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HJ; RELEVANT INFORMATION ON BILLS

Limited entry was discussed, with specific reference to 7 per cent assessment of the gross provision and the six-month transfer provision. Testimony was received that the former was suspect as overheads vary among the fishermen and so many intangibles are involved. Regarding the latter (transfer provision), six months was questioned as too long to be workable. Thirty-sixty days was recommended as more realistic (Bill Hall).

Other recommendations were for the establishment of a major fisheries college in Alaska since it contributes so much to the economy (Bruce Massey), an I.M.S. research station in Cordova, the concept of "regional budgeting" by the Department of Fish and Game (W. Smith), the establishment of more salt water rearing pens and gravel incubators, and more stream clearing and cleaning operations (Newt Johnson), a bond issue for expansion of the Cordova boat harbor with seaplane stalls (J. Poor), and concern over the present unavailability of fuel.

Naknek (7 persons testifying) - December 5

Support for the advisory board concept was voiced, with special reference to the importance of maintaining a board in the Naknek area (G. Bergram). It was also recommended that the legislature should approve funds for the Board of Fish and Game to travel to Bristol Bay and, in fact, to each of the "prime concern" areas.

Testimony was received on the raw fish tax, that the Bristol Bay borough has in the past been so dependent on this, and that it was only \$15,000 this year and may be zero next. Recommended was a plan whereby tax could be received based on an average of what the borough got over the last five years. This would minimize the "up and down" effect (J. Hammond).

Much concern was voiced over stopping the False Pass salmon fishery in an effort to protect Bristol Bay stocks (G. Bergram, T. Mitchell). The proposal was made to adopt a management policy whereby "no fishing occur in areas where adequate escapement needs are not met", even if it means a complete closure of an area or the Bay itself (J. Hammond, T. Mitchell).

The limited entry program was discussed, with concern that all fisheries in an area be considered collectively when being considered for the distressed category, i.e. not just drift gill net in Bristol Bay, but the total impact of gill nets, set nets and hand-lines on the fishery (J. Hammond).

The results of the sliding gear scale in Bristol Bay were noted, with reference to the drastic diminishing of gear from 1972 to

1973. Also recommended was that the sliding gear scale be modified in relation to set nets, and that favoritism of drifters be stopped. The idea should be that both have the same fees, quotas and length of gear fished (A. Ashman).

Other reference was made to: the disastrous employment conditions in Bristol Bay from poor fishing seasons and that the state should not import non-local persons for local jobs if the locals are qualified (R. Johnson); enlisting support from the environmentalists for fisheries improvements (Al Menasplin); the reduction of interim-use permit fees for fishermen in distressed areas, with cost-of-living differentials related to the area a fisherman fishes, not to where he resides (H. Shauback); the need for more enforcement vessels (A. Ashman); and the need for an effort to be made to directly confer with Japan and Canada on foreign fisheries matters since I.N.P.F.C. is ineffective.

Dillingham (7 persons testifying) - December 6

Among top priority for discussion in the Dillingham area was the predator issue. The frequency and number of beluga whales in the bay was noted, with much opposition to the federal sea mammal protection bill in this regard. The Nushagak area was specifically referred to as a problem area for belugas. An immediate control program was urged, employing, if possible, the latest sound scaring devices. This would require several species being exempted from control of the marine mammal commission. (G. Bartman, H. Samuelson, J. Bennett, L. Smith, F. Roberts, A. Ball) Trout as predators were emphasized with similar comments on their control as with the beluga problem. Some advocated placing a bounty back on trout and imposing one on belugas (H. Samuelson). J. Nicholson urged more research be done on trout and char predation, as they are taking large numbers of smolt.

The high seas fishing abuse by other nationals was covered, with urging of a 200-mile limit that would start at the edge of the continental shelf, not the shoreline (H. Samuelson).

Limited entry was mentioned, with concern that members of a permit holder's family will be excluded from the fishery when they should have the right to participate (H. Samuelson).

The need for increased enforcement was stressed, particularly in the closed areas and with more frequent gear inspection.

Other comments suggested a closure of the False Pass fishery and the need for an expanded hatchery program.

Bethel (6 persons testifying) - December 7

Much of the problem in the Bethel area revolves around the change from a subsistence economy to a cash economy; specifically, whether, by regulation change, to allow the commercial sale of subsistence harvested salmon roe. Local testimony supported this, but the difficulty of framing the regulation change in the right manner was emphasized by the regional supervisor of the Department of Fish and Game. Testimony supported the subsistence sale of roe on the Kuskokwim only. Comments were received that now the roe is either wastefully destroyed or sold illegally (an estimated \$15,000-25,000 worth sold illegally). (\$175,000 worth of salmon roe is taken from the subsistence fishery in the commercial area at \$1.25 a lb.) Generally, authority for sale of subsistence roe and fish skins on the Kuskokwim is recommended. It was not felt that this would result in a harvest of salmon only for the roe. The people need both, it was emphasized. (R. Baxter, A. Edge, E. Hoffman, Sr., C. Kairaiiak, T. Williams)

The problem of no continuous year-round enforcement officer was discussed. Local people feel protection is too spotty at the present.

Testimony was heard on sheefish, that their numbers are declining and that more department research is needed on their patterns of movement and population fluctuations. There is a possibility that, properly managed, sheefish could support a commercial fishery.

C. Kairaiiak supported more funding for research in the upper Kuskokwim, particularly spawning studies. T. Williams advocated change in license issuing procedure for Bethel so that licenses are issued for a longer time prior to the opening of the season; the situation at present is very burdensome as persons must wait in long lines all at the same time.

III. CONCLUSION

From the previous discussion, several problems appear to run statewide. Such a consensus is at least some indication of their importance and it is the hope of the committee to meet these problems and issues satisfactorily during the 1974 legislative session. Not necessarily in order of priority they are as follows:

A. Protection and enforcement: Nearly all communities visited by the Joint Committee, with the exception of Kodiak, presented testimony regarding the lack of adequate enforcement of present state statutes and regulations. The following were central to the problem:

- (1) limited personnel;
- (2) personnel not familiar with the particular fishery that the law applies to;
- (3) obsolete or inadequate numbers of inspection and patrolling vessels;
- (4) grossly lenient statutory sentencing structure;
- (5) inability of the state to procure convictions, local juries unwilling to convict, etc.

