qualification, curriculum, and graduation requirements, and of a chiropractic hospital, with emphasis on type and efficacy of care. The study resulted from the confusion of testimony during committee hearings on Senate Bill 227 and hearing testimony, as well as floor debate during a prior session regarding 1966 House Bill 3381. An apparent conflict in the chiropractic profession was demonstrated in testimony, and an antipathy as well as a non-tolerance toward chiropractic generally was exhibited by members of the medical profession appearing before the committee.

The sub-committee was received cordially at three study locations, the Palmer College of Chiropractic in Davenport, Iowa, the Spears Chiropractic Hospital in Denver, Colorado, and the Los Angeles Chiropractic College in Glendale, California. Full assistance was given the committee in display of facilities and response to interrogation, and no objection was passed at any time to the use of the tape recorder during interviews of staff and faculty personnel.

The committee determined that chiropractic is divided by a schism of two conflicting philosophies, which ap-

MICHIGAN LEGISLATIVE INVESTIGATORS REPORT ON CHIROPRACTIC EDUCATION.

In December 1967, a committee of legislators from the State of Michigan visited Los Angeles College of Chiropractic, as a part of an inspection tour which included Palmer College of Chiropractic at Davenport, Iowa, and the Spears Chiropractic Hospital at Denver, Colorado.

The purpose of the investigation was to learn first hand about the education of the chiropractic physician, and the practice of chiropractic, so that this information could be given directly to the Michigan legislature. At LACC, the committee inspected the plant, sat in conference with the administration and the faculty, and conducted interviews at

parently contributes to non-acceptance by other professions.

The basic chiropractic philosophy, that originated in about 1895, holds that bodily health is controllable solely by proper nutritional balance, good physical habits, and the correct alignment of the several vertebra of the spine and the correct relationship of the vertebra to the central spinal cord and ancillary nervous system. There is heavy reliance on the use of X-ray for examining the patient's spinal system. The majority of the practitioners of this philosophy, numbering about 12% of the profession, are graduates of the Palmer College in Davenport. It is the committee's understanding that two or three other small chiropractic colleges in the United States also teach on the Palmer philosophy, based almost entirely on the spinal manipulation and suggestion to the patient of good habits and diet supplementation.

In this method, little work is done on human structural members other than the spine itself, and there is only limited attempt at diagnosis and use of the diagnostic tools used by the medical physician. This segment of the profession opposed House Bill 3381 in 1966. The committee was advised that it was felt the bill tended to authorize the unwarranted expansion of the chiropractor into the diagnostic and medical fields and could contribute to ultimate discrediting of the profession by medical authorities, with possible future punitive legislation. Members of this group are affiliated with the International Chiropractic Association.

The major portion of the members of the profession (about 88%) are graduates of more liberal colleges of chiropractic, of which the Los Angeles College of Chiropractic is an example, and are affiliated with the American Chiropractic Association. This group (ACA) professes a belief in the need for diagnostic appraisal of the patient's general and specific condition, full use of diagnostic tools, such as those used by the physician, and in manipulation of body extremities and joints other than the spine in addition to the correct alignment of vertebra and diet and health control acknowledged by the adherents to the more conservative ICA methods

of practice. Approximately seven chiropractic colleges are instructing in this philosophy.

The Palmer College at Davenport is a full four-year institution providing full education in the basic sciences and approximately two years of classroom and clinical training in manipulative therapy directed at the spine. Special attention is paid to the study of the nerves and nervous system and its relationship to the spinal column. At Palmer, it is taught that most bodily malfunctions and disorders, and some diseases, can be corrected by chiropractic adjustments to correct spinal "subluxations" or vertebral misalignments which might cause interfering pressure on portions of the central nervous system affecting all parts of the body. The faculty stated it is their firm belief and teaching that proper nutritional and dietary control, and regular health habits, combined with correct functioning and alignment of the spinal column members, would assure optimum health in an individual and prevent bodily disorders.

Only minimal effort is made to instruct in recognition of bacterially or virally borne diseases. One year pre-medical training is preferred for entrance at Palmer, although a ninety-day pre-prep course in general sciences is given to entrants not having this qualification. The committee was advised that effective January, 1969, a two-year pre-med course would be requisite to admittance.

The Los Angeles College of Chiropractic, affiliated with ACA, is also a full four-year institution, requiring one year pre-medical instruction for admission. As at Palmer, full instruction is given in the basic sciences, and in the chiropractic manipulative technique. In addition, much attention is paid to diagnostic analysis of human ailments, and to the use of normal medical diagnostic devices and to various therapeutic treatments. Unlike Palmer, where nerve study and dissections are performed on animal carcasses (by reason of a limiting Iowa statute), at Los Angeles College of Chiropractic, human cadavers are used for laboratory study. The committee noted that the curriculum at the Los Angeles institution included a broader treatment of the generally accepted

medical theories than at Palmer, where the efficacy of spinal chiropractic was held paramount over all other medical treatments. It appeared that the Los Angeles College (and ostensibly other college affiliated with ACA) treated chiropractic as an important branch of the medical sciences, to be ancillary to other phases of the treatment of human disorders, and at Palmer (and ostensibly other ICA affiliated colleges) that simple spinal chiropractic manipulation was treated as the primary and most effective treatment of ailments, with the medical practices of other branches of the sciences of lesser importance. This philosophical difference is the apparent chief cause of the schism in the profession of chiropractic.

Both institutions are seemingly adequately equipped in both staff and facilities to perform their function. The professional staff of both institutions appears competent as to background, based on the citations contained in the catalogues, and auxiliary personnel such as technicians, laboratory instructors and administrative aides, although not interviewed, were cited as competent. Facilities in both institutions include modern classrooms, laboratories, practice rooms, public clinical, limited medical library, and modern instructing devices and equipment.

There is one recognized chiropractic hospital, that being Spears Chiropractic Hospital at Denver, Colorado licensed by the State of Colorado. The hospital is affiliated with ACA and was founded in the 1940's by Dr. Leo Spears, now deceased, and currently operated by Drs. Daniel C. and Howard M. Spears, and has survived a long series of legal battles for existence under Colorado law. Approximately 130,000 patients have been treated since founding, many reportedly with startling success after the failure of other professions and hospitals to effect relief or cures. The committee viewed the hospital and was impressed with the seeming efficiency and effectiveness of the treatments given. Diagnosis is made of the condition of the entire body, and on the use of various traction and non-medical therapeutic devices for orthopedic and muscular adjustments. No medicines are administered at the hospital, nor is any

surgery performed, except occasionally by invited outside medical physicians in emergency situations. All staff members are chiropractic personnel and there is strong reliance on the chiropractic adjustment as corrective and preventative therapy.

The facilities of the hospital include a pediatrics ward, which was reported to have had remarkable effectiveness in certain crippling disabilities, and a number of muscle building and therapy devices for assistance in recovery of atrophied members and limbs. The hospital maintains a regular schedule of advertising publications, mailed to the profession, and to the public. The circulars include citations and testimonials of successful treatments at the hospital and general advertising for the chiropractic treatment.

In summary, the committee found that members of the chiropractic profession are well trained in professional techniques and basic sciences and knowledge as to human anatomy. It is believed that both philosophies (ICA and ACA) represent the ability of members of the profession to perform an important adjunctive service in the treatment of human disorders. The committee feels, however, that there is an excessive reliance in the ICA or Palmer concept on the efficacy of the spinal manipulation to correct and maintain bodily health. On the other hand, the ACA adherents would seem to move markedly close to the practice of medicine in its diagnostic and therapeutic actions on the human body.

Rep. DeForest Strang
Chairman
Rep. Frederic J. Marshall
Rep. Vincent Pettipren
Rep. Thomas J. Anderson

GET WELL SOON!

Dr. Josephine Stiers Tennyson, who has been very ill, is now convalescing nicely at home and would really appreciate hearing from all of her friends around the State. Get Well soon Dr. Tennyson!

