HB
209

File for 209

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S — JUNEAU 99801

March 6, 1975

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99811

Dear Mr. Gardiner:

re House Bill No. 209

House Bill No. 209, an Act relating to penalties under the Alaska income tax was introduced on February 26, 1975 and referred to the House Commerce and Judiciary Committees.

For the consideration of the Judiciary Committee, I am enclosing a copy of a memorandum dated March 5, 1975 from Frederick P. Boetsch, Deputy Commissioner, Department of Revenue outlining present violation problems of the withholding tax laws by non-resident workers employed in the construction of the Trans-Alaska pipeline and setting forth the necessity of the proposed legislation for protection of the State Treasury.

If you or any members of your Committee have any questions on the material submitted, kindly advise the writer by telephone at 465-2397 and I will contact Mr. Boetsch for further material or testimony.

Very truly yours,

R. D. Stevenson
Special Assistant

RDS:lw

Enclosure

cc Frederick P. Boetsch
Deputy Commissioner
Department of Revenue

MEMORANDUM State of Alaska

TO: R. D. Stevenson, Special Asst.
Office of the Commissioner
Department of Revenue

DATE: March 5, 1975

FILE NO:

TELEPHONE NO:

FROM: Frederick P. Boetsch
Deputy Commissioner
Department of Revenue

SUBJECT: House Bill 209

A recent survey by auditors and enforcement officers of the Department of Revenue indicated that there was a substantial violation of the withholding tax laws by non-resident workers connected with the Trans-Alaska Pipeline. The violation consisted of submitting a Form W-4 (the withholding tax declaration) with an unreasonable number of exemptions claimed which led to a zero withholding tax. In some cases we found as many as 50 or 60 exemptions had been claimed. The obvious objective of claiming so many exemptions would be to insure that there would be no state income taxes withheld from their pay checks. Without withholding it is unlikely that we would ever receive any tax from these individuals.

Although it would be possible to prosecute these individuals under our existing fraud statutes, the standard of proof is quite complicated and the time reqired to conduct an investigation would be such that many of these individuals may have left the state by the time any action could be brought. In reviewing the federal Internal Revenue Code with respect to this problem we find that they have a specific statute which addresses itself to the question of persons supplying false information to an employer for withholding purposes. The proposed bill is consistant with that provision of the Internal Revenue Code. Basically it allows us to prosecute for fraud, an individual who supplies false information or willfully fails to supply information to his employer for purposes of withholding the Alaska Income Tax. With this kind of provision it is merely necessary for us to establish that such false information was provided to the employer or that such information was withheld. It is not necessary to address ourselves to the more complex question of income tax evasion as such.

Although the punishment is a misdemeanor, and the jail term is for one year, we felt that a $5000 maximum fine was necessary in order to encourage compliance since in most cases that would be more than the tax itself. A person then would run the risk of having to pay the tax and a fine as well as possibly serving some time in jail.

We feel that a statute providing for a direct penalty for submitting false information to an employer for withholding purposes will allow us to proceed more swiftly against violators and thereby curtail the problem before it gets out of hand.

02-A63072

It is difficult to measure the effects on Treasury of this bill since we do not have a total grasp of the extent of the problem or how much money might come in as a result of withholding on these individuals. However, obviously the effect will be positive since it will bring many more people under the withholding provisions.

We anticipate no additional administrative costs administering this bill since Witholding Tax Audits, in connection with the pipeline project, are a part of the Pipeline Impact Budget.

FPB:lw

A M E N D M E N T

TO: HOUSE BILL NO. 209 BY ELIASON

Page 1, line 7: before the period add: "; and providing for an effective date"

Page 2, line 18: add the following:

* Sec. 2. AS 43.20.335(g) is amended to read:

(g) A person required to collect or truthfully account for a tax imposed by this chapter who wilfully fails to collect the tax or to truthfully account for and pay over the tax, or wilfully attempts in any manner to evade the tax or the payment of it is, in addition to other penalties provided by law, liable to a civil penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. This penalty is in place of the tax not otherwise paid to the state. The civil penalty shall be paid upon demand by the commissioner or his designee, and shall be assessed and collected in the same manner as taxes are assessed and collected under this chapter. Any reference in (a) - (f) of this section to "tax" imposed refers also to the civil penalty provided under this subsection.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

HB
211

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S — JUNEAU 99801

April 14, 1975

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99811

Dear Mr. Gardiner:

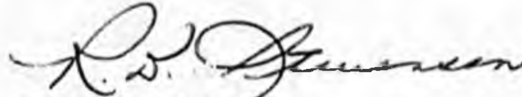
re House Bill No. 211

House Bill No. 211, an Act relating to the administration of state tax and revenue laws was introduced on February 26, 1975 and was referred to the House Commerce, Judiciary and Finance Committees.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a memorandum dated March 12, 1975 from Frederick P. Boetsch, Deputy Commissioner of the Department of Revenue outlining the administrative need for the proposed legislation which is housekeeping in nature and advising of no administrative costs.

If you or any members of your Committee have any questions on the material submitted, kindly advise the writer by telephone at 465-2397 and I will contact Mr. Boetsch who will return to Juneau by mid-week for further material or testimony.

Very truly yours,



R. D. Stevenson
Special Assistant

RDS:sp
Enclosure

cc Frederick P. Boetsch
Deputy Commissioner
Department of Revenue

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: March 12, 1975

FROM: Frederick P. Boetsch
Deputy Commissioner for Taxation
Department of Revenue

SUBJECT: HB 211

House Bill 211 is an administrative housekeeping measure designed to provide uniformity in the administration of our various tax laws. It also provides for the hiring of out-of-state agents to audit the books and records of out-of-state taxpayers, in addition to our present power to enforce collection of taxes by this means.

Presently, each of our tax laws have separate administrative procedures with repect to civil penalty, interest, disclosure of tax returns and reports, taxpayer remedies, and payment of taxes. This frequently creates confusion in the mind of the taxpayer and his representatives. It also causes administrative difficulties since a different procedures apply to each tax type. Finally the lack of uniformity is probably unfair to the taxpayer since it unnecessarily complicates his compliance with our various tax laws.

This bill, then, would eliminate the various administrative procedures mentioned from the different specific tax chapters and place these provisions under the general administrative chapter, of Title 43.

Since the propose of this bill is to provide for administrative uniformity in procedures and ease of compliance with our tax laws by taxpayers, we see no direct effect on Treasury, However, anything which eases compliance and provides for fair and more uniform standards in general has a postive effect on taxpayer compliance and, hence, on the Treasury.