B. Unilateral extension of the U.S. contiguous fisheries zone to 200 miles: The universal agreement among the communities visited was that the U.S. should unilaterally extend its fisheries limits to at least 200 miles. In line with this, it was urged that

- (1) S. 1988 (W. Magnuson's bill (U.S. Senator, Washington) advocating a 200-mile limit on all species of fish and protection anadromous fish wherever they range) be given full support;

- (2) U.S. Coast Guard cutter numbers be increased to adequately patrol the extended fisheries zone;
- (3) if possible, state economic sanctions be imposed on Japan unless it ceases its flagrant violations of I.N.P.F.C.;
- (4) bottom fish be included under the category of fish that cannot be fished east of 175° under I.N.P.F.C.;

- (5) Bristol Bay stocks of red salmon be given protection west of 175° under I.N.P.F.C.

C. Predator control: Testimony frequently included concern for increasing predation on herring and salmon stocks by sea mammals and, in some areas, by trout and char. Generally, the relaxation of bounties and less independent harvest pressure on these species, combined with decreasing salmon and herring stocks, has produced a situation of alarm in some communities. The recent passage of federal legislation to protect sea mammals has further complicated the problem. The main concerns were as follows:

- (1) increased research on and control of trout and char predation on salmon smolt in inland lake systems;
- (2) seal and sea lion predation in Southeast Alaska;
- (3) beluga whale predation, particularly in the Northwest;
- (4) that Alaska be exempted from the prohibitions of the federal Act against taking the above species of sea mammals.

D. Research and rehabilitation: Of top priority in most communities was the need for expanded rehabilitation programs for salmon, particularly for development of the new rearing and incubation programs, and the restocking of barren streams. Associated with this was support for more funding for research into new developing fisheries, specifically bottomfish, sheefish, whitefish, and shellfish. Central to this general area were the following concerns:

- (1) support for an extensive program of stream clearing;
- (2) the adequate funding of a maximum effort to implement present salt-water rearing and travel incubation programs;
- (3) funding of research into an exploratory king crab location program in Southeast Alaska;
- (4) investigation of the economic climate for the commercial marketing of rockfish and red snapper;
- (5) feasibility of authorizing private fish farming;

- (6) establishment of a major fisheries college or department of fisheries within the University of Alaska.

E. Commercial sale of (1) herring roe and (2) salmon roe, by subsistence users.

- (1) Testimony heard in Southeast Alaska communities generally opposed the commercial sale of herring roe in view of what was felt to be declining salmon stocks and the lack of a concrete determination on herring population due to inadequate herring research and management techniques.
- (2) Sale of salmon roe commercially by subsistence users was supported by Bethel and Nenana area residents, and presumably would be by other Northwest Alaska communities on the Yukon or Kus'okwim Rivers where the economy is shifting from a subsistence to a cash one. It was universally felt among the people that all salmon would be utilized and no waste would occur. As things stand now, much of the roe is either destroyed or sold illegally. The recommendation was for the Department of Fish and Game to classify, on a permanent regulatory basis, particular limited areas where subsistence roe or dried salmon could be sold.

F. Changes relating to the Board of Fish and Game: Comments pointed to concern that

- (1) new lifeblood be infused into advisory committees, in an attempt to make them more effective management tools; increased coordination with the board was suggested as a means to effect this result;
- (2) there is a need for a board staff or, at the very least, a full-time board secretary;
- (3) board input to the department regarding the department budget is needed;
- (4) the legislature appropriate funds to allow the board, prior to each board meeting, to visit so-called "prime concern" areas, to allow each board member more familiarity with priority problems.

G. Sport and commercial fishing license fee increase: Comments from the board, the commissioner, and the general public indicated a need and willingness to increase license fees for both sport and commercial fishing licenses.

3/10/67

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 105
amended by the House Judiciary Committee

In an attempt to encourage prompt and reasonable settlements and to compensate an injured party for his loss of capital and further injury while awaiting the trial, this bill provides for the addition of interest to an award of damages for the time prior to judgment. No interest will be allowed when there is a bona fide offer of settlement made within 30 days of the date the cause of action arose if the amount of money offered at least equals the damages awarded. And if such an offer is made later than 30 days after the cause of action arose, interest may be allowed for the period prior to the offer.

Tom Fink, Chairman

3/12/64
art

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 112

This bill generally increases the efficiency of state bonding. It adds redemption premiums to the state's pledge of full faith, credit and resources; removes any question of the legality of the type of bond sold after the earthquake in 1964; permits the spreading of payment over a period greater than 30 years; assures nationwide public notice of the sale of state bonds, thereby increasing the market for them; permits facsimile signatures on state bonds and on bonds issued by political subdivisions of the state; permits a "designee in the department" of a member of the state bond committee to act in the place of the member; and permits the state bond committee to designate one of its members to act when necessary to effectuate the committee's duties if that is not inconsistent with other law.

Tom Fink, Chairman

2/15/67

JUDICIARY COMMITTEE REPORT

on the

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 140

This committee substitute eliminates one basis for admission to the Alaska Bar. The subsection being repealed states in essence, that an applicant is eligible for admission if he has passed a bar examination in another state, is a member in good standing of the bar of that state, has been a resident of Alaska for at least three years, has been employed in Alaska in work of a legal nature for at least three years and the Supreme Court determines that it is in the best interest of those served by the legal profession that he be admitted.

Tom Fink, Chairman

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 160

This bill establishes a new time limitation for certain actions, i.e. those brought against the responsible architect, builder or similar person, based on a defect in the design, construction, etc. of an improvement to real property and those based on an injury caused by that defect. Whether the case is based on the defect itself or on the resulting injury the time begins running upon "substantial completion" of the improvement; consequently this bill limits not only the bringing of the cause of action, but in effect prevents the cause of action from arising when an injury occurs after the time limitation has expired. An action based on a defect not discovered until after the time limitation has expired would likewise be precluded.