NEW CRITERIA AND ANALYSIS THEREOFACCREDITATION

From two conferences (June 9 and July 14) with the Staff of the Accreditation and Institutional Eligibility Unit of the U.S. Office of Education (John R. Proffitt and Ronald Pugsley) and from two documents provided by them (Exhibit A - "List of Nationally Recognized Accrediting Agencies and Associations" and Exhibit B - "Examples of Documentation of the Criteria for Nationally Recognized Accrediting Bodies") some basic concepts become very clear:

1. Specialized agencies designed to accredit professional institutions are not carbon copies of regional agencies designed to accredit college programs in the arts and sciences. (Exhibit A - Page 1, last two paragraphs)
2. An accrediting agency designed to accredit institutions preparing students for careers in a profession cannot divorce itself from that profession and operate in isolation. (Exhibit A - Page 1, paragraph 3, item 1; Exhibit B - Page 1, item 1, line 5; Page 2, item 4, (2); Page 4, item 11, lines 10 and 11)
3. The institutions must be centrally and significantly represented in the processes of accreditation. (Exhibit A - Page 1, paragraph 3, item 1)
4. The current trend is for representation from the general public. (Exhibit A - Page 1, next to last paragraph, line 4)
5. In the case of professions that require legal licensure or certification, representation from licensing bodies is desirable. (Exhibit A - Page 4, criterion 11; Exhibit B - Page 4, item 11, lines 6 and 7)
6. "It is unlikely that more than one association or agency will qualify for recognition." (Exhibit A - Page 4, next to last paragraph)
7. Only high standards of qualities are acceptable.
 - a. Admissions standards
 - b. Faculty qualifications
 - c. Faculty-student ratio
 - d. Facilities
 - e. Financial stability

(Quality was a major, if not the major, item stressed by the U.S. Office of Education staff in our two conferences.)

With these facts in mind, it appears logical to conclude that an accrediting agency composed of representatives of the institutions, the profession, the licensing bodies and the public would be acceptable provided there was only one agency extant, provided the minimum standards were high enough and sufficiently clear, and provided performance of the agency is qualitatively in line with the performance of similar national accrediting agencies.

HB 531

SUGGESTED QUESTIONS TO DR. HAMMOND AND OTHERS

1. Do you feel it is not being discriminatory to choose applicants only from one association?
2. What chance would there be for Board members to be chosen for membership of the Alaska Chiropractic Society?
3. What about doctors who might wish to serve on the Chiropractic Board but don't agree to belong to any organization?
4. Are there two national accrediting agencies?
 - a. Do they make constant evaluations of the respective colleges?
 - b. What is the purpose of these national accrediting agencies?
 - c. When they decide to accredit or discredit a college, is this for the purpose of forcing those colleges to improve their image so that chiropractic colleges raise their standards to that of medical schools, etc.?
5. What college are you a graduate from, Dr. Hammond?
6. Does the International Chiropractors Association fully accredit Western States College?
 - a. Does the American Chiropractor's Accrediting Agency fully accredit your college?
 - b. Is it accredited at all by either of these agencies?
 - c. Does Washington state allow graduates from your college to apply for a licensure in that state at the present time?
 - d. Do you feel Alaska should allow these graduates to come here when Washington state feels they should be kept out?

- e. Do you feel you are better qualified to judge the merits of the many chiropractic colleges than the national accrediting agencies?
- f. Are any of the present board members from colleges fully accredited by either of the national accrediting organizations?
- g. How many members of the Alaska Chiropractors Association are graduates from the unaccredited college you are from?
- h. How many members of the Alaska Chiropractors Association are graduates from fully accredited chiropractic colleges?
- i. How many paid up members are there in the Alaska Chiropractors Association?
- j. Are the four members of the Alaska Chiropractic Society and the student members at the Palmer College of Chiropractic from a fully accredited college, accredited by either national organization?
- k. If graduates from unaccredited colleges can become licensed, what assurance do you have that that college will ever raise their standards sufficiently to become fully accredited?
- l. Would you object to having the chiropractic board chosen by the Governor, as in the past?
 - (1) Would you object to the board being composed of one member of the Alaska Chiropractors Association, one member of the Alaska Chiropractors Society, and one lay member chosen by the Governor?
 - (2) Do you object to having the board composed of members who are from colleges fully accredited?

QUESTIONS YOU MAY ASK ME

1. What do you think would happen to your profession if the Alaska Chiropractors Association were to decide who could become board members?
2. What do you think would happen to your profession if the Alaska Chiropractic Society were to decide who could become board members?
3. Would you object to a lay member on the board?
4. Are there other states with more than one association?
5. What happens on those boards?
6. Do you feel that colleges should be fully accredited?
7. Are the two national accrediting associations doing what they set out to do?
8. Are the accrediting standards of each national organization equal?
9. Do you have any evidence showing Western States College is not fully accredited?
10. Do you have any information indicating that Dr. Hammond has ever felt that the Chiropractic board should accept the national accredited agency as the arbiter in the matter of college accreditation?
11. Have you recently received an appointment to serve as a coordinator of legislative affairs on the national level?
12. Would your work on a national level have to do with problems such as these we are talking about today?

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.



Alaska State Federation of Fishermen's Associations

Box 455
Cordova, Ak 99574
April 22, 1970

Representative Joe McGill, Chairman
Resources Committee
Alaska State House of Representatives
Juneau, Alaska

COPY

Dear Joe,

We strongly urge the passage of CS-SB 536 an,
prohibiting water pollution.

We feel this is a priority bill which seeks
to prevent damage to our marine resources by pollution
from oil tankers dumping dirty ballast.

Sincerely,

Richard
Richard Janson,
Acting Secretary

cc:
Barry Jackson, Judiciary Chairman
Mike Bradner, Sales Chairman

Mr. Jackson, Chairman, and Members of the House Judiciary Committee.

For the record, my name is Roscoe Bell, Land and Legislative Consultant for BP Alaska.

It is my great personal pleasure to speak to you today, and as a representative of British Petroleum Alaska to recommend for your favorable consideration House Committee Substitute for Senate Bill 536.

BP, along with a number of other major international oil companies, has for the past several years sponsored the Clean Seas Program which has been responsible for international agreements and for the substantial decrease in ballast dumping on the high seas and territorial waters. But we all know that much more must be done. Alaska is rightfully concerned about the problems now and in the future relating the dumping of oily ballast.

This legislation is a step with which we agree in principle, although we cannot state with certainty that it will not be challenged in court. We firmly believe that oil spills are a joint responsibility of the shipping industry and the government. As major world oil shippers, the majors included in the Clean Seas Program have accepted their responsibility by developing new handling techniques for completely eliminating the dumping of oily ballast

and by installing ballast cleaning facilities at major loading terminals.

However, there still remains the area 50 miles out at sea where ballast dumping is approved under international agreement. We do not believe that dumping of oily ballast should be legal anywhere on the seas, and most certainly not not anywhere in the seas around Alaska.

Unfortunately, there are independent charter tankers which are not under the complete control of the shippers; although here, too, control is attempted through the terms of the long-term charter contracts as well as the spot charters.

We believe that international agreements should be strengthened. We commend the U.S. Government Water Quality Control Administration for their interest in eliminating, or reducing, the dumping of oily ballast, and we certainly commend the State of Alaska for considering this proposed legislation.

We have examined the legis lation and find that it is consistent with the federal legislation. This is a point in its favor. As you all know, in connection with management and operation of tankers, one of the principal problems is having rules that are consistent, that are generally understood, and that do not vary from port to port, and that can be easily made part of the terms of the charters and can be understood by the captains and other personnel of the ships. Many of the problems that have been

experienced have been human errors or human carelessness. This bill is another step in trying to control this kind of action. By cooperation of the oil companies, the shipping industry, the officials responsible for administration of this law and the federal laws, we will be able to protect Alaska's marine environment and resources.

We also commend the Legislature for the Senate Joint Resolution 95 and hope that the State will press for the international conference between the U.S. and Canada to see if a special zone cannot be set up under international law surrounding these countries where the dumping of oily ballast is completely prohibited.

I thank you for your time and the opportunity to talk with you on this very important subject. By its passage, this bill will further demonstrate Alaska's concern with the environment.

