child should be confined in an institution.[10]

One additional aspect of this appeal should be discussed for we think it appropriate that an explanation be given as to why this matter has been treated as an appeal rather than coming before us for review. Counsel for the minor sought to invoke our discretionary review jurisdiction in the belief that appeal was unavailable for two reasons. First, he cites In re White, 445 P.2d 813, 815 (Alaska 1968) (Rabinowitz, J., concurring). There this court interpreted AS 22.20.022, which allows peremptory disqualification of a superior court judge in a civil or criminal action. A majority of the court in White said:

> While juvenile proceedings have some of the characteristics of both civil and criminal actions, we hold that they are basically different from both, and that the words 'civil or criminal' as used in AS 22.20.022 must be strictly construed. The trial judge was correct

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[10] We note with approval the state's candor in briefing the issues in this case. The state, in its brief, initially conceded that if this court looks only to the express language of AS 47.10.080(j) and 47.10.080(c), a strong argument can be made that the judgment entered below exceeded the court's disposition jurisdiction. The final portion of the state's brief concludes on the following note:

> Nevertheless, it is the belief of the Department of Law that the judgment ordering petitioner detained exceeded the authority of the court below. This belief is founded on the State's concern that courts should comply with their granted powers even where, as here, the factual circumstances cry out for a disposition beyond the fingertips of the lower court.

> in holding that peremptory challenge procedure applied only to civil and criminal actions and not to juvenile proceedings.

Counsel for the minor reads White as requiring the filing of a petition for review because the final judgment rule embodied in Supreme Court Rule 6 applies only to civil or criminal actions.[11] Such an expansive reading of White, assuming without deciding its continued validity in light of several of our recent decisions which vindicated certain constitutional and procedural rights of children in children's proceedings,[12] would result in precluding any review of children's decisions. For the rules which delineate this court's review jurisdiction limit such jurisdiction to "any order or decision of the superior court, not otherwise appealable under Rule 6, in any action or proceedings, civil or criminal . . . ."[13] Adoption

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[11] In regard to what may be appealed, Supreme Ct. R. 6 states:

> An appeal may be taken to this court from a final judgment entered by the superior court or a judge thereof in any action or proceeding, civil or criminal, except that the state shall have a right to appeal in criminal cases only to test the sufficiency of the indictment or on the ground that the sentence is too lenient.

[12] Doe v. State, 487 P.2d 47 (Alaska 1971); RLR v. State, 487 P.2d 27 (Alaska 1971).

[13] Supreme Ct. R. 23.

of counsel's interpretation of White would also conflict with AS 22.05.010 which places final appellate jurisdiction in all cases in the supreme court.[14] We think White should be limited to its interpretation of the peremptory disqualification statute. On the other hand, we hold that the right to appeal from the type of disposition order which was entered in this children's proceeding has been clearly established by the legislature. In this regard, AS 47.10.080(i) provides:

> A minor, his parent, or guardian acting on his behalf, or the department may appeal a judgment or order or the stay, modification, setting aside, revocation, or enlargement of a judgment or order issued by the court under this chapter.

The dispositive provisions of the superior court's judgment are set aside and the matter is remanded for such further disposition proceedings as are necessary and the entry of an appropriate disposition order.

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[14] For a discussion of another facet of this court's final appellate jurisdiction see State v. Browder, 486 P.2d 925, 929-33 (Alaska 1971).

272-9461

HB-132

ANCHORAGE COMMUNITY HOSPITAL
825 L Street, Anchorage, Alaska 99501

March 24, 1971

The Honorable William J. Moran
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99801

Dear Sir:

I strongly support and urge you to support House Bill 132 and Senate Bill 42, an act authorizing state loans from a revolving loan fund, for hospitals and related health facilities and providing for an effective date.

This legislation is necessary to the future development of health resources for the people of the State of Alaska. This is good legislation as it perserves the principle of State funds intact, earns interest income for the State and results in expanded health service for the people of the State.

We also strongly support a separate bill "an act authorizing state grants for hospitals and related health facilities, and providing for an effective date".

House Bill 276 could be supported if the new language being added to the bill was changed to include the words "or non-profit facility" following the words "local government", and other changes as shown in the attached proposed substitute for House Bill 276.

Sincerely,

Robert O Byrnes

Robert O. Byrnes
Administrator

SEVENTH LEGISLATURE - FIRST SESSION

Proposed Substitute for HB 276

For an Act entitled: "An Act relating to state aid for hospitals, health facilities and health services; and providing for an effective date."

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

*Section 1. AS 43.18.010(h) is amended to read:

(h) During each fiscal year the state shall pay to an organized borough or a city outside an organized borough, in which a health facility is operated, a sum equal to $1,500 ($1,000) for each bed licensed by the State Dept. of Health and Welfare (actually used)for patient care within the facility, (limited to the maximum number of beds provided for in the construction design of the facility) or $4,000 for a facility, if the local government elects to accept payment on that basis for a particular facility. In addition, if construction of a facility was begun by a local government or non-profit facility after January 1, 1968 the state shall pay to the local government during each fiscal year a sum equal to $5,000 per bed for the maximum number of beds provided for in the construction design of the facility, until the local government has received from this aid an amount equal to 25 per cent of the total project cost. Sums received by a local government under this subsection shall be used for expenses of operation, maintenance or health services or facilities, as the health facility determines. (local government determines)

*Sec. 2. AS 43.18.010 (i) is amended to read:

(i) In (h) of this section "health facility" or "facility" includes hospitals, public health centers, community mental health centers, facilities for the mentally or physically handicapped, nursing homes and convalescent centers which are determined by the commissioner of health and welfare to satisfy minimum standards of safe and adequate patient care LICENSED BY THE STATE UNDER AS 18.20.010 - 18.20.130 and are owned or operated or both by a local government or by a nonprofit corporation or other nonprofit sponsor; the term excludes facilities operated or wholly supported by the state or the federal government.

*Sec. 3. This Act takes effect July 1, 1971.

Alaska Legislation
HB 164

February 23, 1971

Mr. Carl W. Jones (3)
O f f i c e

Reference is made to your communication of February 22, 1971, with its attached House Bill No. 164.

I only wish to add two comments to my memo of March 17, 1970.

1. I honestly believe that passage of HB 164 can only unreasonably stifle economic growth and development of the resources in Alaska. HB 164 as its predecessor SB 392 makes every combine operating on the North Slope illegal. I believe the same is true for the contemplated Alaskan pipeline.

2. Sec. 45.51.080. EXEMPTION FOR COMMERCIAL FISHING. In substance, commercial fishing is exempt from the provisions of HB 164. For economic and growth reasons, it makes as much sense to exempt the Petroleum industry.

Lewis J. Ottaviani

March 26, 1970

Re: SB 392 - Alaska Legislature
An Act Prohibiting Monopolies
and Combinations in Restraint
of Trade

Mr. W. W. Hopkins
Alaska Oil and Gas Association
c/o Baranof Hotel
Second & Franklin Street
Juneau, Alaska 99801

Dear Mr. Hopkins:

Phillips Petroleum Company has asked one of our most experienced antitrust lawyers to review the bill. He has described it as ambiguous, confusing, onerous and generally poorly written. Whether by design or not, it will undoubtedly foster much irresponsible treble damage litigation with attendant great expense to all major business enterprises. Some of the comments expressed by our antitrust attorney are as follows:

Sec. 45.51.010. This provision is obviously taken from Sec. 1 of the Sherman Act of 1890. In interpreting Sec. 1 of the Sherman Act the courts have long since held that not every contract in restraint of trade is illegal--only those which unreasonably restrain trade. It seems to me that an 1890 act should be improved upon in 1970 by reciting the test in the act itself. Accordingly, this provision should be amended to read: "Each contract, combination in the form of trust or otherwise, or conspiracy, in (unreasonable) restraint of trade or commerce is illegal." For 60 years the Supreme Court has been holding that the legislators in 1890 must have intended that only unreasonable restraints are illegal. A 1970 legislature should make this test clear on the face of the act.

Sec. 45.51.020. PROHIBITED ACTS. Subsections (1) through (7) and subsection (b) should be deleted since they add nothing that is not already covered in the preceding paragraph. If these specific prohibitions remain, I fear that in the long run the court may hold that the legislators must have intended that these specifics be per se illegal.

Subsection (a) of Sec. 45.51.020 is ambiguous. It appears that it may be intended to exclude bathtub or intracorporate conspiracies from coverage. If so, this is desirable from our standpoint since parents and their subsidiaries have been found to have conspired under the federal law. This provision should be deleted as written and Sec. 45.51.020 should simply contain an exclusion from the act's coverage for single business entities and their subsidiaries.

Sec. 45.51.020. ACTS PERMITTED. The acts "permitted" by subsections (1) through (4) are taken away by the first three lines of the section. As written, subsections (1) through (4) permit reasonable specified activity for a legitimate business purpose for a reasonable time and area but only if competition is not substantially lessened. Under the comparable federal statute, the activities in subsections (1) through (4) are considered reasonable restraints and therefore lawful (whether or not competition is substantially lessened) because the objective and purpose is the protection of legitimate business rights for a reasonable time and over a reasonably limited area. Accordingly, the words "Unless the effect . . . in any part of the state" should be deleted.

Sec. 45.51.040. MERGERS, ACQUISITIONS, HOLDINGS, AND DIVESTITURES. In part, subsection (a) is ex post facto. It includes mergers, acquisitions, etc. "whether or not acquired before the effective date of this act." Further, although this is patterned after Sec. 7 of the Clayton Act, ultimately it will be more onerous than Sec. 7. Sec. 45.51.040 prohibits any merger, etc., which may substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the state. In Alaska, this could mean that an acquisition of a single jobber, single dealer, or even a single service station may well be illegal in some town, village, or hamlet.

Subsection (b) is poorly written. The test of illegality under subsection (a) is "may be substantially to lessen competition," etc. Yet, under subsection (b) the court is to order divestiture if the court finds that the effect of the acquisition "is substantially to lessen competition." In other words, the test of illegality concern probability but divestiture depends upon a finding of actual substantial lessening of competition.

Sec. 45.51.050. INTERLOCKING DIRECTORATES AND RELATIONSHIPS. In essence, this is copied from Sec. 8 of the Clayton Act. However, it also adds "officer," "partner" or "trustee" whereas Sec. 8 relates to directors. In addition, the federal provisions (Sec. 8) prohibit interlocking directorates when any one of the "corporations" . . . "has capital, surplus, and undivided profits aggregating more than $1,000,000 . . ." Sec. 45.51.050 in the long run will be very onerous since it is an absolute bar to interlocking directorates, officers, partners, trustees regardless of the size of the business entities, regardless of the commerce involved. Accordingly, the only test of illegality depends upon whether the business entities "are or shall have been theretofore . . . competitors."

I am unable to determine the full import of subsection (b) which does not appear in the comparable federal statutes. However, it would in my view virtually prevent a bank officer from being on the board of a company that borrows money from the bank. In our case, I believe that a Phillips employee would have a most difficult time justifying his being a member of the board of a partially owned jobber or dealer company. This subsection (b) coupled with subsection (a) authorizing private suits would virtually dictate that Phillips not be represented on the board of any majority or minority owned retail subsidiary.

Sec. 45.51.110. SUITS BY PERSONS INJURED. This provision is patterned after the federal statute which authorizes treble damage actions. However, Sec. 45.51.110 authorizes trebel damage actions even in connection with interlocking directorates. As the federal provision, this provision also permits the successful plaintiff to recover costs and attorney fees. However, the successful defendant is not entitled to costs or attorney fees. Such a situation will encourage spurious lawsuits and legal blackmail just as the federal provision has.

Sec. 45.51.120. SUITS BY STATE OR LOCAL GOVERNMENT. Under the federal law, the federal government can only recover actual damages although states suing under the federal law can recover treble damages. The state or local governments, etc., suing under their own statutes should be limited to actual damages. This is particularly so in this instance since it will be relatively simple to find violations of this statute.

If subsection (b) means what it says, it will be much cheaper not to do business in the State of Alaska. As I read this provision, if the State of Alaska has a cause of action, then the Attorney General may undertake class actions on behalf of everybody and everything. This includes the state, counties, all political subdivisions, municipalities, governmental agencies, businessmen, and each and every citizen of the State of Alaska. Such suit can be maintained for violating the federal antitrust law as well as Alaska's, and the latter's clearly includes treble damages for everyone even under the merger and interlocking directorate provision. A defendant will never even know who the Attorney General represents except by class designations.