We anticipate no administrative costs in connection with this bill.

FPB: sp

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S—JUNEAU 99801

March 13, 1975

The Honorable Bob Bradley
Chairman
House Commerce Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99811

Dear Mr. Bradley:

re House Bill No. 211

House Bill No. 211, an Act relating to the administration of state tax and revenue laws was introduced on February 26, 1975 and was referred to the House Commerce, Judiciary and Finance Committees.

For the consideration of the Commerce Committee, I am enclosing a copy of a memorandum dated March 12, 1975 from Frederick P. Boetsch, Deputy Commissioner of the Department of Revenue outlining the administrative need for the proposed legislation which is housekeeping in nature.

If you or any members of your Committee have any questions on the material submitted, kindly advise the writer by telephone at 465-2397 and I will contact Mr. Boetsch for further material or testimony.

Very truly yours,

R. D. Stevenson
Special Assistant

RDS:sp
Enclosure

cc The Honorable Terry Gardiner
Chairman
House Judiciary Committee
The Honorable Hugh Malone
Chairman
House Finance Committee
Frederick P. Boetsch
Deputy Commissioner for Taxation
Department of Revenue

02-001B

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE : March 12, 1975

FROM: Frederick P. Boetsch FPB
Deputy Commissioner for Taxation
Department of Revenue

SUBJECT: HB 211

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We anticipate no administrative costs in connection with this bill.

FPB:sp

02-001B

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE : March 12, 1975

FROM: Frederick P. Boetsch FPB
Deputy Commissioner for Taxation
Department of Revenue

SUBJECT: HB 211

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Since the propose of this bill is to provide for administrative uniformity in procedures and ease of compliance with our tax laws by taxpayers, we see no direct effect on Treasury. However, anything which eases compliance and provides for fair and more uniform standards in general has a postive effect on taxpayer compliance and, hence, on the Treasury.

We anticipate no administrative costs in connection with this bill.

FPB:sp

March 23, 1972

The Honorable Bill Ray
Senator
Alaska State Senate
Juneau, Alaska 99801

Dear Senator Ray:

Pursuant to your request, we have reviewed the federal tax statutes and our statute on publicity of returns and disclosure of information contained in individual returns.

The inspection of federal returns by states is clearly prohibited by § § 6103 of the Internal Revenue Code, unless the purpose of such inspection is for the administration of state tax laws. If for this purpose, then inspection will only be permitted upon the written request of the governor. Section 6103 (b)(2) provides in part as follows:

> All income returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 . . ., shall be open to inspection by any official, body, or commission, lawfully charged **with** the administration of any State tax law, **if** the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State. . . . . . Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State . . . (emphasis added)

It appears from the language of this section that any inspection request not within the meaning of the phrase "administration of state tax laws" would be denied.

As this exchange is administered, these returns are not made available on any basis outside the Department of Revenue including internal State law enforcement agencies. Section 7213(a)(2)

would make it unlawful for any state officer or employee to disclose any information contained in a federal return.

The Alaska Statute on this subject is not as explicit as the federal statute, but the same purpose and intent can be assumed from the existing language. AS 43.20.190(a) provides in part:

> Except when required in official investigation. . . it is unlawful for an officer or employee of the state to divulge or make known the amount of income or the particulars set out as disclosed in a report or return under this chapter.

Under this language, it is unlawful for any state employee or officer to reveal any information unless the purpose of such disclosure is within the meaning of the phrase "except when required in official investigation." It has been held that the intent and purpose of state and federal statutes imposing secrecy in respect to income tax returns is to prevent disclosure of confidential information to those who do not have a legitimate interest in it.

As this law has been administratively interpreted by the State, tax information is not shared by the Department of Revenue with other agencies of the State including internal law enforcement agencies except where a possible violation of the State's tax laws is indicated.

A great deal of tax information is computerized in the interest of efficiency. There has never been any proposal to connect the Department of Revenue data processing activity with the Justice Information System data processing activity. Under the circumstances it serves no purpose and only a potential for mischief and confusion would occur from such an endeavor.

We trust this discussion will be helpful.

Sincerely,

John E. Havelock
Attorney General

JEH:ss
jcr

cc: Revenue
Governor's Office
Public Safety

November 21, 1972

The Honorable Mike Bradner, Chairman
Legislative Audit Committee
915 Kellum Street
Fairbanks, Alaska 99701

Dear Mr. Bradner:

At the request of the Budget and Audit Committee of the Legislature, the Division of Legislative Audit is examining Department of Health and Social Services records relating to the Adult Public Assistance and Aid to Families with Dependent Children programs to determine whether recipients are in fact eligible and for what amount of payment.

As one method of verifying income information submitted to the Department of Health and Social Services by individuals receiving services from the Department, the Committee would like the Legislative Audit Division to examine State income tax returns on file with the Department of Revenue, and wage information submitted by employees and employers to the Department of Labor in connection with administration of the State Employment Security Act.

Information collected under each of these Acts is protected by specific statutory provisions guaranteeing confidentiality to the records in the Departments of Labor 1/ and Revenue 2/ respectively and establishing criminal penalties. On the other hand, under a third provision of statute, the Division of Legislative Audit is entitled to have access to the records of every State agency whether confidential or not. 3/

You have asked whether the Legislative Auditor has the authority to examine such records and you have advanced cogent reasons for his being allowed to do so. You have

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1/ AS 23.20.110(a)

2/ AS 43.20.190(a)

3/ AS 24.20.271(b)

stated that there is no reason to believe that the Legislative Auditor is any more likely to divulge information obtained than Department personnel would in the performance of their duties. You have further stated that in any published reports, specific names and raw data would not be made public. You have also expressed the view that Article IX, Section 14 of the Constitution of Alaska requires the Departments of Revenue and Labor to open their records to review, regardless of confidentiality. This provision states that there shall be a legislative auditor who "shall conduct post-audits as prescribed by law and shall report to the legislature and to the governor." Finally, you have indicated that such access is inherent in the general investigative authority of legislative bodies and is even required by the separation of powers doctrine and that, as a practical matter, any curtailment of the Legislative Auditor's access to any State agency records will drastically reduce the ability of the Legislature to review operations of the executive branch.

Initially, it should be noted that the confidentiality of the records in question is not for the benefit or convenience of the executive branch of government nor for the convenience of the legislative branch, but constitutes a recognition by the Legislature, through the enactment of law, of a right of privacy adhering to the individual submitting the data.

