(b) The commission is authorized to determine, after hearing initiated by a complaint describing the alleged violation or violations with reasonable particularity, the existence of any violation described in (a) of this section and to impose such monetary penalties, not to exceed the amount provided in (a) of this section, as it deems justified under the circumstances. The determination and penalty imposed by the commission shall be enforced by suit commenced in the Superior Court by the Attorney General in the name of the commission.

(c) In the event the commission elects not to proceed pursuant to (b) of this section, or in the event a complaint is not answered within the time provided by the commission for answer, the Attorney General shall enforce the provisions of (a) of this section by suit commenced in the Superior Court in the name of the commission. In all such actions, the procedure and rules of evidence shall be the same as are applicable in ordinary civil actions.

(d) All penalties recovered under this section shall be paid into the general fund of the State of Alaska.

REASONS: At a meeting of the Legislative Council in Anchorage on October 12, 1968, Senator Brad Phillips asked me what the Commission could do in the event it made an investigation of a utility and found its services and facilities were sub-standard and that complaints to that effect by its customers were fully justified. I had to inform him our only recourse, under the present law, would be to revoke the utility's certificate of public convenience and necessity, in which event the company would then be free to completely abandon service if it so desired. It was then I informed him I had suggested last year that we have a monetary penalty law to take care of such cases and he seemed to think it was a good idea. In fact, he said the Legislative Council was going to meet again before the next session and would like to have all of our recommendations at that time.

It is very apparent to anyone who views the matter realistically that one of the most outstanding defects in AS 42.05 is the almost complete absence of any effective enforcement tools. The only specific enforcement provisions I find in the law as it stands now are for the purpose of dealing with specific problems. (See AS 42.05.055, AS 42.05.200, and AS 42.05.550). Insofar as I can determine, if there are any other enforcement tools that can be applied to other infractions of the governing law, they will be found in AS 44.62--the Administrative Procedure Act. It is my understanding, also, that the Commission must turn <u>all</u> of

its enforcement problems over to the Attorney General--a tremendous burden. There is no procedure whereby the Commission can take direct action to deal with violations of AS 42.05. This is comparable to depriving State Patrolmen of the power to arrest traffic violators. The purpose of this proposed legislation is to remedy the situation and at the same time relieve the Attorney General of carrying the full burden of enforcement. There is absolutely nothing more frustrating to an administrator of laws containing numerous mandatory provisions than to be forced, as a practical matter, to depend almost exclusively upon voluntary compliance with the law and to have no prompt and effective recourse when voluntary cooperation is not forthcoming. In short, it is completely unrealistic to expect truly effective administration of AS 42.05 as it is now written, unless the APSC has a realistic means of enforcement.

.535 No response

.555 No response

.565 No response

.575 No response

.605 Sec. (2) cannot be reconciled with lines 8 and 9 on page 13 where reference is made to the exemption of municipally-owned utilities.

Sec. (2)(A) This section in the present law has been extremely difficult to interpret and administer as evidenced by the attached request for an opinion of the Attorney General and the opinion which contains the following statement: "But only one thing seems certain, the legislature must not have been aware of the collateral problems it created by the amendment."

Attention is also directed to omission of the words "for compensation" which is a qualification that is present in the definitions of all other types of utilities.

There is reason to believe that the term "telephone" needs to be more specifically defined. Should it include mobile telephone systems that are not connected with a local telephone exchange or a long-lines carrier? Shoudl it also include a wire line telephone utility not connected to a long-lines carrier? Should it include a mobile telephone service operated by a certificated company that has no telephone exchange of its own but does have a patch connection with a wire line exchange that, in turn, is connected with a long-lines carrier?

In view of previously recommended changes, I suggest that the term "tariff" be defined as follows:

"Tariff" means any or all rates, charges, tolls, rules or regulations of a utility relating to commodities or services furnished by a utility to the general public for compensation and every map, page, adoption notice, instrument or other document filed with the Commission setting forth the terms and conditions under which utility services or commodities are offered to the public together with instruments of concurrence and all other documents and data setting forth the terms of a utility's business relations with any other utility insofar as they affect the general public either directly or indirectly.

MEMORANDUM

State of Alaska

TO: Kent Edwards
Attorney General
Department of Law

DATE : September 12, 1968

FROM: Don Hall
Executive Director
Public Service Commission

SUBJECT: AS 42.05.640(2) as Re-enacted by HCSCSSB 167 (Chapter 188, Laws of 1968, Second Session)

AS 42.05.640(2), (A) provides that the term "public utility" or "utility" includes electric, telephone, and telegraph utilities "which produce an annual gross income in excess of $25,000. Prior to the effective date of the new law (July 29, 1968), all such utilities were included in the term "public utility" without regard to their annual gross revenue. It appears from the latest available information that approximately 16 electric, telephone, and telegraph utilities had gross revenues of less than $25,000 from operations during their latest fiscal year, and therefore, are not subject to regulation by the Commission.

Unfortunately, the problem of administering the new law is not limited to a simple determination of which utilities no longer fall within the definition of the term "public utility." The Alaska Public Service Commission has directed me to ask you for a legal opinion on these additional administrative problems as outlined below:

1. Can the Commission continue to regulate a utility simply because it states that it wishes to submit to regulation even though it is exempt from regulation by the controlling law? This is not a theoretical question as evidenced by the attached letter dated July 31, 1968 from John B. Heafer, President of Greater Anchorage Borough Telecommunications, Inc.

2. Is there an implied requirement that the Commission must specifically revoke all certificates of public convenience and necessity previously issued to utilities that are no longer required to have a certificate? The problem here is that these utilities were put to considerable time, effort, and expense to obtain their certificates. Some are now approaching the $25,000 gross revenue figure, and may reach it in the near future, at which time they would again be required to have a certificate.

In addition, there is a possibility the next legislature might strike the gross revenue requirement from the law, in which case all utilities would again be required to have a certificate. If it is discretionary with the Commission as to whether or not it should revoke the aforementioned certificates, could the Commission legally reinstate them (due to increased revenues or a change in the law) without requiring a new application and possibly a hearing? If the Commission could legally reinstate such certificates without application or hearing, it would simplify the task of reasserting its regulatory jurisdiction and, of course, spare the utilities a lot of time and expense. If this procedure is improper, what course of action would be open to the Commission to force the re-certification of a utility in the event it does not voluntarily make application?

3. If a utility with annual gross revenue in excess of $25,000 should apply for a certificate to serve an area served by a utility that has been de-regulated, would the Commission be within its legal rights to deny it on the grounds that it would result in duplication of utility facilities? Would it be within its legal authority to grant such an application if it found that the area could be served more adequately by the certificated utility?

4. Attached hereto is a letter from the Alaska Village Electric Cooperative, Inc. inquiring if it is required to obtain a certificate to serve five villages this year. The basic question is whether or not the Commission should require the Cooperative to apply for a certificate on the basis of projected revenues in excess of $25,000 or whether the Commission should inform the Cooperative that no certificate will be required until such time as it has actually earned $25,000 gross revenue during any consecutive 12-month period. Your opinion in this regard is needed right away because of the urgent need to start construction to serve five villages this year. If a certificate is required, the REA probably will not advance construction funds until the Cooperative has obtained

a certificate authorizing it to serve the five villages.

5. In the event the Commission had good reason to believe, or even suspected, that an electric, telephone, ~~communications~~ had earned gross revenue in excess of $25,000 in any given annual period, would it have a right to demand access to its accounting records to determine the facts in regard to its annual revenue? If not, what legal recourse, if any, would the Commission have to ascertain the facts necessary to require certification? This will undoubtedly become a problem in respect to certifying the Alaska Village Electric Cooperative either this year or next year when its gross revenues will apparently exceed $25,000. A corollary question is what legal penalty a utility would become subject to if it failed, or refused, to apply for a certificate after its annual revenue exceeds $25,000.

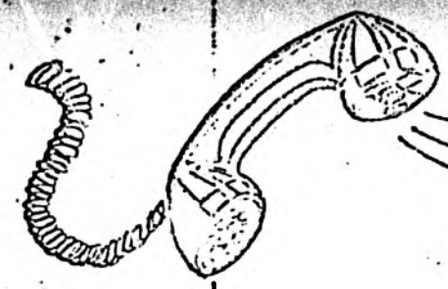
6. Also attached hereto is a copy of the statement of profit and loss of Sidney C. and Shirley J. Childers, dba Communications Equipment & Service Co., who have applied for a certificate of public convenience and necessity. The Commission received the said application prior to the effective date of the new law.

According to the data they submitted, the public utility portion of their business had expenses in 1967 of $27,541 from which could be imputed a gross revenue greater than $25,000; however, the question is whether or not the Commission may issue a certificate to the Childers at this time when their actual "utility" revenue was only $15,322 for the year.

A decision on the issuance of a certificate is a matter of urgency for the Childers since the FCC won't grant them an MCC license until they are able to show either that they have appropriate operating authorization from the State or that no such authorization is required. (They are

operating now under the pseudo-authority of an FCC license which was issued to a predecessor company.)

By Don Hall
Don Hall.



GREATER ANCHORAGE BOROUGH

TELECOMMUNICATIONS COMPANY, INC.

PHONE 272-5132
BOX 2473
ANCHORAGE, ALASKA

31 July 1968

Mr. Don Hall, Executive Director
Alaska Public Service Commission
700 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Reference: APSC Letter, dated 21 June 1968, re: Exclusion of Utility Under $25,000 Revenue From Regulation

Dear Mr. Hall:

This utility has complied with the request contained in the above reference. However, the Alaska Statute does not prohibit a utility from voluntarily subjecting itself to regulation by the Commission. Accordingly, in the public interest, this utility respectfully requests that it be continued under regulation for the service area so designated in its certificate.

Sincerely,

John B. Heafer

John B. Heafer
President

cc: Governor Walter J. Hickel
Commissioner George Sharrock
Commissioner James R. Clouse
Commissioner Loren H. Lounsbury
Commissioner Gordon J. Verbetz

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Alaska Village Electric Cooperative, Inc.

Room 25 Reed Building 608 Fourth Avenue P. O. Box 1739
ANCHORAGE, ALASKA 99501

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August 21, 1968

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Mr. Don Hall
Executive Director
ALASKA PUBLIC SERVICE COMMISSION
700 Mackay Building
338 Denali Street
Anchorage, Alaska 99501

Dear Mr. Hall:

This letter is to advise you that we are starting construction on a Rural Electrification Project to include approximately 60 villages in the State of Alaska.

The projected gross revenue upon completion of the entire construction project is $1,500,000 per year. Present plans indicate that we will complete construction of distribution systems in five villages in this calendar year. Annual revenue will be less than $25,000 per year from each of the five villages during the first five years of their operation. However, next year we contemplate the installation of an additional 25 projects and some of these will exceed $25,000 per year in revenue.

Will you please acertain for us whether or not our entire project will be subject to regulation by the Public Service Commission or will it be necessary for us to apply for certificates only for these individual villages where we expect the revenue to exceed $25,000 per year.

Any cooperation you can give us in this matter will be greatly appreciated.