Sec. 45.51.130. PENALTY FOR VIOLATION. This provision converts the entire act into a criminal statute. The fine of $10,000 and/or one year in jail applies with equal force to merger situations and interlocking directorates as well as the basic restraint of trade provision. This, of course, is not the case under the federal statute. Only violations of Secs. 1 and 2 of the Sherman Act subject an individual or corporation to criminal penalties.

Sec. 45.51.140. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN ACTION; SUSPENSION OF LIMITATION. This provision is patterned after the federal statute but is much more onerous. The federal statute only applies to final judgments or decrees rendered after evidence has been taken or to guilty pleas. Consent judgments or decrees entered before evidence is taken are excluded under the federal provision. The Alaskan bill only excludes consent judgments or decrees entered before any complaint is filed.

Members of Congress have for many years tried to include the nolo plea and consent judgments and decrees within the prima facie category. Each time the Department of Justice and the Antitrust Division have opposed such proposals primarily because it would virtually eliminate inducements to plead nolo or to consent to judgments and thus substantially increase the number of cases that would go on to trial.

Sec. 45.51.130. ANTITRUST FUND. Obviously, this provision will set up a permanent war chest which will continually breed antitrust litigation. This is particularly onerous in view of Sec. 45.51.120 which empowers the Attorney General to sue on behalf of virtually every resident and entity in the State of Alaska. Thus, it will be a war chest for private actions as well as state actions.

Yours very truly,

Thomas M. Blume
Division Chief Attorney

MEMORANDUM

April 7, 1971

Statement of James Waters to House Judiciary Committee on

HB 164

H.B. 164 would enact a general antitrust statute for Alaska. In brief summary it would cover agreements in restraint of trade and certain acquisitions and management interlocks, with injunctive, treble damage and criminal sanctions for violation of any of the substantive provisions. For reasons detailed below, this bill should not be enacted without substantial revision.

Section 10. This section uses the language of section 1 of the Sherman Act to forbid "each contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade * * *." Although section 1 of the Sherman Act uses the same language, the Supreme Court has held that it forbids only "unreasonable" restraints of trade. It reached that result because any commercial arrangement to some extent restrains trade, and therefore the statute properly should be limited to agreements that effect unreasonable restraints. To make sure that this fundamental "rule of reason" would be applied in Alaska, the word "unreasonable" should be inserted in section 10 before the word "restraint" in line 15, page 1.

Another difficulty with section 10 is its failure to define the market in relation to which "trade or commerce" may be restrained. It is impossible to measure the reasonableness or unreasonableness of a restraint of trade except with reference to a market. The relevant market or geographic area in which suppliers may sell the particular product or service in effective competition with one another is not, of course, necessarily coterminous with the boundaries of Alaska. Therefore in determining whether challenged conduct unreasonably restrains trade it would be desirable to include the entire area in which the suppliers can effectively compete for sales. This can be achieved by designating the present substantive provision of section 10 as part ("a") and by adding part ("b") as follows: "(b) In deciding whether conduct unreasonably restrains trade or commerce determination of the relevant market or effective area of competition shall not be limited by the boundaries of this state."

Section 20. This section sets forth seven categories of unlawful agreements in restraint of trade, and is obviously designed to particularize specific examples of restrictive agreements within the scope of section 10. Section 20 provides as follows:

> "(a) No person, exclusive of members of a single business entity consisting of sole proprietorship, partnership, corporation or other single business entity, may agree, combine, or conspire, with any other person or persons, or enter into, become a member of, or participate in any understanding, arrangement, contract, pact, or trust, directly or indirectly, to
>
> (1) create or carry out restrictions in trade or commerce;
>
> (2) limit or restrict the production, or maintain or increase the price of any article of trade;
>
> (3) prevent competition in the harvesting, extraction, production, manufacturing, making, transportation, sale or purchase of any article of trade;
>
> (4) fix any standard of quality in respect to any article of trade intended for sale, barter, use or consumption in this state, whereby its price to the public, consumer or purchaser of any kind shall be in any manner controlled, maintained or increased;
>
> (5) agree not to sell, dispose of or transport any article of trade below a common standard, figure or fixed value;
>
> (6) agree to keep the price of any article of trade at a fixed or graduated figure;
>
> (7) establish or settle the price of any article of trade so as to preclude a free and unrestricted competition in the sale or transportation of such article of trade;

(b) Nothing in subsection (a) of this section shall limit the generality of sec. 10 of this chapter."

In view of the breadth of section 10 there is really no need for section 20. All of the conduct attempted to be particularized would violate section 10 if it satisfied the basic test by effecting an unreasonable restraint of trade. Moreover, the confusing and antiquated language of section 20 is of doubtful meaning and could be applied in anticompetitive rather than procompetitive ways.

For example, the introductory language, describing the persons who may not combine or conspire, expressly exempts agreements between "members of a single business entity consisting of sole proprietorship, partnership, corporation or other single business entity." This language implies that it would be improper for a parent company and its subsidiaries to agree upon such things as prices and the areas in which each shall market, although such arrangements could have no anticompetitive effect in any relevant market.

The specific categories, numbered 1 through 7, are substantially the same as those used to define unlawful "trusts" under California's Cartwright Act (Cal.Bus.& Prof. Code § 16720). Since the Cartwright Act has no provision comparable to section 1 of the Sherman Act or section 10 of S.B. 392, it made sense to attempt a particularization of those agreements or arrangements sought to be prohibited. But it is undesirable and unnecessary to do so if the basic principle of regulation is stated as in section 10.

In addition, the wording of many of the categories in section 20 is so obscure that it could lead to unsound decisions. In the first place, none of these categories is modified by the term "unreasonable," which could lead to condemnation of ordinary commercial arrangements having no unduly restrictive effects. To take an obvious example, any contract for the purchase of goods or services, whatever its duration or quantities, restricts trade because the buyer has committed himself to a particular supplier, which to that extent prevents other suppliers from filling the buyer's needs. But even though the usual supply contract should not be condemned under the antitrust laws, it could be held to fall within subpart (1) of section 20. Similarly, subparts (5) and (6) could be construed to forbid ordinary and wholly innocuous supply arrangements merely because they

establish the prices at which the products will be sold or the cost of their transportation.

It is therefore recommended that section 20 be dropped in favor of reliance on the appropriately broad language of section 10 (amended to add "unreasonable") which will outlaw each of the particularized kinds of conduct to the extent that it would effect an unreasonable restraint of trade.

Section 30. This section would exempt certain agreements from sections 10 and 20 if they do not "substantially lessen competition or * * * create a monopoly in any line of commerce in any part of the state." Exempted are certain agreements by the seller of a business not to compete with the buyer, by a partner not to compete with the partnership following his withdrawal, by a licensee restricting his use of leased property, and by an agent restricting his use of the principal's trade secrets.

Apart from the vague and obscure wording of these stated exemptions,* they would be most unfortunate because there are numerous other arrangements that have been approved under the Sherman Act and comparable state legislation as lawful restraints when they are reasonably ancillary to legitimate business goals and are not seriously anticompetitive.**

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* E.g., subpart (1) refers to an agreement "not to compete" without indicating with what the covenantor is not to compete; the word "for" in subpart (2) should presumably be "after"; and subpart (3) refers to restricting the use of leased property "to certain business or agricultural areas," whatever that may mean. Note also that subpart (4) would forbid the use of trade secrets only if used in competition with their owner. In contrast, the general rule at common law protects against any unauthorized appropriation and use. 2 Restatement, Agency 2d, §§ 395,396.

** See generally United States v. Addyston Pipe & Steel Co. (6 Cir. 1898) 85 Fed. 271, 280-283, affirmed (1899) 175 U.S. 211; 2 Restatement, Contracts, § 516. See also, Snap-On Tools Corporation v. F.T.C. (7 Cir. 1963) 321 F.2d 825, 837; Nelson Gas Stations Number Six, Inc. v. Shell Oil Company (4 Cir. 1962) 307 F.2d 306, certiorari denied (1963) 372 U.S. 911.

The development of these exceptions was begun at common law and has continued under the Sherman Act's "rule of reason" concept. It is therefore recommended that the advantage of this adaptability be taken in Alaska by inserting "unreasonable" in section 10, as noted above, and by eliminating section 30 as too restrictive, confusing, and indeed superfluous.

Sections 40 and 50. These sections would largely enact for Alaska the essence of sections 7 and 8 of the Clayton Act which, respectively, regulate acquisitions and interlocking directorates.* Thus, section 40 states, subject to limited exemptions, that no corporation may acquire the whole or any part of the stock or assets of another corporation (even if acquired before passage of this bill!) if the effect "may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the state." If the court finds that the effect of the acquisition "is substantially to lessen competition or tends to create a monopoly" it shall order divestiture if that is "necessary to eliminate" such effect and if the assets "are reasonably identifiable and separable, and the disposition can be done without causing undue hardship on the economic entity."

No good reason has ever been put forward why a state should have an antimerger provision in the nature of section 7 of the Clayton Act. In the first place, any merger within Alaska that threatened monopoly or an unreasonable restraint of trade, would be cognizable under the general language of section 10. Moreover, in view of the Federal courts' liberal interpretation of what is interstate commerce, it is likely that any merger of this kind would violate Clayton 7 and hence would be subject to the expert and experienced staffs both of the Antitrust Division of the United States Department of Justice and of the Federal Trade Commission. Thus, it seems reasonable to conclude that any merger or acquisition in Alaska not subject to section 10 of this bill or Clayton 7 would have only a de minimis effect on the state's commerce. A provision with no more utility than that would merely burden the courts with trivial claims having no significant bearing on free competition in the state.

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* 15 U.S.C. 18, 19.

Section 50 is equally unnecessary for the proper regulation of a state's commerce. The general provision of section 8 of the Clayton Act forbids any person to be a director in two or more corporations any one of which has capital, surplus and undivided profits aggregating more than $1 million, which are engaged in any interstate commerce, "if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws." Proposed section 50 would go beyond what the Federal Government has seen fit to prohibit, by dropping any requirement as to the size of the businesses involved and by covering not only a director but an "officer, partner, or trustee in any two or more firms, partnerships, trusts, associations, or corporations" if they or any combination of them "are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination [of competition?] by agreement between them would constitute a violation of this chapter."

No evidence has ever been presented or is likely to be found that there are interlocking management relationships between entities which threaten the effectiveness of intrastate competition. Thus, at most, section 50 appears to be an unnecessary and even more encompassing imitation of Clayton 8. Here as with the proposed antimerger provision, it is likely that the chief result of section 50 would be to burden the judiciary with trivial claims whose resolution would be of no importance to the free economy of Alaska.

It should be borne in mind in connection with sections 40 and 50 that the antitrust enforcement efforts of the states have been minor compared with those of the Federal government. It seems clear that one reason for this is the typical proliferation of state trade regulation statutes, which must dilute and impede the effective enforcement that could otherwise be given to an appropriate general prohibition against unreasonable restraints of trade.

Section 60 seeks to exempt labor organizations and apparently also agricultural cooperatives from the operation of this antitrust act. At least some of the language appears now to be antiquated (e.g., the requirement that labor organizations not have capital stock) or vague,

and hence these appropriate objectives could be more effectively achieved by using the following language for section 60:

> "(a) This Chapter does not forbid the existence or operation of labor, agricultural or horticultural organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of such organizations from lawfully carrying out the legitimate objects thereof; nor are those organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of this Chapter.
>
> "(b) Nothing contained in this Chapter shall be construed to forbid actions or arrangements authorized or regulated under those acts of the United States which exempt such actions or arrangements from the antitrust laws of the United States or under the following statutes of this state.
>
> (1) AS 10.15 (3) AS 31.05.100 [*]
>
> (2) AS 21.87 (4) AS 31.05.110."*

Section 100 states that any contract or agreement violating the statute "is void and is not enforceable at law or in equity." In view of the substantial sanctions proposed by S.B. 392 (discussed below), this provision is unnecessary. Moreover, it could lead to undesirable results. For example, the Supreme Court of the United States has held (see, e.g., Kelly v. Kosuga (1959) 358 U.S. 516) that ordinary supply arrangements are not made unenforceable merely because, for example, the goods sold were subject to a combination or conspiracy to affect their price. The Court has reasoned that in view of the adequate and independent antitrust sanctions available to the Government and to private parties, it is not necessary to create an additional sanction at the cost of rendering ordinary commercial transactions unenforceable. Thus, section 100 should be deleted.