This right of privacy was recently given constitutional standing by the people of Alaska through the adoption of an amendment affirming that, "The right of the people to privacy is recognized and shall not be infringed." 4/ The Legislature is directed to implement this section, but to the extent that it has not done so, under Article XII, Section 9 of the Constitution of Alaska, the provisions of the Constitution "shall be construed to be self-executing whenever possible." In proposing this provision to the people we deem that the Legislature must have been aware not only of the likely effect of Article XII, Section 9, but of the body of legal authorities and literature which have historically given meaning to the concept of the right of privacy. 5/ Ratification and

4/ Article I, Section 22, adopted August 22, 1972 (actual effective date: October 14, 1972)

5/ The literature on the legal basis of the right of privacy is voluminous. A recent introduction may be found in 77 Yale, L.J. 475, 481 (1968) or 67 Michigan L. Rev. 1091, 1223 (1969). The original definition of the right in America may be found in the work of Samuel D. Warren and Louis D. Brandeis 4 Harv. L. Rev. 193 (1890).

adoption of the amendment by the people does not freeze into constitutional doctrine every aspect of this literature but sets the main trends which compel the conclusions set out in this opinion.

While readily acknowledging the supremacy of the judicial branch in the expounding of the Constitution of Alaska, this opinion should be considered as a definitive interpretation of the laws of Alaska for officers of the executive branch until an order of a court of competent jurisdiction rules otherwise. 6/

In my opinion, the data collected by the Department of Labor and the Department of Revenue is within the ambit of the protection intended to be afforded by the Right of Privacy recognized by Article I, Section 22 of the Constitution of Alaska. Each of these departments 7/ holds private information in trust to the individual submitting it to the extent of the obligation of the right of privacy.

The Supreme Court of the United States has recognized the right as constituting a zone of fundamental concern for personal rights and liberties which predates the Bill of Rights of the Constitution of our country in origin. Many of the guarantees of the Bill of Rights describe specific areas of this zone. Griswold v. Connecticut, 381 U.S. 479 (1965).

The right of freedom of speech declared in Article I, Section 5 of the Constitution of Alaska and the corresponding right to remain silent found in Section 9 of Article I have been enriched by the adoption of this amendment establishing a right of privacy binding on judicial, legislative and executive branches alike.

Section 14 of Article I relating to search and seizure must be interpreted with due regard to the right of privacy as must Section 20 relating to the quartering of soldiers. The list of potential applications of the constitutional right of privacy is not here exhausted.

The right of association, for instance, which has been expounded by the Supreme Court largely within the

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6/ In the absence of judicial enforcement, executive interpretation is a necessity. c.f. Laird v. Tatum, 40 U.S. L.W., 4850 (June 27, 1972).

7/ In the interest of brevity, this opinion will discuss the application of the Right of Privacy to income tax records. A parallel analysis leads us to our identical conclusion regarding Employment Security Records.

context of the First Amendment to the Constitution of the United States, is yet one more aspect of the right of privacy. This right has already been construed as prohibiting under certain circumstances the gathering or distribution of information by government about individuals. Hentoff v. Ichord, 318 F.Supp. 1175 (D.C. 1970). In NAACP v. Alabama, 357 U.S. 449 (1957), the Court noted that even though the intent of the governmental action challenged may appear to be totally unrelated to protected liberties, if the natural effect is to inhibit the exercise of a right, then it is constitutionally suspect. The Court thereupon concluded that the membership lists of the association "were so related to the right of the members to pursue their lawful private interests privately" that they were immune from state scrutiny.

The right of privacy is not absolute but lies in fine balance with the right of government and of the public to gather and use information for the purpose of assuring the common good. The particular private and public interests involved must be weighed and a balance struck between the impact on the individual and on society of a particular practice in information treatment. American Communications Association v. Douds, 339 U.S. 382 (1950); Barber v. Time, Inc., 159 S.W.2d 291 (Mo.)

Though the right of privacy may be a "passive" right, it nonetheless enjoys the shelter of that penumbra of vigilance which requires that governmental action having an adverse impact on it must be supported by compelling reasons 8/ to be sustained.

In assaying the propriety of a particular government information practice in the light of the Constitution, a number of questions should be asked, the answers to which will determine the balance between the proper use of information by government and the right of privacy.

> First, what is the expectation of the individual to whom the information relates? Is the information more or less personal? Is it the kind of information which the average citizen of ordinary sensibility would view as close to or remote from sensitive areas of personality? Nader v. General Motors Corp., 255 N.E.2d 765 (N.Y.)

8/ By use of the term "compelling" we do not intend to join the semantic debate on the degree of specific gravity to be accorded particular principles in the balancing process. c.f. Dunn v. Blumstein, 31 L.ed. 274 (1972). In my view a rigorous policy analysis provides its own balancing rationale.

If the information was given voluntarily with full expectation that it would be used in any manner which the government chose, then privacy as a legal right is not applicable. A voluntary surrender of privacy is involved. See also Brents v. Morgan, 299 S.W. 965 (Ky.). On the other hand, if information is obtained from the individual under duress or totally involuntarily, it is subjected to a more restricted trust in its storage and use by the government.

Income tax returns do not constitute a truly voluntary source of information. As an involuntary source, the returns are specially entitled to the cautious judgment of the administrator in interpreting laws protecting the privacy of the individual. It is undoubtedly within the reasonable contemplation of the individual submitting income tax returns that an auditing function will be performed on the data he furnishes for the purpose of assuring its accuracy and for the purpose of assuring the efficiency and honesty of those administering the tax laws. It is unlikely that the individual contemplates the use of financial revelations in his return to cross-check other filings he may have made at other times for other purposes.

> Second, is the inquiry essential to a government function and the scope of inquiry limited to the necessities of the case? Not every end of government justifies the means. The information gathering or distribution process should not pick up information irrelevant to the public governmental purpose nor distribute private information beyond the dictates of necessity. 9/

The State is prohibited by statute from invading the right of privacy of the individual through the use of wire tapping or eavesdropping techniques for the purpose of checking welfare fraud; nor can the home of the welfare recipient be subject to search without a warrant showing probable cause supported by oath or affirmation. Similar protection is afforded the citizen's income tax returns though they may already be in the hands of a government agency.

Income tax returns contain a broad range of information of varying intimacy constituting a self-portrait of the individual taxpayer. A person who has access to the tax returns, though he may wish only to obtain net income figures, is exposed to a wide range of additional confidential information.

9/ United States v. Robel, 389 U.S. 258 (1967).