Sincerely yours,

W. C. Rhodes
MANAGER

WCR:dba

COMMUNICATION EQUIPMENT & SERVICE Co.
1010 College Road
Fairbanks, Alaska

PROFIT & LOSS STATEMENT
for
Year of 1967

		Total	General Sales	Radio Telephone
INCOME		$87,625.23	$71,001.05	$16,624.18
Inventory 12/31/66	$ 6,125.00			
Parts Purchased	12,692.06			
	$18,817.06			
Less Inventory 12/31/67	13,610.00			
		5,207.06	3,905.30	1,301.76
Equipment Purchased for Resale		13,370.86	13,370.86	
		$69,047.31	$53,724.89	($15,322.42)
EXPENSES:				
Payroll		$11,410.64	$8,557.98	$2,852.66
Shop Expense		2,344.10	1,758.08	586.02
Supplies		142.04	106.53	35.51
Office Expense		1,199.30	899.47	299.83
Vehicles Expense		938.26	703.70	234.56
Telephone		1,408.22	352.06	1,056.16
Electricity		904.74	678.56	226.18
Fuel		1,056.57	792.43	264.14
Advertising		1,180.96	590.48	590.48
Repair		512.08	384.06	128.02
Promotion & Entertainment		899.09	674.32	224.77
Dues & Subscriptions		295.46	221.60	73.86
Rent		1,125.00		1,125.00
Insurance		2,451.80	1,225.90	1,225.90
Equipment Rental		495.03	371.27	123.76
Professional Services		373.53	186.76	186.77
Airplane Expense		246.50	184.88	61.62
Contract Labor		3,115.32	2,336.49	778.83
Travel Expense		735.48	551.61	183.87
Fed. Unemployment Tax		76.47	57.35	19.12
Fed. Excise Tax		495.45		495.45
Business License		25.00	18.75	6.25
Sales Tax		467.29	350.47	116.82
Auto Licenses		140.00	105.00	35.00
Property Tax		243.60	182.70	60.90
Interest Expense		2,358.62	1,768.97	589.65
Freight		238.21	178.66	59.55
MCC Dispatch Expense		541.67		541.67
E.S.C. Taxes		331.22	248.42	82.80
F.I.C.A. Taxes		506.87	380.15	126.72
Misc. Expense		242.00	181.50	60.50
Bad Debts		743.78	371.89	371.89
Depreciation Expense		25,094.75	10,377.57	14,717.18
Total Expense		62,339.05	34,797.61	(27,541.44
NET PROFIT OR LOSS		$ 6,708.26	$18,927.28	($12,219.02)

FORM SA-18

MEMORANDUM State of Alaska

TO: Don Hall, Executive Director
Alaska Public Service Commission
Anchorage

DATE : November 13, 1968

FROM: G. Kent Edwards
Attorney General

By: George L. Benesch
Assistant Attorney General

SUBJECT: Effect of 1968 amendment (Sec. 1, Ch. 188, SLA 1968) on jurisdiction of Public Service Commission to certificate utilities prior to actual operation.

The question to which this opinion is primarily directed can be stated as follows:

Does the 1968 amendment establish the prerequisite that a new utility actually be operating and have realized the specified revenue before it comes within the jurisdiction of the Public Service Commission? Stated another way, does it preclude commission certification of all prospective utilities?

At the outset we advise that all interpretations of the amendment create difficult problems, of application, regulation, enforcement and discretion. The answer is essentially a matter of determining the legislative intent. But only one thing seems certain, the legislature must not have been aware of the collateral problems it created by the amendment.

In our judgment, the matter requires legislative clarification. This should be sought at the earliest possible time.

If it is necessary or desirable for the commission to take positive action within the framework of the amendment prior to legislative clarification, our interpretation is as follows:

(a) An operating utility which grosses $25,000 or less during a full year of operation is not a public utility for the purposes of regulation.

(b) A utility which has not yet operated a full year but which is not expected to receive more than $25,000 gross revenue during its first full year of operation, is not subject to the commission's regulatory jurisdiction.

(c) A prospective utility whose gross revenue during its first full year of operation is reasonably projected at $25,000 or less is not subject to the commission's regulatory jurisdiction.

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(d) All other utilities, whether prospective or operating, are within the commission's jurisdiction unless specifically exempted by AS 42.05.645.

(e) All utilities exempt from regulation simply because of the $25,000 limitation come within commission jurisdiction as soon as that limitation is exceeded in actual operations.

Although the language of the amendment is, in many respects, unfortunate and inadequate, we believe that the single, basic objective of the legislature was simply to relieve small utility systems from the presumed burdens of regulation. The systems it had in mind are defined in terms of annual monetary income. We are convinced that the legislature did not intend to otherwise change the commission's jurisdiction beyond achieving that objective. It is reasonably certain that the legislature considered the application of the amendment to be one of simple mechanics and procedure. That the application may prove to be difficult and involve numerous unforeseen legal problems does not necessarily mean that the legislature must have intended a more far-reaching jurisdiction restriction which would avoid some of those problems. This is particularly true in this case. Any interpretation of the amendment, different from that we have given here, also involves comparable difficulties and legal problems.

The provisions of the 1968 amendment with which we are here concerned reads as follows:

> AS 42.05.640(2). "'Public utility' or 'utility' includes every corporation, whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages or controls any plant, pipeline, or systems for
>
> (A) the generation, transmission, or distribution of electric energy and power, or the furnishing of telephone or telegraph communications, any of which produces an annual gross income in excess of $25,000;". (Underlining added.)

Except for the language underlined above (which is new language) this quoted portion of the amendment reads exactly the same as the statute it supersedes.

The amendment is written in the present tense. But, as a matter of fact, the superseded statute also sounded in the present tense. Neither the previous statute nor the amendment says anything about a prospective utility. The tense employed in both appears to have been essentially a matter of convenience, without special meaning. AS 01.10.050 together with AS 01.10.020 provide the interpretive rule that "words in the present tense include the past and future tenses" unless "the construction would be inconsistent with the manifest intent of the legislature."

The "manifest intent" which must be ascertained here is not whether the legislature intended to exclude small utility systems from regulation. This intent is quite obvious. The interpretive problem is rather to determine whether the legislature intended to do away with certification of all prospective utilities irrespective of size.

If the legislature did not intend the broader exemption, then the achievement of the more limited objective is a matter of commission procedure rather than statutory interpretation.

In assessing the legislative intent, AS 42.05.640(2) must be read in context with the other provisions of AS 42.05. In this vein it should be kept in mind that AS 42.05.640(2) is simply a "definition" statute. It merely defines a "public utility" or "utility." The amended definition even encompasses municipal utilities.

As a definition statute the 1968 amendment reflects some improvements over its predecessor. The statute previously included a number of exemptions to the commission's jurisdiction. These exemptions are now removed from the definition and incorporated in a separate exemption statute, AS 42.05.645.

Having determined to remove primarily jurisdictional matters from the definition, it would be inconsistent to conclude that the legislature intended to nevertheless provide therein a new, purely jurisdictional limitation that removes all authority over all non-operating utilities. If this had been an objective of the legislature, it seems certain that it would have been expressly stated and placed elsewhere in the chapter, for example as an amendment to AS 42.05.193 or as an exemption in AS 42.05.645.

As a practical matter, the definition provided in the amendment is also jurisdictional in nature. But, aside from the fact that the amendment is written in the present tense (a matter already discussed), there is nothing to indicate that the legislature intended it to revoke commission jurisdiction over all prospective utilities.

The 1963 Legislature imposed certification requirements upon all public utilities coming within the commission's jurisdiction. (Sec. 1, Ch. 95, SLA 1963). Thus prospective as well as operating utilities were to be regulated. But this was accomplished by enacting a new statute, AS 42.05.193, not by amending the definition statute. AS 42.05.193 provides that "no public utility shall operate after January 1, 1964, without first having obtained . . . a certificate. . . ." By law, then, no public utility can now gain operating experience prior to certification unless otherwise exempt.

A companion statute, AS 42.05.196, enacted by the same legislature, grants the commission discretionary authority to "issue a certificate as requested or for good cause shown deny the same in whole or part." This discretionary authority is limited by a grandfather clause applied to utilities which were "actually operating in good faith on October 15, 1962 . . . or . . . installing the facilities necessary to furnish service under a franchise as of that date." (AS 42.05.194).

The language of these certification statutes remains the same today. The commission derives its jurisdictional authority and guidance from them insofar as prospective utilities are involved. Neither the definition statute nor the exemption statute expressly revokes that authority.

Certification of prospective utilities is a very important function to effective regulation. The rescission of such authority should not be presumed in the absence of a clear indication that that was the result intended. In order to find such an intention in the 1968 definition amendment it would also be necessary to conclude that the legislature intended to do away with all future certification. Delay of certification until after a utility has commenced operation is analogous to closing the barn door after the horse escapes. A principal objective of certification is establishment of controlled monopoly. Furthermore, this interpretation would lead to perhaps the most complicated legal problems of any interpretation.

What, for example, happens to the utility that builds its system, commences operations and shortly thereafter grosses $25,000? Must it wait until that point in time to receive certification? And must it cease operation thereafter until certified? Furthermore, does the commission still have the discretion at that time to grant or deny certification?

Theoretically, the answers to all three questions would be yes. The 1968 amendment could not be construed as yielding a different result. These could be very serious problems where two prospective utilities build competing facilities to serve the same area; or if the new utility was seeking a certificate in an area already certificated.

Thus we arrive at the conclusion that if the commission previously had jurisdiction to certificate proposed utility systems (and we find that it did), it was not divested of that authority by the 1968 amendment. The basic difference now is that the commission must first determine whether a particular system or prospective system is that of a utility within the "25,000" definition. Although it may be difficult in some instances, we doubt that this is an insurmountable task. The degree of difficulty in performing a task does not negate jurisdiction.

Even though the commission may not have jurisdiction over a particular utility system which will not gross $25,000, it nevertheless has the inherent authority to make that determination. 1/

We recognize that our conclusions in this matter leave a number of pressing questions on application unanswered. Hopefully, however, it provides a sufficient working guide to permit reasonable functioning of the commission in the area of prospective utilities until such time as the legislature takes corrective measures. It would be our thought that any prospective utility can voluntarily confer jurisdiction on the commission by stating that it expects to produce an annual gross income in excess of $25,000. Whether or not the commission necessarily loses jurisdiction thereafter if the first full year of actual operating experience shows less than $25,000 is a question we defer until such time as it may arise. We suggest, however, that in the case of a voluntary invitation to continued jurisdiction there may be room for relying on a future projection, even for an operating utility.

GKE:GLB:rw

1/ In Sayre Land Co. v. Pennsylvania Public Utilities Commission, (1959) 27 PUR3d 502, the Pennsylvania Court of Common Pleas stated "The commission has the function to determine the existence of the fact of ownership or operation of public utility facilities, upon which fact the commission's jurisdiction over public utilities depends."

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

Jackson PSC

SUMMARY

Rank of Alaska Public Service Commission compared with All Other State Regulatory Agencies in Respect to the Following:

Subject	Alaska No.	Alaska Rank
No. of Regulated Electric, Gas and Telephone Utilities	60	28
Total No. of Regulated Electric Utilities	35	14
No. of Private Electric Utilities Regulated	24	1
No. of Publicly-Owned Electric Utilities Regulated *32 other commissions share 21st place.	0	21*
No. of Regulated Cooperative Electric Utilities	11	14
No. of Regulated Gas Utilities	3	45
No. of Private Gas Utilities Regulated	3	44
No. of Publicly-Owned Gas Utilities Regulated #41 other commissions share 12th place.	0	12#
No. of Regulated Telephone Utilities	22	33

No. of Employees:

	No.	Ratio (a)
Professional Staff	4	1
Clerical Staff	3	3/4
Total Staff	7	50

(a) The nationwide average ratio is 2 clerical employees for each professional employee.