Section 110 provides in part that "A person who is injured in his business or property by reason of anything forbidden or declared unlawful by this chapter" may sue to enjoin the unlawful practice and may recover threefold the

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* Oil or gas drilling units and unitization arrangements authorized under either of these sections should be included. The express exemption provided in AS 31.05.110 (1) might be held not to apply to a later antitrust statute or to drilling units under AS 31.05.100.

damages sustained, along with costs and a reasonable attorney's fee. Even though damages are mandatorily trebled for violations of the Federal antitrust laws, there is reason to believe that the inflexibility of this punitive sanction has in many cases caused severe economic hardship well beyond any appropriate redress of the wrong committed. It would therefore seem desirable to provide for the recovery of actual damages subject to the court's discretion to increase the award up to three times that amount in cases of wilful and substantial violations. This would permit the court to assess the degree of the wrong and to award an appropriate judgment in the light of all circumstances. The damage sanction would remain an adequately strong deterrent, for in cases of wilful and substantial wrongs the court would be expected to increase the damages commensurately. This change could be accomplished by omitting "threefold" in line 24, and by adding after "suit" in line 26 these words: "provided that the court in its discretion may in cases of wilful and substantial violations increase damages to an amount not in excess of 3 times the actual damages sustained."

Subpart (a) (2) of section 110 authorizes private injunctive proceedings. This unduly terse provision should be expanded to make clear that the court will be guided by traditional equitable principles in granting such relief. It is therefore recommended that the following language be substituted for present lines 29 through 2?:

> "(2) may bring proceedings for injunctive relief, temporary or permanent, against threatened loss or damage to his property or business by a violation of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue. If the court issues a permanent injunction, the plaintiff shall be awarded reasonable attorneys' fees together with the cost of suit."

It would also be desirable to amend section 110 to limit suits for multiple damages to plaintiffs other than the state or its governmental agencies. The purpose of providing multiple damages is to encourage enforcement of the

statute through private suits. No such encouragement is necessary when the plaintiff is the state itself or one of its political subdivisions or agencies. This is particularly true where, as here, the Attorney General is authorized to bring damage actions in behalf of "the state or any of its political subdivisions or governmental entities." This limitation can be achieved by inserting after "person" in the first line of section 110 the following parenthetical statement: "(other than a governmental body, the state, or any of its political subdivisions or public agencies)," and by amending section 120 as noted below.

Section 120. This section would give the state and any of its governmental entities injured by an antitrust violation the same remedy provided in section 110, i.e., to recover threefold the damages sustained. For the reasons stated above, this would be inappropriate and therefore subpart (a) of section 120 should be amended by inserting the words "it may sue for the actual damages by it sustained, and the cost of suit, as determined by the court" in place of the words "it shall have the same remedies provided in sec. 110 of this chapter."

Subpart (b) of section 120 authorizes the Attorney General to sue "on behalf of any citizen or class of citizens of the state if the state or its political subdivision also has a cause of action, to enforce the provisions of this chapter, or any comparable provisions of federal law." A comparison of this provision with Rule 23 of the Federal Rules of Civil Procedure indicates that it is far too brief and general to be workable. In short, no effort should be made to provide antitrust class actions without appropriate criteria to govern when a class action would be appropriate, e.g., whether the members of the class are too numerous to be joined as plaintiffs, whether there are common questions of law or fact that predominate over questions affecting only certain members of the class, whether the plaintiff's interest is such that the interests of the other members of the class will be fairly and adequately protected, etc. But apart from these difficulties, there does not appear to be any reason why there should be recommended to the Attorney General the added burden of prosecuting antitrust class actions in behalf of private parties. Nothing comparable has been done with respect to the Department of Justice or the Federal Trade Commission.

Section 150 would provide that any person or his agent who violates sections 10, 20, 40 or 50 "is punishable, if a natural person, by a fine not exceeding $10,000 or by imprisonment not exceeding one year, or by both; if the person is not a natural person then by a fine not exceeding $20,000." Under the Federal antitrust laws there are no criminal penalties for violations of section 7 or 8 of the Clayton Act, but only for violations of the Sherman Act. Nor should there be any criminal sanctions for violations of the proposed comparable sections 40 and 50, which as noted above, should be deleted for other reasons. But even if the substantive provisions of this bill were appropriately narrowed to the restraint of trade prohibitions of section 10, there would seem to be no reason to characterize such violations as crimes. Particularly is this true where, as with section 10, the language is broad enough to be applied ex post facto to new developments not defined as violations when the conduct was initiated. This problem has been handled under the Sherman Act by the Antitrust Division's declining to bring criminal proceedings except where clear cut flagrant violations are involved. There can be no assurance, however, that like restraint would be exercised by a state attorney general. The problem can be obviated, while providing a fully adequate deterrent, simply by limiting the sanctions to "civil penalties" in stated amounts to be imposed for "substantial and wilful violations" of section 10. This would also avoid the more cumbersome and formalistic criminal proceeding in favor of a relatively simple and efficient civil action to recover the penalties. It would also seem desirable to reduce the maximum fine for individuals to $5,000 per violation. This should prove an adequate deterrent without the crushing prospect that the larger fine could present for many individual defendants.

The foregoing changes could be effected by substituting for lines 24 through 27 of section 150, page 7, the following language:

> "shall if an individual pay to the state a civil penalty of not more than $5,000, and shall if a corporation, association, firm or partnership pay to the state a civil penalty of not more than $20,000."

Section 160. This section provides that "A final judgment or decree rendered in any civil or criminal proceeding brought by the state under this chapter shall be

prima facie evidence against the defendant in any other action or proceeding brought by any other party under this chapter, or by the state, a city or borough, under sec. 120, as to all matters respecting which the judgment or decree would be an estoppel between the parties in such other action or proceeding." This provision should be amended in several respects for, unlike the comparable Clayton Act provision,* it (1) does not limit the state proceedings to those brought to obtain an injunction or penalties, as distinguished from governmental damage actions, and (2) it is not required that the final judgment or decree be to the effect that the defendant has violated the state's antitrust law.

No reason appears why a state's provision of this kind should be broader than the Federal one. Subpart (a) could be brought into conformity with the comparable provision of the Clayton Act by amending it as follows:

> "A final judgment or decree rendered in any civil proceeding for injunctive relief or civil penalties brought by the state under this chapter to the effect that a defendant has violated this chapter shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under this chapter or by the state, a city or a borough, under sec. 120, as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto."

Subpart (b) of section 160 provides that the prima facie effect provision would not apply to consent judgments or decrees "entered before any complaint has been filed." This provision, like its Federal counterpart, is designed to save the enforcement resources of the government by encouraging compromise and settlement. But you cannot have a "consent judgment or decree" unless a complaint is on file to which it can relate. Therefore, following the Federal provision, the words in line 14 should be changed to read "entered before any testimony has been taken." Under Federal cases judgments upon pleas of nolo contendere have been held to be "consent judgments" within the meaning of the comparable Federal exception.

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* Section 5(a), 15 U.S.C. 16(a).

Subpart (d), however, would provide that judgments rendered upon nolo contendere pleas would be given prima facie effect in subsequent proceedings. While it was recommended above to eliminate the proposed criminal sanctions, it should be noted that if retained, subpart (d) should be eliminated. Judgments upon pleas of nolo contendere serve the same function of compromise in criminal proceedings as consent decrees do in civil proceedings. No reason appears why this useful enforcement method should be vitiated.

Subpart (c) of section 160 should be deleted. It provides that for 60 days after a consent decree is filed any one "interested" under section 110 (private plaintiffs) or section 120 (governmental plaintiffs) may file "exceptions" to the form or substance of the decree which will be resolved by the court after a full hearing. There is no reason to believe that the executive discretion lodged in the Attorney General is inadequate to protect the public interest or should be subjected to review by plaintiffs free themselves to sue if they see fit. Note also that the proposed power of the court, after hearing, to "modify" the consent decree is incongruous. The court could not properly issue an unconsented to decree or judgment except upon the record after a full trial.

Section 170. This would bar any proceeding under the bill "unless commenced within four years after the claim accrues."* But this section goes on to provide that "a claim for a continuing violation is deemed to accrue at any time during the period of the violation."

There are two objections to section 170. The first is that the word "claim" in line 7 is not as clear as the words "cause of action," which are used in the comparable provision in section 4 B of the Clayton Act (15 U.S.C. 15b). The second objection is that if a claim for a continuing violation is deemed to accrue at any time during the period of the violation, it can be argued that if any damage was sustained within

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* Except when the statute is suspended under section 160(c) which, like section 5(b) of the Clayton Act, suspends the statute of limitations during the pendency of civil or criminal government proceedings, and for one year thereafter, as to any private damage action based in whole or in part on any matter complained of in the government proceeding.

four years of commencement of the action then all damages deriving from the same course of conduct could be recovered even if they accrued decades before the action was brought. This would contradict the provision's purpose to prevent litigation over stale claims. The second sentence of section 170 should be deleted. Its apparent purpose is simply to provide that a plaintiff can recover for damages sustained within four years of commencement of his suit even if the continuing unlawful conduct was initiated more than four years prior to such commencement. This same result is reached under the general language of section 4 B of the Clayton Act.

Humble Oil comments 4-24-71

March 22, 1971

Re: 1971 Alaska Legislature
H.B. 154

H.B. 154 would enact a general antitrust statute for Alaska. The scheme of the bill is to adopt some of the general language of the Sherman Act, but to combine with it some particularized prohibitions found in the statutes of other states. This is an illogical combination which will cause much confusion and rob the statute of effectiveness.

Sections 10, 20 and 30. Section 10 adopts the language of Section 1 of the Sherman Act, prohibiting every contract, combination or conspiracy in restraint of trade or commerce. Of course, such a general prohibition cannot be literally applied, because every contract made in the ordinary course of business restrains trade in the strictest sense. For instance, the owner of an article can sell it but once, and when he contracts to sell it to another, the contract restrains him from selling it to any third person. Recognizing this, the federal courts have established the "rule of reason" which is the cornerstone of the great body of antitrust law of the nation. It is this rule which gives the courts the flexibility necessary to apply the principles of the antitrust laws to constantly changing business practices and patterns. To make certain that the fundamental rule of reason will be applied in Alaska, the word "unreasonable" should be inserted in Section 10 before the word "restraint."

Section 20 adds prohibitions against seven specified types of conduct, apparently patterned after California's Cartwright Act (Cal. Bus. & Prof. Code, §16720). There is some need for such provisions in the Cartwright Act because it contains no general prohibitions against restraints of trade like Section 1 of the Sherman Act and Section 10 of H.B. 154. But with this general prohibition in H.B. 154, the particularized prohibitions of Section 20 are unnecessary and can only cause confusion. For instance, Section 20 literally applies to every person "exclusive of members of a single business entity consisting of sole proprietorship, partnership, corporation or other single business entity." Taken literally, this would apply the provisions of Section 20 to the most ordinary relations between a parent and subsidiary corporations, even though these could not possibly involve any objectionable restraint of trade. The language of the various subsections is extremely vague and confusing and could only cause the courts great trouble in applying the act. For instance, no less than four of the seven subsections deal with price-fixing in varying language (subsections 2, 5, 6 and 7). Taken literally, Section 20 would

prohibit even the most ordinary and innocent business transaction. Any contract of sale might be said to "create ... restrictions in trade" (subsection 1) or to "establish or settle the price of any article of trade" (subsection 7).

All of the actually anticompetitive arrangements which Section 20 are designed to deal with would in fact be covered by the general language of Section 10 with the addition of the word "unreasonable" as recommended above. Section 20 should be deleted entirely.

Section 30 is designed to except from the effect of Sections 10 and 20 certain specified transactions, "(u)nless the effect ... shall be to substantially lessen competition or to create a monopoly ...." The exceptions specified would permit the sellers of businesses and withdrawing partners to agree not to compete, would permit leases of business property to contain certain restrictions upon the use of property by the lessee and the lessor (assuming that the word "lessee" in the third line of subsection 3 is a misprint, intended to read "lessor") and would permit an employee to agree not to use his employer's trade secrets in competition with the employer. These exceptions, in themselves, are reasonable, but they fail to include various other arrangements which have been found by the courts not to be anticompetitive in effect, yet which might be held to be condemned by the literal language of Section 20.* It is very undesirable to attempt the specification of exceptions to the literal language of the statute, when the list will undoubtedly be incomplete, thereby raising serious questions about the legality of perfectly innocent conduct. This merely illustrates further how unwise it is to attempt the particularization of prohibited acts such as is found in Section 20. It shows the wisdom of relying, instead, upon a statement of general principle such as Section 1 of the Sherman Act and Section 10 of H.B. 194 (with the addition of the word "unreasonable"), which will much more effectively accomplish the actual purposes of the bill.