SB-536

V

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JUNEAU ALASKA 1 1154A PDT

JARRED CARTER

ROOM 6420 STATE DEPT BLDG WASHDC

THE FOLLOWING IS A TEXT OF A BILL SENATE BILL 356 WHICH HAS PASSED OUR

STATE SENATE AND IS NOW BEING CONSIDERED BY THE HOUSE RESOURCES COMMITTEE. IT WOULD BE APPRECIATED IF YOU COULD REVIEW THE BILL FROM THE STANDPOINT OF FOREIGN RELATIONS AND WIRE ME ANY COMMENTS WHICH YOU FEEL

MAY BE OF ASSISTANCE IN OUR DELIBERATIONS. AN ACT PROHIBITING WATER POLLUTION SECTION 1 AS46.05 IS AMENDED BY ADDING A NEW SECTION TO READ SECTION

46.05.173 BALLAST WATER DISCHARGE SECTION A NO PERSON MAY POLLUTE OR ADD TO POLLUTION OF WATERS

OF THE STATE BY DISCHARGING FROM ANY VESSEL BALLAST WATER, TANK CLEANING WASTE WATER OR OTHER WASTE CONTAINING

OIL IN EXCESS OF 100 PARTS PER MILLION OF OILY RESIDUE, OR IN EXCESS OF A PERCENTAGE LEVEL TO BE ESTABLISHED BY

THE DEPARTMENT WHICH DOES NOT EXCEED 100 PARTS PER MILLION OF OILY RESIDUE. SECTION B EXCEPT AS PROVIDED IN C

X changed eliminated

OF THIS SECTION, VESSEL TAKING ON OIL, PETROLEUM PRODUCTS X ARRIVE

X changed

IN PORTS IN THE STATE WITHOUT HAVING DISCHARGED BALLAST AT SEA, AND THE MASTER OF THE VESSEL SHALL

CERTIFY THAT FACT ON FORMS TO BE PROVIDED BY THE DEPARTMENT SECTION C VESSELS EQUIPPED

WITH TANKS USED EXCLUSIVELY FOR BALLAST OR CAPABLE OF PRODUCING BALLAST WITH AN OILY CONTENT

LESS THAN THAT PROVIDED FOR IN SECTION A

MAY BE CERTIFIED BY THE DEPARTMENT TO DISCHARGE

X eliminated

THAT BALLAST AT SEA, INCLUDING THE WATERS
OF THE STATE SECTION 2 AS46.05.210 IS AMENDED
TO READ SECTION 4605.210 IS AMENDED TO READ SECTION
46.05.210 PENALTIES SECTION A A PERSON WHO VIOLATES
PROVISION OF THIS CHAPTER OR AN ORDER ISSUED UNDER THIS
CHAPTER, OR WHO FALSELY CERTIFIES INFORMATION
REQUIRED UNDER THIS CHAPTER IS GUILTY OF A
MISDEMEANOR AND UPON CONVICTION IS PUNISHABLE BY FINE
OF NOT LESS THAN 500 OR MORE THAN 25,000 AND IMPRISONMENT
FOR NOT LESS THAN 30 DAYS NOR MORE THAN A YEAR EACH UNLAWFUL
ACT CONSTITUTES A SEPARATE OFFENSE SECTION B IN
ADDITION TO THE PENALTIES PROVIDED IN SECTION A. A PERSON
WHO VIOLATES SECTIONS 172-173 OF THIS CHAPTER IS LIABLE
IN A CIVIL ACTION FOR LIQUIDATED DAMAGES TO BE
ASSESSED BY THE COURT FOR AMOUNT NOT LESS THAN
5000 NOR MORE THAN 100,000 DEPENDING ON THE SEVERITY OF THE
VIOLATION SECTION C IN ADDITION TO THE PENALTIES PROVIDED IN
A AND B OF THIS SECTION, A PERSON WHO VIOLATES SECTIONS
172-173 OF THIS CHAPTER IS LIABLE IN A CIVIL
ACTION FOR DAMAGES IN THE AMOUNT NOT TO EXCEED \$100 PER
GROSS TON OF THE VIOLATING VESSEL OR \$14,000,000, WHICH
EVER IS LESS. (DAMAGES) AS USED IN REMOVAL
OF A POLLUTANT AND REASONABLE RESTORATION OF THE
ENVIRONMENT TO ITS FORMER STATE

REPRESENTATIVE JOE MCGILL CHAIRMAN HOUSE
RESOURCES COMMITTEE POUCH V JUNEAU.

changed

X changed



DEPARTMENT OF STATE

Washington, D. C. 20520

SB-534

May 12, 1970

Mr. Joseph McGill
Chairman, Natural Resources Committee
House of Representatives
Juneau, Alaska 99801

Dear Mr. Chairman:

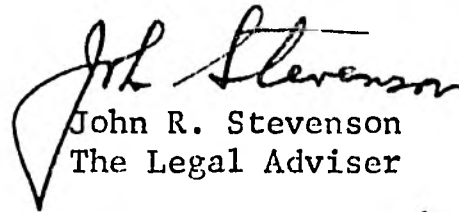
Mr. Jared Carter of my office has brought to my attention your telegram to him of May 2, 1970 asking the Department's views from the standpoint of foreign relations on legislation pending in your Committee. We have reviewed the draft bill and have the following comments:

Alaska's enactment of this legislation would create foreign relations difficulties for the United States by conditioning a ship's access to Alaskan ports upon that ship's adherence to standards in areas of the high seas beyond the jurisdiction of Alaska. The effect of the bill would be to impose conditions upon commercial maritime activities on the high seas. As explained in the attached press release, which was issued after the Canadian Government introduced into its Parliament bills on the limits of the territorial sea and fisheries and pollution control jurisdiction, the United States has long sought international solutions, rather than unilateral approaches, to problems involving the high seas. Specifically, we are seeking a new international means for controlling pollution on the high seas. Our efforts to obtain such international solutions would be greatly complicated if we ourselves attempt to solve these admittedly important problems on a unilateral basis. The problem is compounded by our federal system and the prospect of the several states imposing their own (possibly inconsistent) standards and regulations. For these reasons, the Department would be opposed to enactment of the bill set forth in your cable.

- 2 -

I hope these views are of assistance to you in your Committee's deliberations on this bill. If we can be of any further assistance, please let us know.

Sincerely yours,


John R. Stevenson
The Legal Adviser

Attachment:

Press Release.

DEPARTMENT OF STATE

APRIL 15, 1970

FOR THE PRESS

NO. 121

CAUTION - FUTURE RELEASE

FOR RELEASE AT 1:00 P.M., E.S.T., WEDNESDAY, APRIL 15, 1970. NOT TO BE PREVIOUSLY PUBLISHED, QUOTED FROM, OR USED IN ANY WAY.

DEPARTMENT OF STATE STATEMENT ON GOVERNMENT OF CANADA'S BILLS ON LIMITS OF THE TERRITORIAL SEA, FISHERIES AND POLLUTION

Last week the Canadian Government introduced in the House of Commons two bills dealing with pollution in the Arctic, fisheries and the limits of the territorial sea. The enactment and implementation of these measures would affect the exercise by the United States and other countries of the right to freedom of the seas in large areas of the high seas and would adversely affect our efforts to reach international agreement on the use of the seas.

The bills seek to establish pollution zones in Arctic waters up to 100 miles from every point of Canadian coastal territory above the 60th parallel. Within these zones, Canada would assert the right to control all shipping, to prescribe standards of vessel construction, navigation and operation, and to prohibit, if Canada deemed it necessary, the free passage of vessels in those waters. Additionally, the legislation seeks to authorize the establishment of exclusive Canadian fisheries in areas of the high seas beyond 12 miles, such as the Gulf of St. Lawrence and the Bay of Fundy, and of a 12-mile territorial sea off Canada's coasts.

International law provides no basis for these proposed unilateral extensions of jurisdictions on the high seas, and the United States can neither accept nor acquiesce in the assertion of such jurisdiction.

We are concerned that this action by Canada if not opposed by us, would be taken as precedent in other parts of the world for other unilateral infringements of the freedom of the seas. If Canada had the right to claim and exercise exclusive pollution and resources jurisdiction on the high seas, other countries could assert the right to exercise jurisdiction for other purposes, some reasonable and some not, but all equally invalid according to international law. Merchant shipping would be severely restricted, and naval mobility would be seriously jeopardized. The potential for serious international dispute and conflict is obvious.