TOTAL OF REGULATED ELECTRIC, GAS AND TELEPHONE UTILITIES

State	Total	State	Total	State	Total
Iowa	491	North Carolina	90	Montana	38
Puerto Rico	361	Arkansas	85	Maryland	37
Wisconsin	264	West Virginia	84	Utah	36
Indiana	238	Virginia	75	Tennessee	35
Kansas	206	Wyoming	73	Arizona	33
Pennsylvania	192	New Mexico	72	Idaho	31
New York	173	Washington	62	New Jersey	29
Minnesota	165	Alaska	60	Connecticut	22
Illinois	138	South Carolina	58	Rhode Island	14
Texas	138	Georgia	57	Delaware	8
Missouri	133	Nebraska	54	Hawaii	8
Ohio	120	Oregon	54	District of Columbia	3
Kentucky	119	Maine	53	Virgin Islands	1
California	112	Vermont	53		
Michigan	110	Alabama	52		
Oklahoma	110	South Dakota	52		
Colorado	101	North Dakota	45		
Louisiana	97	Florida	42		
Mississippi	95	Nevada	42		
Massachusetts	94	New Hampshire	40		

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas and Telephone Utilities published by the Federal Power Commission and from the 1966 Statistics of the Independent Telephone Industry published by the United States Independent Telephone Association.

NUMBER OF REGULATED
TOTAL ELECTRIC UTILITIES PER STATE

State	Utilities	State	Utilities
Iowa	225	New Jersey	15
Wisconsin	107	Utah	15
Indiana	97	California	14
New York	67	Missouri	13
Massachusetts	60	Ohio	12
North Carolina	51	Connecticut	11
Colorado	49	South Carolina	8
Illinois	47	Idaho	7
Kansas	45	Hawaii	6
Mississippi	43	Rhode Island	6
Wyoming	42	Florida	5
Kentucky	38	Louisiana	5
Vermont	35	Montana	5
Alaska	35	Tennessee	5
Arkansas	31	Oklahoma	4
Michigan	29	Oregon	4
New Mexico	29	Washington	4
West Virginia	26	Delaware	3
Virginia	24	North Dakota	3
Maryland	23	Alabama	2
Pennsylvania	20	Georgia	2
Maine	19	District of Columbia	1
New Hampshire	18	Minnesota	0
Nevada	17	Nebraska	0
Arizona	15	Puerto Rico	0
		South Dakota	0
		Texas	0
		Virgin Islands	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities Published by the FPC.

NUMBER OF REGULATED
PRIVATE ELECTRIC UTILITIES PER STATE

State	Utilities	State	Utilities
Alaska	24	Idaho	7
New York	22	Kansas	7
West Virginia	21	Arizona	6
Wisconsin	21	Hawaii	6
Massachusetts	20	Connecticut	5
Pennsylvania	18	Florida	5
Vermont	16	Louisiana	5
Illinois	14	Montana	5
Michigan	14	New Jersey	5
Missouri	13	Rhode Island	5
North Carolina	13	Colorado	4
Maryland	12	Oklahoma	4
Nevada	12	Oregon	4
Ohio	12	Washington	4
Indiana	11	North Dakota	3
Maine	11	Tennessee	3
New Hampshire	11	Utah	3
Iowa	10	Alabama	2
California	9	Delaware	2
Kentucky	9	Georgia	2
Wyoming	9	Mississippi	2
New Mexico	8	District of Columbia	1
South Carolina	8	Minnesota	0
Virginia	8	Nebraska	0
Arkansas	7	Puerto Rico	0
		South Dakota	0
		Texas	0
		Virgin Islands	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities Published by the FPC.

NUMBER OF REGULATED
PUBLIC ELECTRIC UTILITIES PER STATE

State	Utilities
Iowa	142
Wisconsin	86
Indiana	81
New York	45
Massachusetts	40
Mississippi	15
Vermont	15
Colorado	12
New Jersey	9
Maryland	7
Wyoming	7
Connecticut	6
New Hampshire	6
Arkansas	5
Maine	5
Pennsylvania	2
Tennessee	2
West Virginia	2
Rhode Island	1
Utah	1
Alabama	0
Alaska	0
Arizona	0
California	0
Delaware	0
District of Columbia	0
Florida	0
Georgia	0
Hawaii	0
Idaho	0
Illinois	0
Kansas	0
Kentucky	0
Louisiana	0
Michigan	0
Minnesota	0
Missouri	0
Montana	0
Nebraska	0
Nevada	0
New Mexico	0
North Carolina	0
North Dakota	0
Ohio	0
Oklahoma	0
Oregon	0
Puerto Rico	0
South Carolina	0
South Dakota	0
Texas	0
Virginia	0
Virgin Islands	0
Washington	0

This information was taken from the 19[illegible] Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities Published by the FPC.

NUMBER OF REGULATED
COOPERATIVE ELECTRIC UTILITIES PER STATE

State	Utilities	State	Utilities
Iowa	73	Alabama	0
Kansas	38	Connecticut	0
North Carolina	38	District of Columbia	0
Colorado	33	Florida	0
Illinois	33	Georgia	0
Kentucky	29	Hawaii	0
Mississippi	26	Idaho	0
Wyoming	26	Louisiana	0
New Mexico	21	Massachusetts	0
Arkansas	19	Minnesota	0
Virginia	16	Missouri	0
Michigan	15	Montana	0
Utah	11	Nebraska	0
Alaska	11	New York	0
Arizona	9	North Dakota	0
California	5	Ohio	0
Indiana	5	Oklahoma	0
Nevada	5	Oregon	0
Maryland	4	Pennsylvania	0
Vermont	4	Puerto Rico	0
Maine	3	Rhode Island	0
West Virginia	3	South Carolina	0
Delaware	1	South Dakota	0
New Hampshire	1	Tennessee	0
New Jersey	1	Texas	0
		Virgin Islands	0
		Washington	0
		Wisconsin	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities Published by the FPC.

NUMBER OF REGULATED
TOTAL GAS UTILITIES PER STATE

State	Utilities	State	Utilities
Puerto Rico	360	Arizona	8
Texas	138	Connecticut	8
Pennsylvania	87	Montana	8
Louisiana	60	North Carolina	8
Kentucky	50	Tennessee	7
Indiana	48	Washington	7
West Virginia	43	Arkansas	6
Iowa	40	Nevada	6
Oklahoma	36	New Jersey	6
New York	34	Rhode Island	6
Ohio	33	South Carolina	6
Massachusetts	30	Alabama	5
Mississippi	27	New Hampshire	5
Kansas	24	Delaware	4
Missouri	21	North Dakota	4
Virginia	21	Oregon	4
Illinois	20	Utah	4
New Mexico	20	Vermont	4
California	18	Georgia	4
Colorado	17	Alaska	3
Wisconsin	17	Idaho	2
Florida	16	Maine	2
Wyoming	16	District of Columbia	1
Maryland	12	Hawaii	1
Michigan	11	Minnesota	0
		Nebraska	0
		South Dakota	0
		Virgin Islands	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas and Telephone Utilities published by the FPC.

NUMBER OF REGULATED
PRIVATE GAS UTILITIES PER STATE

State	Utilities	State	Utilities
Puerto Rico	360	Arizona	8
Pennsylvania	87	North Carolina	8
Texas	76	Connecticut	7
Louisiana	60	Montana	7
Kentucky	50	Tennessee	7
West Virginia	43	Washington	7
Oklahoma	36	Arkansas	6
Indiana	34	Nevada	6
Ohio	33	New Jersey	6
New York	32	Rhode Island	6
Massachusetts	26	South Carolina	6
Kansas	24	Alabama	5
Missouri	21	New Hampshire	5
Virginia	21	Delaware	4
Illinois	20	North Dakota	4
California	18	Oregon	4
New Mexico	17	Utah	4
Wisconsin	17	Vermont	4
Colorado	16	Georgia	3
Florida	16	Alaska	3
Wyoming	16	Idaho	2
Iowa	12	Maine	2
Maryland	11	District of Columbia	1
Michigan	11	Hawaii	1
Mississippi	9	Minnesota	0
		Nebraska	0
		South Dakota	0
		Virgin Islands	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas and Telephone Utilities published by the FPC.

NUMBER OF REGULATED PUBLIC GAS UTILITIES PER STATE

State	Utilities
Texas	62
Iowa	28
Mississippi	18
Indiana	14
Massachusetts	4
New Mexico	3
New York	2
Colorado	1
Connecticut	1
Maryland	1
Montana	1
Alabama	0
Alaska	0
Arizona	0
Arkansas	0
California	0
Delaware	0
District of Columbia	0
Florida	0
Georgia	0
Hawaii	0
Idaho	0
Illinois	0
Kansas	0
Kentucky	0
Louisiana	0
Maine	0
Michigan	0
Minnesota	0
Missouri	0
Nebraska	0
Nevada	0
New Hampshire	0
New Jersey	0
North Carolina	0
North Dakota	0
Ohio	0
Oklahoma	0
Oregon	0
Pennsylvania	0
Puerto Rico	0
Rhode Island	0
South Carolina	0
South Dakota	0
Tennessee	0
Utah	0
Vermont	0
Virginia	0
Virgin Islands	0
Washington	0
West Virginia	0
Wisconsin	0
Wyoming	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas and Telephone Utilities published by the FPC.

NUMBER OF REGULATED
TELEPHONE UTILITIES PER STATE

State	Utilities	State	Utilities
Iowa	226	Kentucky	31
Minnesota	165	North Carolina	31
Wisconsin	140	Virginia	30
Kansas	137	Mississippi	25
Missouri	99	Montana	25
Indiana	93	New Mexico	23
Pennsylvania	85	Tennessee	23
California	80	Alaska	22
Ohio	75	Florida	21
New York	72	Idaho	22
Illinois	71	Nevada	19
Michigan	70	New Hampshire	17
Oklahoma	70	Utah	17
Nebraska	54	West Virginia	15
Georgia	52	Wyoming	15
South Dakota	52	Vermont	14
Washington	51	Arizona	10
Arkansas	48	New Jersey	8
Oregon	46	Massachusetts	4
Alabama	45	Connecticut	3
South Carolina	44	Maryland	2
North Dakota	38	Rhode Island	2
Colorado	35	Delaware	1
Louisiana	32	District of Columbia	1
Maine	32	Hawaii	1
		Puerto Rico	1
		Virgin Islands	1
		Texas	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas and Telephone Utilities Published by the FPC and from the 1966 Statistics of the Independent Telephone Industry Published by the USITA.

SA-12
State of Alaska
Department of Administration
Budget & Management Div.
(Rev. 5-68)

STATEMENT OF PROGRAM

For the Fiscal Year Ending June 30, 1970

		Code
Department	Commerce	08
Division	Public Service	3
Program	Operations	1
	Utility Regulation	01

STAFFING COMPARISON OF REGULATORY AGENCIES BY STATE

State	Professional Staff	Clerical Staff	Total Staff
Alabama	13	12	25
Alaska	4	3	7
Arizona	1	102	103
Arkansas	15	0	15
California	280	515	795
Colorado	8	44	52
Connecticut	14	35	49
Delaware	2	5	7
District of Columbia	11	20	31
Florida	30	111	141
Georgia	8	26	34
Hawaii	21	9	29
Idaho	5	11	16
Illinois	55	187	242
Indiana	17	28	45
Iowa	20	90	110
Kansas	26	137	163
Kentucky	20		
Louisiana	10	19	29
Maine	14	28	42
Maryland	25	33	58
Massachusetts	11	107	118
Michigan	69	29	98
Minnesota	11	47	58
Mississippi	5	47	52
Missouri	91	5	96
Montana	4	13	17
Nebraska	10	65	75
Nevada	13	11	24
New Hampshire	5	6	11
New Jersey	58	72	130
New Mexico	8	0	8
New York	295	331	626
North Carolina	19	37	56
North Dakota	12	17	29
Ohio	62	64	126
Oklahoma	28	164	192
Oregon	76	151	227
Pennsylvania	204	143	347
Puerto Rico	28	8	36
Rhode Island	4	11	15
South Carolina	7	43	50
South Dakota	4	3	7
Tennessee	7	27	34
Texas			
Utah	6	6	12
Vermont	9	4	13
Virginia	19	258	277
Virgin Islands	0	4	4
Washington	46	83	129
West Virginia	23	64	87
Wisconsin	73	61	134
Wyoming	5	35	40

ANALYSIS	NO. EMPLOYEES		RATIO	
	Nationwide	Alaska	Nationwide	Alaska
Professional	1810	4	1	1
Clerical	3331	3	2	3/4

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities published by the Federal Power Commission.