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* See generally United States v. Keystone Pipe & Steel Co. (5 Cir. 1898) 85 Fed. 271, 280-83, affirmed (1899) 175 U. S. 211; 2 Restatement, Contracts, § 516. See also, Snap-On Tools Corporation v. F.T.C. (7 Cir. 1963) 321 F.2d 825, 837; Savon Gas Stations Number Six, Inc. v. Shell Oil Company (4 Cir. 1962) 309 F.2d 305, certiorari denied (1962) 372 U.S. 911.

Section 50. This section provides that no person may at the same time be a director, officer, partner or trustee of two or more corporations or other entities which are competitors. It was patterned after Section 8 of the Clayton Act, but it goes further than the Clayton Act in two respects: No minimum size criterion is provided; and Section 50 applies not only to directors, but also to officers, partners and trustees. It seems doubtful that the state needs any such statute as Section 50, because combinations in unreasonable restraint of trade would be reached by Section 10, and interlocking directorates of any significance would be reached by the federal law. If such provision is to be enacted, it certainly seems reasonable that it should not go beyond the provisions of the Clayton Act, and especially that it should provide some minimum size criterion (although the Clayton Act's standard of $1 million might be too high).

Sections 50 and 70. These sections provide exemptions for labor organizations and certain cooperative associations. It is most important that language be added to include actions or arrangements authorized or regulated under AS 31.05.100 and AS 31.05.110, which authorize oil and gas drilling units and unitization arrangements. AS 31.05.110 contains an antitrust exemption, but this should also be expressed in the antitrust statute itself, to avoid any question about the effect of the later statute and any question about the effect on AS 31.05.100. Cmp. AS 38.05.180

Section 100. This section provides in the most general language that any agreement in violation of any provision of the chapter is void and unenforceable. The literal application of this language would go well beyond the effect of the federal antitrust laws, which are held to avoid contracts only if the enforcement of them would give effect to the illegal provisions themselves. Kelly v. Kosuga, 358 U.S. 516. Section 100 could have two very unfortunate effects: (1) it could give a windfall to guilty parties, for instance, by allowing them to refuse to pay for goods sold and delivered; and (2) it could result in antitrust defenses being raised in a great many ordinary suits arising out of commercial transactions, which would unduly burden the courts and might result in serious distortion of the antitrust laws by forcing the courts to interpret them in cases between private litigants where the public interest is not properly represented by any public official. Section 100 should be deleted, leaving the Alaska courts to follow the federal law on this subject, refusing to enforce provisions of contracts which actually constitute unreasonable restraints of trade under Section 10.

Section 120. Subsection (b) provides that the attorney general not only may bring actions on behalf of the state or any political subdivision but also "on behalf of any citizen or class of citizens of the state" if the state or any political subdivision also has a cause of action. There is no such provision as this in the federal law and no need for it has ever appeared. It would surely burden the attorney general unduly to require him to represent private parties. But the most serious defect in this provision is that it attempts to provide for class actions in the few words quoted above, without providing any criteria whatever to guide the courts in determining whether a class action is appropriate or feasible. Experience under Rule 23 of the Federal Rules of Civil Procedure shows that it is essential that such criteria be provided. The above quoted provision of Subsection (b) should be deleted.

Section 160. This section provides that judgments in proceedings brought by the state shall be prima facie evidence against the same defendant in private actions. It goes beyond Section 5(a) of the Clayton Act in that it is not limited to actions brought by the state for injunction or penalties. It could apply judgments in simple damage suits brought by the state. Subsection (a) should be modified to read "in any criminal proceeding or injunction suit brought by the state."

Subsection (b) provides that the Section shall not apply to consent judgments or decrees entered "before any complaint has been filed." It is not apparent how a judgment could be entered before any complaint is filed. Apparently this language should be changed to read "before any testimony has been taken," like the Clayton Act.

Subsection (c) of Section 160 apparently would authorize the court to modify consent decrees without the consent of the parties. This, of course, should not be done, since no final judgment can be entered without the consent of the parties, except after trial of the case.

Section 170. This Section provides a four-year statute of limitations, but in the provision preserving causes of action for continuing violations, language is used which could be construed to authorize recovery of damages accrued more than four years before commencement of the action, if the violation has continued to a time within the four-year period. This should be changed to accord with 50 U.S.C.A. §15b to make it plain that even though causes of action for continuing violations extending to a time within the statute are preserved, damages accrued more than four years before commencement of the action cannot be recovered.

K. C. Minter

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HB 164

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

June 7, 1971

RWMcL:DIB:BG
60-03-13

Mr. Arthur H. Peterson
Revisor of Statutes
The Legislature
State of Alaska
Pouch Y - State Capital
Juneau, Alaska 99801

Dear Mr. Peterson:

This is in response to your letter of March 26, 1971, requesting the Antitrust Division's comments on Alaska House Bill No. 164 (7th Leg., 1st Sess.).

We are pleased to learn that Alaska is considering the enactment of state antitrust legislation. Many forms of anticompetitive conduct, injurious to the economy of a state and the welfare of its citizens, do not clearly affect interstate commerce and may therefore be outside the scope of the federal antitrust laws. This may be particularly true with respect to local service industries, which are a major source of today's inflationary pressures.

We have analyzed the various provisions of House Bill No. 164 and, pursuant to your request, shall indicate below a number of suggestions which we believe would make this particular legislation more effective. Initially, however, a few general comments may be helpful.

The goal of a state antitrust law should be effective enforcement at a low cost. This implies several points. First, excessive detail and complexity should be avoided in draftsmanship. Complex statutes have tended to bog down antitrust enforcement in many states, as the courts have attempted to deal with a maze of overlapping or conflicting statutory provisions of great specificity. Therefore, in view of this experience, we feel that simplicity without omission should be the goal in a statute which attempts to create a basis for effective state antitrust enforcement. Secondly, the substantial existing body of federal case law should be utilized by the states, wherever appropriate. This can be done by use of substantive statutory provisions following closely the federal provisions or by statutory language and legislative history making clear the intent of the Alaskan legislature to adopt this body of federal jurisprudence. This should be of significant assistance to the courts of the state as they attempt to apply the law to specific factual situations. Thirdly, the importance of relief and investigative provisions in an antitrust statute should not be underestimated; state enforcement officers must be provided with effective means by which to discover violations of the statute if vigorous enforcement is to be achieved. Finally, the private sector, properly motivated, can be a significant aid to state enforcement. The theme of these very general comments will reoccur in the ensuing discussion of specific provisions of the proposed statute.

I. Substantive Provisions

Section 45.51.010

Section 10 of the proposed bill declares contracts, combinations and conspiracies in restraint of trade to be illegal in language virtually the same as that used in the first sentence of Section 1 of the Sherman Act (15 U.S.C. 1). The use of such language will probably imply to the

Alaska courts a legislative intent to adopt the body of jurisprudence which has evolved under Section 1 of the Sherman Act. However, the use of a general prohibition in Section 10 and both specific and general prohibitions in Sections 20, 40 and 50 could cause certain confusion with respect to relief and enforcement. Thus, if the major purpose of Section 10 is to indicate a legislative intent to adopt federal antitrust precedent, this intention could be made even more explicit by substituting for the proposed general language more specific language such as that found in New Jersey's recent antitrust law, N.J.S.A. 56: 9-18, which requires that the state statute be interpreted in harmony with federal antitrust precedent.

Therefore, we would suggest that Section 10 read as follows:

> Section 45.51.010 - Construction. This Act shall be construed in harmony with judicial interpretations of comparable Federal antitrust statutes.

Sections 45.51.020. 45.51.040. 45.51.050

The enumerations in these sections which, along with Section 10, comprise the substantive portion of the statute, illustrate the difficulties which have resulted from unnecessary attempts to be overly precise in drafting this kind of legislation. For example, in Section 20, the first of the seven prohibited acts of agreement is to "create or carry out restrictions in trade or commerce." This seems intrinsically as broad as the Sherman Act formulation in Section 10, but brings to the bill none of the accumulated judicial interpretations which have given the Sherman Act certain specific meanings including

the essential "rule of reason" construction and a list of "per se" violations. The third prohibited act, to "prevent competition," is too narrow because antitrust violations restrain competition; they seldom prevent it. The sixth and seventh prohibited acts are confusingly similar definitions of price fixing.

Sections 40 and 50 are modeled after provisions of the federal antitrust laws and, like those laws, contain imprecise terms and significant weaknesses. Section 40 would be applicable only to corporations, and thus might be too narrow in scope. Section 50 contains some confusing provisions concerning designees.

Section 20 could, in our opinion, be usefully employed to both broadly prohibit participation in anticompetitive agreements and the agreements themselves, and to enumerate, in plain language specific anticompetitive acts. Section 20 could also be used to incorporate the substance of Section 3 of the Clayton Act (15 U.S.C. 14) which is directed at tie-in sales, exclusive dealing, requirements contracts, and "full line forcing." Each of these is a serious anti-competitive practice not now covered by the bill except as it may constitute a generalized restraint of trade. Finally, Section 20 could incorporate the anti-merger provisions and the interlock provisions of the bill now contained in Sections 40 and 50. The remedial provisions of Sections 40 and 50 could more clearly be stated in a general relief section. Section 20 could, therefore, read as follows:

Section 45.51.020 - Prohibited Acts

(A) It shall be a misdemeanor for two or more persons to enter into an agreement with each other for the purpose of restraining trade or lessening competition by establishing, determining, or substantially influencing, as to any commodity or service,

(1) the price or other consideration which any person shall cha·ge or pay;

(2) the quantity which any person shall produce, sell or buy, or in which such person shall deal;

(3) the portion or share of the total supply or demand in any transaction to be produced, sold, bought, dealt in or accounted for by any person;

(4) the geographical area in which any person may produce, sell, buy, deal or conduct transactions; or

(5) the person or persons to whom sales may be made, or from which purchases may be made, or with whom dealings may be had or transactions conducted.

(B) It shall be a misdemeanor for any person to monopolize or attempt or conspire to monopolize trade in any commodity or service.

(C) It shall be a violation of this Act:

(1) for any person to do anything prohibited by subsections (A) or (B);

(2) for any person to enter into any agreement with the purpose, or with the effect, of unreasonably restraining trade or lessening competition in any commodity or service;

(3) for any person to sell, purchase or lease any commodity or service on the condition, express or implied, that the other party to the transaction, or any other person,

(a) purchase, sell, or lease any additional commodity or service from or to such person, or any person designated by him; or

(b) not purchase, sell, or lease any commodity from or to any other person;

where the effect may be to substantially lessen competition in any line of commerce in the State of Alaska or any part thereof;

(4) for any person to, at the same time, be a director, officer, partner, manager or trustee in (a) any two or more firms if such firms are or shall have been theretofore, by virtue of their business and location or operation, competitors, or (b) in any two or more firms where the effect may be to substantially lessen competition or tend to create a monopoly; or

(5) for any person to acquire, directly or indirectly, an asset from any person if the effect may be to substantially lessen competition in any line of commerce in the State of Alaska or any part thereof.

Section 20 as proposed above would be divided into three subsections. The first, 45.51.020(A), is basically limited to those actions which are per se violations of federal antitrust statutes. Thus, it prohibits price fixing, output limitations, production and territorial sharing, and group boycotts. The anticompetitive effects of these practices are most serious and their illegality under federal antitrust law is clearly established; therefore criminal prosecution is appropriate.

The second subsection, 45.51.020(B), is based upon Section 2 of the Sherman Act and would make criminal monopolization, and attempts or conspiracies to monopolize.

The third subsection, 45.51.020(C), contains the remainder of the substantive provisions of the statute. It is contemplated that violations of this subsection would be subject to civil remedies -- injunctive relief or actions for damages -- since the legality of the practices prohibited therein and not covered in subsections (A) or (B) may turn upon an analysis of their competitive effect under particular market conditions. It should be noted that subsection (C) includes all the acts enumerated in subsection (A) or (B). Thus, violations of subsections (A) or (B) could be proceeded against by criminal and/or civil process. Subsection (C)(3) covers tie-ins, reciprocity, exclusive dealing arrangements and negative covenants. Subsection (C)(4) covers interlocks, making interlocks illegal, irrespective of proof of anticompetitive effect if the firms are or could be direct competitors, and applying the Clayton Act competitive effect standard to all other interlocks. This permits the dissolution of interlocks, and thus increases the possibility of competition, between potential competitors. Finally, subsection (C)(5) covers acquisitions, but unlike Clayton Act §7 (15 U.S.C. 18), it is not limited to acquisitions by and from a corporation. Any acquisition made by a person, as defined infra, is subject to the law, whether the vendor or purchaser is a corporation or not.