The inherent general investigative authority of legislative bodies, which you specify as establishing authority for this access, is subject to constitutional limitations designed to protect the rights of the individual. The constitutional fathers of Alaska were particularly concerned that the claim of legislative or executive prerogative should not be used to override rights retained by the people. To the extent that recognition of the right of privacy reduces the ability of the Legislature to review operations of the executive branch or limits the ability of the executive branch to operate with optimum efficiency, this is a price which the people have placed upon their liberty. Section 7 of Article I of the Constitution of Alaska proclaims:

> "No person shall be deprived of life, liberty or property without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed."

In my opinion the right of privacy is a "liberty" within the meaning of this provision of the Constitution. Limitations on this liberty may not be imposed without procedural due process, the investigative power of the Legislature notwithstanding.

The prevalence of welfare fraud is undoubtedly a proper area for legislative inquiry by a legislative committee of competent jurisdiction. Nevertheless, if the Committee prepares rules of procedure and practice for the Legislative Audit Division as later suggested in this opinion, the Committee may wish to reconsider whether the broader purpose for which the information is being sought constitutes a proper exercise of the post-audit function under the relevant statutes,10/ since the inquiry seems to be not so much whether the executive branch is faithfully and efficiently executing its duties under the statute but whether the public is. We do not here express an opinion on this question which is primarily one for legislative consideration.

> Third, assuming the underlying purposes of the government are legitimate and pressing, are there alternative ways in which the government can accomplish its business without passing through the penumbra of the right of privacy?

10/ see Kent v. Dulles, 357 U.S. 116 (1958); Schniedes v. Smith, 390 U.S. 17 (1968).

While the purpose of tracking and defeating welfare fraud is laudible, th... are many ways in which this purpose can be accomplished without invading the privacy of income tax records. 11/

You have indicated that the information sought would be used to support findings expressed ultimately in numbers or percentages. I would recommend that you discuss with the agencies involved the use of coding procedures and appropriate executive agency personnel to determine whether the ultimate purpose can be accomplished without expanding the number of personnel having access to records which identify persons or in any manner intrude upon the right of privacy retained by the people in accordance with the principles described in this opinion.

> Fourth, what kind of security is afforded the information? The right of privacy includes a right to adequate data protection so that information obtained and used legitimately is not incidentally subject to use in some other manner that lies beyond the legitimate need of the government to know.

Under the practices and procedures of the Department of Revenue, the information contained in income tax returns is held confidential even from other officers of State government. Access within the Department of Revenue itself is based upon a "need to know."

The Committee's request on behalf of the Legislative Auditor is not for the purpose of determining whether the Department of Revenue is effective and efficient in managing the tax laws but is intended to serve the purpose of cross-checking the performance of a program administered by the Department of Health and Social Services. It is significant that the internal auditors of the Department of Health and Social Services, and of the whole executive branch, housed in the Budget and Audit Division of the Department of Administration, are themselves denied the access now sought for the Legislative Auditor.

Any individual member legislator or member of the Committee staff may peruse the files of the Division, examining the raw data contained therein. No matter how improbable

11/ The effect of widening circulation of private records in impairing the candor of individuals later reporting should be noted as a public interest incidentally protected by the ri...t of privacy.

it may be that an individual legislator or staff member might examine these files and copies of income tax returns or data contained therein, the fact is that no prohibition, safely restricting access to described individuals having a need to know, exists. 12/

The right to privacy does not extend only to privacy against publication to the general public. It applies to lesser audiences also, including audiences of government officers not engaged directly or indirectly in business pertinent to that for which the private information is collected. While there is no reason to suppose that the Legislative Auditor, as a person, is more likely to divulge information to unauthorized persons than members of the Income Tax section of the Department of Revenue, the lack of well-articulated rules regarding storage of information and restricting access to the files of the Division, means that the situation of any income tax records in the Division is in fact precarious considering the sensitivity of the rights involved.

> Fifth, to what extent is due process afforded the individual whose right of privacy is at hazard? The procedures and safeguards by which information is collected, stored and distributed should be articulated in rules available to the public. In some instances the individual may have a right to be notified of a proposed use of information about himself and to be afforded an opportunity to voice objection, with provision for appellate review.

Critical, in my opinion, to the determination of the rights and obligations of the parties in the present situation is the doubt as to the subsequent security of the information to be obtained and the absence of guarantees of procedural due process to the individual whose privacy may be in the process of being surrendered or impaired. Greene v. McElroy, 360 U.S. 474 (1959). Compare Hannah v. Larche, 363 U.S. 420 (1960).

AS 24.20.271(6) provides that the Legislative Audit Division shall

> "have access at all times to the books, accounts, reports or other records, whether confidential or not, of every state agency;"

12/ For historical and survey background see S. Wheeler, On Record: Files and Dossiers in American Life (1969).

Under AS 24.20.201(a)(1) the Legislative Budget and Audit Committee is empowered to

> ". . . adopt rules for the conduct of its business and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions;"

To the best of my knowledge this section has never been implemented. No rules have ever been proposed or formally adopted. 13/ There has been no opportunity for the public to have access to proposed rules or comment on them. There is no procedure which limits in a satisfactory manner access to the files of the agency on a need to know basis. Nor, to initiate a search of records pertaining to an individual citizen is a statement required which sets out with specificity the purpose for which the search is made. c.f. Watkins v. United States, 354 U.S. 178 (1957); Barenblatt v. United States, 360 U.S. 109 (1959).

Applying this outline of principles to the practice proposed by the Committee, it is my opinion that an infringement of the Constitution would be involved in implementation of this application for record review in the manner suggested. Accordingly, the Departments of Labor and Revenue are instructed to deny access to the records involved under the circumstances presented in this instance.

By this opinion we do not deny that in a proper case, for the performance of the audit function, under appropriate procedural guarantees, the Legislative Auditor may have access to income tax returns or other confidential personal data in the files of every department of government. For proper purposes relating to the efficiency and honesty of the administration of the Department of Re[illegible]nue, and under appropriate procedural safeguards, he may do [illegible]. However, at the present time the regulations and safeg[illegible]ards to be provided by the Committee are nonexistent or inadequate. They afford neither procedural protection to the individual whose privacy may be jeopardized nor adequate regard for the larger concerns of the society in the right of privacy.

Respectfully submitted,

John E. Havelock
Attorney General

cc: Commissioner Benson
Commissioner of Revenue

13/ c.f. U.S. Smelting, Refining and Mining Co. v. Local Boundary Commission, 489 P.2d 140 (Alaska 1971).