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March 3, 1969

Senator P. B. Haggland
Chairman, Senate Commerce Committee
Alaska State Legislature
Juneau, Alaska 99801

Re: Senate Bill No. 128 - Alaska Public Service Commission

Dear Senator Haggland:

I wrote to you on February 17, 1969 regarding Senate Bills Nos. 54 and 128. That letter was principally with respect to the composition of the Commission, the employment of Hearing Officers and the advantages of having at least one full-time Commissioner. Since writing that letter I have obtained from the Secretary of State information concerning the amount paid for Hearing Officers in the important proceedings before the Commission. The following is offered for your information:

1966-67 Application of Native Village of Tyonek, $1,680.00

Rates, services and facilities of Alaska Electric Light and Power Company, $3,318.50

1967-68 Rates of A. J. Industries, Inc.,$3,279.02

Applications of North State Telephone and Glacier State Telephone, $13,369.20.

The following are observations concerning Senate Bill No. 128 and to some extent the same apply to Senate Bill No. 54.

The present law requires that one member of the Commission be an attorney, one an engineer and one an accountant. I was instrumental in having that provision put in the present law and I think it is essential that the Commission have talent which includes all of these three fields in order for the Commission to be able to sit down and make intelligent decisions without reference to information other than is contained in the record of the proceeding. Under my proposal

for a full-time Commissioner I believe he should be an attorney.

The bill requires that tariffs be filed according to rules set by the Commission. The Commission has never adopted any tariff rules, but it is in the process of doing so.

The bill sets up a procedure for obtaining reparations for charges which have been unreasonable, but collected according to a tariff, provided that the rates have not previously been determined by the Commission as fair and reasonable. The Commission has had a rate proceeding for Alaska Electric Light and Power Company in which it has approved the rates. So far as I know, all other utilities filed their rates at the time they received Certificates of Public Convenience and Necessity and have never had those rates approved. Therefore, in any future proceeding, if the Commission determines that the rates which have been charged have been excessive, it could order a refund to customers, many of whom could not even be found. This would be making rates retroactively and in my opinion is strictly unconstitutional. The common law is that rates cannot be made retroactively and refunds cannot be ordered to be made by a Commission except where rates have been put into effect on the condition that a portion of the revenue be put in a trust fund and refunded later if it is determined that the temporary rates are excessive. I have been advised by the attorney for the Commission that he caused this provision to be inserted in the law and admitted it was a job done in a hurry without a great deal of thought.

Section 42.05.351 provides that there be no unreasonable discrimination in rates "either as between localities or between classes of service". Therefore, if you are furnishing telephone service in a city where you have a density of population amounting to hundreds or thousands per square mile you cannot charge any more than you would in a rural area where the density of population is only ten or fifteen customers to the square mile. Moreover, a utility which operates in several communities would have to have the same rate for each community regardless of the cost of service. For instance, in one community you may have a fine head of water and produce all of the power by a hydroelectric system at a very low cost whereas in another community you have to operate with small diesel engines at very

high cost. The provision against discriminating for classes of service is also unrealistic. Almost all electric and telephone rates distinguish between the service for business establishments and those for domestic establishments. Under this provision a business establishment which may have hundreds of telephone calls in a day could not be charged any more than a householder who only had a few calls a day.

Section 42.05.431 provides for a system of accounts and submission to the Commission within 75 days after the close of an annual accounting period of a report of the operations. These reports are prepared and certified by the accountants under present law. Particularly at the end of the calendar year corporations find it impossible to get their auditors to complete their audits and submit reports within 75 days. The Internal Revenue Service allows three and one-half months for filing income tax returns and an accountant can automatically get an extension of time by mailing a form stating that he is unable to complete the audit and returns on time. Most corporations do not file within the three and one-half months because they do not have the reports. This provision is wholly unrealistic and there should be an allowance of three and one-half months with the right of the Commission to extend the time for good cause shown.

Section 42.05.511 needs revision. It provides that the surplus, profits and operating margins of public utilities shall be distributed in accordance with the bylaws or ordinances controlling the utility. The words "operating margins" should be deleted for obvious reasons. Since utilities are under the control of the Public Service Commission, no control by municipal ordinances should be permitted. This section would allow the Commission to adopt regulations governing the distribution of surplus, profits and operating margins. In other words, the Commission could regulate by some unknown manner the amount of distributions to shareholders or prohibit them entirely. There is nothing wrong with allowing a public utility commission to enjoin the distribution of profits in the form of dividends if such distribution will impair the ability of the utility to furnish adequate and reliable service. There is no reason to give the Commission any more than this limited authority.

The Legislature has never amended the Municipal Code to delete the power of political subdivisions to regulate

utilities so as to prevent a conflict between the powers granted to political subdivisions and those granted to the Public Service Commission.

Section 29.10.141 allows the Council to grant franchises for the exclusive right to furnish utility services. This power has been transferred to the Public Service Commission which issues Certificates of Public Convenience and Necessity. Since the authority of the Commission was granted subsequent to the authority granted to municipalities it is my opinion that the authority of the Commission is exclusive but it is very confusing to laymen to find that the law still gives the right to the municipalities to determine who shall furnish the service and in what areas. The authority of the Council to grant the use of the streets and other public places is also contained in the same section. In my opinion this power should be transferred to the Public Service Commission to be exercised under such rules and regulations as the Commission shall promulgate. In other words, if the Commission wants to allow a municipality to make a charge for the use of its streets such as the 3 per cent gross franchise tax imposed by the City of Juneau on Alaska Electric Light and Power Company, it should be allowed to do so but no municipality should be allowed to determine which utilities can use the streets when the Public Service Commission has determined who shall furnish the service. When the franchises of the presently operating utilities expire, the utilities have no rights to use the public streets and could theoretically be put out of business unless the municipalities are willing to grant such privilege on some reasonable basis. The Commission should be able to determine what is reasonable and to protect the utilities against municipalities making unreasonable charges. Alaska Electric Light and Power Company is now paying the City of Juneau in excess of $35,000 a year for the use of the streets while other public utilities pay nothing.

Section 29.10.144 gives the political subdivisions the right to regulate public utility rates and the Public Service Commission has subsequently been granted that right. This resulted about three years ago in the Attorney General of Alaska giving the Greater Juneau Borough an opinion that there was concurrent jurisdiction in both the Public Service Commission and the City to regulate rates. It seems to me that the opinion is ridiculous on its face. I have advised my clients that the Public Service Commission received its authority subsequent to the receipt of such authority by municipalities. Therefore,

the Commission has exclusive jurisdiction and the Municipal Code should be amended in this regard. However, armed with that opinion from the Attorney General, the Chairman of the Greater Juneau Borough stated in a large public meeting that the Borough would regulate utility rates outside of the City of Juneau and outside of the City of Douglas.

I hope to be able to appear at the meetings which you will have on Senate Bill No. 128 but if I am not able to be present I would like to have my two letters to you on this subject read at the meeting.

Yours very truly,

N. C. Banfield

NCB:db

cc: Clarence D. Bramhall
Don H. Wallach
Don H. Brooks
F. D. Nagel

STUDY OF STATE SUPERVISION OVER MUNICIPALLY OWNED UTILITIES

Prepared by the City of Fairbanks
Office of the City Attorney
January 3, 1961

INDEX

STUDY OF STATE SUPERVISION OVER MUNICIPALLY OWNED UTILITIES

I. INTRODUCTION

This study is based primarily upon the article on the same subject by Charles M. Kneier appearing in 49 Columbia Law Review, pp. 180-200. Other sources are indicated by the citations.

The principal of regulation of public utilities is generally accepted since they are ordinarily monopolies, and where there is a monopoly, regulation is necessary to insure adequate service at reasonable rates. As of 1948, therefore, all of the states but Delaware had state commissions regulating public utilities. In some of these, local public utilities were largely regulated by the cities they served.

However, it is frequently questioned whether such regulation should extend to municipally owned utilities. Do the reasons for control of private monopolies apply to municipally owned public utilities? If regulation is needed, should it be by the state or by the voters of the city through their control over the city officials and by the initiative and referendum? As might be expected, the states vary greatly in the extent of regulation of such utilities.

II. DIFFERING POLICIES OF THE STATES

In many states, including Oregon, such utilities are exempt from state regulation by constitutional or statutory provisions, at least as to service within the city. A smaller group of states

have statutes clearly giving some degree of state control. In some it is over service beyond the corporate limits. In others it is limited to such matters asprescribing methods of keeping accounts, requiring reports, and requiring certificates of convenience and necessity. In a third group of states the statutes and constitutions neither expressly include nor expressly exclude, control by the state commissions.

Three states, Lousiana, New Mexico, and Indiana, leave the question of state regulation up to the voters of the city, the first two by voting to ask for regulation. In Michigan and Kansas the commissions are required to advise the cities upon request, but cannot regulate city owned utilities. Other commissions give such advice and assistance informally.

III. STATE POWER TO REGULATE

A. General.

In the absence of a constitutional prohibition it is clear that the legislature may provide for regulation of municipally owned utilities by a state commission. It is equally clear that such utilities may be exempted, and privately-owned utilities cannot complain of deprivation of due process or equal protection under either the state or federal constitutions.

In Colorado, Montana and Utah the state constitutions provide that the legislature shall not delegate to a special commission any power to make, supervise, or interfere with any municipal functions. Holding that the purpose of such a provision is to "hold inviolate the right of local self-government...with re ct to municipal improvements, money, property, effects, the lev ng of taxes, and

the performance of municipal functions" the Utah Supreme Court held unconstitutional a statute attempting to confer regulatory powers upon the state commission. Logan City v. Public Utilities Comm'n, (1928) 72 Utah 536, 271 Pac. 961, 972. Accord, Holyoke v. Smith, (1924) 75 Colo. 286, 226 Pac. 158; contra, Public Service Comm'n. v. Helena, (1916, held not a "special commission") 52 Mont. 527, 159 Pac. 24.

B. Home Rule As a Restriction On State Power.

Home rule usually restricts the power of the state legislature to interfere in local affairs. Under this doctrine Ohio has held that the state commission has no power to regulate rates of municipally-owned utilities, Shoemaker v. Village of Granville (Ohio Civil App., 1958) 156 N.E.2d 757. Water supply is a local affair in Oklahoma, Pitts v. Aleen (1929) 138 Okla. 295, 281 Pac. 126, and California, City of Pasadena v. Charleville, (1932) 215 Cal. 384, 10 P.2d 745. Sale and distribution of electricity is a local affair in California, Los Angeles Gas and Electric Corp. v. City of Los Angeles, (1922) 188 Cal. 307, 205 Pac. 125. The only state which permits a measure of control is Michigan, which has held that the provisions of the state labor mediation act is applicable to city employees of the utility, Local Union No. 876 v. State of Michigan Labor Mediation Board, (1940) 294 Mich. 629, 293 N.W. 809, 811. See also Antieau, Municipal Corporation Law, Section 3.19. Colorado has also held that home rule cities cannot be regulated as to utility services, at least as to service within the city limits, see infra.