Section 45.51.030

Section 30 sets forth four kinds of acts which will be presumptively lawful unless the effect "shall be to substantially lessen competition or to create a monopoly." Since most of these practices have traditionally been found to be legal with respect to the federal antitrust laws, it seems unnecessary and perhaps unwise to single them out from other legal practices.

II. Enforcement Provisions

Section 45.51.100

Section 100 would render void and unenforceable agreements violative of the Act. As currently worded, Section 100 could allow businessmen to use the antitrust laws as a means of avoiding normal contract responsibilities, i.e., payment for goods already received, where it was to their advantage to do so. Thus, we feel that the provision is overly broad and might result in courts refusing to find a violation in order to avoid an inequitable decision between the private litigants. On the other hand, the provision has some obvious usefulness as a deterrent. Therefore, we would suggest altering this provision so that a party could not refuse to pay for goods already received, but could refuse to continue performing under a contract which violated this Act. Cf. Kelly v. Kosuga, 358 U.S. 512 (1959). Such a provision might read as follows:

> Section 45.51.100 - Contracts Voidable. A contract or agreement in violation of any provision of this chapter is voidable by either party as to any future performance by either party, except for payment for goods already received, and such future performance, except for payment for goods already received, may not be enforced at law or in equity.

Section 45.51.120

Section 120 provides the state and its subdivisions the same injunctive and treble damage remedies provided private litigants under Section 110. This is a departure from federal law (15 U.S.C. 12a) which limits the United States' recovery to single damages for its injuries.

Section 45.51.130

Section 130 provides that the Attorney General may bring proceedings to enjoin violation of this Act. Consideration might be given to providing borough attorneys with concurrent enforcement jurisdiction. Such a measure might create a mechanism for effective enforcement. Under a system of dual enforcement responsibility, however, the Attorney General should be allowed to assume control of any litigation initiated by borough officials. We would suggest the following language:

> Section 45.51.130 - Enforcement. Jurisdiction to enforce this Act, in addition to that noted in Section 110, is vested concurrently in the Attorney General and borough attorneys. When a borough attorney brings an action under this Act, however, the Attorney General may assume full control of the investigation and litigation by giving appropriate notice to the borough attorney.

Section 45.51.150

Section 150 provides the penalties for violation of the Act. As drafted, it does not seem to us to take into account the differences between the actions which would violate this statute. There has also been a belief in some quarters that inflexibly harsh penalties discourage effective enforcement of state antitrust statutes. We

feel that criminal penalties should be limited to the clearly illegal activities of violators, and that injunctive relief should be flexible and left to the discretion of the court. We would suggest the following language:

> Section 45.51.150 - Penalties for Violation
>
> (A) A violation of Section 20(A) or (B) of this Act shall constitute a misdemeanor, and shall be punishable by fine of up to $50,000, or by imprisonment for up to one year, or both.
>
> (B) A finding of a violation of Section 20(A),(B) or (C) of this Act shall empower the superior court to issue such judgment or decree as it considers necessary to remove the effects of any violation which it finds, and to prevent such violation from continuing or from being renewed in the future. The court may, at its discretion, exercise all equitable powers necessary for this purpose, including, but not limited to, injunction, divestiture of property, termination of business relationships, divorcement of business units, dissolution of corporations or associations, and suspension or termination of a license, franchise, or charter issued under the authority of this state.

In view of the size of many potential violators, we have suggested making the maximum fine $50,000 rather than $20,000 in order to provide a more meaningful deterrent.

Section 45.51.160

Section 160 contains the prima facie provisions, giving such effect in subsequent cases to final judgments obtained by the state. These provisions parallel §5 of

the Clayton Act (15 U.S.C. 16). Unlike the Clayton Act, the state itself would be able to rely on its final judgment in a subsequent damage action. Section 160(b) makes the basic provision inapplicable to "consent judgments or decrees entered before any complaint has been filed." We doubt that the state would submit, or a court accept, a consent judgment without an accompanying or previously filed complaint. Indeed, a court might lack jurisdiction under those circumstances. We therefore suggest a return to the Clayton Act language, "consent judgments or decrees entered before any testimony has been taken." We would favor rewording these provisions as follows:

> Section 45.51.160 - Judgment in Favor of the State as Evidence in Action. The final judgment or decree rendered in any action brought by the State of Alaska under Section 20, to the effect that defendant has violated Section 20, shall be prima facie evidence against such defendants in any action brought by any party against said defendants under Sections 110 or 120, as to all matters respecting which said judgment would be an estoppel as between the parties thereto. This Section shall not apply to consent judgments or decrees entered both before any testimony has been taken and before any finding of illegality by the court, but shall apply to judgments or decrees entered on pleas of nolo contendere.

III. Investigatory Provisions

Effective enforcement requires comprehensive investigation before civil or criminal proceedings are initiated. Enforcement officers should have the power to obtain information necessary to make a responsible

decision as to whether to initiate formal proceedings. H.B. 164 does not confer any specific discovery powers upon the Attorney General. If the proposed law is to be effective, this omission must be rectified.

Since 1962, the Antitrust Civil Process Act (15 U.S.C. 1311-1314) has allowed the Department of Justice, prior to the institution of an action, to serve a civil investigative demand upon any legal entity, requiring it to produce documents for examination. Several states have such provisions, but they vary widely in scope. Some are similar to the federal statute, e.g., N.C. Gen. Stats. §75-10, and some are broader, e.g., N.Y. Gen. Bus. Law §343.

The federal statute has some significant limitations. It applies only to documents, and only to persons under investigation. This obviously limits the effectiveness of the provision in compiling adequate investigatory records from which decisions on the initiation of formal proceedings must be made. In contrast, the recently-enacted New Jersey Antitrust Act contains a very broad investigatory provision, giving the Attorney General discretionary power to institute investigation, subpoena witnesses and compel the production of documents. N.J.S.A. 56:93 (1970).

We believe that the appropriate provision for a state antitrust statute would be somewhere in between these two examples. The enforcing officer should not be limited to compelling the production of documents but should also be permitted to depose individuals for relevant information. With the proper safeguards, the enforcing officer should also be able to compel documents and testimony from individuals who are not themselves being investigated but who have information necessary to a properly instituted investigation. Therefore, we would suggest that any statute finally adopted include the following provisions:

(A) The Attorney General shall have the power to investigate alleged or suspected violations of this Act and to (1) compel the appearance and examination under oath of any person under such investigation, including the officers and directors of any corporation under such investigation, and (2) to compel the production of, and to inspect and copy, any or all tangible documents or recordings in the possession of or under the control of any person under such investigation, or any officer or director of any organization under such investigation.

(B) Upon a showing to the superior court that such is reasonably necessary to an investigation under subsection (A) of this Section, the Attorney General shall have the power to (1) compel the appearance and examination under oath of any person, and (2) to compel the production of, and to inspect and copy, any and all tangible documents or recordings.

The statute should also contain provisions for the enforcement of these discovery powers, as well as provisions which would take into account the possibility of the privilege against self-incrimination being raised as a bar to production of documents or testimony. See, e.g., 38 Ill. Rev. Stats. §§60-7.6, 60-7.7.

IV. Definitions

If the above suggestions were to be adopted, the bill should include the following definitions in an appropriate section:

"Person" shall mean any natural person, or any corporation, partnership or association of persons.

"Asset" shall include any property, tangible, real, personal, or mixed, and wherever situate, and any other thing of value.

"Commodity" shall mean any kind of real or personal property.

"Service" shall mean any activity not covered by the definition of "commodity" which is performed in whole or part for the purpose of financial gain.

We hope that our comments have been responsive to your request. If we can be of any further assistance to you in this or other matters related to our experience, you can count on our continued cooperation.

Sincerely yours,

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

By: Donald I. Baker
Acting Director of Policy Planning

HB-164

RE: Proposed Antitrust Legislation

My general feeling is that the antitrust bill which has passed the House is unduly vague for an area of the law which has as much history as antitrust. I am thoroughly in agreement with the recommendations of the U. S. Department of Justice which were mailed to Arthur H. Peterson, Revisor of Statutes, in connection with this bill. However, if we wish to continue with this existing bill which has passed the House I would want to recommend the following amendments:

1. A provision utilizing the juris prudence which is involved under the Sherman Act should be inserted. An example is provided by the U. S. Department of Justice: "This act shall be construed in harmony with judicial interpretations of comparable federal antitrust statutes."

2. HB 164 states:

> Sec. 45.51.010(c) In deciding whether conduct unreasonably restrains, monopolizes or attempts to monopolize trade or commerce, the determination of the relevant market or effective area of competition shall not be limited by the boundaries of this state.

It would seem to be understood that where the relevant market goes beyond the State of Alaska that relevant market should be considered. Thus, this paragraph would seem to be

unnecessary, unless the promoters are seeking to use it for the purpose of reading in a legislative intent not to prosecute multi-state companies located in Alaska.

For example, the oil companies have operations in the other northwest states. In those other states there is a competitive oil and gas distribution situation. In Alaska, however, there are only a few competitors of which Standard Oil of California is clearly dominant. Normally one would interpret the relevant market for gasoline and oil products to be a market in which the consumer has the opportunity to choose from which to purchase. However, by adding this provision those companies could argue, assuming they were accused of monopolization, that since their total market is competitive they are exempt from the Alaska antitrust law.

Reasoning such as this could destroy the usefulness of the antitrust law in the case of multi-state corporations but retain its usefulness for corporations which operate only in Alaska. Such discrimination does not seem reasonable and thus the provision, paragraph (c), would be better left out.

3. AS 45.51.020 refers to contracts voidable. This provision has a danger of allowing businessmen to use antitrust laws as a means of avoiding normal contract responsibilities. Thus, where such a provision is included, it should be very specific. Here again I suggest the Justice Department provision:

> A contract or agreement in violation of any provision of this chapter is voidable by either party as to any future performance by either party, except for payment for goods already received, and such future performance, except for payment already received, may not be enforced at law or in equity.

OKH:agm

BB 164

RE: Antitrust Legislation

The United States Department of Justice, Antitrust Division, made some comments on Alaska's proposed antitrust bill. Their revisions were based on the following premises:

> The goal of a state antitrust law should be effective enforcement at a low cost. This implies several points. First, excessive detail and complexity should be avoided in draftsmanship. Complex statutes have tended to bog down antitrust enforcement in many states, as the courts have attempted to deal with a maze of overlapping or conflicting statutory provisions of great specificity. Therefore, in view of this experience, we feel that simplicity without omission should be the goal in a statute which attempts to create a basis for effective state antitrust enforcement. Secondly, the substantial existing body of federal case law should be utilized by the states, wherever appropriate. This can be done by use of substantive statutory provisions following closely the federal provisions or by statutory language and legislative history making clear the intent of the Alaskan legislature to adopt this body of federal jurisprudence. This

should be of significant assistance to the courts of the state as they attempt to apply the law to specific factual situations. Thirdly, the importance of relief and investigative provisions in an antitrust statute should not be underestimated; state enforcement officers must be provided with effective means by which to discover violations of the statute if vigorous enforcement is to be achieved. Finally, the private sector, properly motivated, can be a significant aid to state enforcement. The theme of these very general comments will reoccur in the ensuing discussion of specific provisions of the proposed statute.

This principles are sound and are given to us by an organization with much more expertise than we can find within the state.

Attached is a draft of an antitrust bill using provisions they have suggested plus a few additions especially pertinent to Alaska.

OKH:agm

Attachment

PROPOSED AMENDMENTS TO HOUSE BILL NO. 164, entitled
"An Act prohibiting monopolies and combinations in
restraint of trade."

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

Section 1. AS 45 is amended by adding a new chapter to read:

CHAPTER 51. MONOPOLIES: RESTRAINT OF TRADE.

ARTICLE 1. SUBSTANTIVE PROVISIONS.

[Amend section 10 as follows:]

Sec. 45.51.010. UNREASONABLE RESTRAINTS OF TRADE OR COMMERCE, MONOPOLIES PROHIBITED. (a) Every contract, combination in the form of trust or otherwise, or conspiracy, in unreasonable restraint of trade or commerce is unlawful.

(b) It is unlawful for any person to monopolize or attempt to monopolize trade or commerce in the relevant market for the specific purpose of excluding competition or controlling, fixing or maintaining prices.

(c) In deciding whether conduct unreasonably restrains, monopolizes or attempts to monopolize trade or commerce, the determination of the relevant market or effective area of competition shall not be limited by the boundaries of this state.