However, this limitation does not affect the bringing of an action against the person in possession or control of the improvement (e.g., as an owner or tenant).

Tom Fink
Chairman

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 165

This bill establishes an additional method of handling some prisoners. In certain cases the commissioner of the Department of Health and Welfare may direct that a prisoner be permitted to continue in his regular employment, or may authorize him to secure employment, unless the court at the time of sentencing has prohibited work furloughs for that prisoner. The earnings of the prisoner shall be collected by the commissioner for payment of support of the prisoner's dependents, if any, and for payment of the prisoner's board and personal expenses inside and outside the prison facility. The balance shall be paid to the prisoner at the time of his discharge.

Tom Fink, Chairman

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 175
amended by the House Judiciary Committee

This bill requires the Department of Labor to follow the same procedures as all other encumbrancers when placing a lien on motor vehicles as a means of securing payment under the Employment Security Act. Either the instrument creating the lien shall be accompanied by the vehicle's certificate of title or a new certificate shall be issued bearing evidence of the encumbrance.

Tom Fink, Chairman

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 176

This bill simply prohibits the use of the streets and public thoroughfares of a city for the business of furnishing water by tank, wagon or other conveyance unless a franchise has been granted by the city council. The council is given the authority to regulate water distribution.

Tom Fink, Chairman

JUDICIARY COMMITTEE REPORT

ON
CS FOR HOUSE BILL NO. 178

This bill establishes the concept that a person who operates a motor vehicle upon the public highways has "impliedly consented" to chemical tests of his blood, breath or urine for determining the alcohol content of his blood if he is arrested for an offense arising out of acts alleged to have been committed while he was driving while under the influence of intoxicating liquor. A standard for determining whether a person is "under the influence" is also established.

Tom Fink, Chairman

3/11/67

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 201
amended by the House Judiciary Committee

This bill requires that agencies providing child placement and counseling services be licensed, and thereby assures the public that persons primarily engaged in offering these services possess a certain degree of training and competence and adhere to certain standards.

Tom Fink, Chairman

3/7/67

JUDICIARY COMMITTEE REPORT

on

CS FOR HOUSE BILL NO. 207

This bill helps protect freedom of religion and the right to live in accordance with one's religion so long as others are not endangered. A schoolchild whose parents, on the grounds of religious principles, object to the physical examination or immunization of him may be examined or immunized only under certain circumstances.

Tom Pink, Chairman

3/9/67

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 211

This bill is very similar to House Bill No. 90 which recently passed the House of Representatives in the State of Washington. It protects news reporters and elected public officials from being compelled to disclose their sources of information, except when there is a judicial determination by the superior or supreme court that withholding testimony on the source of information would be contrary to the public interest or would result in a miscarriage of justice or the denial of a fair trial to those who challenge this privilege. The bill contains certain limitations on the privilege, recognizing the need to protect individual rights while relieving reporters and public officials from unnecessary pressures to disclose their sources of information.

Tom Fink, Chairman

2/20/67

JUDICIARY COMMITTEE REPORT

ON

CS FOR HOUSE BILL NO. 221

This bill applies to colleges and universities the prohibition against the location of liquor outlets within 200 feet of school grounds and churches. In areas outside of incorporated cities it leaves to the persons residing within a one mile radius of a proposed outlet (i.e., the persons most directly affected) the determination, provided other requirements of law are met, of whether a liquor license should be issued. (See AS 04.10.440) Other changes proposed by the bill make the measurement of the 200 feet more certain.

Tom Pink, Chairman

2/9/67

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 230

This is one of several bills enhancing the Alaska judiciary. It requires that a district judge be licensed to practice law in Alaska, rather than just in any one of the United States. Through committee amendment, it increases his Alaska residence requirement from 90 days to one year, but to provide for filling vacancies when no person with these qualifications is available the position of acting district judge is created, for which there is no residence or law-practice requirement. The term of an acting district judge is limited to twelve months.

In addition, this bill changes the method of selection of district judges and magistrates. By requiring the judicial council to nominate two or more persons for the selection of one by the governor, the presiding judge of the superior court in each judicial district is relieved of the obligation to make the appointments.

Tom Fink, Chairman

3/10/67

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 236

This bill requires that all automobile insurance policies sold in this state provide the minimum coverage specified in AS 26.20.440(b)(2), and, unless waived as provided in AS 26.20.440(b)(3), contain an uninsured motorist clause. Legislation enacted in 1966, seeking to accomplish this end, was not a general provision and therefore has only limited application.

Tom Fink, Chairman

JUDICIARY COMMITTEE REPORT ON CS FOR HB 247

The basic change in existing law made by this bill is the removal of the concept of "fault" (for a divorce) from consideration in the award of child custody. "Fault" for the divorce is not necessarily relevant to the question of which parent could best take care of the child, particularly in Alaska where the far greater percentage of divorces are granted on the grounds of "incompatibility." In this bill the court is given guidelines to assist it in awarding child custody. The bill also makes both parents responsible for the future welfare of the child, rather than just requiring payments from "the party in fault" as under present law. In this connection payments made by the parent not having custody would go into a trust fund for the child when the parent having custody remarries, unless it is manifest that the child's present welfare requires that the payments to the parent having custody continue.

The bill also abolishes the concept of "fault" with regard to alimony, and requires that an award of alimony to either party be based on a consideration of need, ability to earn a living (as affected by age or physical condition) and other appropriate factors. It is not, however, the intent to require divorced mothers who are awarded custody of the child to place the child in a nursery so the mother can go out and work to support herself. (She will already be receiving support payment for the child.)

This is one of the factors to be considered by the court. Distribution of property is also changed by the bill so that only property acquired during the marriage can be awarded. The parties would still be free, of course, to make some other contractual arrangement.