HB 211

1. housekeeping - Admin procedures
2. Makes uniform - different procedures for remedies
3. allows to employ tax agents

240 - informal hearing on taxpayer remedies

Problem - taxpayers confused about remedies available on different types of taxes

~~Add~~ 025 - authority for outside auditors
1. large Corp. - income tax - Multi-state tax
~~Corp~~ will do if request

1972 - 2 opinions 43.20.190
tax returns inspected by Legis Audit

(1) Test - What does Ind anticipate who will have access to his info (tax return)
(2) Does Agency have leg purpose - Alternative sources of info
(3) Security for info - rules procedures set out for due process

Opinions
No access for Leg Audit
" " for Legis

HB
213

UNIVERSITY OF ALASKA
Fairbanks, Alaska

Office of the President

Juneau, Alaska
April 2, 1975

Memorandum to: Honorable Terry Gardiner, Chairman
House Judiciary Committee

From: Don M. Dafoe, Executive Vice-President

Subject: Comments on HB 213 and HJR 15

We were informed at 1:00 p.m. today that hearings scheduled on the above bill and Resolution had to be deferred. Your Aide suggested that we might submit a written statement.

Under date of March 14, Vice-President Rae, responding to a request from Representative Naughton, noted general concurrence with the provisions of the bill. However, Dr. Rae had not conferred with our Legal Counsel relative to the implications of the amendments proposed to AS 14.40.290.

Note attached is a copy of an opinion from our University Counsel, Dr. Tom Gruening. He concurs, as do we in the Office of the President, with the amendments to 14.40.190 and 14.40.250 which specifically provide for reporting to the legislature on the administration and disposition of restricted as well as appropriated funds. We believe that this provision is entirely reasonable. We do not see, however, why a constitutional amendment as provided for in HJR 15 would be necessary.

We concur with the opinion of our Counsel that the amendments proposed to Sec. AS 14.40.290 would raise serious constitutional questions in view of the constitutional mandate to the Regents to "govern" the University. We believe that application of all requirements of AS 37.07 to the University, particularly AS 37.07.030(4) and 37.07.080(a)(c)(d) and (e), would infringe upon and perhaps usurp the constitutional responsibility and the policy perogatives of the Board of Regents.

We would emphasize the desire of the University to respond meaningfully, and hopefully in a timely manner, to legislative needs for information in general and particularly to needs related to the budget process. We believe our controls are adequate but do acknowledge some difficulty with timely response.

In this regard, we believe that the Legislative Budget and Audit Committee might well want to convene some Interim Sessions involving legislative finance Chairmen and analysts, Department of Administration representatives, Office of the Governor representatives, and University administrators with a view toward clarifying and simplifying reporting and budget policy and processes.

UNIVERSITY OF ALASKA

MEMORANDUM

TO: Dr. Don M. Dafoe, Executive Vice President

FROM: Tom Gruening, University Counsel

SUBJECT: House Bill #213

DATE: March 27, 1975

This is in response to your request for an analysis of the implications of House Bill #213. The bill would amend four sections of the Alaska Statutes.

It would amend 14.40.190 to include language expressly encompassing appropriated and restricted funds as being included in the written report to the Legislature. In my opinion this amendment simply clarifies existing law and has no implications.

A.S. 14.40.250 is amended to conform with the proposed amendment to Section 190 clarifying the scope of the written report to the Legislature. This section also simply clarifies existing law and has no implications.

A.S. 14.40.290 is amended by adding a new subsection subjecting the University to the Executive Budget Act, and A.S. 37.07.120 (1) is correspondingly amended to include the University of Alaska within the definition of agency contained in the Executive Budget Act.

Inclusion of the University within the terms of the Executive Budget Act raises serious constitutional questions. The relationship between the constitutional autonomy of the Board of Regents in relation to similar attempts by other branches of state government has been considered at length in a Memorandum of Opinion from Grace Schaible, the University's retained counsel, to William R. Wood, then President of the University of Alaska, dated January 9, 1973. I have excerpted the pertinent portions of that opinion rather than repeat them here. The excerpt is set out in Exhibit A which is attached hereto. The basic thrust of the constitutional argument is that under Alaska Constitution Art. VII. Sec. 3, the Board of Regents shall govern the University and any attempt by the Legislature to intervene in University management decisions respecting planning or expenditure of funds would effectively emasculate the constitutional duty of the Board of Regents to govern.

A second constitutional ground is that under Alaska Constitution, Article VII, Section 2, real and personal property is subjected to the requirement that it shall be administered and disposed of according to law. Since money is not mentioned it is not subject to regulation by the Legislature as to its administration and disposition. (Thus A.S. 14.40.280 is unconstitutional on its face as it purports to regulate the expenditure or management of money of the University of Alaska. This probably explains why no attempt has ever been made to enforce it.)

The two sections of the Alaska Constitution mentioned above would, in my opinion, render unconstitutional the portions of the Executive Budget Act listed below insofar as they purport to authorize the management or control of the Univeristy's expenditures, policies, planning or operations or otherwise interfere with or restrict the governance of the University by the Board of Regents:

A.S. 37.07.010 (2), (3)
A.S. 37.07.030 (4)
A.S. 37.07.040 (5)
A.S. 37.07.050 (a) (2) except insofar as needed to determine the University's budget.
A.S. 37.07.050 (d) except insofar as the division purports to describe rather than set policy, priorities, etc.
A.S. 37.07.070
A.S. 37.07.080 (a), (c), (d), and (e).

It should be noted that there is no constitutional or statutory objection to the requiring that information be provided for purposes of budget planning, priority setting, etc., by the Legislature so long as such requirements do not interfere with the Board of Regents' governance of the University.

mh

Exhibit A

Memorandum of Opinion from Grace Schaible to Willima R. Wood, dated January 9, 1973.

It may be well at this point to review the broader aspects of the problem in view of the Constitutional provisions relating to the University of Alaska and Board of Regents. There are two provisions involved as follows:

> "Section 2, Article VII. State University. The University of Alaska is hereby established as the State University and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. This property shall be administered and disposed of according to law."

and Section 3 of Article VII as follows:

> "Section 3, Board of Regents of University. The University of Alaska shall be governed by a Board of Regents. The Regents shall be appointed by the Governor, subject to confirmation by a majority of the members of the legislature in joint session. The Board shall, in accordance with law, formulate, policy and appoint the President of the University. He shall be the executive officer of the Board."