[Delete present sections 20 through 50.
Renumber as section 20 and amend present
sections 60, 70 and 80 as follows:]

Sec. 45.51.020. EXEMPTION OF LABOR ORGANIZATIONS, CERTAIN COOPERATIVE ORGANIZATIONS, CERTAIN SPECIALLY REGULATED INDUSTRIES AND COMMERCIAL FISHING. (a) This chapter does not forbid the existence or operation of labor, agricultural or horticultural organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of such organizations from lawfully carrying out the legitimate objects thereof; nor are those organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of this chapter.

(b) Nothing contained in this chapter shall be construed to forbid actions or arrangements authorized or regulated under those acts of the United States which exempt such actions or arrangements from the antitrust laws of the United States or under the following statutes of this state.

(1) AS 10.15
(2) AS 21.87
(3) AS 31.05.100
(4) AS 31.05.110

(c) Persons engaged in the business of commercial fishing may act together in associations, corporate or otherwise, with or without capital stock, in collectively handling and marketing fish without violating the provisions of this chapter. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes.

ARTICLE 2. ENFORCEMENT PROVISIONS.

[Delete present section 100. Renumber and amend present section 110 as follows:]

Sec. 45.51.100. SUITS BY PERSONS INJURED. (a) A person (other than a governmental body, the state, or any of its political subdivisions or public agencies) injured in its business or property by reason of a violation of the provisions of this chapter

(1) may recover actual damages sustained, and reasonable attorneys' fees and the costs of the suit. The court in its discretion may in cases of wilful and substantial violations increase damages to an amount not in excess of three times the actual damages sustained; and

(2) may bring proceedings for injunctive relief, temporary or permanent, against threatened loss or damage to his property or business by a violation of this chapter, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings; and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate,

a preliminary injunction may issue. If the court issues a permanent injunction, the plaintiff shall be awarded reasonable attorneys' fees together with the costs of suit.

(b) The remedies provided in this section are cumulative and may be sought in one action.

[Renumber as section 110 present sections 120 and 130, and amend as follows:]

Sec. 45.51.110. SUITS BY STATE OR LOCAL GOVERNMENT. (a) The attorney general may institute proceedings to prevent and restrain violations of this chapter. In addition to granting prohibitory injunctions and other restraints for a period and upon terms and conditions necessary to deter the defendant from, and insure against, the committing of a future violation of this chapter, the court may grant mandatory injunctions reasonably necessary to restore and preserve competition in the trade or commerce affected by the violation. The court may issue temporary restraining orders or prohibitions. The court may enter consent decrees.

(b) A governmental body, the state, or any of its political subdivisions or public agencies injured in its business or property by reason of anything forbidden in this chapter may recover the actual damages by it sustained and the cost of

suit, as determined by the court. The attorney general on behalf of the state or any of its political subdivisions or public agencies, or the political subdivision or public agency at the direction of, or with the permission of the attorney general, may institute this action or damage action for a violation of comparable federal law.

[Renumber present section 140 as 120.]

Sec. 45.51.120. JURISDICTION OF COURT. Actions allowed by this chapter shall be brought in the superior court.

[Renumber as section 130 present section 150, and amend as follows:]

Sec. 45.51.130. PENALTY FOR VIOLATION. (a) A person who violates section 10 of this chapter, including any principal, manager, director, officer, agent, servant or employee, who has engaged in or has participated in the determination to engage in an activity that has been engaged in by any association, firm, partnership, trust or corporation, which is in violation of section 10 of this chapter, shall if an individual pay to the state a civil penalty of not more than $5,000, and shall if an association, firm, partnership, trust or corporation pay to the state a civil penalty of not more than $20,000.

(b) Whenever a corporation violates section 10 of this chapter, the violation shall be deemed to be also that of the individual director, officer or agent of the corporation who has authorised, ordered or done any of the acts constituting in whole or in part such violation.

[Renumber as section 140 present section 160, and amend as follows:]

Sec. 45.51.140. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN ACTION: SUSPENSION OF LIMITATION. (a) A final judgment for injunctive relief or civil penalties brought by the state under this chapter to the effect that a defendant has violated this chapter shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under this chapter or by the state, a city or a borough under sec. 110(b), as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto.

(b) This section does not apply to consent judgments or decrees entered before any testimony has been taken.

(c) Whenever a proceeding is instituted by the state to prevent or restrain violations of this chapter, or to recover civil penalties therefor, the running of the statute of limitations in respect of each private right of action arising under sec. 100 (a) (1) of this chapter, and based in whole or in part on any matter complained of in the proceeding, shall be suspended during the pendency thereof, including any appeal, and for one year thereafter; provided, however, that whenever the running of the statute of limitations in respect of a cause of action arising under sec. 100(a) (1) of this chapter is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

[Renumber as section 150 present section 170, and amend as follows:]

Sec. 45.51.150. LIMITATION OF ACTIONS. An action under this chapter is barred unless commenced within four years after the cause of action accrued, except as otherwise provided in sec. 140 of this chapter. No cause of action barred on the effective date of this chapter is revived by this chapter.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 45.51.200. DEFINITIONS. In this chapter

(1) "article of trade" includes, but is not limited to, goods, merchandise, natural resources, whether or not severed, extracted, harvested or produced, agricultural products, produce, choses in action, commodities, and any other article of commerce; it includes trade or business in service trades, transportation, insurance, banking, lending, advertising, bonding and any other business whether or not that business furnishes a personal service;

(2) "purchase" or "buy" includes "contract to buy," "lease" and "contract to lease";

(3) "sale" or "sell" includes "contract to sell," "lease" and "contract to lease."

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K — STATE CAPITOL
JUNEAU 99801

April 6, 1971

The Honorable Walter M. Hickel, Chairman
House Commerce Committee
Alaska State Legislature
Rm. Y, Capitol Building
Juneau, Alaska

Re: House Bill No. 104, Your Letter of March 26, 1971 Requesting Comments

Dear Representative Hickel:

I regret that our shorthanded staff and the many requirements on this Department have prevented me from answering this letter earlier and from answering it in the detail which we would prefer. However, there is some question whether much time need be spent lingering over those provisions which are taken from the historic body of federal anti-trust law. The objections made have been made in one form or another since 1890 and have been discussed more adequately on many previous occasions than I could do here. The basic opposition to anti-trust legislation comes not from individuals or corporations who feel that a particular section is onerous, unwieldy or unworkable, but from those who feel that no anti-trust legislation should be adopted.

With regard to the specific points raised:

1. "Passage of HB 104 can only unreasonably stifle economic growth and development of the resources in Alaska."

This criticism is based on the premise that the opportunity to engage in combinations in restraint of trade tend to monopolize industry in the State of Alaska have contributed to the economic growth and development of

the State. Nothing could be further from the truth. [illegible] is a predatory, non-free enterprise system enactment. It is based on the assumption that economic growth and development will take place at the optimum rate if the State acts to inhibit the activity of those who prefer not to trust in the workings of the laissez-faire system, but wish to establish new ground rules.

2. "S 104 makes every combine operating on the North Slope illegal. The same is true for the Alaskan pipeline."

I am sure this is not true, otherwise, the federal authorities would have moved in by now. They will certainly be so later as the product of this effort moves into interstate commerce. Needless to say, I could not rule on the legality of any arrangement on the North Slope in the absence of it being specifically brought to my attention. However, from my existing status familiarity with operations in that area, I know of no obvious violations. The actual [illegible] operators on the North Slope and Alyeska Pipeline Service Company make it all but impossible for [illegible] to avoid the impact of federal anti-trust. I would submit that these major companies are quite careful to conduct themselves with circumspection in the vicinity of the subject of these laws.

3. "S 104 exempts commercial fishing from the [illegible] of the act. For economic and growth reasons, it would seem sound to exempt the [illegible] industry."

I am sure that the commercial fishermen of Alaska [illegible] this analogy with [illegible]. The reason the commercial fishing industry is exempted is that commercial fishing in Alaska is [illegible] of thousands of very small operations. The commercial fisherman is much more analogous in his relations to [illegible] to the individual workman who, in effect is selling his own labor. At the same time, his prosperity [illegible] upon his ability to bargain with far larger economic units [illegible] the fish processing industry. The exemption for the fishermen is put in the act for much the same reason labor unions are exempt under the federal act.

4. As to S.1.010 should improve on the Sherman Act by inserting, the word "unreasonable" before "restraint of trade."

As the commentator points out, for 80 years the Supreme Court of the United States has been holding that this is generally what the 1890 Legislature intended. There is an enormous advantage in adopting the wording of a measure from another jurisdiction in toto. With that wording, the patina of interpretation of the courts grown up over a period of years is adopted. When that language is altered, it opens the door to new arguments about what the new legislative enactment might be. All anti-trust lawyers know what the Sherman Act prohibition means. We would have a whole new line of litigation testing the meaning of the new act if this wording was changed.

3. "The specific enumeration of prohibited acts under proposed AS 45.51.020 adds nothing and may be subject to misconstruction by the courts."

The absence of these provisions might also be [illegible] by the courts. Again, these are provisions [illegible] from federal anti-trust law and our courts might [illegible] some negative implication from their absence.

Any act of this nature, which is now part of the [illegible] common law of anti-trust, represents some kind of [illegible] between general terms and specific terms. The [illegible] of the former is really restricted to lawyers since [illegible] lawyer, knowing how the courts have interpreted the [illegible], would have much [illegible] of the nature of their [illegible]. Specific prohibitions can be addressed [illegible]. They are warnings to industri[illegible] as well, as well as lawyers, as to specific [illegible] which the general proposition contemplates.

In addition, the courts give additional [illegible] to the specific provisions which also [illegible] what might be referred to as the common law [illegible]. [illegible] the specific [illegible] and speculation [illegible] based on [illegible] are intended to apply in Alaska.

4. "Proposed AS 45.51.[illegible] is ambiguous. [illegible] that it may be intended to exclude [illegible] conspiracies from coverage. This is [illegible] under federal law, parents and their subsidiaries

...have been found to have conspired. The provision should be deleted and rewritten to exclude from the act's coverage single business entities and their subsidiaries.

A careful reading of the provision does not find the exclusion anywhere near so broadly. The provision is intended to exclude from the impact of the section agreement between partners in the same business entity, corporate officers, etc. The provision grants no exclusion to "single business entities and their subsidiaries." The author of the provision obviously wants to expand the scope of the exemption.

7. "Proposed AS 45.51.040 contradicts itself by ... certain types of conduct while at the same ti... ...the effects of the permission with the proviso that ... conduct is lawful 'unless the effect shall be to substantially lessen competition or create a monopoly.'"

There is a substantial difference between declaring certain conduct per se legal and declaring that it is not per se legal. The purpose of the proviso is to prevent people from stretching covenants not to compete, etc., beyond their legitimate purposes as instruments of monopoly.

8. "Proposed AS 45.51.040 is an ex post facto law."

This provision merely recognizes that the ... of a monopoly position or the maintenance of ... ...on which substantially lessens competition may be ... to the act of acquisition which pre-dates the effective ... of the act. The maintenance of the monopoly or the ...ination on trade must be subsequent to the effective ... of the act for the act to be effective on it.

9. "The effect of proposed AS 45.51.040 ... ...an acquisition of a single jobber, single dealer, or ... single service station may well be illegal in some ... village, or hamlet."

First, the court will have to define the relevant ... through interpreting "in any section of the state." ... a specific set of circumstances, where the market ... ascertainable only as the particular town or village, ... acquisition may be in violation of the act. However, ... the years a number of doctrines have grown up aroun...

the anti-trust laws which preserve the public interest in the application of Section 7 of the Clayton Act, from which it is taken, and it is obvious that a number of these doctrines will be applied to local Alaska conditions. Perhaps new doctrines will be promulgated following the rule of reasonableness. One of the most obvious exceptions is the "failing business doctrine" which allows an acquisition even though it may result in a monopoly or lessening of competition when the business being acquired is in poor shape. Other cases have held that where the convenience and needs of a community to be served by a merger clearly outweigh any anti-competitive effects, the proposed merger may be made.

16. "Subsection (a) of proposed AS 45.51.060 prohibits mergers the effect of which 'may be substantially to lessen competition'. Yet, under (b), the court is to order divestiture if the court finds that the effect of an acquisition is substantially to lessen competition.' Thus, in one case, the test of illegality concerns probabilities whereas the other depends upon a finding of actual substantial lessening of competition."

Statutes frequently distinguish between what is prohibited before action by injunction and what a court will authorize to be undone after the act has been done. There is no necessary inconsistency here between subsection (a) which allows injunction where the effect of the acquisition may be to lessen competition, but subsection (b) will only undo the merger which has already taken place where there is a finding that the merger has in fact substantially lessened competition, etc.

17. "Proposed AS 45.51.050 is broader than the federal enactment."