In addition, the bill extends to both parties the courtesy presently extended only to the wife by requiring her to deliver to the

husband his personal property which is in her possession or control at the time of giving the judgment.

Tom Fink, Chairman

3/22/67

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 252 amended

This bill raises the fees for set or stake gill net licenses and makes special provision for persons whose gross income for the previous calendar year was less than \$3,600.

Tom Fink, Chairman

2/22/67

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 253 amended

This bill raises the fees for drift gill net licenses and makes special provision for persons whose gross income for the previous calendar year was less than \$3,600.

Tom Fink, Chairman

3-122

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 255

This bill provides for the enforcement of municipal liquor-control ordinances by applying the same sanctions that are available for enforcement of state liquor laws.

Tom Pink, Chairman

3/22/67

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 256

Under present law a person can be convicted of reckless driving or of driving under the influence of intoxicating liquor only if he is driving "upon a public street or highway." This bill removes that condition, so that driving in a parking lot or other place likely to endanger the public would be covered.

Tom Pink, Chairman

3/17/12

JUDICIARY COMMITTEE REPORT

ON
HOUSE BILL NO. 266

This bill alleviates the problem faced by some of the smaller cities when conventions are held there. It is a general grant of permission to holders of a "club license" to serve alcoholic beverages to nonmember conventioners when, due to a convention, the regular dispensing facilities are inadequate, as certified by the Alcoholic Beverage Control Board.

Tom Fink, Chairman

3/23/67

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 286

This bill applies the same sanctions to violations of municipal liquor control ordinances as to violations of state liquor control statutes. It also makes clear that for a second or third violation to bring a more severe penalty the violations need not all be of the same ordinance or statute.

Tom Fink, Chairman

Art

2/28/67

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 287

The basic change proposed by this bill is the placing of the incorporation and dissolution of cities in the hands of the Local Boundary Commission instead of the courts. It also prohibits the incorporation of third and fourth class cities within an organized borough, and adds a new basis for the dissolution of home rule and general law cities in an organized borough, i.e. the consent of the borough to assume the city's rights, powers, duties, assets and liabilities.

Tom Flak, Chairman

2/27/67

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 290

This bill gives the Alaska Transportation Commission the authority to suspend a rate change by a motor freight carrier for up to 180 days, pending a hearing and decision on the reasonableness of the change. Under present law the commission has the authority to reject a change, but pending its decision the change can remain in effect.

Tom Pink, Chairman

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 300

This bill seeks to protect children against neglect or abuse by requiring rather than just permitting medical personnel, school teachers and social workers to report to the Department of Health and Welfare cases when it is believed the child suffered physical injury due to abuse, neglect or starvation. The bill also requires that these reports be in writing and that the department forward copies to the largest hospital in the vicinity where the injury is discovered so that medical personnel, probation officers and agencies offering child protective services can review them.

Tom Fink, Chairman

1/1/67

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 322

This Bill modifies the court rules providing for a stay of imprisonment. If the defendant is admitted to bail the sentence of imprisonment will be stayed pending an appeal. However, if he is not admitted to bail a facility may be designated where he will be detained pending appeal or admission to bail.

Tom Fink, Chairman

3/11/67

JUDICIARY COMMITTEE REPORT

ON

SENATE BILL NO. 13

This bill simply assures blind persons that they may take their guide dogs with them, free of charge, into public facilities notwithstanding the possible prohibition in local ordinances or "company policy".

Tom Fink, Chairman

3/30/67

JUDICIARY COMMITTEE REPORT

ON

SENATE BILL NO. 45

This bill authorizes the director of the Division of Lands, with the approval of the commissioner of the Department of Natural Resources, to grant state land to a corporation for construction of a railroad and establishes the procedure for doing so. It also provides that the land reverts in the state under certain circumstances.

Tom Fink, Chairman

AW
3/18/67

JUDICIARY COMMITTEE REPORT

ON

HCS FOR SENATE BILL NO. 51 amended

This bill helps preserve the state's wildlife resources by requiring non-residents, hunting for certain species of animals, to be accompanied by a guide licensed in this state.

3/25/72

JUDICIARY COMMITTEE REPORT

ON

CS FOR SENATE BILL NO. 74 am

This bill adds to the regular penalties of fine and imprisonment the suspension of the driver's license of a person convicted more than once of driving a vehicle without the owner's consent.

Tom Pink, Chairman

3/10/67

JUDICIARY COMMITTEE REPORT

ON

SENATE BILL NO. 90 amended

This bill provides for greater efficiency in the Department of Highways by allowing a designee of the commissioner, within the department, to sign an order for a declaration of taking in eminent domain proceedings. It also requires rather than just permits the department to pay into court the reasonable value of the property taken.

Tom Fink, Chairman

3/19/67

JUDICIARY COMMITTEE REPORT

on

CS FOR SENATE BILL NO. 99

Prompted by growing concern over the hazards of ski areas and a recent court case in Washington seeking to hold a ski tow operation or owner to the standard of care of a common carrier, this bill simply clarifies the status and liability of such persons. It also protects them from regulation as a common carrier.

Tom Fink, Chairman

3/7/67

JUDICIARY COMMITTEE REPORT

on

SENATE BILL NO. 102

Under present law a bank may disclose its records pertaining to customers and depositors in only four situations. This bill adds one more, so that a bank, lending institution, credit bureau or retail outlet extending credit to an individual may obtain information from the individual's own bank regarding his credit rating. This bill does not permit his bank to disclose his exact deposit balance.

Tom Fink, Chairman

3/14/67

JUDICIARY COMMITTEE REPORT

on

SENATE BILL NO. 114

This bill simply applies to veterans of the Viet Nam war the same employment-preference benefits presently applied to veterans of the two world wars and the Korean War.