These two sections of the Constitution are unique in that it is the only place that a division of State government is singled out and provided a special corporate status. As we are all aware, both secondary educational groups and the Fish and Wildlife people tried to obtain like status at the constitutional convention, but were unsuccessful. Alaska is not unique in having a constitutionally established University and Board of Regents; however, only a few institutions of public higher education in the entire United States enjoy this very privileged legal status. As one treatise writer has indicated:

> "These fortunate few possess a sphere of authority within which neither the legislative nor the executive division of State government may interfere. They are, in substance,

coordinate with the legislative, executive, and judicial branches and thus represent a fourth arm of State government". (Blackwell, College Law, page 242).

As has been pointed in Alexander and Solomon's College and University Law 1972 edition, there are nine states which guarantee Constitutional autonomy for universities. Although Alaska is not expressly included among these nine which are Michigan, Minnesota, California, Colorado, Georgia, Idaho, Oklahoma, Nevada and Arizona, it is recommended the University contact the authors and advise of the omission. In three of these states there has developed a considerable body of law regarding the autonomous status of the university, namely Michigan, Minnesota and California. We believe that when the Alaska Constitutional provisions relating to the University and Board of Regents are judicially interpreted it is very probable that Alaska's constitutional provisions will be considered as establishing an "autonomous" university. The Michigan Constitution provides:

> "The Board of Regents shall have the general supervision of the University, and the direction and control of all expenditures of funds."

Although Alaska's constitutional provision is drafted less explicitly, Article VII, Sec. 2 and 3, supra, establishes the University as a "body corporate" and directs that "the University of Alaska shall be governed" by the Board. This specific power to govern the University stongly implies and indeed mandates the "control of all expenditures of funds" must be in the governing board, with the legislative control being the overal sum and not the specific direction of where and how said funds are to be spent.

The broad grant of powers above quoted has given the Board of Regents of Michigan complete control of all university income regardless of source. The Michigan Supreme Court in 1895 resolved the issue of a legislative enactment requiring the Board of Regents to discontinue a homeopathic school in Ann Arbor and establish a new school in Detroit and spelled out the legislature-university relationship in an unmistakable fashion:

> "The Board of Regents and the legislature derive their power from the same Supreme authority, namely the Constitution...they are separate and distinct Constitutional bodies, with the power of the regents defined. By no rule of construction can it be held that either can encroach upon or exercise the powers conferred upon the other."

This interpretation was based on the broad constitutional powers given to the Board of Regents under the Michigan Constitution. We believe the Alaska Supreme Court, in light of these precedents combined with the intent of the delegates to our 1956 constitutional convention expressed in the minutes of those proceedings will likewise find similar powers in the Board of Regents of the University of Alaska.

The citizens of Michigan in the Constitution of 1908 granted privileges similar to that granted to Michigan State College (now Michigan State University) and provided that State Board of Agriculture was given "general supervision of the college, and the direction and control of all agricultural college funds".

The Constitutional status of the University of Minnesota is likewise closely aligned to that of Alaska. The Board of Regents of the University of Minnesota was incorporated by the Territorial Assembly in 1851 with a mandate "to govern" the university and the 1858 Constitution of the State of Minnesota expressly "perpetuated unto said university" "all the rights, immunities, franchises and endowments heretofor granted or conferred". It was not until 1925, however, that the first legislative test was made of the autonomous powers of the University of Minnesota. In that year the legislature enacted the laws regarding the organization of the State government which centralized the State Administrative functions under the Governor. The Commission on Administration and Finance operating under the Governor's office pursuant to this act claimed the authority to supervise and control the expenditure of moneys for the University of Minnesota. Suit brought on behalf of the University against the Commission resulted in a decision of the Supreme Court which stated in part:

> "...the right to control university finances is the power to dictate university policy and direct every legislative activity....The legislature cannot transfer any of these constitutionally confirmed powers from the regents to any other board, commission or officer whatever....The purpose of the constitution remains clear. It was to put the management of the greatest state educational institution beyond the danger of vacillating policy, ill-informed or careless meddling and partisan ambition that would be possible in the case of management by either legislature or executive, chosen at frequent intervals and for functions and because of qualities and activities vastly different from those which qualify for the management of an institution of higher learning." See State v. Chase, 175 Minn. 259 220 N.W. 951 (1928).

In subsequent suits involving an enactment of the legislature who changed the method of selection of regents, the Supreme Court of

Minnesota in describing the university's relationship to the executive, legislative and judicial branches of government commented:

> "The people by their Constitution chose to perpetuate the university which had been created by their Territorial Legislature in a Board of Regents, and the powers they gave are not subject to legislative or executive control; nor can the courts at the suit of a taxpayer interfere with the board while governing the university in the exercise of its granted powers. This does not mean that the people created a corporation or institution which is above the law. The board must keep within the limits of its grant."

The California Constitution of 1879 provided for the independence of the Board of Regents as follows:

> "The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the Organic Act creating the same..., subject only to such legislative control as may be necessary to insure compliance with the terms of this endowment and the proper investment and security of its funds."

This constitutional language has been uniformly interpreted by the Supreme Court in California to provide immunity from any legislative act changing the form of government of the college. In 1913, the Supreme Court of California made a clear statement of the University's independence in a case involving a conflict between vaccination requirements of the legislature and those of the University of California. (Williams v. Wheeler, 23 Cal. App. 619, 138 P. 937) The Board of Regents of the University of California had required all enrolling students to be vaccinated whereas the legislature provided for exceptions for those conscientiously opposed or for those for whom vaccination would be harmful to their health. A student not having been vaccinated and conscientiously opposed to vaccination was denied entrance to the university and sued for admission. The question of legislative versus university predominance in making of admission and health policies was placed squarely before the court. The court held that the exceptions provided for in the vaccination law were not founded upon consideration of the general health and did not constitute an exercise of the general police protection of the legislature. More specifically with regard to the Constitutional powers of the university, the Court said:

"...it was the intention of the framers of the Constitution to invest the Board of Regents with a larger degree of independence and discretion in respect to these matters than is usually held to exist in such inferior boards and commissions as are solely subjects of legislative creation and control. This would seem to be a necessary conclusion from the fact of the evaluation of the university to the place and dignity of a constitutional department of the body politic...."

In Idaho the Constitution adopted in 1889 provided with reference to the administration of the University of Idaho:

"The Regents shall have the general supervision of the university and control and direction of all funds of and appropriations to, the university, under such regulations as may be prescribed by law."