The United States has long sought international solutions rather than national approaches to problems involving the high seas. We are working for appropriate action within the United Nations framework looking toward the conclusion of a new international treaty dealing with the limit of the territorial sea, freedom of transit through and over international straits and defining preferential fishing rights for coastal states on the high seas.

We are also seeking new international means for controlling pollution on the high seas. Last fall 47 countries, including the United States and Canada, participated in the preparation of two international conventions establishing the right of a coastal state to take certain limited anti-pollution measures against vessels on the high seas, and also imposing strict liability upon the owners of vessels responsible for pollution.

These

These conventions which the United States has recently signed were concluded under U.N. auspices at Brussels. Other international approaches to control of pollution are underway at NATO and the U.N. Moreover, the United States is acutely aware of the peculiar ecological nature of the Arctic region, and the potential dangers of oil pollution in that area. The Arctic is a region important to all nations in its unique environment, its increasing significance as a world trade route and as a source of natural resources. We believe the Arctic beyond national jurisdiction should be subject to internationally agreed rules protecting its assets, both living and non-living, and have noted with pleasure the Canadian Prime Minister's public statement that Canada would be prepared to enter into multilateral efforts to develop agreed rules of environmental protection. To this end, we intend shortly to ask other interested states to join in an international conference designed to establish rules for the Arctic beyond national jurisdiction by international agreement. We would be pleased if Canada were to join us in organizing such a conference.

We regret that the Canadian Government, while not excluding these cooperative international approaches to our mutual problems involving the oceans, now proposes to take unilateral action to assert its own jurisdiction and establish its own rules pending the conclusion of international agreements satisfactory to it. For the reasons indicated earlier the United States can not accept these unilateral jurisdictional assertions and we have urged the Canadian Government to defer making them effective while cooperating in efforts promptly to reach internationally agreed solutions.

If, however, the Canadian Government is unwilling to await international agreement, we have urged that in the interest of avoiding a continuing dispute and undermining our efforts to achieve international agreement, that we submit our differences regarding pollution and exclusive fisheries jurisdiction beyond 12 miles to the International Court of Justice, the forum where disputes of this nature should rightfully be settled. Canada's action last week excluded such disputes from its acceptance of the International Court's compulsory jurisdiction. However, such action only prevents Canada from being forced into the Court. It does not preclude Canada voluntarily joining with us in submitting these disputes to the Court or an appropriate chamber of the Court.

With respect to the 12 mile limit on the territorial sea, we have publicly indicated our willingness to accept such limit, but only as part of an agreed international treaty also providing for freedom of passage through and over international straits.

The history of U.S.-Canadian relations is unique in world affairs for its closeness and cooperation. We are confident that, in this spirit, our two countries will continue to resolve our differences amicably and with mutual understanding.

* * *

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

SB 538

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

May 19, 1970

Barry,

Your HCS for SB 538 (school lands) is attached. It incorporates the W&E amendment and Mr. Bell's amendment regarding equivalent values. In his amendment (the fourth sentence of the section), the second to last word could read "lower" instead of "higher". He also recommends deleting "privately owned lands" from the second sentence, because it allows for a negotiated sale instead of bidding, and it puts the administrator of the provision in a difficult spot. Since the committee didn't seem to reach an agreement on this point, I left the words in; they can easily be deleted.

A.
rt

5/30/70

AMENDMENT

IN THE HOUSE

BY The Judiciary Committee

TO: HCSSB 538

Page 1, Line 24:

Insert new Section 2 to read:

This Act does not apply to land which, on the effective date of
this Act, is being advertised or negotiated for sale, lease or other
disposal. *has been or*

File - this
bill may
come to us



Alaska Court System

State of Alaska

ROBERT H. REYNOLDS
ADMINISTRATIVE DIRECTOR
Gerald A. Peterson
ASSISTANT ADMINISTRATIVE DIRECTOR
ERNEST Z. REHBOCK
LEGAL ASSISTANT

OFFICE OF ADMINISTRATIVE DIRECTOR
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

April 16, 1970

The Honorable Terry Miller
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V, State Capitol
Juneau, Alaska 99801

RE: Senate Bill 539

Dear Senator Miller:

We have reviewed the provisions of Senate Bill 539 and are somewhat at a loss to provide an accurate fiscal note for same. This is due, in part, to the rather indefinite requirement for marriage counseling, and further, to the fact that it would take more time than we have available to predict the number and cost of forms to be devised, printed and distributed to the Masters provided by the act.

As far as marriage counseling is concerned, to be available, we would have to have at least three more marriage counselors, one in Fairbanks, one in Juneau, and an additional marriage counselor in Anchorage. Each of these marriage counselors would require a secretary. Furthermore, to make their services available, the counselors would necessarily be required to ride circuit in the "Bush", and there is no way we can accurately anticipate the need for them to travel.

It is my own opinion, without regard to the ultimate merits of the bill, that the matter needs further study to determine its true costs and other ramifications.

The Honorable Terry Miller
April 16, 1970
Page Two

I enclose herewith a copy of a memorandum, evaluating this bill, which I directed to be prepared by my Legal Assistant, Dr. Ernest Rehbock. I share his conclusions for the most part.

Sincerely,



Robert H. Reynolds
Administrative Director

RHR/rgg

Encl

MEMORANDUM

April 3, 1970

TO: Robert H. Reynolds
Administrative Director

FROM: EZR *ER*

SUBJECT: Some Comments on Senate Bill 539 to Provide for
Alternate Procedure in Actions for Divorce

You directed my attention to a senate bill introduced March 17, 1970, and purportedly favorably voted upon by the Committee on Health, Welfare and Education. The popular name for this bill seems to be the "quickie divorce action."

Under this statute provisions in the Code of Civil Procedure relating to divorce would be amended by adding new sections.

It appears that a non-adversary action for divorce would be established under AS 09.55.231 of this bill. Residence and domicile requirements under existing law are to be maintained.

Under proposed AS 09.55.232 family court masters may be appointed to carry out these provisions. I did not discover any provisions which provide special expertise in this master and must read the bill to authorize the appointment of a standing master or of a district judge or of any magistrate of the court of Alaska to conduct divorce hearings under this statute. The superior court judge is, however, authorized to conduct these hearings if he so elects.

AS 09.55.233 provides for the services of a family court marriage counselor to the extent available for a voluntary meeting. I should add at the present time only one such counselor has been budgeted for the entire state of Alaska.

AS 09.55.234 would make the procedure applicable to a divorce over which the court has jurisdiction where custody of minor children has been settled by agreement, and property issues are limited to support and alimony questions and property is limited to such items as dwelling, trade business, personal effects and similar items.

Mr. Robert H. Reynolds
April 3, 1970
Page Two

The action as herein provided shall be commenced under 09.55.235 by filing a fee and by filing documents.

It seems to be of some importance to take note of the documents which must be filed:

1. Statement under oath by both spouses that there is incompatibility of temperament.
2. Statement by both spouses under oath containing the necessary personal data and description of property owned.
3. An agreement signed under oath by both spouses expressing the desire to terminate the marriage, expressing their wishes as to custody of children, as to alimony and as to property award.

AS 09.55.236 would regulate the scope of hearing. The hearing officer may be the family court master or the superior court judge where applicable. The hearing is concerned with the question of children custody and the fairness of the agreement as to custody and as to support money provisions, as well as property division.

AS 09.55.237 would authorize entry of decree based on findings of fact and conclusions of law unless certain appropriate objections are being made or the superior court determines the unfairness or inadequacy of the settlement.

The following comments seem appropriate:

The social policy upon which the bill is grounded is apparently that a marriage which no longer represents a meaningful social and personal relationship should be terminated if so desired by both spouses without unnecessary litigation.

It is undoubtedly correct that both under statute and court decisions Alaska is committed to incompatibility of temperament as a ground for divorce absolute regardless of the question of who is at fault for the destruction of a meaningful relationship. In jurisdictions where divorce on objective grounds is known, it has always been recognized that there must be a deep disruption of the marital relationship and that on trifling grounds the court would not grant divorce. See material listed in Gobron v. Gobron, 2 Alaska Law Journal, p. 5 (1964), which defines the conflict

Mr. Robert H. Reynolds
April 3, 1970
Page Three

in personalities as one so deep as to be irreconcilable and to render it impossible for the parties to continue a normal marital relationship with each other.