Tom Vink, Chairman

3/19/67

HOUSE JUDICIARY COMMITTEE REPORT

ON

CS FOR SB 142

This bill attempts to codify the law with respect to the burden of proof in medical and dental malpractice actions and counter the 1964 case of Fabrick v. Sedwick, Alaska, 391, P. 24, the effect of which is said to be an intolerable ~~state~~ of law resulting in astronomically high malpractice insurance rates. Basically the bill requires that, in these actions, negligence be proved and not presumed.

Tom Fink, Chairman

3/23/47

JUDICIARY COMMITTEE REPORT
on
HOUSE COMMITTEE SUBSTITUTE
for
SENATE BILL NO. 145

This bill brings into conformity with the Alaska Uniform Commercial Code the language of the provision prohibiting removal from the state of an encumbered motor vehicle. Under AS 45.05.690 to AS 45.05.794 a secured transaction is one which, regardless of form, is intended to create a security interest in personal property or fixtures. See AS 45.05.692(a). The common terms "chattel mortgage" and "conditional sales contract" are included in the term "security interest".

Tom Fink, Chairman

3/27/67

JUDICIARY COMMITTEE REPORT

ON

HCS FOR SB 156

This bill attempts to assure state employees using air charter services of greater safety by removing the competitive bid requirement for these services. Contractual arrangements for these services will still be possible, but in the absence of a formal contract reasonable fees established by the Department of Administration will apply, and the employee actually flying in the aircraft may select the charter service to be used. Also, the department may promulgate regulations establishing minimum standards for air charter services to be used by state employees. The emphasis will be on the qualifications of the pilot and his aircraft.

Tom Pink, Chairman

3/22/67

JUDICIARY COMMITTEE REPORT

ON

SENATE BILL NO. 178

This bill provides for the greater efficiency of the state ferry system by permitting the hiring of persons who are not United States citizens for handling ferry business in Canada.

Tom Pisk, Chairman

3/22/67

JUDICIARY COMMITTEE REPORT

ON

SENATE BILL NO. 181

This bill simply adds the Board of Fish and Game to the list of state agencies covered by the Administrative Procedure Act.

Tom Fink, Chairman

3/23/67

JUDICIARY COMMITTEE REPORT

ON

SENATE BILL NO. 191

This bill simply extends to July 1, 1967, the time for making application for earthquake disaster relief. The present deadline is July 1, 1966.

Tom Vink, Chairman

3/28/07

JUDICIARY COMMITTEE REPORT

ON

SENATE BILL NO. 192

This bill establishes the Alaska Toll Bridge Authority to handle the financing and construction of toll facilities in the state.

Tom Pink, Chairman

A M E N D M E N T

Offered in the HOUSE

BY THE JUDICIARY COMMITTEE

To: HOUSE BILL NO. 105

Page 1, line 10: Insert "(a)" before the word "Unless"

Page 1, lines 12 - 17: Delete all material up to the period in line 17 and substitute:

damages awarded by the jury or the court interest on the entire amount of the award ~~is~~ a portion of it. The interest shall be calculated at the legal rate from the date the cause of action arose to the date of entering judgment, and it shall be included in the judgment.

(b) If a bona fide offer of settlement was made within 30 days of the date the cause of action arose and the amount offered at least equals the amount of the judgment no interest may be allowed for any of the time before judgment. If this offer was made later than 30 days after the cause of action arose interest may be allowed only for the period before the date of the offer.

Page 1, line 17: Begin a new paragraph and insert "(c)" before "The rate"

3/17/67

A M E N D M E N T

Offered in the HOUSE

BY THE JUDICIARY COMMITTEE

To: HOUSE BILL NO. 112

Page 2, line 12: Between the comma and "at" insert:

"in one published in San Francisco, California, and in one published in Chicago, Illinois."

Page 2, lines 24 - 29 and Page 3, lines 1 - 6: Delete all matter and insert:

Sec. 37.15.080. SIGNATURES AND SEAL. (a) Each bond shall be signed on behalf of the state by the governor and attested by the secretary of state, [ONE OF] which signatures may be [A] facsimile signatures [SIGNATURE]. The seal of the state shall be impressed, imprinted or otherwise reproduced on each bond. Each interest coupon attached to the bond shall be signed by the facsimile signatures of the governor and secretary of state. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, the signature is, nevertheless, valid and sufficient for all purposes, as if the officer had remained in office until delivery.

(b) A signature required on a bond issued by a political subdivision of the state may be a facsimile signature.

Page 3, lines 13 and 14: Delete "principal deputy or assistant" and insert:

"designee in the department"

A M E N D M E N T

Offered in the House

By the Judiciary Committee

To: HOUSE BILL NO. 175

Page 1, line 15: Delete all material after the period

Page 1, line 16: Delete all material and add the following:

* Sec. 2. AS 28.10.530(a) is amended to read:

(a) Filing as provided in sec. 480 of this chapter is the exclusive method of giving constructive notice of a lien or encumbrance upon a registered vehicle [THE METHOD PROVIDED IN SEC. 510 OF THIS CHAPTER OF GIVING CONSTRUCTIVE NOTICE OF A LIEN OR ENCUMBRANCE UPON A REGISTERED VEHICLE IS EXCLUSIVE], except as to liens dependent upon possession, and a lien or encumbrance or title retention instrument which is filed and documents evidencing the instrument are exempt from secs. 22-6-5, 29-2-5, and 29-2-6, ACLA 1949, but only to the extent that those sections are inconsistent with the method provided in this section for the giving of constructive notice of a lien or encumbrance upon a registered vehicle.

2/5/12

A M E N D M E N T

Offered in the HOUSE

BY THE JUDICIARY COMMITTEE

To: HOUSE BILL NO. 201

Page 2, line 18: Add:

(c) In this section "agency" does not include an individual who occasionally provides the services set out in (a) of this section.

A M E N D M E N T

Offered in the HOUSE

BY THE JUDICIARY COMMITTEE

To: HOUSE BILL NO. 201

Page 2, Line 18:

Add:

(c) In this section "agency" means

(1) an establishment, the primary purpose of which is to provide the services set out in (a) of this section; or

(2) an establishment required to be licensed under secs. 20 or 90 of this chapter.