C. Home Rule in Alaska.

Despite these cases and the lack of contrary decisions it is questionable whether they will be of help to Alaskan home rule cities in avoiding regulation. The local affairs-state concern dichotomy does not appear to be embodied in the Constitution of Alaska.

The convention, believing that the dichotomy led to an erosion of local powers through court decisions, instead vested "all legislative powers not prohibited by law or by charter" in home rule cities. It appears to be the intent of the framers that home rule cities would never have to ask for any enabling legislation, while reserving to the legislature the power to limit the city's powers in the event the city "abused" its powers or in the event the city came into conflict with the home rule borough (county) of which it is a part. See Article X, Constitution of Alaska, especially Sections 1, 2, and 11.

> "3. Specifically reviewed were the provisions authorizing the adoption of home rule charters. It was generally agreed that the procedure should be left to the legislature and to the local government body. The grant of powers is to be based upon "legislative powers" rather than a specific enumeration. Enumerations have frequently been restrictively interpreted by the courts. Nor was it felt desirable that the grant be on the basis of powers covering "local affairs" or "local government". Such terms have also given rise to continuous judicial interpretations, causing great uncertainty in what the actual powers of local government are. The grant of "legislative" power would be subject to restrictions contained in the constitution, to powers specifically withheld by the legislature and to powers withheld by the people in the adoption of their local charter." (emphasis added) Minutes, 24th Meeting, Committee on Local Government, Constitutional Convention. See also Minutes of the 35th and 40th Meetings.

Nevertheless, since the distriction was avoided in order to

to protect the powers of home rule cities, such cities may argue that the omission was not intended to and did not sweep away the protection from unwanted and unwarranted interference by the legislature in municipal affairs, the protection which is afforded by constitutional home rule in the other states. Otherwise, the legislature could provide, for example, that home rule cities shall not use the city manager plan. Obviously there must be a line drawn somewhere, and in view of the cases cited it is at least possible that the courts would hold that the legislature cannot vest in the State Public Service Commission the power to regulate municipally-owned public utilities as to service within city limits.

This reasoning is especially applicable to certain aspects of such regulation contemplated by Chap. 199, S.L.A. 1959. Section 37 appears to give the commission control over staffing patterns, wage and salary scales, and management generally and the commission may order the correction of "abuses" which "adversely affect the cost...or service." Section 50 requires the commission to review municipal bonding ordinances, providing for issuance of bonds to construct or improve a public utility, and permits the commission to make orders in the event the commission finds that the ordinance will preclude the operation of the utility in the "best" public interest. Presumably the commission could order that proposed bonds not be issued.

It is probable that the extensions of the Fairbanks water system will be financed in part by revenue bonds and, at a lower interest rate, by general obligation bonds. Revenues would not be sufficient to finance wholly by revenue bonds. Though the interest

rate would be lower, the City will probably not want to finance the extensions wholly by general obligation bonds because of the limit on such bonds in the city charter. Could the commission order the city to finance such extensions wholly by general obligation bonds? Apparently so, yet if the commission can do so, home rule in Alaska will not be a guarantee of maximum local self-government. The annual trek of city lobbyists to the state legislature will not be diminished, the only change will be that instead of seeking legislative authorization to handle their own affairs, they will be seeking to prevent further inroads of state interference.

Of course, home rule cities could, by ordinance, exempt their utilities from state control, but there can be little doubt that the legislature would react immediately to "specifically" withhold this legislative power from the cities.

D. Alaska Constitution, The "Appropriation"Clause.

One constitutional protection is, however, clearly available. "Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected." Section 19, Article II, Constitution of Alaska. While restricted to local acts of the legislature, it seems doubtful that the State Public Service Commission could make orders requiring appropriations by the cities, as for example, to make extensions of a utility system, and avoid the election where the legislature could not do so. Not being bound by such a constitutional limitation, the state of New York appears to have required the City of New York to acquire and finance the public transit systems in that city, operational control

of which was vested in a state board. See McCabe v. Voorhis (1926) 243 N.Y. 401, 153 N.E. 849 and McAneny v. Board of Estimate and Approptionment of City of New York, (1922) 232 N.Y. 377, 134 N.E. 187.

IV. EXTENT OF STATE REGULATION

A. Management.

In those states which do give regulatory powers over municipally-owned public utilities, some commissions have been relatively liberal in regulation, as compared to regulation of privately owned utilities, especially as to extensions. Further, the commissions repeatedly state that the power to regulate municipally-owned utilities is not the power to manage. Yet on occasion the commissions have invaded the area of management, ordering such utilities to give discounts on bills paid before the first of the month, to require safety guards on equipment, and to require the city to employ an engineer to inspect a building to ascertain whether the roof was in danger of collapse. Section 38 of Chapter 199, S.L.A. 1959 would appear to give carte blanche to the commission to manage city utilities once a complaint has been made. In this respect Alaska appears to vary greatly from the practice in the other states.

B. Rates and Discriminatory Practices.

Only nine states, as of 1948, gave their state commissions power to fix rates for municipal utility service within the city limits. An argument advanced in support of such regulation is that without it rates have been kept high and the surplus transferred to the general fund. This is condemned by some as inequitable, as

favoring business property by reducing property taxes through surplus accumulated from the small holders, who are said to use proportionately more utilities.

Yet if to some it seems unwise to finance general city services out of utility earnings, is it necessary or good policy to control this through a state commission? If the citizens approve, why should the state interfere? If the citizens do not approve they can easily effect a change by election, recall, initiative or referendum. If such control is said to be more theoretical than practical, the same can be said of citizen control of all governmental activities. Shall the state now regulate and control the fire protection services of cities? And who shall regulate and control the state ferry system if the democratic controls provided by our constitution are deemed inadequate to prevent the state from operating it at a profit?

Speaking of profit, it should be noted that the Municipal Utilities System of the City of Fairbanks makes no contributions to the general fund, except by way of in lieu of tax payments, and the general fund is charged for utilities furnished to the city.

Though it is not yet true in Alaska, some cities have financed general operations out of utility earnings not by choice but by necessity, since many states have taken over all the best sources of tax revenue, and only through surplus earnings have city property taxes been kept within reasonable limits.

Finally, it has been well said that "experience teaches us that state government is not the repository of all wisdom."

State commissions which do have jurisdiction have found and removed discriminatory rates and other practices and, while

there is somewhat greater justification for control to prevent discrimination as contrasted with control of profits, yet it is often a reasonable question as to whether a particular practice is discriminatory. Further, not only is state control contrary to the principle of local self-government, but bad practices may be corrected by the voters or by the courts, under the common law. The courts have not hestitated to correct real discrimination and other abuses wherever they have found such to exist, see McQuillin, Municipal Corporations, Sections 35.34 and 35.35, Antieau, Municipal Corporation Law, Sections 19.01, 19.02, 19.03 and 19.04.

C. Accounting and Reporting.

About 18 states have given state commissions the power to prescribe accounting methods and require reports from municipal utilities. A strong case can be made for this. Comparable statistics are needed by the public as well as the commission, and proper accounting and reporting are essential if the citizens of cities are to exercise effective local control over their municipally-owned utilities.

D. Critique.

> "Advocates of state control over municipal utilities take the position that if not necessary it is nevertheless desirable. They cite cases in jurisdictions making use of state control where rates have been increased or lowered on the basis of scientific ratemaking and not on the basis of what an uninformed public favors; where questions of discrimination in service or rates have been decided on the basis of experience and accepted practice rather than according to the influence or persuasivenss of the individual persons objecting; and where by the requirement of proper accounting and reporting not only the state commission but the people of the city have been able to judge the results of municipal operation of utilities. They look upon

state control of municipal utilities as a means by which a staff of experts with accumulated knowledge assists and guides cities in the operation of their plants and saves them from errors.

A distinction might be made between the technical questions of operation of a municipally owned utility and questions of public policy. As to the latter, good practice would seem to dictate local determination, even though some mistakes might be made. The New York Public Service Commission, in refusing to grant a certificate to a village for the construction of a publicly owned electric plant, said: "The Commission is therefore called on to protect the village against itself. Public convenience and necessity do not require a village to embark on a disastrous business enterprise." Even though we assume that the case was properly decided and that the Commission did, as it suggested, protect the City against itself, there is a serious doubt as to whether the policy question of municipal ownership should be left to the determination of a state commission. If a city in some cases "burns its fingers," this is a small price to pay for local determination of public policies. And if, as many city officials feel, state commissions are in general believers in the principle of private ownership and public regulation, state control may place a serious obstacle in the path of the spread of municipal ownership. The Montana Commission, in ordering service restored to a customer, condemned as "inhuman, inconsiderate, cruel and un-American the action of the water commission and clerk in shutting off water." The customer, a county charge who failed to pay his bill, was, according to the Commission, "denied service without consideration and more despicably, more lowly and more contemptibly than he would have been by any of the predatory and greedy privately owned utilities in this state". It appears as if the practice here was bad, and the Commission was right in its disapproval. However, the management of the utility was subject to control by the electorate and the situation might have been remedied there. And if the principle of state supervision is accepted in such a case, then the door is open for interference in other questions of policy." Cited, Columbia Law Review, pp. 192, 193.

V. REGULATION WHEN SERVICE RENDERED OUTSIDE MUNICIPAL LIMITS

Here is the strongest case for state control, as the consumers are not citizens who can effect a change in policies if they are dissatisfied. In addition to nine states which regulate within as well as without the city limits, ten other states, in 1948, had given to their commission jurisdiction over service performed outside the city limits by municipally-owned public utilities. In some this is by statute, in others it is by judicial decision, and the courts have noted the need for protecting such consumers.

However, such jurisdiction is generally restricted to those cases where the city holds itself out as serving the general public beyond the city limits, thus becoming a public utility. If the city acts on a limited, contractual basis, the state commission will have no jurisdiction. Denver thus avoided regulation, though it had 4500 water users outside the city limits. Re City and County of Denver, (1937) 18 P.U.R. (N.S.).

In the absence of commission control there are varying state doctrines on the remedies available in the courts to consumers residing outside the city limits. The majority rule appears to be that the city is subject to all the common law duties of a public utility, at least where it holds itself out as such. At the other extreme, Georgia and South Carolina appear to impose no duties upon the city. At the risk of over simplification, it may be said that the remaining states require that the city not discriminate in service among such consumers and that the out of city rates not be excessive in comparison to the rates within the

city, but the courts will not require the city to make extensions into new areas, nor will the courts examine the overall rate structure to determine whether the rate of return is excessive.

The reaction of this third group of states to these problems is reflected by the actions of the commissions which have regulatory powers. Most commissions permit higher rates to be charged to those consumers outside the city. Justifications for such a practice are said to be the added cost of service, the city assumes the risk of casualty losses, and, most frequently, such consumers have foregone nothing as taxpayers, and cannot expect to share in the benefits. Most commissions hesitate to order major extensions, recognizing this to be a matter of internal management, and that financing problems of such a utility are different from privately owned utilities.

VI. KNEIER'S CONCLUSION

> "That no right, conclusive, and unquestionable solution have yet been found to the problem of whether a state commission should have the same supervisory control over municipal utilities that it does over privately owned utilities is indicated by the varying practices in the states. City officials speaking as individuals and through state municipal leagues oppose such control. They look upon it as a further unnecessary interference with the right of cities to manage their own affairs. They believe that a remedy is available to the voters if there is mismanagement or if unpopular policies are adopted. If the state commissions have technical experts who can be helpful, then city officials believe their assistance should be available on a voluntary basis. The evidence, however, indicates that in the states where the latter practice has been adopted, cities have made little use of the technical service.
>
> Those who favor state control point to what they consider to be cases of mismanagement, discrimination in service and rates based on the political influence of individuals or groups, poor accounting methods, and rates that cannot be justified on economic grounds.