The nature of this definition would seem to indicate that a judicial determination of the existence of this ground for divorce is necessary.

It is the policy of the state of Alaska that in all civil actions of some significance parties should be represented by counsel. Special provisions were made for the creation of the Alaska Legal Services Corporation for the express purpose that indigents may not be deprived of the benefit of advice of counsel.

The use of masters is encouraged under the Alaska rules and while masters are widely used under appropriate court orders for family matters, the use of masters has always been thoughtfully limited to fields of special expertise and has never been conceived as a matter which can be handled by random disposition or by voluntary submission of litigants to such a master.

In Alaska as in most jurisdictions, the drafting of legal documents pertaining to division of property, alimony and child support is considered practice of law. Litigants would not be forbidden to draft these papers themselves but any advice they may have to obtain with regard to such a settlement is legal advice and must, therefore, be forthcoming from attorneys authorized to practice law in Alaska.

In the matter of child custody and property division advice of counsel is so much more important because child custody can readily involve difficult jurisdictional questions and questions of determination of domicile and property division questions may involve technicalities of the law of real and personal property which may entirely escape the attention of the spouses or of a layman social advisor. Most of the masters which would be available to the Alaska court system to hear the so-called quickie divorce proceedings and to approve the documents submitted to them are laymen in the field of law. It must be remembered that magistrates and district judges have no jurisdiction in property actions and in equity actions and, therefore, may entirely lack the expertise necessary to make recommendations in a legal matter which concerns both property law and equity.

Mr. Robert H. Reynolds
April 3, 1970
Page Four

The fact that the superior court judge may if he so deems appropriate hear the matter himself or reverse the recommendations seems small consolation. Realistic consideration of Alaska geographic distances and of the heavy calendar with which a limited number of superior court judges have to contend will be a formidable obstacle to a meaningful review of the merits of the application and the details of the settlement in many instances.

Although the statement as to voluntariness of the action is made under oath, many litigants may not be fully aware of the nature of the action and its effect upon their children and their property possessions. Without mandatory advice of counsel such divorce action may be brought improvidently and in a manner inconsistent with the cultural and ethnic aspirations and ways of the spouses or dispositions may be made which could result in unfairness as to one of the parties.

It is my conviction that in this form at least, the bill defeats rather than implements the social policies of the state which are:

- (1) Upon serious incompatibility, divorce be granted.
- (2) Advice of counsel shall be available.
- (3) Utmost care should be taken that provisions of alimony and property divisions are in the best interests of the spouses and their minor children.

With regard to the last mentioned items, we should bear in mind that the state has a particular interest in the welfare of children. The order for custody and the provisions for child support must be so designed that the best interests of the child are protected. Neither parent is entitled to child custody as of right. AS 09.55.205. The important viewpoint of paramount consideration of the welfare of the child has been judicially expressed in numerous decisions. Bass v. Bass, 437 P.2d 324 (Alaska 1968); Ransier v. Ransier, 414 P.2d 956 (Alaska 1966). To say the least, it is unclear under the bill how the somewhat cavalier manner of submitting a statement of the parents to a master (in most cases a magistrate) can be a sufficient basis for this critical determination. In order to comport with the interest of the state, the custody and alimony disposition should in all cases have the judicial attention of the superior court judge on the basis of all relevant facts. Under the proposed bill, collusion through carelessness or ignorance may frustrate the child's interests.

Mr. Robert H. Reynolds
April 3, 1970
Page Five

I failed to mention that the question of jurisdiction over (a) the spouses (b) the custody of the children possibly out of the state and (c) alimony and support obligations, are difficult ones in divorce actions which may have multi-state aspects. It seems awkward to assume that any magistrate should be able to render such a decision without any opportunity afforded to counsel to present his views to a learned judge.

EZR/ld

The Legislature of the State of Alaska
FISCAL NOTE

COPIES: THE CHAIRMAN OF THE COMMITTEE MAKING THE REQUEST
THE HOUSE FINANCE COMMITTEE STAFF
THE SENATE FINANCE COMMITTEE STAFF
THE DIVISION OF BUDGET & MANAGEMENT
RETAIN A COPY FOR YOUR FILES

Subject Marriage Counselors SB 539
 requested by Senate Judiciary Committee
 referred to _____ date of request April 13, 1970
 completion date requested _____ date received _____

EXPENDITURE DETAIL	FY 70-71	FY	FY
100 PERSONAL SERVICES	\$ 83,583.	\$	\$
200 TRAVEL	9,600.		
300 CONTRACTUAL SERVICES	21,480.		
400 COMMODITIES	2,700.		
500 EQUIPMENT	11,383.		
600 LAND AND STRUCTURES			
700 GRANTS, CLAIMS & SHARED REVENUE			
	(Rounding)	(46.)	
TOTAL	\$ 128,700	\$	\$

FUNDING DETAIL			
FEDERAL RECEIPTS	\$	\$	\$
SPECIAL FUNDS			
UNRESTRICTED GENERAL FUND RECEIPTS	128,700.		
Man Months	72		
Permanent Positions	6		
Temporary Positions	0		

FISCAL ANALYSIS

See Fiscal Detail Attached

DATE April 16, 1970

SIGNATURE



NAME & TITLE Robert H. Reynolds, Administrative
Alaska Court System

SUPPLEMENT TO FISCAL NOTE FOR SB 539

ANCHORAGE - MARRIAGE COUNSELOR - RANGE 21

	<u>TOTAL</u>
100 - Personal Services - Salary 16,680; Benefits 2,002	\$18,682.
200 - Travel - Transportation 2,000; Per Diem 1,200	3,200.
300 - Contractual - Communications 500; Repairs and Services 100; Printing and Advertising (Special Forms) 2,000; Space Rental 1,650; Transportation of HIRE 1,500	5,750.
400 - Commodities - Legal and Office Supplies including copy machine supplies and expense	700.
500 - Equipment - Desk 264; Chair, swivel 130; Credenz. 225; Bookcase 150; Chairs, side (4) 418; Cabinet, 5-drawer, legal w/lock 154; Table, pedestal, 30" x 60" 154; Coatrack 50; Dictating, Transcribing Units 990	<u>2,535.</u>
	<u><u>\$30,867.</u></u>

SECRETARY I (Range 10)

100 - Personal Services - Salary 7,572; Benefits 908	\$ 8,480.
300 - Contractual - Space Rental 1,320	1,320.
400 - Commodities - Office Supplies	200.
500 - Equipment - Desk, typewriter 190; Chair, steno 45; Electric Typewriter 468; Chairs, side (2) 209; Cabinet, file, 4-drawer, legal w/lock, fireproof 330	<u>1,242</u>
	<u><u>\$11,242.</u></u>

	TOTAL:	\$42,109.
	Rounding	<u>(09)</u>

	NET:	<u><u>\$42,100</u></u>
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SUMMARY

100 - Personal Services	\$27,162.
200 - Travel	3,200.
300 - Contractual	7,070.
400 - Commodities	900.
500 - Equipment	<u>3,777.</u>
	\$42,109.
Rounding:	<u>(09.)</u>
TOTAL:	\$42,100.

SUPPLEMENT TO FISCAL NOTE FOR SB 539

FAIRBANKS - MARRIAGE COUNSELOR - RANGE 21

	<u>TOTAL</u>
100 - Personal Services - Salary 17,964; Benefits 2,156	\$20,120.
200 - Travel - Transportation 2,000; Per Diem 1,200	3,200.
300 - Contractual - Communications 500; Repairs and Services 100; Printing and Advertising (Special Forms) 2,000; Space Rental 1,950; Transportation of HIRE 1,500	6,050.
400 - Commodities - Legal and Office Supplies including copy machine supplies and expense	700.
500 - Equipment - Desk 264; Chair, swivel 137; Credenza 225; Bookcase 150; Chairs, side (4) 418; Cabinet, 5-drawer, legal w/lock 154; Table, pedestal 30" x 60" 154; Coatrack 50; Dictating, Transcribing Units 990	<u>2,542.</u>
	<u><u>\$32,612.</u></u>

SECRETARY I (Range 10)

100 - Personal Services - Salary 8,160; Benefits 979	\$ 9,139.
300 - Contractual - Space Rental 1,560	1,560.
400 - Commodities - Office Supplies	200.
500 - Equipment - Desk, typewriter 210; Chair, steno 45; Electric Typewriter 468; Chairs, side (2) 209; Cabinet, file, 4-drawer, legal w/lock, fireproof 350	<u>1,282.</u>
	<u><u>\$12,181.</u></u>

TOTAL:	\$44,793.
Rounding:	<u>7.</u>
NET:	<u><u>\$44,800.</u></u>

SUMMARY

100 - Personal Services	\$29,259.
200 - Travel	3,200.
300 - Contractual	7,610.
400 - Commodities	900.
500 - Equipment	<u>3,824.</u>
	\$44,793.
Rounding:	<u>7.</u>
TOTAL:	\$44,800.