A M E N D M E N T

Offered in the HOUSE

By THE JUDICIARY

To: _____ HOUSE Bill No. 230

COMMITTEE

_____ SENATE Bill No. _____

AMENDMENT: Page _____ Line _____

Page 1, line 14: Delete "90 days" and substitute "one year"

Page 2, lines 4 - 8: Delete the sentence "An acting district ... United States." and substitute:

"An acting district judge shall be a citizen of the United States and of the state, at least 21 years of age, but need not be licensed to practice law in any one of the United States and need not have established Alaska residence before his appointment."

MEMORANDUM

March 6, 1967

SUBJECT: HB 117 and HB 229

TO: House Judiciary Committee
Tom Fink, Chairman

Re HB 117: The question was whether, as the result of enacting the bill, an out-of-state encumbrance on a motor vehicle would be without validity (as against a good faith purchaser) in Alaska unless it is filed here or is reflected on the title or registration certificate. When read in conjunction with AS 45.05.736(a)(4) and AS 28.10.470 - 28.10.480 and 28.10.510, that would appear to be the result. (Those sections require filing here and provide that it is constructive notice to subsequent purchasers and encumbrancers.)

However, this result raises the question of "full faith and credit" under the U. S. Constitution, in that it would deny a right to an individual when that right has been perfected under the laws of another state. Broderick v. Rosner, 294 U.S. 629 (1935), presented a situation in which New York law established certain liability of bank stockholders and New Jersey law specifically prohibited enforcement of that liability. The decision of the New Jersey court upheld its own statute, but the U. S. Supreme Court reversed the decision, stressing the contractual nature of the right, and saying, ". . . the full faith and credit clause does not require the enforcement of every right which has ripened into a judgment of another state or has been conferred by its statutes But the room left for the play of conflicting policies is a narrow one [A state] may not, under the guise of merely affecting the remedy, deny the enforcement of claims otherwise within the protection of the full faith and credit clause, when its courts have general jurisdiction of the subject-matter and the parties."

The practical effect of HB 117 (if every state had similar legislation), seeking to protect local good faith purchasers, would be to require out-of-state creditors (encumbrancers) in states where the encumbrance is not reflected on the title to file their encumbrance in all 49 other states, since they could not be sure where a defaulting debtor would run.

AS 45.05.694(d) provides for the situation when the certificate of title does reflect the encumbrance, which poses no problem here.

March 6, 1967

There appears to be a substantial question of the constitutionality of HB 117, but further research and time would be required to give a more definite answer.

Re HB 229: The first question was whether lines 27 - 28, page 1 of this bill, conflict with HB 158. If it weren't for the repealer in sec. 7 of HB 158 there would be a substantive conflict between the two bills.

The second question was whether the grant of jurisdiction over actions of an equitable nature to the district court would give that court jurisdiction over divorce cases. Since there would be a general grant of equity jurisdiction, no reason appears why this wouldn't be true. Nothing provides for exclusive jurisdiction over divorce cases in the superior court, and, under AS 22.15.030(b), "insofar as the civil jurisdiction of the district magistrate courts and the superior court is the same, such jurisdiction is concurrent."

Sincerely,

John M. Elliott
Acting Executive Director

By
Arthur H. Peterson
Legislative Counsel

MEMORANDUM

March 7, 1967

SUBJECT: HB 175 and HB 105

TO: House Judiciary Committee
Tom Fink, Chairman

Re HB 175: The question was whether the citations in lines 14 to 16 are correct. It appears that they are. There is some confusion, however, in that AS 28.10.530, which is specifically included, refers to AS 28.10.510, which is specifically excluded. Two suggestions: (1) change the wording in AS 28.10.530 to simply refer to "filing as provided in secs. 480 and 490 of this chapter;" and (2) delete the last sentence of AS 23.20.200(c) (lines 15 to 16 of the bill), as being unnecessary.

Re HB 105: The question was in what cases can the court add to the judgment interest for the time prior to the date the judgment is rendered. The only general provision dealing with interest on judgments is AS 09.30.070 (the one being amended by this bill), and the only court rule is Civ. R. 78(e) -- neither of which speak to the question of cases appropriate for the award of interest, other than limiting interest to money judgments. Superior Court Judge Thomas B. Stewart says he knows of no general law or rule or practice on this point, but warns that it is possible that the statutes contain some buried provision applying to a certain cause of action and requiring or prohibiting interest. Although the amount of the potential award may be more certain in many contract cases than in most tort cases, present law appears to contain no criteria for determining which cases would be appropriate for application of the amendment of AS 09.30.070 as proposed in HB 105.

Arthur H. Peterson
Legislative Counsel

AHP:ee

MEMORANDUM

March 13, 1967

SUBJECT: Committee bill request re the Supreme Court's recently promulgated Rules of Juvenile Procedure

TO: House Judiciary Committee
Tom Fink, Chairman

RULE 26 of the RULES OF JUVENILE PROCEDURE:

The name or picture of a juvenile under the jurisdiction of the juvenile court shall not be made available to the public unless authorized by court order accompanied by a written statement reciting the circumstances which support such authorization.

AS 47.10.090(b):

The name or picture of a minor under the jurisdiction of the court may not be made public by a newspaper, radio, or television station in connection with the minor's status as a delinquent or dependent child, except as authorized by order of the court. A person who violates this provision is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500 or by imprisonment for not more than one year, or by both.

According to the March 9 Juneau Alaska Empire, Rep. Ted Stevens, in criticising the rule, said "under the law, the minor first must be established as a delinquent child or a ward of the court." That appears to be incorrect. Although the statute contains the clause "in connection with the minor's status as a delinquent or dependent child," there is no requirement that there be a finding that the child is delinquent or dependent before the "name-or-picture" prohibition applies. Perhaps Mr. Stevens was misquoted. (AS 47.10.080 provides for the determination of delinquency or dependency, and in (f) states that a minor found to be delinquent or dependent is a "ward of the court.")