Some advocates of state control favor such a policy on the ground that it is fairer to privately owned utilities; "otherwise privately owned plants operate at a competitive disadvantage compared with municipally owned plants".

Opponents of state control are on their weakest ground when opposing supervision over methods of accounting and the requirement that reports be made to the state commission. Proper methods of accounting are not questions of policy to be left to local discretion. A state commission should be helpful, and giving control in this area can hardly be considered an encroachment on local self-government.

With an increase in the service by municipal plants beyond the corporate limits of the city, a strong case for state supervision of the rates and service can be made. Otherwise the remedies available to the outside consumer are inadequate. When served by a municipal plant he should pay higher rates than those who reside within the city. And state commissions have approved such higher rates. However, there should be a limit to the amount which he must pay for the privilege of living outside. To say that he can resort to the courts or that he can have a privately owned utility invade the field is hardly adequate.

State control of accounting or of rates charged beyond the corporate limits appears to the cities, however, as merely an opening wedge, a toe-in-the-door, and a step to full control of municipal utilities. On the basis of experience with state legislatures and with state boards and commissions, they fear a further invasion of the rights of local self-determination. The right of self-government is still charished, and this includes the management of municipally owned utilities." Cited, Columbia Law Review, pp. 196, 197.

STATE COMMISSION JURISDICTION OVER MUNICIPALLY OWNED UTILITIES*
(Electric, Gas, and Water Unless Otherwise Indicated)

	Regulate Rates		Regulate Service				License for Operation	
	Within Corp. Limits	Outside Corp. Limits	Within Corp. Limits	Outside Corp. Limits	Prescribe or Control Accounting	Require Reports	Within Corp. Limits	Outside Corp. Limits
Alabama	No	No	No	No	No	No	No	No
Arizona	No	No	No	No	No	No	No	No
Arkansas	No	Yes	No	Yes	No	No	No	Yes
California	No	No	No	No	No	No	No	No
Colorado	No	Yes[1]	No	Yes	Yes	Yes	No	Yes
Conn.	No	No	No	No	Yes	Yes	No	No
Delaware	No Commission							
Florida	No	No	No	No	No	No	No	No
Georgia	No	Yes	No	Yes	No	No	No	No
Idaho	No	No	No	No	No	No	No	No
Illinois	No	No	No	No	No	No	No	No
Ind.[2]	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Iowa	No	No	No	No	No	No	No	No[3]
Kansas	No	No	No	No	No	No	No	No
Kentucky	No	Yes	No	Yes	No	No	Yes	Yes
Louisiana	No	No	No	No	No	No	No	No
Maine	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Maryland[4]	Yes	Yes	Yes	Yes	Yes	Yes	Yes[5]	Yes[5]
Mass.[6]	No[7]	No[7]	Yes	Yes	Yes	Yes	Yes[8]	Yes[9]
Michigan	No	No	No	No	Yes[10]	Yes[10]	No	No
Minnesota	No	No	No	No	No	No	No	No
Miss.	No	No	No	No	No	No	No	No
Missouri	No	No[11]	No	No[11]	No	No	No	No[11]
Montana	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Nebraska	No	Yes	No	Yes	No	No	No	No[12]
Nevada	Yes	Yes	Yes	Yes	Yes	Yes	No	No
N. H.	No	Yes	No	Yes	Yes	Yes	No	No
New Jersey	No	Yes[13]	No[14]	Yes[15]	Yes	Yes	No	Yes[16]
New Mexico	No	No	No	No	No	No	No	No
New York[17]	Yes	Yes	Yes	Yes	Yes	Yes	No	No[18]
No. Carolina	No	No	No	No	No	Yes	No	No
No. Dakota	No	No	No	No	No	No	No	No

STATE COMMISSION JURISDICTION OVER MUNICIPALLY OWNED UTILITIES*
(Electric, Gas, and Water Unless Otherwise Indicated)

	Regulate Rates		Regulate Service				License for Operation	
	Within Corp. Limits	Outside Corp. Limits	Within Corp. Limits	Outside Corp. Limits	Prescribe or Control Accounting	Require Reports	Within Corp. Limits	Outside Corp. Limits
Ohio	No	No	No	No	No	No	No	No
Okla.	No	No	No	No	No	No	No	No
Oregon	No	No	No	No	No	No	No	No
Penn.[19]	No	Yes	No	Yes	Yes	Yes	No	Yes
R. I.[20]	No	No	No	No	No	No	No	No
So. Carolina	No	Yes[21]	No	Yes[21]	No	No	No	Yes[21]
So. Dakota[22]	No	No	No	No	No	No	No	No
Tenn.	No	No	No	No	No	No	No	No
Texas	No	No	No	No	No	No	No	No
Utah	No	No	No	No	No	No	No	No
Vermont[23]	No	Yes	No	Yes	Yes	Yes	No	No
Virginia	No	No	No	No	No	No	No	No[24]
Wash.	No	No	No	No	No	No	No	No
West. Vir.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wisc.	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Wyoming	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Source: This table is reproduced from Kneier State Supervision Over Municipally Owned Utilities, 49 Columbia Law Review, 180, 198-200 (1948).

*This table is based on state laws and the decisions of courts and public utilities commissions. The answers given in the table have been approved by the commissions in the following states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The Indiana, Maryland, Massachusetts, Pennsylvania, and Rhode Island Commissions have furnished data on which the table is based, but they have not passed upon the specific answers given in the table. Data in table as of August 15, 1948.

1. Where the city takes on a few customers by special contract the commission has no jurisdiction.
2. The Indiana statute is very confusing and in fact the provisions are in conflict as to state supervision over municipally owned utilities. Data in the table based in part on Opinions of Attorney General of Indiana given to Chairman of the Public Service Commission of that state under date of April 24, 1947, and April 5, 1948.
3. The "Commission does have jurisdiction over construction and operation of all electric transmission lines outside cities and towns. Franchise is required and given after application, hearing and determination of propriety."
4. The Maryland Commission has no jurisdiction over water utilities except some very limited jurisdiction when water is supplied outside the municipal limits.
5. Baltimore is excepted from this requirement.
6. The Department of Public Utilities has no regulatory authority over municipal water system.
7. Municipal plant may not sell at less than cost of production without approval of state Department of Public Utilities; and it is limited to profit of eight per cent. Mass. Ann. Laws c.164 § 58 (1933).
8. The statutory requirement is for "towns", but this has been construed to include cities.
9. Required only for municipal gas and electric utilities.
10. No statutory provision for enforcing compliance. "Municipally owned utilities may completely disregard the forms as prescribed by the Commission."
11. Missouri municipalities have very limited power to furnish utility service beyond their corporate limits. City of Springfield v. Monday, 353 Mo. 981, 185 S.W. 2d 788 (1945); Re City of Springfield, 58 P.U.R. (N.S.) 237, 60 P.U.R.(N.S.) 161 (No. 1945); Taylor v. Dimmitt, 336 Mo. 330, 78 S.W.2d 841 (1934). The General Counsel of the Missouri Public Service Commission writes (letter dated Aug. 9, 1948) that: "If a municipally owned utility should attempt to render service to customers outside of the corporate limits, then to that extent it would lose its status as a municipal operation and would become subject to the regulation of the Commission in the same manner as any other privately owned public utility."
12. "Authorizes construction of lines, but does not issue certificates of convenience and necessity."
13. No jurisdiction over municipal water utilities except in cities of second class having over 120,000 population supplying water to inhabitants of another municipality.

14. The answer is "yes" for municipal electric utilities.
15. The answer would be "no" for municipal water utilities.
16. The answer would be "no" for municipal water utilities.
17. Commission no jurisdiction over municipal water works.
18. Consent of commission is necessary if service is extended to adjoining municipalities and a private utility is operating in the new territory.
19. "Municipal Corporation" as used in the statute means cities, boroughs, towns, townships, or counties, and also any public corporation, authority, or body whatsoever created for the purpose of rendering service similar to that of a public utility.
20. The only municipally owned utilities in Rhode Island are water works, and they are exempt from supervision by the Public Utility Administrator.
21. Electric utilities only.
22. The commission has no jurisdiction over municipally owned water, gas, or electric plants; it does have jurisdiction over the two municipally owned telephone systems. (Brookings and Beresford).
23. The Vermont commission has no jurisdiction over municipally owned water utilities.
24. The answer would be "yes" for transportation, but no municipally owned systems are operating in Virginia.

The Legislature of the State of Alaska
FISCAL NOTE
First Session - Sixth State Legislature

COPIES: ___THE CHAIRMAN OF THE COMMITTEE MAKING THE REQUEST, POUCH V
___THE LEGISLATIVE FINANCE COMMITTEES' STAFF, POUCH Y
___THE DIVISION OF BUDGET & MANAGEMENT, POUCH C
___RETAIN A COPY FOR YOUR FILES

subject HB 202 SB
requested by Chairman Barry W. Jackson, House Judiciary Committee
referred to date of request
completion date requested date received

EXPENDITURE DETAIL	FY 1969-70	FY 1970-71	FY1971-72
100 PERSONAL SERVICES	$228,300	$250,400	$257,700
200 TRAVEL	26,500	24,300	25,000
300 CONTRACTUAL SERVICES	120,400	73,000	73,000
400 COMMODITIES	4,000	5,000	5,000
500 EQUIPMENT	7,700	2,500	2,500
600 LAND AND STRUCTURES			
700 GRANTS, CLAIMS & SHARED REVENUE			
900 Inter-agency Charges	22,000	23,000	23,000
TOTAL	$408,900	$378,200	$386,400
FUNDING DETAIL			
FEDERAL RECEIPTS	$	$	$
SPECIAL FUNDS			
UNRESTRICTED GENERAL FUND RECEIPTS	408,900	378,200	386,400
Man Months	180	204	216
Permanent Positions	15	17	18
Temporary Positions	0	0	0

FISCAL ANALYSIS

Please see attached.

DATE 3/4/69 SIGNATURE George Sharrock

NAME & TITLE George Sharrock, Commissioner of Commerce

FORM SA-18

MEMORANDUM State of Alaska

TO: B. L. McMurtrey
Deputy Commissioner
Department of Commerce

DATE : February 27, 1969

FROM: Don Hall
Executive Director
Public Service Commission

SUBJECT: HB 188 and HB 202

You asked for my comments in regard to HB 188 but made no similar request in regard to HB 202.

I have compared HB 188 and SB 54 and find that they are identical in every respect. I have also compared HB 202 with SB 128 and find that they too are identical in every respect with one exception; namely, that Sec. 42.05.691(b) of SB 128 has been omitted from HB 202. This deletion has the effect of broadening the Commission's authority.

I have already prepared detailed comments on SB 54 and SB 128, copies of which are in Mr. Sharrock's possession--and these comments, of course, apply also to their respective House companion bills.

You have the Commission's original budget in the amount of $347,800 as subsequently modified by the cost of upgrading certain positions and by adding $8,500 to cover the cost of regulating pipeline companies (principally the Alaska Pipeline Company). The cost of administering SB 54 would be somewhat greater than the cost of administering SB 128 because of the fact that SB 54 requires more extensive regulation of municipally owned and operated utilities. However, I believe that the aforementioned original budget as modified would be adequate to administer SB 54, at least during the first year.