SUPPLEMENT TO FISCAL NOTE FOR SB 539

JUNEAU - MARRIAGE COUNSELOR - RANGE 21

	<u>TOTAL</u>
100 - Personal Services - Salary 16,680; Benefits 2,002	\$18,682.
200 - Travel - Transportation 2,000; Per Diem 1,200	3,200.
300 - Contractual - Communications 500; Repairs and Services 100; Printing and Advertising (Special Forms) 2,000; Space Rental 1,500; Transportation of HIRE 1,500	5,600.
400 - Commodities - Legal and Office Supplies including copy machine supplies and expense	700.
500 - Equipment - Desk 264; Chair, swivel 130; Credenza 225; Bookcase 150; Chairs, side (4) 418; Cabinet, file, 5-drawer, legal w/lock 154; Table, pedestal, 30" x 60" 154; Coatrack 50; Dictating, Transcribing Units 990	<u>2,535.</u>

\$30,717.

SECRETARY I (Range 10)

100 - Personal Services - Salary 7,572; Benefits 908	\$ 8,480.
300 - Contractual - Space Rental 1,200	1,200.
400 - Commodities - Office Supplies	200.
500 - Equipment - Desk, typewriter 175; Chair, steno 45; Electric Typewriter 468; Chairs, side (2) 209; Cabinet, file, 4-drawer, legal, w/lock, fireproof 350	<u>1,247.</u>

\$11,127.

TOTAL:	\$41,844.
Rounding:	<u>(44.)</u>

NET: \$41,800.

SUMMARY

100 - Personal Services	\$27,162.	
200 - Travel	3,200.	
300 - Contractual	6,800.	
400 - Commodities	900.	
500 - Equipment	<u>3,782.</u>	
	\$41,844.	
Rounding:	<u>(44.)</u>	
TOTAL:	\$41,800.	

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

STATE OF ALASKA

DEPARTMENT OF COMMERCE

ALASKA TRANSPORTATION COMMISSION

58-543
KEITH H. MILLER, GOVERNOR

750 MACKAY BUILDING
338 DENALI STREET—ANCHORAGE 99501

May 9, 1970

The Honorable Barry Jackson, Chairman
House Judiciary Committee
State Capitol Building
Juneau, Alaska 99801

Re: Senate Bill 543 am "An Act relating to the
Alaska Transportation Commission...."
which provides for removal of commissioners
and the employment of hearing officers.

Dear Chairman Jackson:

The following comments are offered by the Alaska
Transportation Commission to explain why such legislation is
needed.

Sec. 1. Amendment to As 42.07.021(d) Removal of
Commissioners

Although generally classified as an administrative body within
the framework of the administrative branch of government, the
Alaska Transportation Commission functions in fact, as an arm
of all three branches of government. It interprets and admin-
isters the statutes intended by the legislature to provide the
tools for development of a dependable, adequate and sound trans-
portation industry and network to serve the public needs. The
legislature prescribes the enabling statutory tools. However,
the commission itself must develop within that statutory frame-
work the policy, expertise and judgment which will bring about
the legislature's intended result. In this task the commission
must look entirely to the guidance of the legislature as expressed

by statute rather than the guidance of the executive branch of the state government. Until the commission has developed a substantial body of expertise, procedure, precedence and law to fall back upon, the degree of success of the commission hinges primarily on its ability to do its job with the organization and funds provided by the legislature and the integrity, judgment, and knowledge of the appointed commissioners.

It must be recognized that the expertise essential to good regulation of the transportation industry is not acquired in a day no matter what the previous background of the commissioners may be. It is also true that optimum policies, procedures, regulations and laws are a matter of evolution and precedence.

As with the judiciary, it is necessary that a substantial degree of continuity of procedure, policy and decisions be established. Otherwise the transportation industry will be without guidelines and benefit of precedence. It is an essential ingredient of good regulation that the regulated industry and the public have confidence in the regulatory agency and some assurance of a steady direction of that agency.

All of this boils down to the factor that "commissioner" of the ATC should not be a position in which the appointee serves at the pleasure of the governor. We know of no federal or other state regulatory agency with similar regulatory responsibilities which is required to conduct its regulatory affairs and shape a transportation policy in the interest of the public under such a tenuous arrangement. The subject bill would

remedy this situation by providing for removal for cause.

The commissioners should be given this assurance that they will be able to initiate and carry out long range policies, procedures and programs which will be of benefit to the public and the industry. The challenge of the objectives is the only real inducement to this job of commissioner. Neither the work load nor the pay scale are such as to attract highly qualified people to this position; and if there is no reasonable prospect of an assurance of tenure there is little inducement for well qualified people to either take the job or to remain in it.

Sec. 2. Amendment to AS 42.07.101 Hearing Officers

The commission is a quasi judicial body. It must determine in the context of the public interest the relative rights and obligations of parties who come before it. Its hearings for this purpose are governed by and conducted in substantially the same manner as a civil proceeding in a court of law. A commission decision in a contested case is analogous to a court's judgment and is appealable to a court in the same manner as a judgment.

The overriding consideration of the commission is the public interest.

Commission proceedings differ from court civil proceedings in at least one very obvious and material way. The court proceeding is typically an adversary one. The parties present opposing cases to the court and the court then decides as between the parties, which one should receive the relief sought.

The typical proceeding before the commission, however, is essentially one of fact finding. Since it is the public interest that is of primary concern in most such proceedings.

the relative relationship of opposing parties is not the predominant issue. The overriding public interest consideration necessitates the development of an adequate record upon which the commission can base a reasoned decision. And where the parties have not developed an accurate or adequate record at a hearing it is essential that the commission (through the participation of its staff as a party in the hearing) help develop the facts.

Under the present organizational setup of this commission, the three commissioners have the duties of all of the administration of the agency including the investigation and enforcement activities from which many of its formal actions begin. Further, the commissioners must hear all of the cases, render all opinions and then issue the final orders of the commission. This, in substance, requires that they be enforcement agents, jury, prosecutor, and judge for every proceeding coming before the commission.

This coagulation of all functions of the commission under the direct day to day supervision of the commissioners effectively precludes the commissioners from adequately performing what is perhaps the most important responsibility assigned to them by the legislature. In the policy statements of the various transportation Acts the legislature outlines its objectives. AS 02.05.010, for example, provides:

"The purpose and policy of this chapter is to

- (1) recognize and preserve the inherent advantage of air commerce;
- (2) foster sound economic conditions in air commerce and among air carriers in the public interest;
- (3) promote adequate, economical and efficient service by air carriers, and reasonable charges therefor,

- without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices;
- (4) provide for the competition necessary to assure the sound development of an air transportation system properly adapted to and adequate to meet the needs of the commerce of this state;
 - (5) improve the relations between and coordinate transportation by and regulation of air carriers;
 - (6) provide for the administration and enforcement of this chapter to avoid conflict with the regulation of air carriers by the federal government;"

The legislature wisely recognizes these elements as essential ingredients to adequate, viable, healthy, integrated transportation networks capable of satisfactorily meeting the transportation needs of the state. Transportation is the state's most basic and vital industry.

But the legislature's objectives are not attainable by simple mechanical processes.