The application of the principles of Section 8 of the federal Act from which this is taken, obviously will have to be modified to apply to conditions prevailing in Alaska. Presently interlocking commercial ventures of almost any description are outside of the limitation on the conduct of "directors" and the conduct of officers, partners, or trustees only recognizes the corporate reality. A dual officer is far more influential in obtaining the elimination of competition by agreement than an interlocking director. Even in the wider Alaska conditions of today, the application of this section to multi-million dollar

...orations. A limitation of convenience under the federal ... the effects of conduct limiting competition can be as severe in the smaller, isolated markets of Alaska with corporations under the million dollar line.

12. "Proposed AS 45.51.050(b) would prevent a representative of a distributor from being represented on the board of a retail subsidiary."

This would sometimes be true if the subsidiary and the distributor were in competition and if agreement between them would eliminate that competition. We see nothing offensive about such a provision. I would gather that the criticism of the attorney that his chart does ... with its own retailers.

13. "The statute should provide that a successful defendant is entitled to costs or attorney's fees ... these spurious lawsuits and legal blackmail will be discouraged." (directed at proposed AS 45.51.110.)

This criticism is evidently based on ignorance of ... Alaska law which entitles the prevailing party to recover his costs including an attorney's fee, whether ... plaintiff or defendant.

14. "AS 45.... allows the State to recover ... damages under it ... state although the federal ... can only recover actual damages under the federal ... here can recover treble damages under the ... statute under existing law.)"

This is a policy question for the legislature. ... damages provisions are intended to be an additional deterrent against violations of the act which would ... others. If the legislature believes that ... damages would be a sufficient deterrent, then it ... amend this law to suit the criticism raised.

15. "Proposed AS 45.51.120(b) will frighten ... States out of Alaska because it gives the Attorney General the authority to undertake class actions."

I believe that much of this authority, as applied ... anti-trust, is available to an Attorney General ... The purpose of this kind of provision is to avoid a ... of suits which clog the courts and to join

...e causes of action of a number of plaintiffs whose individual damages may be too small to justify the expense of a ...wyer so that they will recover the damages done to them. ...e see no policy reason why this authority should be stricken. ...s unlikely, to say the least, that any business is going to be so intimidated by this section that it will refrain ...om doing business in Alaska. Of course, any Attorney General can go on a rampage under any existing law in such a manner as to do damage to the business climate. The political system acts as an effective restraint on this type of conduct.

16. "The penalty provision is broader than the Sherman Act since it provides for criminal penalties for the full range of violations."

This is necessary because, through the Federal Trade Commission, the federal anti-trust laws provide for a wide range of administrative enforcement techniques including criminal penalties for the violation of administrative orders. As a practical matter, no Attorney General would find it feasible to bring a proceeding for the enforcement of the criminal penalty in an 040 or 050 situation and no court is going to enforce criminal sanctions in such cases without proof of specific intent.

17. "The use of consent judgments in evidence in ...ivil actions is more onerous than the equivalent federal ...rovision."

True, the state law is stricter. As the letter suggests, this aspect of federal law has been quite controversial but the argument has had two sides. There has been criticism of the federal provision as giving the Attorney General too much leeway to excuse violations at the expense of injured parties.

18. Proposed AS 45.51.180 is not included in the ...rrent draft and the criticism is therefore irrelevant.

I hope this information is of some service to you.

Sincerely,

John E. Havelock
Attorney General

...ajt

HB-164

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K — STATE CAPITOL JUNEAU 99801

April 23, 1971

The Honorable William J. Moran
State House of Representatives
Capitol Building
Juneau, Alaska 99801

Re: Anti-Trust Legislation

Dear Representative Moran:

We have reviewed the proposed change in HB 164 and the statement of James Waters to the House Judiciary Committee on April 7, 1971 and have the following comments:

In Section 10, of the proposed amendment to the legislation, an attempt is made to define the marketing area to determine the reasonableness or unreasonableness of the restraint of trade. In this connection, it is suggested that in deciding whether conduct reasonably restrains trade or commerce determination of the relevant market or effective area of competition should not be limited by the boundaries of this state.

It would be the position of the Department of Law, that the legislation should not contain an express invite to enlarge marketing areas beyond the State of Alaska. Alaska is geographically separate from the rest of the continental United States and has shown unique marketing problems. The area can best be developed through the use of case law and if the defendants are able to persuade the court that the actual marketing area is indeed broader than the State of Alaska, it should be handled through the judicial process on a case by case basis. It is therefore our recommendation that no definition of marketing area be included in the legislation.

The comments relative to sections 20, 30, 40, and 50, can be summarized by stating: that these sections set forth certain types of prohibited activity. Anti-trust laws require judicial interpretation which sets

forth the specific and basic guidelines for construction. It must be presumed that the courts will follow and interpret the legislation in the light of economic and practical realities. This fact is noted in the statement of Mr. Waters wherein he indicates that the Supreme Court has placed the word "unreasonable" in front of all violations.

It is also suggested in the proposed amendments to these sections, that the State of Alaska not adopt the legislation, as there is federal legislation and the matter should be left to the staff of the Federal Government. The primary purpose of a state adopting its own anti-trust laws is to regulate those activities which are not large enough in scope for the federal intervention, or which do not involve inter-state commerce. In addition, some cognizance must be given to the fact that Alaska's geographical location and economic base which may result in cases not sufficiently large to interest the justice department, or which are not within the Clayton Act, because of the lack of assets. However, these cases would nevertheless under Sections 20-50 of proposed legislation, be actionable under the proposed State Anti-trust law.

The remainder of the comments in Mr. Waters' bill go to the remedies available, which include section 100 and subsequent sections. It should be noted in here that again an obscure example is cited for the unenforceability of contracts made in violation of the State's proposed anti-trust law. If these and the subsequent suggestions for modification were adopted, the act in summary would provide for the following remedies:

> The contract, although made in violation of the proposed State Anti-trust law, would still be enforceable.
> The treble damage provision, except for wilful and substantial wrongs, would be eliminated and actual damages awarded.

Under these provisions it would appear that there is little, if any, incentive to comply with anti-trust laws as the violation only requires the return of those actual damages sustained with the contract still enforceable.

Section 120 of the Act, contains various authority by the Attorney General to bring suit on behalf of others. Such a provision could be desirable in that the Attorney

General would have the information available, which may not be available to other parties or they may not even be aware of the action. However, this should be a matter of legislative determination on whether or not they wish the Attorney General to exercise such authority. It should be noted that in the basic area of consumer protection, such as the legislation last session on the consumer protection act, clearance by the Attorney General is required prior to a class action also the act recognizes the Governments duty to protect its private citizens from certain wrongdoing.

From the foregoing it is the Department of Law's position that:

1. The legislation should not set forth the proposed market areas, but they should be left to a matter of judicial determination on whether or not a market area exceeds the physical boundaries of the State of Alaska.

2. Sections 20,30,40, and 50 should be retained in the Act as a legitimate State function within the State of Alaska as pointed out many corporations which for one reason or another are not subject to sanction by the Federal Trade Commission or the Anti-trust Division of the Justice Department, because of geographical and economical problems, would be subject to the State of Alaska jurisdiction.

3. Contracts made in violation of the Act should be unenforceable and the treble damage provision should be maintained in order to insure adequate penalty for violation of the Act.

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

By
Donald J. Beighle
Assistant Attorney General

JEH:DJB:dmt

HB-164

FAULKNER, BANFIELD, BOOGREVER & DOOGAN
ROOM 201, 311 FRANKLIN STREET
PHONE 586-2210
JUNEAU, ALASKA 99801

March 12, 1971

The Honorable Jalmar M. Kerttula
Chairman, Commerce Committee
House of Representatives
Juneau, Alaska 99801

Dear Mr. Chairman:

Re: H.B. No. 164, Anti-Trust Bill

I previously wrote to you on February 23, as a representative of American Mutual Insurance Alliance, stating I would investigate the impact which H.B. No. 164 would have on the insurance industry in Alaska and report to you.

Congress has the right to regulate the insurance industry by reason of the fact that it is engaged in interstate commerce. In 1945, it passed the McCarran-Ferguson Act (15 USCA 1011, et seq), which provides that the business of insurance shall be subject to the laws of the several states which relate to the regulation and taxation of the industry. It also provided that the Sherman Anti-Trust Act, the Clayton Act, the Federal Trade Commission Act and the Robinson-Patman Anti-Discrimination Act would not apply to the business of insurance until June 30, 1948, and after that date said Acts shall be applicable to the business of insurance "to the extent that such business is not regulated by state law." Therefore, the states have the right to regulate monopolies and combinations in restraint of trade in the insurance industry. Many states have anti-trust statutes such as proposed by H.B. 164, but New York is the only state which did not exempt the insurance industry. However, when New York did enact such a law on January 1, 1970, it specifically exempted the setting of rates through rating bureaus. The reason various states other than New York have not attempted such regulation is that the Insurance Departments have complete control over discrimination, unfair trade practices, etc., under the Insurance Code. The Insurance Departments, therefore, have control insofar as they care to exercise it, but they recognize that rating bureaus are an absolute necessity. There are other practices in the industry which might be said to be combinations in restraint of trade, such as formulating and adhering to standard insurance policies, the content of which are, in turn, under the control of the State Commissioners. The State Commissioners have their own

association to which the industry goes for guidance with the result that the standard fire insurance policy is used everywhere and any deviations from it can be used only with the approval of the State Director of Insurance. You can understand what a chaotic situation would be created, especially for the consumers, if you had 200 different types of insurance policies in Alaska and how difficult it would be for the Director to regulate the industry.

The reason the companies use rating bureaus to recommend how much they should charge and the State Commissioners use the same bureaus to ascertain what they should allow to be charged, is because the loss experience of all the companies in an area especially under standard policies, is more reliable for rate making than individual loss experience. Therefore, our Director is a subscriber to and pays to support the various bureaus which specialize in rate making for particular purposes. These must be continued, but H.B. No.164 would prohibit such use of, rating bureaus.

From the foregoing, I think it is evident that the industry should be exempt from H.B. No. 164 since it is completely regulated in the same respects by the Insurance Code. If the state should decide to do like New York and prohibit monopolies and regulate the insurance industry under a bill of this type, then it is necessary to work out some specific exemptions such as has been done in New York. Whereas New York is the state in which most of the big companies are incorporated and it is the insurance center of the Western Hemisphere, Alaska is at the opposite end of the spectrum and is in no position to competently regulate the insurance industry except through its Director of Insurance. Therefore, unless the industry is exempt from the provisions of this bill there is a need for specific amendments which can be patterned after the recent New York law. I am furnishing to your staff and particularly Mr. Rhode, a copy of a report made by Mr. Edwin M. Zimmerman, of Washington, D.C., who talked on "Insurance Underwriting Under Antitrust" at a meeting of the 1970 Mutual Insur-

ance Technical Conference at Philadelphia, last November. It will give him some idea of the complexity of the subject of trying to regulate insurance companies under limited exemptions such as are contained in the New York Act.

Yours very truly,

N. C. Banfield

c.c. Mr. Charles A. Brown
Mr. Kenneth H. Nails
Mr. F. O. Eastaugh
Mr. W. W. Fritz
NCB:k

No. 2

HB-172

IN THE_____COURT OF THE STATE OF ALASKA

_____JUDICIAL DISTRICT

AT_____

_____ _____ Plaintiff, vs. _____ _____ Defendant.	Civil Action No._____ WRIT OF EXECUTION ON DEFAULT JUDGMENT (Or Where Debtor Not Represented by Counsel)

THE STATE OF ALASKA

TO: Any Officer Serving Process

GREETINGS:

Whereas, a Judgment has been issued by this Court on the_____day of_____, 19____, adjudging that_____, judgment debtor, is justly indebted to_____, judgment creditor, in the amount of $_____,

NOW THEREFORE,

You are hereby COMMANDED to seize and safely keep the personal property subject to execution of the said Judgment Debtor, and if sufficient personal property cannot be found, to seize and safely keep real property of the Judgment Debtor subject to execution belonging to the said Judgment Debtor when the Judgment becomes a lien or thereafter, so that the said property may be held in custody of the Court for the period prescribed in A.S. §09.35.035 and that thereafter final execution may be made thereon, and of this Writ make due service and return.

AND IT IS ORDERED FURTHER that if you find earnings owed to the said Judgment Debtor you shall not seize more

than the amount permitted by 15 U.S.C. §1673 and the regulations prescribed thereunder.

DONE at_____, Alaska, this_____day of _____, 19____.