Estimates have also been submitted regarding our budgetary requirements for the years ending June 30, 1970, 1971, and 1972. These estimates were specifically based upon administering SB 128 and consist of a three-year projection compiled in one document.

I believe the foregoing is an adequate response to your request for information in regard to the House and Senate bills mentioned above.

By Don Hall

DH:SG

ALASKA PUBLIC SERVICE COMMISSION

Detail of Personnel Requirements

NOTE #1

Position Title	Approved FY 1968-1969	Projected FY 1969-1970	Projected FY 1970-1971	Projected FY 1971-1972
Executive Director	18,888	21,612	21,612	21,612
Deputy Director	17,844	19,992	19,992	19,992
Utilities Engineer	14,916	17,844	17,844	17,844
Financial Analyst II	15,876	15,876	15,876	15,876
Tariff Specialist II		15,876	15,876	15,876
Financial Analyst I	12,156	13,908	13,908	13,908
Tariff Specialist I		13,908	13,908	13,908
Accountant IV			13,032	13,032
Assistant Utilities Engineer		12,156	12,156	12,156
Administrative Officer I		12,156	12,156	12,156
Accountant II	9,960			
Secretary III		8,496	8,496	8,496
Secretary II	7,956			
Secretary I		7,488	7,488	7,488
Secretary I		7,488	7,488	7,488
Documents Clerk III		7,488	7,488	7,488
Clerk Steno II	6,420	6,420	6,420	6,420
Clerk Steno II			6,420	6,420
Clerk Typist III	6,420	6,420	6,420	6,420
Clerk Typist III				6,420
Sub-total	110,436	187,128	206,580	213,000
Commissioner		5,000	5,000	5,000
Commissioner		5,000	5,000	5,000
Commissioner		5,000	5,000	5,000
Employee Benefits	11,164	26,172	28,820	29,700
Total Personnel Services	$121,600	$228,300*	$250,400	$257,700

*The difference between this amount and the request for personnel services included on our original FY 1969-1970 budget request ($228,300 - $194,900 = $33,400) is comprised of nominal salaries for the three Commissioners plus six reclassifications which were recommended by consultants in recommendations on Commission Staffing.

NOTE # II

200 Travel
We anticipate that our travel fund requirements, both outside and within the State, will remain fairly constant for the next three years. The moderate decrease projected for FY 1970-1971 is comprised of two items included in our present budget (ACS Sale Bid Proposal Evaluation conferences and transportation of new employees) which will no longer be needed. The moderate increase in FY 1971-1972 is anticipated because of increase in workload.

NOTE # III
300 Contractual Services
The $28,500 increase in FY 1969-1970 projected requirements is made up of the following costs:

a) $20,000 to provide funds for hearing officers appointed pursuant to AS 42.05, Section 181 of SB 128
b) $8,500 to provide funds for consultants to investigate operations of existing oil transmission pipelines within the State

The $47,400 decrease in FY 1970-1971 was computed as follows:

a) $5,100 increase in overall contractual services account due to increase in workload and change in methods and procedures utilized in accomplishing program of utility regulation.
b) $52,500 total decrease possible because of anticipated finalization of ACS sale by July 1, 1970 ($35,000); completion of investigation of safety programs of natural gas utilities ($18,500); completion of investigation of oil transmission pipelines ($8,500); and an increase of $10,000 for hearing officer fees.

NOTE # IV
400 Commodities
Our requirements in this area have reached a fairly stable level. The increase in FY 1970-1971 is necessary because of additional personnel to handle the added workload. However, we then expect requirements in this account to level off at the amount shown.

NOTE V
500 Equipment
Continuing decrease in requirements in this area is a reflection of the adequacy of budget requests made and appropriations received in the past.

NOTE VI
900 Interagency Charges
Moderate increase is for additional travel funds for the attorney on full-time assignment from Department of Law.

	FY 1969 - 1970	FY 1970 - 1971				FY 1971 - 1972			
	Original APSC Request	Increase	Decrease	Projected Budget Requirement	Increase	Decrease	Projected Budget Requirement	Increase	Decrease	Projected Budget Requirement
- General Services (See attached Note I)	194900	33400		228300	22100		250400	7300		257700
- Travel (See attached Note II)	26500			24500		2200	24300	200		24500
- Contracted Services										
1. Communications	5100			5100	900		6000	500		6500
2. Printing & Binding	3500			1500	1500		3000		2000	3000
3. Rent	4900			4900	1200		10500			10500
4. Repairs	700			700	300		1000	200		1200
5. Transportation of Things	1200			1200		500	700			700
6. Spec. Rental	2400			2400	1000		3400			3400
7. Misc. & Reserve	700			300	100		400			400
8. Professional Services	63000	25500		76000		52000	47500	1500		49000
9. Utility Fees	300			200	100		1000			1000
Sub-total (See attached Note II)	91900			120400			73000			73200
- Commodities (See attached Note III)	4000			4000	1000		5000			5000
- Equipment (See attached Note IV)	7700			7700		5200	2500			2500
- Contingency Charges (See attached Note V)	22000			22000	1000		23000			23000
TOTALS	342000			405700			378200			386400

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

The Legislature of the State of Alaska
FISCAL NOTE
First Session - Sixth State Legislature

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___THE LEGISLATIVE FINANCE COMMITTEES' STAFF, POUCH Y
___THE DIVISION OF BUDGET & MANAGEMENT, POUCH C
___RETAIN A COPY FOR YOUR FILES

subject HB 188 SB
requested by Chairman Barry W. Jackson, House Judiciary Committee
referred to date of request
completion date requested date received

EXPENDITURE DETAIL	FY 1969-70	FY 1970-71	FY1971-72
100 PERSONAL SERVICES	$243,300	$265,400	$272,700
200 TRAVEL	28,500	26,300	27,000
300 CONTRACTUAL SERVICES	120,400	73,000	73,200
400 COMMODITIES	4,000	5,000	5,000
500 EQUIPMENT	7,700	2,500	2,500
600 LAND AND STRUCTURES			
700 GRANTS, CLAIMS & SHARED REVENUE			
900 Inter-agency Charges	22,000	23,000	23,000
TOTAL	$425,900	$395,200	$403,400

FUNDING DETAIL			
FEDERAL RECEIPTS	$	$	$
SPECIAL FUNDS			
UNRESTRICTED GENERAL FUND RECEIPTS	425,900	395,200	403,400
Man Months	180	204	216
Permanent Positions	15	17	18
Temporary Positions	0	0	0

FISCAL ANALYSIS

Please see attached.

DATE 3/4/69 SIGNATURE George Sharrock

NAME & TITLE George Sharrock, Commissioner of Commerce

ALASKA PUBLIC SERVICE COMMISSION

Detail of Personnel Requirements

NOTE #1

Position Title	Approved FY 1968-1969	Projected FY 1969-1970	Projected FY 1970-1971	Projected FY 1971-1972
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Clerk Steno II	6,420	6,420	6,420	6,420
Clerk Steno II			6,420	6,420
Clerk Typist III	6,420	6,420	6,420	6,420
Clerk Typist III				6,420
Sub-total	110,436	187,128	206,580	213,000
Commissioner **5 ea @$6,000 each per year**		**30,000**	**30,000**	**30,000**
Employee Benefits	11,164	26,172	28,820	29,700
Total Personnel Services	$121,600	**$243,300**	**$265,400**	**$ 272,700**

*The difference between this amount and the request for personnel services included on our original FY 1969-1970 budget request ($228,300 - $194,900 = $33,400) is comprised of nominal salaries for the **five** Commissioners plus six reclassifications which were recommended by consultants in recommendations on Commission Staffing.

ALASKA PUBLIC SERVICE COMMISSION Cont.

NOTE # II

200 Travel
We anticipate that our travel fund requirements, both outside and within the State, will remain fairly constant for the next three years. The moderate decrease projected for FY 1970-1971 is comprised of two items included in our present budget (ACS Sale Bid Proposal Evaluation conferences and transportation of new employees) which will no longer be needed. The moderate increase in FY 1971-1972 is anticipated because of increase in workload. **Add increase of 2,000 for each Year covering additional 2 commissioners for a total of 5 .**

NOTE # III

300 Contractual Services
The $28,500 increase in FY 1969-1970 projected requirements is made up of the following costs:

a) $20,000 to provide funds for hearing officers appointed pursuant to AS 42.05, Section 181 of SB 128
b) $8,500 to provide funds for consultants to investigate operations of existing oil transmission pipelines within the State

The $47,400 decrease in FY 1970-1971 was computed as follows:

a) $5,100 increase in overall contractual services account due to increase in workload and change in methods and procedures utilized in accomplishing program of utility regulation.
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NOTE # IV

400 Commodities
Our requirements in this area have reached a fairly stable level. The increase in FY 1970-1971 is necessary because of additional personnel to handle the added workload. However, we then expect requirements in this account to level off at the amount shown.

NOTE V

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NOTE VI

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Moderate increase is for additional travel funds for the attorney on full-time assignment from Department of Law.

	FY 1969 - 1970			FY 1970 - 1971			FY 1971 - 1972			
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- Travel (See attached Note II)	26500			24500 + 2000		2200	24700 + 2000	200		25000 + 2000
- Contractual Services										
(a) Communications	5100			5100	900		6000	500		6500
(b) Printing & Binding	3500			1500	1500		3000		2000	3000
(c) Rent	9600			9600	1200		10800			10800
(d) Repairs	700			700	300		1000	200		1200
(e) Transportation of Things	1200			1200		500	700			700
(f) Office Rental	2000			2400	1000		3400			3400
(g) Fees & Books	500			300	100		400			400
(h) Professional Services	65000	28500		93500		52000	41500	1500		43000
(i) Utility fees	1000			2000	100		1000			1000
Sub-total (See attached Note II)	91900			120400			73000			73200
- Commodities (See attached Note III)	4000			4000	1000		5000			5000
- Equipment (See attached Note IV)	1700			7700		5200	2500			2500
- Contingency Charges (See attached Note V)	22000			22000	1000		23000			23000
TOTALS	347000			468900			378200			384400
			+	17000		+	17000		+	17000

FORM SA-1B

MEMORANDUM State of Alaska

TO: B. L. McMurtrey
Deputy Commissioner
Department of Commerce

DATE : February 27, 1969

FROM: Don Hall
Executive Director
Public Service Commission

SUBJECT: HB 188 and HB 202

You asked for my comments in regard to HB 188 but made no similar request in regard to HB 202.

I have compared HB 188 and SB 54 and find that they are identical in every respect. I have also compared HB 202 with SB 128 and find that they too are identical in every respect with one exception; namely, that Sec. 42.05.691(b) of SB 128 has been omitted from HB 202. This deletion has the effect of broadening the Commission's authority.

I have already prepared detailed comments on SB 54 and SB 128, copies of which are in Mr. Sharrock's possession--and these comments, of course, apply also to their respective House companion bills.

You have the Commission's original budget in the amount of $347,800 as subsequently modified by the cost of upgrading certain positions and by adding $8,500 to cover the cost of regulating pipeline companies (principally the Alaska Pipeline Company). The cost of administering SB 54 would be somewhat greater than the cost of administering SB 128 because of the fact that SB 54 requires more extensive regulation of municipally owned and operated utilities. However, I believe that the aforementioned original budget as modified would be adequate to administer SB 54, at least during the first year.

Estimates have also been submitted regarding our budgetary requirements for the years ending June 30, 1970, 1971, and 1972. These estimates were specifically based upon administering SB 128 and consist of a three-year projection compiled in one document.

I believe the foregoing is an adequate response to your request for information in regard to the House and Senate bills mentioned above.