In its 1921 decision in State v. State Board of Education, 33 Idaho 415 196 P. 201, Supreme Court of Idaho officially placed the University of Idaho in the magic circle of autonomous universities. The Supreme Court held that the Constitutional provision meant that while functioning within the scope of its authority, the Board of Regents is not subject to the control or supervision of any other branch, board, or department of the State government. The portion of the Constitution limiting the Board of Regents' authority ('under such regulations as may be prescribed by law") refers to methods and rules for the conduct of business and accounting functions and does not interfere with the Constitutional discretion of the Board. When an appropriation of public funds is made to the university and the university Board of Regents accepts the funds, the legislature may impose such conditions and limitations on the use of the funds as it deems necessary. However, the court stated, where the Board sells university property there is no obligation on the part of the Regents to pay the proceeds from the sale of the property into the State treasury.

The Colorado Constitution vested in the Board of Regents "the general supervision of the State university" and "the exclusive control and direction of all funds of, and appropriations, to the university". This broad grant of power is quite similar to that given to the governing boards of other constitutionally independent universities. However, the courts of Colorado have not, as yet, conceded that it was the intention of the people to grant full autonomy to their State university. Furthermore, in another section of the State Constitution, the management of the university is declared to be "subject to the control of the State, under the provisions of the Constitution, and such laws and regulations as the general assembly may provide."

Two States, Missouri and Utah, have failed to achieve autonomy even though the Constitutional grants of powers to the governing boards were rather broad. In Utah, for example, the State Supreme Court held in 1956:

> "It is inconceivable that the framers of the Constitution ...intended to place the university above any controls available to the people of this State as to the property, management and government of the university.... The university is a public corporation, not above the powers of the legislature to control, and is subject to the laws of the State from time to time enacted relating to its purposes in government."

Although all the constitutional provisions establishing university autonomy in the foregoing States are not uniform where autonomy has been found to exist by the courts, it has been of constitutional origin such as is contained in the Alaska Constitution. It has also been observed in establishing constitutional autonomy,

> "a great deal depends on the attitude of the court and how it, within the context of either implied or explicit constitutional provisions, is willing to view the relationship between the State and the university. The lack of autonomy of some State universities may be attributed to the attitudes of the courts or even to inaction on the part of university officials." (Alexander and Solomon College and University Law, 1972).

Summary and Conclusion

In light of the detailed research outlined above and with knowledge of the debate and circumstances at the constitutional convention in singling out the University as the only division of State government afforded special status, besides the traditional three branches, we are of the opinion that serious constitutional questions have been raised by the method of legislative appropriation proposed by the Governor for fiscal year 1974 and actually used by the legislature for 1973, which constitutes effective internal control of the University. If the constitutional language that the University as a body corporate "shall be governed" by a Board of Regents is to be given the meaning intended by the constitutional convention, the University should not be subordinated to the Executive, Legislative and Judicial branches of government or relegated to the status of the legislatively-created department or agency.

We cannot see how the Board of Regents can legally consent to administration of University affairs, either directly or indirectly, by any branch of the State government without an express constitutional change. The precedents established in other jurisdictions such as Michigan, Minnesota, California and Idaho are clearly in point and we believe the Supreme Court of Alaska in a proper case would be strongly inclined to follow such precedents and hold that the Alaska Constitution created an autonomous University to be governed in all respects by a Board of Regents without the spectre of any type of partisan, geographical or political influence.

HB
214

P.O. Box 652
Douglas, Alaska 99824
March 3, 1976

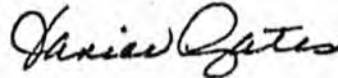
Representative Thelma Buchholdt
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Representative Buchholdt:

Enclosed please find a Position Paper for House Bill 214, of which you are the prime sponsor. We realize the bill has not been heard this Session, but wanted to be on record supporting the concept in case hearings are anticipated in the near future.

Please feel free to call on the League if we can be of assistance in this matter.

Sincerely,



Janice Gates
LWV Lobbyist,
Election Laws & Procedures

Attachment

3/14 Milton

Introduced: 2/26/75
Referred: State Affairs and Judiciary

1 IN THE HOUSE BY BUCHHOLDT, MALONE AND PARKER

2 HOUSE BILL NO. 214

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to absentee voting."

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

8 * Section 1. AS 15.20.150 is amended to read:

9 Sec. 15.20.150. CASTING VOTE BY PERSONAL REPRESENTATIVE OR BY

10 MAIL. Upon receipt of an absentee ballot through a personal represen-

11 tative or by mail, the voter, whether in or outside the state, [in the

12 presence of two attesting witnesses, both of whom are at least 18 years

13 of age, or] before an election judge, notary public, commissioned officer

14 of the armed forces including the National Guard, district judge or

15 magistrate, United States postmaster, United States assistant post-

16 master, or other person qualified to administer oaths <u>or, if none of</u>

17 <u>the above-listed options is reasonably available, in the presence of a</u>

18 <u>single attesting witness who is at least 18 years of age</u>, may proceed

19 to mark the ballot in secret, to place the ballot in the small blank

20 envelope, to place the small envelope in the larger envelope, and to

21 sign the voter's certificate on the back of the larger envelope in the

22 presence of the above-listed official or described persons who shall

23 sign as attesting witnesses. The voter may then return the ballot

24 properly enclosed in the envelopes, by personal representative to the

25 election official who provided the ballot or by the most expeditious

26 mail service, postmarked not later than the day of the election, to

27 the election supervisor in his district.

28

29

delete in 15

P.O. Box 652
Douglas, Alaska 99824
March 3, 1976

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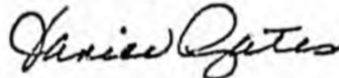

Janice Gates
LWV Lobbyist,
Election Laws & Procedures

Attachment

LEAGUE OF WOMEN VOTERS OF ALASKA
Election Laws and Procedures
March 3, 1976

POSITION PAPER

ON

HOUSE BILL 214

"An Act relating to absentee voting." By Buchholdt, Malone and Parker.

POSITION: Support.

JUSTIFICATION: The League of Women Voters has long supported an electoral system which maximizes citizen participation. House Bill 214 liberalizes the absentee voting requirements, thus offering a realistic response to voting problems frequently encountered because of Alaska's inclement weather conditions and communications difficulties. The option of allowing a single witness of at least 18 years of age to verify an absentee ballot would appear to be a reasonable alternative to offer the Alaskan resident who is voting absentee, whether in or outside the State.

Janice Gates

Janice Gates, LWV Lobbyist
465-3050 or 364-3441

put on list for next week

File HB 214

Alaska State Legislature
House of Representatives

STATE CAPITOL
JUNEAU 99811

2607 KONA LANE
ANCHORAGE 99503

(907) 274-2414

March 10, 1976

Terry Gardiner:

Hello there! When will your committee consider my HB 214, An Act relating to absentee voting"?