How to accomplish these objectives initially and in the future under rapidly changing conditions is the fundamental and most important responsibility the legislature has assigned to the Transportation Commission. Unfortunately, as matters now stand this Commission has little time available to meet this responsibility. Or if it takes the time, as it frequently must (See for example the attached Exhibits A, B and C relating to CAB and ATC air service investigations, jurisdiction, policies, procedures, etc.) then hearings, decisions and other such matters become further backlogged.

This is not to say the commissioners should not have the overall responsibility for the performance and functioning of the commission staff. It is simply that there should be a much

greater delegable capability, not only in the routine staff functions but in the hearing process itself. The ICC has delegated responsibility for the conduct of hearings to hearing officers since about 1906; the FTC since about 1914. Today, as Professor Kenneth Davis, one of the leading scholars on administrative law, points out, among all the federal administrative agencies, only in the Tax Court (which is an administrative agency) does the agency head actually hear and receive the evidence, conduct the hearings, personally study the record, and thereafter render his personal decisions. Says Davis:

"Theoretically this system (of the Tax Court) could be used for handling the business for all agencies now using examiners. Why not?

"The answer is that such a system would be grossly uneconomical. The evidence-taking process is slow and cumbersome. The job of presiding unually does not call for skills of top personnel. . . . The special skills and understanding of the agency heads should be reserved for issues of policy and overall supervision, and for troublesome problems of fact finding..... The tendency of nearly all adjudicating agencies (is) to move away from personal decisions toward institutional decisions (i.e. a decision made by an organization and not by an individual or solely by agency heads).....

"Able administrators in many agencies acting independently of one another, have experimented and have searched for the most effective means of deciding hosts of difficult cases, and they have almost uniformly concluded that deciding officers should have the assistance both of reviewing staffs and of agency specialists."

Davis, supra, §11.10 pp. 83, 84 and 87. Emphasis added.

It is physically impossible for the commissioners either collectively or acting individually to adequately direct the day to day operations of the staff, concurrently hold hearings and

render decisions on what are frequently very complex issues and questions of fact and law, keep abreast of the ever changing transportation needs of the state and shape the policy and procedures mandated by the legislature.

As a matter of fact it is impossible for the commissioners to conduct all hearings required by the statute and decide all such cases within a reasonable time. New applications for operating authority or transfer, etc., are now coming in at an average rate of about 20 to 25 per month. Most of these are required by law to be noticed and virtually all are protested. This is true even of applications for transfer of authority. This means that since early 1969 nearly all applications have had to go to hearing; and a rapidly increasing number of these hearings are lengthy and complex. Three hearings within the past 9 months each lasted for two weeks. The transcript for the most recent of these was over 2200 pages and nearly 100 Exhibits were received in evidence. (2200 pages of transcript require about 300 hours to transcribe and type.)

Where the formal hearing of a year ago averaged about 1 to 1 1/2 days in duration, the average now is from four to five days. This, coupled with at least a 50 percent increase in applications means that hearing time requirements have magnified approximately 500 percent since a little over one year ago.

Exhibit D shows a breakdown of present hearing workload. The number of hearings yet to be held would be substantially greater but for the fact that all applications have not been noticed yet or time for protest has not yet run. As shown in

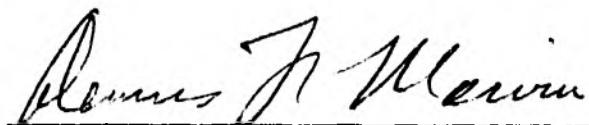
The Honorable Barry Jackson, Chairman
House Judiciary Committee

May 9, 1970
Page 8

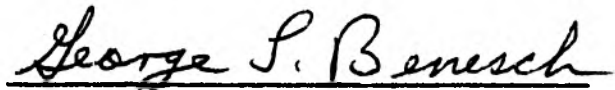
Exhibit C all applications for scheduled air carrier authority
are being deferred for action pending further progress in the
CAB ALASKA SERVICE INVESTIGATION.

The Commission wishes to thank you and your Committee
for this opportunity to testify in behalf of SB 543.

Sincerely,



Dennis L. Marvin, Commissioner



George L. Benesch, Commissioner



Jake Johnson, Commissioner

HOUSE JOURNAL

Judiciary Committee Report

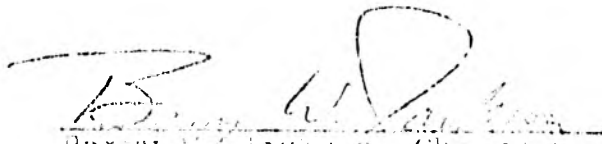
on

House CS for SENATE BILL NO. 543

This bill strengthens the Alaska Transportation Commission by (1) providing that commissioners may be removed only for cause, which is necessary to attract and retain professionally qualified persons; (2) allowing for the appointment of hearing officers in appropriate cases, which is necessary to cope with the overwhelming increase in caseload and complexity of cases, increases making it physically impossible under present law for the commissioners to keep up with current applications let alone reduce the backlog; and (3) clarifying the effect of an ATC permit for collection and disposal of garbage in an area which is annexed by a local government, which is necessary in order to avoid the inequity of a local government being able to drive a garbage hauler out of business by extending its boundaries to include all or part of the area served by him and then furnishing its own municipal garbage service under AS 29.10.156.

With regard to this third point, the committee believes that the local government should not be able to nullify, without compensation, a permit granted by the ATC and that a rate structure approved by the ATC should not be undermined by action of a local government in providing garbage service at a reduced rate. In basing fair market value on the economic loss to the permit holder, when the local government exercises the power of eminent domain to acquire the operating authority from the permit holder, the effect on the remaining portion of his business, if any, is to be considered.

It is the understanding of the committee that under changes in AS 42.10, enacted in Ch. 107 SLA 1970 (HCS CSSB 271 and H), garbage-hauling services are subject to regulation by the ATC.


Barry W. Jackson, Chairman
House Judiciary Committee

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

ALASKA SERVICE INVESTIGATION

DOCKET 20826

PETITION BY ALASKA TRANSPORTATION COMMISSION
FOR JOINT BOARD PROCEEDING

Communications with respect to this document should be sent to:

G. KENT EDWARDS
ATTORNEY GENERAL
By Shirle A. Debenham
Assistant Attorney General
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Commission
338 Denali St., 750 Mackay Bldg.
Anchorage, Alaska 99501

Anchorage, Alaska

April 28, 1970

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

ALASKA SERVICE INVESTIGATION

DOCKET 20826

PETITION BY ALASKA TRANSPORTATION COMMISSION
FOR JOINT BOARD PROCEEDING

COMES NOW the ALASKA TRANSPORTATION COMMISSION (ATC) and petitions the Civil Aeronautics Board to implement the provisions of the Federal Aviation Act of 1958 (49 USC 1324) which authorize the C.A.B. to hold joint hearings and otherwise perform such acts, to issue such orders and to make such procedure as necessary to carry out the provisions of the Act relating to cooperation with State regulatory agencies; and in keeping with the objectives of such provisions, the ATC petitions the C.A.B. to reconstitute the Alaska Service Investigation as a Joint Board proceeding to be conducted and decided jointly by the C.A.B. and the ATC.

In support of its petition, the ATC respectfully states as follows:

I

The ATC is the duly constituted regulatory agency of the State of Alaska as provided by law (Chapter AS 42.07); and as such, is the agency responsible for the regulation of intrastate air commerce under the Alaska Air Commerce Act, Chapter AS 02.05.

II

The ATC is presently a party intervenor in the Alaska Service Investigation and as such is limited to participation on the evidence-producing level and to making recommendations to the C.A.B. without first having benefit of a complete record.

III

Approximately 95 percent of all scheduled intrastate air service in Alaska is provided by air carriers regulated exclusively by the C.A.B.; and between approximately 75 and 95 percent of all traffic moving between points in Alaska is intrastate rather than interstate movement and subject to regulation by the State.

IV

The ATC has conducted informal public hearings throughout Alaska in connection with the Alaska Service Investigation. It has done this as a

response to numerous requests of the public for such hearings and by virtue of the commendable understanding of the Board's Hearing Examiner in the Alaska Service Investigation who granted an extension of time to the Commission for this purpose. (All parties concurred in an extension of time substantially as requested by this Commission.) As a result of such hearings, and the Commission's additional investigations and familiarity with the intrastate air commerce needs of Alaska, the Commission has submitted, as a direct exhibit, a Position Paper directed primarily to the matters of CAB-ATC jurisdiction, regulatory objectives, and essentiality of substantially closer cooperation between the C.A.B. and this Commission. The summary of this Position Paper is attached to this petition and by reference made a part of this petition in support thereof.