The same source quotes Mr. Stevens as saying "It [the Supreme Court] also overlooked the statute whereby a minor can be prosecuted for a traffic offense in the same manner as an adult." (AS 47.10.010(b) contains a general provision on this point; AS 28.30.010(d) applies only to driving a vehicle without the owner's consent.) In that under present law the District Court has jurisdiction over juveniles (but cf. HB 158) and traffic offenses there may be a conflict as Mr. Stevens implies. However, the new rule does apply only to juveniles "under the jurisdiction of the juvenile court"; it is not a general provision; and when the District Court considers a juvenile case (not a traffic case) it announces that it is now sitting as a juvenile court. So there is really no conflict.

The Empire also cites Mr. Stevens as saying that it was the legislature's intention to protect the delinquent child, but not necessarily the wayward child, where some publicity can serve as a deterrent to others. Neither the House nor Senate Journals for 1957 (when AS 47.10.090(b) [1957 SB 86] was enacted) contain any indication of the legislative intent on this point; existing statutes do not indicate that the new court rule is contrary to the legislative intent but only indicate that the intent was to protect juveniles - whether delinquent or dependent or "wayward" - from the stigma resulting from unnecessary publicity; and the statutes do not contain the "wayward" versus "delinquent" distinction. (A hasty scan discloses that "wayward" only appears in AS 47.10.010(a)(2).)

There are two basic differences between the new court rule and AS 47.10.090(b): (1) The rule requires that a written statement supporting the authorization accompany the court order while the statute only provides for the court order; and (2) the statute contains the qualifying phrase "in connection with the minor's status as a delinquent or dependent child," while the court rule refers to the "jurisdiction of the juvenile court". In regard to this second point, the result of both would seem to be pretty much the same. Only this first point establishes a bit more protection for the juveniles by requiring the statement of justification. Is this what the bill requested by your committee (via Mr. Tillion) would seek to amend?

An additional difference between the statute and the rule is that the former specifies "made public by a newspaper, radio, or television station" while the latter simply says "made available to the public." Again, the result seems to be the same, and certainly this difference in language is no evidence of strongly conflicting "intents".

MEMORANDUM

March 16, 1967

SUBJECT: HB 247 and proposed CS for HB 247 as they relate to AS 09.55.210 -- a sectional analysis.

TO: House Judiciary Committee
Tom Fink, Chairman

1. The basic change proposed by Section 1 is the removal of the consideration of "fault" (for the divorce) in determining custody of a child -- a factor not necessarily related to a party's ability to care for and raise the child, and certainly quite irrelevant when considering the bases for divorce under Alaska law. In addition, the original bill sets up an arbitrary age limit, after which no automatic preference (in awarding child custody) may be given to the mother. The CS removes the arbitrary age limit and introduces the concepts of "tender years" and "age to require education . . . ," both of which appear unworkable although the end sought is eminently sound. The CS also introduces the wishes of the child as a factor to be considered -- a situation which may already exist under case law, but which a statute would make definite.

It was my observation while studying law in Michigan that the courts there tended to give automatic preference to the mother even when good reasons for not doing so were present, and I was under the impression that this problem existed in other states, too. One of the staff attorneys who studied in Oregon says the malady is rampant there. It appears that some observers of the critics of this tendency fear that change would be a challenge to the sanctity of "Motherhood".

Section 1 of the original bill needs a technical change and Section 1 of the CS needs substantial rewording.

2. Section 2 continues the elimination of the concept of "fault" in the determination of custody and support money by requiring both parents to contribute to the welfare of the child. (Present law says the court may provide for the payment "from the party in fault.") The CS changes the original bill by substituting "by either or both parties" for "by both parties equally," and adds a provision for the establishment of a trust fund for the future education of the child; when the spouse having custody remarries, the payments from the other spouse would go into this fund. (This should probably be in a separate subsection.)

3. Section 3 again removes the "fault" concept and allows for alimony only when ~~one party~~ (not necessarily the wife) is physically incapable of earning a livelihood. The CS broadens this a bit by allowing alimony when the need is manifest and one of the parties is incapable of earning a living by reason of age or physical condition. The CS also provides for the termination of alimony. This is not mentioned in the existing statute and I'm not sure how much it changes case law on the point. Daily care of a child, preventing employment, presents another problem that should be provided for in this section.

I believe the courts in general -- I'm not yet sufficiently familiar with Alaskan courts -- are tending toward a more rational approach to alimony; but again they must fight the emotional cries of "Motherhood."

The section should be reworded.

4. Section 4 limits the division of property to that acquired during coverture. The CS removes the phrase "without regard as to which of the parties is the owner of the property" which appears in existing law and the original bill. Property held jointly or separately is included. A pencilled note at the bottom of page 2 of the CS says "specifically excluding separate property acquired by inheritance or gift." If that's what was intended, I don't think that's what was accomplished.
5. Section 5 of the CS is self-explanatory. It extends to both parties the courtesy formerly extended only to the wife.

Arthur H. Peterson
Legislative Counsel

3/20/67

Memorandum

Subject: House Bill No. 221

To: House Judiciary Committee
Tom Fink, Chairman

The question was whether the proposed amendment to AS 04.15.020(e) would conflict with existing law because of the "shall" in line 18 of the bill. As you noticed, the second condition of the exception (lines 22 to 24) appears to avoid the conflict by requiring compliance with other provisions on the point.

AS 04.10.440 requires the consent of a majority of the persons over 21 residing within a one mile radius of the proposed location of a liquor outlet before a license may be issued. So if HB 221 becomes law the board may issue a license only if the borough assembly and the residents within one mile agree.

Your suggestion to delete the rest of the sentence after "municipality" in line 15 and define "school" to include "college and university", of course, would avoid the question altogether.