By Don Hall

DH:SG

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

Jackson

COMMENTS OF CITY OF ANCHORAGE
S.B. 128 - PROPOSED AMENDMENTS

INTRODUCTION

The City of Anchorage has reviewed S.B. 128 and in this commentary would point out certain deficiencies in the bill and offer amendments to the bill. The fact that the City makes these comments and proposed amendments does not signify that the City is not strongly opposed to any jurisdiction of the Public Service Commission over municipally owned and operated utilities. The City still maintains that no sound reason exists for public service commission regulation, and that such regulation would constitute an unnecessary costly and time-consuming process to add to the almost prohibitive cost of living in this state.

This bill would establish a commission practically unlimited in its powers as the analysis will show. In addition, this bill could eliminate the City's municipal light and power utility because of its certificate requirements. This bill as designed is punitive in nature and proposes an invidious discrimination against municipally owned and operated utilities.

COMMENTS

ESTABLISHMENT

1. AS 42.05.020(a)

Add: "The Commission shall be an independent, quasi-judicial body."

Comment: The purpose of this amendment would be to establish the Commission as a "Section 26" board and to carry out the proposal that any commission having jurisdiction over valuable public properties should be a full-time commission.

2. AS 42.05.040-050.

These two sections should be repealed and reenacted as a new section to provide for qualifications commensurate with the concepts of a full-time commission .

Comment: A full-time commission is contemplated by the proposed amendment. A full-time commission should not necessarily be limited to a lawyer, engineer or accountant. The expertise in these fields, although helpful, could be

supplied by staff members. Nevertheless, some qualifications should be stated so that the commission offices do not become patronage plums. It is a serious business to regulate one of the largest businesses in this state, as many of the utilities in this state constitute multi-million dollar operations. A bad commission decision may involve hundreds of thousands of dollars, and the commission should be composed of the most competent people with the full time available to dispatch with adequate review the commission business.

3. AS 42.05.091(d)

Amend the first sentence to read:

> "The annual salary for each member of the commission is the same annual salary received by the head of a principal department of the state."

Comment: The salary should be commensurate with the responsibility, and a commission member should be paid as well as the head of a state department, or as much as a superior court judge. Without such a salary incentive, it is doubtful that competent persons would be attracted to the position. The present $5,000 salary proposal may make a commissioner feel that he could afford a little more commission time, but it does not resolve the problem of providing a commission which would adequately tend to the increased number of utilities and their problems caused by regulation. The present commission apparently is of the opinion that it cannot adequately handle its present business. The present commissioners are doing the best job they can, but it is unfair to classify them as even being "part-time" commissioners because of the two or three days a month that they are able to meet. However, the extra $5,000 is not going to create even a part-time commission.

4. AS 42.05.133. Add a new section to replace existing AS 42.05.180 to read:

> "Facts and information in the possession of the commission are public and reports, files, books, accounts, papers and memoranda of every nature in its possession are open to public inspection at reasonable times, except commission work papers or agency memoranda not used by the commission in determining an issue before it. Facts and information developed or used by the commission, its staff or consultants affecting a commission proceeding or decision shall be disclosed to the parties prior to the hearing and are subject to cross-examination."

Comment: The total elimination of existing AS 42.05.180 would undoubtedly see materials required to be filed by the commission be classified as confidential information. If the commission is to regulate utilities, the utilities regulated should have full access to all of the facts, documents and statistics available to the commission without a Supreme Court case to obtain the information. The public should have a right to readily determine if the commission is accomplishing its tasks. Courts require commissions to divulge and make available for cross examination facts and statistics developed by staff personnel and usually used to brief the commission in secret. The prejudice of unknown evidence influencing a decision is evident and its use should be eliminated.

5. AS 42.05.135. Add a section to read:

"The commission shall provide for the publication of its reports, orders, decisions, rules and regulations. Publication shall be in a manner and form best adapted to public information and use."

Comment: Under the total regulation proposed by the bill the commission will build up a body of commission law and guideline which should be known to all utilities spread throughout this vast state, many of which just cannot afford to hire lawyers or other experts in Anchorage to find out what the commission requires, but who would be substantially affected by many of the commission actions, otherwise buried in files known only to the commission. Utilities and the public should have a readily available source of commission laws, decisions, policies, etc., in order to comply with proper regulations and to review the work of the commission.

POWERS AND DUTIES OF THE COMMISSION

6. AS 42.05.141(1) Amend to read:

"Supervise and regulate every public utility engaged or proposing to engage in such business within the state of Alaska except to the extent exempted by AS 42.05.641 [AND MAY DO ALL THINGS, WHETHER SPECIFICALLY DESIGNATED IN THIS CHAPTER OR IN ADDITION THERETO, WHICH ARE NECESSARY OR CONVENIENT IN THE EXERCISE OF SUCH POWER AND JURISDICTION] and the powers of the commission shall be reasonably construed to accomplish its stated purposes;"

Comment: This section clearly states that the commission may do all things in addition to those things which the Legislature

has expressly empowered the commission to do. This is dangerous language and grants the commission carte blanche powers to regulate in areas in which the legislature undoubtedly would not desire the commission to regulate. No utility in this state should be subject to a complete legislative delegation of all regulatory powers to the commission. The proposed language is probably what is intended, and that is to give the powers of the commission a reasonable and not a strict construction by courts of law.

7. AS 42.05.141(6). Delete in its entirety.

[SUPERVISE AND REGULATE A PUBLIC UTILITY IN ALL OTHER MATTERS AFFECTING ITS RELATIONSHIP WITH OTHER PUBLIC UTILITIES, ITS CUSTOMERS AND WITH THE GENERAL PUBLIC.]

Make clear what is meant?

Comments: This provision is so vague as to be utterly meaningless. If a public utility is to be regulated, the public utility should understand in exactly what way it is being regulated so that it may protect itself against unwarranted and litigious commission interference. For example, this section could be construed to give the commission regulatory authority over the manner in which a city may establish a special assessment district for the furnishing of sewer or water service. The commission could presumably prescribe uniforms for customer service representatives. Such a vague grant of powers should not be tolerated by the legislature if only because the commission would not have the staff to handle every conceivable detail entrusted to it by this provision. If the commission is given power to regulate, it should be entrusted only with those matters it can regulate effectively within the power granted.

8. AS 42.05.151(a). Amend to read:

"The commission may make such reasonable regulations . . .".

Comment: As commission regulations have the effect of law, the commission regulations at their inception should be reasonable and not arbitrary.

9. AS 42.05.151(b). Amend to read:

"The commission shall by regulation establish reasonable rules of practice and procedure . . .".

Comment: The term "reasonable" here implies fundamental fairness, and due process of law does not in every case accord with what is reasonable.

10. AS 42.05.161(a) Amend to read:

> "The administrative adjudication procedures of the Administrative Procedures Act (AS 44.62) do not apply to adjudicatory proceedings of the commission except as final administrative determination by the commission are subject to decision procedure and judicial review as provided in AS 44.62.510,.520, .540, .560,.570."

Comment: The sections on judicial review are correlated to the APA sections concerning the commission decision and reconsideration. The APA provides mechanics for reconsideration of a final decision, and the judicial review sections, particularly the time for appeal, would be confusing without the prior sections containing decisions.

11. AS 42.05.161(b). Delete: Words after "rules of agency organization", lines 9-13, page 6.

Comment: The APA was originally conceived to correct the abuse of agencies adopting unknown (even to the agency) rules, including rules of practice and procedure. A person desiring to process a matter before the commission should have the right to consult the Alaska Administrative Code to determine what the rules of practice and procedure are. The APA does provide for emergency rule changes, and it is hard to visualize a situation which would be "contrary to the public interest" to avoid publication of a rule affecting public utilities. The commission should abide by its rules, and these rules should be available to everyone. The interpretive rules, general statements of policy and rules of agency organization should also be promulgated if the proposed amendment in Comment No. 5, appropriate means of making this information available, is not adopted.

12. AS 42.05.171. Amend next to last sentence to read:

> "A determination or order of a commissioner or commissioners on such an investigation or hearing, undertaken or held by him or them shall not be effective until approved and confirmed by at least a quorum of the commission upon a review of the entire record and after the parties have the opportunity for argument, to the commissioners not present at the hearing."

Comment: The amendment would add a procedural safeguard in that any commissioner who did not sit in on the hearing must

have a record available and review that record. All parties should have the right to make an argument to at least a quorum of the commission when they must rely upon the cold record.

13. AS 42.05.181(d). Add new subsection to read:

"(d) The commission shall hold hearings in the locality where the utility involved is located."

pmb OK

Comment: Because of the drastic powers of the commission, it should hold hearings where the utilities are located. This amendment points out the insurmountable task of an effective commission regulation in this state.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

14. AS 42.05.191(b). Delete this subsection.

Comment: This provision is discriminatory as to utilities previously not subject to public service commission regulation. Most, if not all, service areas were granted by the commission in 1964 without a hearing or even notice of hearing, and certificates were issued without regard to the service areas of utilities not subject to commission jurisdiction.

For example, Chugach Electric Association was granted a certificate which blankets almost the entire City of Anchorage, even though Chugach was not in fact serving all of the city which was being served by the city utility. The problem becomes more acute where the blanket certificate of Chugach contains an area which is not served by either utility, and there is no actual conflict as to facilities. The fairest way to treat the new certificate problem would be to repeal without a savings clause all certificates. Further analysis will indicate that the discrimination between municipally owned utilities is even more invidious by the failure to include a grandfather clause.

15. 42.05.191(c) Delete this subsection.

Comment: Much ado has been made about service area conflicts, and protaganists for public service commission regulation have always pointed to the conflict of service area problems. Subsection (c) constitutes the magic formula of public service commission regulation which is intended to solve this conflict. The legislature merely states that the commission shall take "appropriate action" to eliminate competition and duplication of facilities" by delineation of service area or services. Surely, is the commission to be granted absolute regulation over municipal electric, telephone

water and sewer utilities just so a bill may be passed to require the commission to take "appropriate action". No standards are supplied or direction given, even though the answer to the problem is simple. Unless the commission shall order one utility to relinquish its service, a doubtful conclusion of the authorization, no ready solution is offered by this entire bill. A court under simple standards, could easily and readily resolve the problem and would grant a local forum.

The commission will undoubtedly spend a couple of years and thousands of dollars of everyone's time in delineating and apportioning each resident, lot and parcel to each and every utility within this state. An appeal is bound to follow to ensure years of litigation at great cost to the consumer. But the fact exists that no duplication of facilities can be avoided except by expropriation and the payment of just compensation, a judicial matter. However, this bill does provide the commission with an even greater tool, it could conceivably destroy the competition altogether by not granting the municipal utility a certificate of public convenience and necessity.

16. AS 42.05.192. Add a section to read:

> "A certificate shall be granted if it appears to the commission that the public utility was actually operating in good faith on October 15, 1969, within the confines of the requested area, or that the public utility was installing the facilities necessary to furnish service to the requested area as of that date."

Comment: The absence of such a section in the bill as drafted represents invidious discrimination to municipally owned and operated utilities. The above section is commonly referred to as a "grandfather" provision, because it must constitutionally recognize existing rights. When the public service commission granted the original certificates of public convenience and necessity in 1964, every existing utility in this state regulated by the commission received a certificate based on its "grandfather" rights. Without exception, this state has provided in granting licenses to professions and operating authorities to motor carriers, air carriers and in all other situations where a person or entity was operating prior to the licensing, without requiring an examination or a showing of right to continue an occupation or operation within this state. However, publicly owned and financed municipally owned and operated utilities are not to be granted this long recognized right which could be destroyed by a prejudiced commission under this Act.