V

It is essential that the jurisdictional questions be squarely faced and the utmost in cooperative effort be pursued by both the C.A.B and the ATC. This Commission currently has in its files a substantial number of applications for intrastate scheduled authority. The Commission has deferred consideration of all such applications (upon which hearings have not been held in the past six months) pending the outcome of this Alaska Service Investigation. Even where hearings had been held previous to this policy decision, the granting of authority where warranted by the public convenience and necessity has been limited to a one-year period.

It is presently intended by the Commission to systematically review the scheduled service requirements of limited geographical areas in a series of State regional service investigations and to provide for certificated service as needed in the many areas of the State.

If the C.A.B. and the ATC failed to integrate their efforts in these matters which so vitally affect the public interest, effective regulation would be very substantially frustrated.

The ATC recognizes that these matters and this petition should have been submitted to the C.A.B. at a much earlier stage in the Alaska Service Investigation proceeding (ideally at its inception or at least prior to the prehearing conference).

Unfortunately, this was not possible. The Commission was completely reorganized by repeal and reenactment of the Alaska Transportation Commission Act in May 1969 (Chapter 104, SLA 1969).

The policy developed herein is that of the new three-year Commission which Commission was not complete until January 1970. (Only one of the present three Commissioners was appointed to office prior to the prehearing conference in September 1969.)

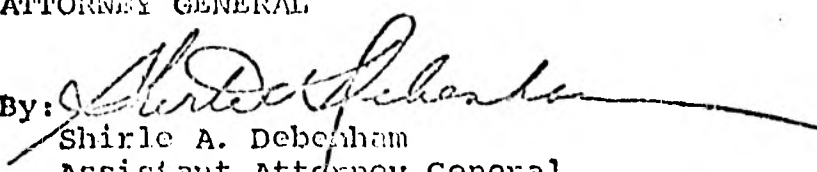
It is the Commission's belief, however, that the Alaska Service Investigation proceeding can still be restructured as a Joint Board proceeding even at this less timely stage particularly since no new issues will be added to delay the present proceeding schedule.

WHEREFORE, the Alaska Transportation Commission respectfully requests the Civil Aeronautics Board to reconsider the unilateral nature of the Alaska Service Investigation and to more appropriately in the overall interest of the public, reconstitute it as a Joint Board proceeding by the C.A.B. and the ATC.

Respectfully submitted,

G. KENT EDWARDS
ATTORNEY GENERAL

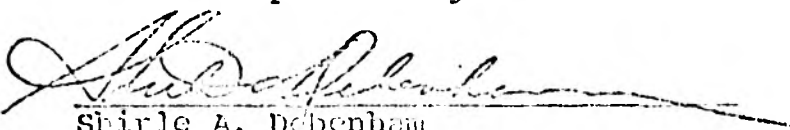
By:


Shirle A. Debenham
Assistant Attorney General
Attorney for Alaska Transportation
Commission

April 28, 1970.

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of April 1970 mailed true and correct copies of the PETITION BY ALASKA TRANSPORTATION COMMISSION FOR JOINT BOARD PROCEEDING, properly addressed and postage prepaid to all parties of record in this proceeding.


Shirle A. Debenham
Assistant Attorney General
Attorney for Alaska Transportation
Commission

EXHIBIT

ATC No. 1

IN THE MATTER OF:

THE ALASKA SERVICE INVESTIGATION

DOCKET 20826

POSITION PAPER

ALASKA TRANSPORTATION COMMISSION

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POSITION PAPER
OF
ALASKA TRANSPORTATION COMMISSION
STATE OF ALASKA

The official position of the Alaska Transportation Commission (ATC) in this proceeding, the ALASKA SERVICE INVESTIGATION, can be summarized as follows:

1. That this investigation of primarily-intra-Alaska service should have been initiated by the Civil Aeronautics Board (CAB) as a joint board proceeding (as provided for in 49 USC 1324) thereby combining the regulatory efforts of both the CAB and this Commission in this matter. However, having failed to initiate it as a joint proceeding, the investigation should, nevertheless, be concluded in that vein with a joint decision.
2. That the Alaska Transportation Commission is a state regulatory agency with responsibilities on the state level similar to the responsibilities of the CAB on the federal level; that the limited role of "party" relegated to the Commission, notwithstanding its major function as a decision making body, is highly inappropriate in this proceeding; that this Commission cannot and should not develop recommendations as to specific route authorities, realignments, competitive service, subsidies, mail service, etc., without first having before it all evidence, briefs, etc., of all parties; that further, this Commission cannot and should not make any such specific recommendations without close coordination of its policies and conclusions with the policies and conclusions of the CAB; and that this review and close coordination can only be accomplished at the decisional level of this proceeding.
3. That the standards of performance and adequacy of service being provided by CAB certificated carriers in Alaska bear directly and forcibly upon the issues in this proceeding; that the importance of these questions pervades the entire spectrum of issues; and that fact-finding, public hearings as provided for

in CAB regulations [302.14 and 399.61(c)], are an essential ingredient of this proceeding if an informed decision on the issues is to evolve.

4. That the CAB is completely out of touch with the real operational conduct of its carriers in this State; that that conduct as measured in terms of service, effort, concern, public interest and operational integrity is deplorable; and that these conditions must weigh heavily in the CAB's determination of its future course of action in the exercise of its jurisdiction.

5. That the recent mergers and purchases of CAB-regulated carriers engaged in Alaska air transportation appear to have led to a substantial deterioration of intrastate service to virtually all communities and areas except those major cities where competition exists in fact.

6. That a formal and thorough investigation into matters of rate levels, rate discrimination, other discriminatory practices, accounting practices relating to separation of scheduled air transportation activities from other activities, efficiency, claims and refund practices and other matters of similar nature of Wien Consolidated Airlines and Alaska Airlines should be initiated by the CAB on its own motion as a logical outgrowth of this Service Investigation.

7. That approximately 95 percent of the scheduled intra-state air service in Alaska is being provided directly or indirectly by carriers certificated by the CAB over routes authorized thereto by the CAB and thus far regulated exclusively by the CAB. This situation has outlived its justification and has become a substantial burden on the public of Alaska.

8. That the exercise of regulatory authority by the State of Alaska should be substantially extended (preferably in cooperation with the CAB) over intrastate routes and over all carriers serving such routes. Over those routes where it remains essential or otherwise desirable for the CAB to exercise primary jurisdiction, the

machinery should be established for joint regulation by the CAB and the ATC, or in the alternative, regulation by the CAB upon consultation with the ATC.

9. That the practice whereby CAB-certificated carriers subcontract the scheduled performance of segments of their routes to local state-regulated carriers is not in the public interest. It is the position of this Commission that such subcontracts are unlawful and constitute a usurpation by the CAB carrier of the regulatory jurisdiction of this Commission.

10. That the contractual arrangements for the intrastate transportation of mail are outdated, inadequate and inappropriate. This matter needs a complete review toward the end of providing better service and adequate compensation to the carrier actually performing that service.

11. That matters relating to subsidy needs of, and payments to, carriers engaged in intrastate air service (including mail service) and the use to which such subsidies are put in competitive practices are of major concern to this Commission as well as to the CAB. A realistic and imaginative review should be made of the basis and need for subsidy and the qualifications for and the formulas under which subsidies should be paid.

12. That all carriers which serve Alaska and are regulated by the CAB, including those providing on-line interstate gateway service, should be required by the CAB to file concurrently with the ATC copies of all applications for routes, exemptions, tariff changes, transfers, and all other such documents which relate to Alaskan air commerce and which are filed with the CAB. It is essential that the State of Alaska be adequately and fully apprised of those matters affecting air commerce to and within the State.

13. That there is a serious need for closer cooperation and consultation between the CAB and the ATC. This Commission recognizes that the actions taken by each agency can, and frequently do, have a significant effect on those carriers regulated