Arthur H. Peterson
Legislative Counsel

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1968

REPORTS,
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T.E. 3/15/68

JUDICIARY COMMITTEE REPORT

on

CS For House Bill No. 27

This bill provides for a method for the owner of a vehicle, who sells his vehicle to give notice to the Department of Revenue that he is no longer the owner of the vehicle. Under current law, until title document is submitted by the buyer showing the transfer, the seller of the vehicle is still considered to be the owner of the vehicle. The committee substitute does not make it mandatory for the seller to give such notice, but permissive. Were the provision to remain mandatory on the part of the owner the paper work of the Department of Revenue for transferring titles would be considerably increased and the issuance of new titles would be considerably slowed down.

3/24/68

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 41

This bill provides that the justices of the supreme court shall elect one of their number to be the chief justice and that the justice so elected shall serve as chief justice for a term of three years. It also provides that the first election shall be held no later than one month after the membership of the supreme court has been increased to five justices.

Tom Fink, Chairman

15-3/6/68

JUDICIARY COMMITTEE REPORT

on

House Bill No. 57

This bill is designed to facilitate the passage of ordinances and emergency ordinances by the boroughs. It takes away some of the difficult mechanical procedures required in the passing of such ordinances. It makes the procedure considerably more like that of a city government.

The Local Government Committee's committee substitute for House Bill No. 57 does not create any legal problems. The question is whether we should continue to make it difficult for a borough government to operate because of mechanical obstacles placed in its way.

JUDICIARY COMMITTEE REPORT

ON

CS FOR HOUSE BILL NO. 92

This bill establishes a pilot public defender program to assure needy defendants of adequate legal representation and to more equitably distribute the public obligation to provide this representation. The constitutional right to counsel is held by the needy as well as the financially secure, and presently the obligation with regard to the former is met almost entirely by the members of the legal profession alone. The committee substitute provides that a needy defender who is served by the public defender and who, within three years, acquires an ability to pay for the services shall do so.

Tom Fink, Chairman

T.F.
5/10/60

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 103

This bill broadens the definition of doing business in the State of Alaska insofar as insurance companies are concerned. Its effect will give the state jurisdiction over any insurance company having transactions in the state. It is designed to protect the citizens of the state from insurance companies who cover risk in Alaska but are not subject to our laws or service of process within the state under current law.

It will result in considerably increasing our premium- tax income. It will not require that insurance be bought through agents in Alaska but it will require that all companies covering risk in Alaska be licensed in Alaska and therefore subject to our jurisdiction.

Tom Pink, Chairman

3/23/68

JUDICIARY COMMITTEE REPORT

ON

CS FOR HOUSE BILL NO. 205

This bill provides that the owner or operator of a motor vehicle, vessel or aircraft is not liable for injury to a non-paying passenger, such as a hitchhiker or a friend, in case of an accident unless the accident was intentional or was the result of the owner's or operator's intoxication or his wilful and wanton disregard of the safety of others. This means that he, and therefore his insurance company, will not be legally bound to pay for injury resulting from his ordinary negligence.

Tom Fink, Chairman

JUDICIARY COMMITTEE REPORT

on

House Bill No. 212

This bill provides that written agreements to arbitrate disputes are valid, enforceable and irrevocable, except as otherwise provided by law, and sets up a procedure for handling these agreements. The bill is based on a proposed uniform act approved by the House of Delegates of the American Bar Association and the National Conference of the Commissioners on Uniform State Laws.

Tom Fink, Chairman

ut 2/22/68

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 213

This bill repeals a 1964 amendment which permitted a corporation to provide in its bylaws that a shareholder may not cumulate his votes when electing directors. By repealing that language, the law will allow shareholders to vote cumulatively if they desire, any bylaws notwithstanding.

Tom Pink, Chairman

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 213

This bill repeals a 1964 amendment which permitted a corporation to provide in its bylaws that a shareholder may not cumulate his votes when electing directors. By repealing that language, the law will prevent a majority on a board of directors from adopting a bylaw that would deny representation to the minority. Consequently, the welfare of shareholders who do not hold a majority of stock will also have to be considered when action is taken on behalf of the corporation. Section 2 of the bill states the public policy of protecting minority shareholders against oppression by the majority and of insuring fairness and equitable business practices.

Tom Fink, Chairman

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 234

This bill as amended is a simple conflict-of-interest statute. It requires that a public official must file a statement with the Department of Commerce within 30 days of any transaction in which he or any close relative has a financial interest in excess of \$1,000. The public official is identified as anyone holding an office in the legislative, executive or judicial branch of state government, whether or not he receives compensation.

Tom Pink, Chairman

Judiciary Committee Report

on

CS For HOUSE BILL No. 254

This committee substitute establishes the Division of Lands as the agency with the authority to vacate land plats in areas outside cities in the unorganized borough. Presently there is no state agency or political subdivision with authority to officially vacate plats in these areas. Thus plats which may have been filed cannot be formally changed or vacated. The original bill would have also required the filing of plats in these areas with the Division of Lands, a procedure viewed as not necessary at this stage of the state's development and as placing too great a burden on areas of low population.

Tom Fink, Chairman

T.F. 3/13/68

JUDICIARY COMMITTEE REPORT

on

CS For House Bill 332

This bill requires that anyone whose name is made available to the public as a practitioner of one of the healing arts or one who tests human functions must show after his name the particular field of licensure. It also provides that a dentist who performs surgery may designate his field of licensure as "dental surgeon" or "doctor of dental surgery".

It is the opinion of the committee that this law refers only to those instances wherein the name is placed before the public as a practitioner of the healing arts or one who tests human functions. For example the committee believes that in the white pages of a telephone directory, the suffix is not necessary. In the yellow pages of the telephone directory the suffix is necessary. On the individual's letterhead the suffix is necessary and in a church bulletin the suffix is not necessary.

The obvious purpose of the bill is to assure that the public is aware of the particular field of licensure of any individual who is a practitioner of the healing arts.

The bill provides that the Department of Law may obtain an injunction to enforce this bill.

T.F. 3/11/63

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 333

This bill imposes mandatory sentences on the first and subsequent convictions for the commission of certain serious crimes if the individual is carrying a firearm. There is a 10 year minimum sentence for the first offense and 25 years for a subsequent offense.

Tom Fink, Chairman