_____
Clerk of Court

By_____
Deputy Clerk

JUDGMENT DEBTOR FORM

IN THE _____ COURT FOR THE

STATE OF ALASKA _____JUDICIAL DISTRICT

_____
_____,
Plaintiff,

vs. CIVIL ACTION NO._____

_____
_____,
Defendant

NOTICE AND ASSERTION
OF EXEMPTIONS

PART I: NOTICE OF EXECUTION

The _____ Court of the State of Alaska, _____ Judicial District, has issued a judgment that you must pay to _____ the sum of $_____: A Writ of Execution on the Judgment has been issued against you, a copy of which is attached to this form. This Writ is an order of the Court by which your property can be taken from you and sold in order to pay the Judgment and any court costs which have been assessed against you.

The following property, believed to be yours, has been seized and is now being held by the Court:

DESCRIPTION	PERSON IN POSSESSION AT TIME OF LEVY	DATE OF LEVY

Final sale or disposition of this property will be sought FIFTEEN (15) DAYS after you have received this Notice.

Some of the property listed may be exempt from execution under either State or Federal law. A general explanation of these exemptions is given in Part II of this form. If you have any questions or desire a more detailed explanation after reading Part II carefully, you should contact your lawyer, your local legal services office, or other local agency providing legal advice.

If any of the property listed above is exempt, you may prevent loss of that property by doing all of the following things within FIFTEEN (15) days of the time you receive this Notice:

Step 1: Fill out Part II of this form, following the directions carefully. Please type or print carefully. This is to notify the court of your property you claim as exempt.

Step 2: Read carefully the paragraph headed STATEMENT and sign the form.

STEP 3: Mail or deliver one copy of the form to this address:

Clerk of Court

_____, Room_____

_____, Alaska _____

The other copy is for you. Keep it for your records. Keep also the copy of the Writ of Execution which came with the form.

Step 4: Fill out the notice form which came with this form, and mail it as instructed by the information sheet.

If these steps are followed within FIFTEEN (15) days of the date you receive this Notice, the Court will hold a hearing to determine whether the property you claim as exempt is actually exempt under the law. You will be notified of the time and place of the hearing, to which you should come.

NOTE: IF YOU DO NOT FILL OUT PART II OF THIS FORM AND TURN IT IN TO THE CLERK OF THE COURT, YOU WILL LOSE YOUR EXEMPTIONS, AND ALL OF THE PROPERTY LISTED WILL BE SOLD OR DISPOSED OF.

PART II: EXEMPTIONS

The word "property" as used in this form means anything you own, including such things as:

a. Real Estate;

b. Personal property of any kind (whether in your possession or held by someone else);

c. Your money (whether in your possession or in a bank);

d. Money that is owed to you (such as your wages that have not been paid yet).

Property subject to execution or garnishment means anything the Court can take from you to pay the Judgment; exempt property is property which you may keep, provided you claim your exemption on this form.

You do not have to claim your exemptions. If you do not wish to claim any, simply do nothing further with this form, and all of the property listed in Part I will be sold or disposed of. If you do not wish to claim some particular exemption, simply leave that item blank on this form.

This form is used to claim exemptions only for property listed in Part I. The Writ of Execution is not being used to take any of your property which is not listed.

If the property listed in Part I includes any of the following items, you may claim your exemptions by filling in the blanks according to the directions accompanying each item.

A. INCOME:

You may claim at least some of your income (wages, salary, etc.) as exempt. There are two laws which provide this kind of exemption: State and Federal. You must figure your **State Law** exemption yourself in Item I below. Your **Federal Law** exemption is an automatic exemption, because the Writ of Execution does not allow the exempt part of your income to be seized.

Item 1: How to Figure Your Exemption Under State Law.

a. Look back to the list of property in Part I of this form and find the date of levy listed for your wages, salary or other income. Count back 30 days from that date.

b. Add up all of the wages, salary, tips, or commissions you were actually paid (take-home pay after withholding) for work done during those 30 days. Write the total here: $_____

c. Add up all money you received during those 30 days from any other source except wages, salary, tips, or commissions. For instance, if you are renting out any property, receiving interest on any money, receiving stock dividends, etc., add these items in. Write the total here: $_____

d. Add up all of the money (take-home pay) which you should have been paid for work done during those 30 days only, which you have not yet received (unpaid back wages, etc.). Write the total here: $_____.

e. Add up all of the money which you paid out during those 30 days which you were required to pay by order of any court. Include such things as alimony, child support, payments on a property settlement or any other court judgment. Write the total here: $_____.

f. Add the amounts in blanks b, c, and d together. Write the total here: $_____.

g. Subtract the amount in blank e from the amount in blank f. Write the result here: $_____.

h. If you <u>are</u> the <u>head of a family</u>, and your family is supported either partly or completely by your income, your <u>State Law</u> exemption is the amount in blank g, <u>unless</u> that amount is <u>more</u> than $350.00. If the amount shown in blank g is <u>more</u> than $350.00, your state law exemption is $350.00.

If you <u>are</u> the <u>head of a family</u>, write your state law exemption here: $_____. If you are <u>not</u> the head of a family, skip this blank.

i. If you are not the head of a family, your state law exemption is the amount shown in blank g, unless that amount is more than $200.00. If the amount in blank g is more than $200.00, your State law exemption is $200.00.

If you are not the head of a family, write your state law exemption here: $_____. If you are the head of a family, skip this blank.

Item 2: Your Automatic Exemption under Federal Law.

Under Federal law, you must get a certain automatic minimum exemption on your wages, salary or other earnings. Under the Writ of Execution, only that part of your earnings which is not exempt under Federal law should be listed in Part I. In order for the court to check on this and make sure that you have received your automatic federal exemption, please fill in these blanks:

a. If you are employed, check here how often you get paid.

☐ Once each week

☐ Once every two (2) weeks

☐ Twice each month

☐ Other (explain)_____

_____

b. Each time you get paid, how much money do you get? Write the amount here: $_____.

c. Do you get any pension or retirement payments?

☐ Yes

☐ No.

d. If you checked "yes" in blank c, how often do you get your pension or retirement payments? _____.

If you checked "no" in blank c, skip this blank.

e. If you checked "yes" in blank c, how much money do you get each time you get a pension or retirement payment? Write the amount here: $_____. If you checked "no" in blank c, skip this blank.

B. CHILD SUPPORT:

Item 1. Payments to court trustee.

If you have been ordered by any court to pay child support to a court trustee, you may claim this money as exempt by filling in these blanks.

a. Write here how much you pay to the Trustee each month: $_____.

b. Fill in the title of the court which ordered the payments: _____Court of the State of _____.

c. Write here the date of the decree or order: _____, 19____.

d. Write here the case number of the child support case: _____.

If you do not make your payments to a court trustee, you may not claim any exemption under Item 1.

Item 2: Child Support Payments Made by Your Employer.

If any court of Alaska has ordered child support payments to be withheld from your pay and paid to a court trustee or clerk of the court by your employer, you may claim these payments as exempt by filling in these blanks:

a. How much is each payment: $_____.

b. How often is the payment made: _____.

c. Fill in the title of the court which ordered the payments: _____ Court of the _____ Judicial District.

d. Write here the date of the decree or order: _____, 19____.

e. Write here the case number of the child support case: _____.

If your child support payments are not withheld from your pay by your employer, you may not claim any exemption under Item 2.

C. PERSONAL PROPERTY:

If any of these things listed below have been seized and listed in Part I of this form, you may claim an exemption for them by checking the boxes which apply:

☐ 1. Books, pictures, and musical instruments belonging to you up to $300 in value.

☐ 2. Wearing apparel (clothing, shoes, etc.) which is needed for your use or for your family's use.

☐ 3. Your watches or jewelry up to $200 in value.

☐ 4. Things which you need to earn a living, including cars, trucks or other vehicles if you use them in your work or to get to work; tools, books you use in your business, office furniture, business files, laboratory equipment, farm animals or other working animals, and a supply of food for the animals. If you claim any of these things, and use them to earn a living, check this box. You will not be allowed to keep more of these things than have a total value of $1,800.

☐ 5. Household goods, furniture, and utensils used by your family; animals used by your family; food for these animals, and food for yourself and your family. The total value of these items which you are allowed to keep will not be greater than $1,200, and you may keep only enough food to

support you and your family, and the animals, for 6 months. If you claim <u>any</u> of these things, check this box. ☐

WARNING: You may <u>not</u> claim an exemption for any of the things in the list above if the Judgment under which the thing seized was for the purchase price of that thing. For example, if the Judgment is for the purchase price of your car (Box 4), you could not claim any exemption for that car; but you could claim any of the other exemptions on the list.

D. LIQUOR LICENSE

Do you own a liquor license?

☐ Yes

☐ No

If you own one, you can claim your liquor license as exempt by filling in the <u>number</u> of the license here:

_____

E. HOMESTEADS

There are three (3) laws under which you might be able to claim a homestead exemption: the State homestead exemption law, and two (2) Federal laws. Read the three items below and check all boxes which you believe apply to you:

<u>Item 1</u>: <u>State Homestead Exemption Law</u>

Please answer these questions:

a) Do you own the home you live in?
If there is a mortgage on your home, you may still answer "yes."

☐ Yes

☐ No

b) Does your family live in your home with you?

☐ Yes

☐ No

c) Is the judgment mentioned in Part I of this form a judgment to foreclose a mortgage or deed of trust on your home?

☐ Yes

☐ No

If you answered "yes" to questions a and b and "no" to question c, you may claim an exemption on your home under state law. If you claim this exemption, check here: ☐

Note: This exemption may not completely protect your home. If your home is worth more than $8,000, it may still be sold or part of your land may be sold. If the entire homestead is sold, you still will get to keep $8,000 of the price under this exemption. If you live outside a town or city and your homestead is larger than 160 acres, only 160 acres is exempt. If you live in a town or city and your homestead is larger than 1/4 acre, only 1/4 acre is exempt under state law.

Item 2: The Federal Homestead Law

Please answer these questions:

a) Do you have a homestead which you obtained under the Federal Homestead Law (by filing and proving-up, etc.)?

☐ Yes

☐ No

b) Is the judgment mentioned in Part I of this form a judgment for a debt which arose before you received a patent on your homestead from the Government?

☐ Yes (If you have not received a patent, check "yes.")

☐ No

If you answered both questions a and b "yes," you may claim an exemption on your entire homestead. If you claim this exemption, check here: ☐

Item 3: Native Homesteads and Townsites

Please answer these questions:

a) Are you an Alaskan Native (Alaskan Indian, Aleut or Eskimo)?

☐ Yes (If you are only part Alaskan Native, you may still answer "yes.")
☐ No

b) Do you have a Native Homestead Allotment from the Department of the Interior?

☐ Yes
☐ No

c) Do you own land in a Native Village under a Restricted Title from the Department of the Interior?

☐ Yes
☐ No

If you have a Native Homestead Allotment or own land in a Native Village under a Restricted Title, your land is not exempt under Federal law, but you may still claim your State homestead exemption (Item 1 above).

F. CEMETERY LOTS

If you own a cemetery lot which you purchased from a cemetery association, and you bought the lot for burial purposes only, you may claim it as exempt. You may not claim this exemption if you are holding the lot to sell again for profit. If you claim this exemption, check here: ☐

G. UNEMPLOYMENT

If you have received Unemployment Payments, you may claim an exemption for all of this money if you have kept it separate from your other money. You may not claim this exemption if the judgment mentioned in part I of this form is a judgment for the price of necessities (food, clothing, rent, etc.) bought by you or your family during the time you were unemployed.

1. If you claim this exemption, check here: ☐

2. Write the amount of your unemployment payments here_____.

H. WORKMEN'S COMPENSATION

If you have received or are receiving Workmen's Compensation payments, please check here: ☐

Write the amount of your Workmen's Compensation payments here_____.

These payments are exempt.

I. INSURANCE BENEFITS

In some cases, the benefits from insurance policies may be exempt from execution. If you have received or are receiving benefits from any of the kinds of insurance policies listed here, please check the boxes which apply to you. At the hearing on your exemptions, the Court will decide whether your benefits are exempt under the law.

Have you received, or are you receiving benefits under any of these kinds of policies (if benefits are due to you, but have not been paid yet, you should check the box which applies):

☐ 1. Group Life Insurance

☐ 2. Disability Insurance

☐ 3. Annuity Policy

J. TEACHER'S RETIREMENT

Please answer these questions:

1. Are you a retired Schoolteacher?

☐ Yes

☐ No

2. Are you receiving teacher's retirement payments from the State of Alaska?

☐ Yes

☐ No

3. If you answered "yes" to questions 1 and 2, write the amount of your teacher's retirement payments here_____.