Enclosed is a support paper from the League of Women Voters.

Please let me know when you plan to schedule the bill.

Thanks.

Thelma

Thelma Buchholdt

STATE REPRESENTATIVE, DISTRICT 9 (SPENARD)
VICE-CHAIRMAN, FINANCE COMMITTEE
MEMBER, LEGISLATIVE COUNCIL SUBCOMMITTEES ON TELECOMMUNICATIONS AND HEALTH PLANNING

P.O. Box 652
Douglas, Alaska 99824
March 3, 1976

Representative Thelma Buchholdt
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Representative Buchholdt:

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Please feel free to call on the League if we can be of assistance in this matter.

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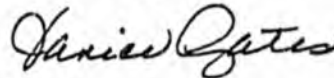


Janice Gates
LWV Lobbyist,
Election Laws & Procedures

Attachment

HB
237

"An Act relating to mediation in divorce actions."

COMMITTEE REPORT

2/28/75

HOUSE

Mr. Speaker: Date [illegible]

The Committee on Judiciary has had HB 237 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB237 AND THAT CS FOR HB 237 DO PASS

( ) "and" recommends it BE REFERRED TO THE ________ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner

[illegible]

[illegible]

[illegible]

Members NOT concurring in the Majority report:

________ recommends:

________ recommends:

________ recommends:

________ recommends:

________ recommends:

Terry Gardiner, Chairman

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

Pouch H01, Juneau 99811

April 7, 1975

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

In reply to your letter of March 7 we are pleased to submit the following information concerning total number of divorces over the past five years involving children and the number filed by men as compared to women.

Year	Number Filed by Men	Number Filed by Women	Total
1970	306	679	985
1971	317	698	1,015
1972	377	862	1,239
1973	394	773	1,167
1974	446	876	1,322

We keep no records relating to disputed cases as this is a function of the Alaska Court System and the information does not appear on th divorce document.

Our information is gleaned from the divorce document and only basic statistical information is kept. This also holds true for information concerning custody.

May we suggest that these same questions be asked of the Court System, they may be able to give you more assistance in areas of dispute and custody.

If there is any other way we might be of assistance, do not hesitate to ask.

Sincerely yours,

Francis S.L. Williamson

Francis S.L. Williamson
Commissioner

Original sponsor: Bradner, Beirne,
Brown, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 237

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to mediation in divorce actions."

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

* Section 1. It is the intent of this Act to provide a means of mediation between parties in divorce actions, in order to achieve a mutually agreeable settlement in termination of the marriage, and to thereby minimize disruption of the household, adverse effects on minor children, and litigation between the parties.

* Sec. 2. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.115. MEDIATION. (a) At any time within 30 days after a complaint or cross-complaint in a divorce action is filed, a party to the action may submit a request to the court for mediation, for the purpose of achieving a mutually agreeable settlement in termination of the marriage. When a party requests settlement mediation, the other party shall answer the request on the record, and the judge may order mediation. When no request for mediation is made, the court may at any time order the parties to submit to mediation if there is reason to believe that mediation may result in a more satisfactory settlement between the parties.

(b) The court appoints the mediator. The court may appoint another judge, a standing master, or any other person the court finds suitable to act as mediator.

(c) Mediation shall be conducted informally as a conference or series of conferences. The parties to the action and a representative of any minor children of the marriage shall attend. Counsel for the

parties may attend.

(d) After the first conference, either party may withdraw, or the mediator may terminate mediation if he determines that mediation efforts are unsuccessful. Upon withdrawal by either party on termination by the mediator, the mediator shall notify the court that mediation efforts have failed, and the divorce action shall proceed in the usual manner.

(e) Upon submission of the parties to mediation under this section divorce proceedings then pending shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made under sec. 200 of this chapter remain in effect during the period of mediation.

House Judiciary Committee
March 20, 1975

The meeting was called to order at 7:20 p.m. by Chairman Gardiner. All members were present except Mr. Fink and Mr. Specking.

HB 265/266 Community Legal Assistance

Mr. Brown moved out both bills with a do pass recommendation. Mr. Bradley objected and withdrew his objection. There being no further objection, HB 265 and HB 266 were passed out of committee do pass.

HCR 39 Criminal Code Revision

Mr. Parr moved the bill out do pass. The group objected. Mr. Brown moved that on page 1, line 29, law enforcement officers and members of the lay public be included and "and the like" deleted. There was an objection and Mr. Brown withdrew his amendment.

Mr. Gardiner moved that on page 1, line 25, insert "broadly" after should be and on line 27 put a period after laws and delete the rest of the sentence to line 29 "and be it" The amendment passed.

Mr. Parr moved that on page 2, line 3 "the work of the commission" should be deleted and replaced with "the commission's work." The amendment passed.

Mr. Brown moved HCR 39 am out do pass. There being no objection, the bill was passed out of committee.

HB 237 Divorce/mediation

Mr. Brown moved the following amendments:
page 1, line 14, 15 delete all and insert "Sec. 09.5[illegible].115. MEDIATION. (a) At any time within 30 days after a complaint or cross complaint is filed, a party to the action may submit a request to the court"
page 1, line 20, delete all and insert: "the court may at any time order the parties to submit to mediation if there is"
page 1, line 28, delete all and insert: "of any minor children of the marriage, shall attend. Counsel for the parties may attend."
page 2, line 5, delete all of sec (e).
page 1, line 23, delete "himself"
Mr. Brown's amendments passed.
Mr. Brown moved CS HB 237 out of committee do pass. There being no objection, the bill was passed out of committee.

House Judiciary Committee
March 6, 1975

The meeting was called to order at 11:30 a.m. by Chairman Gardiner. All members were present except Reps. Brown and Parr.

CS CS SB 28 Marriage

The committee reviewed the proposed Judiciary CS. Mr. Fink moved and asked unanimous consent that H CS for CS for SB 28 pass out of committee with a do pass recommendation. There being no objections, it was so ordered.

HB 237/238 Divorce

Speaker Bradner, sponsor of the legislation testified that HB 237 was intended to provide for an informal forum outside the Rules of Court Procedure. He suggested the following amendments:

p 1, line 14 - within 30 days after
p 1, line 23 - delete "himself"
p 2 - delete section (e)
add a section stating that counsel may be present

He explained the purposes of HB 238 as follows: if custody is at issue, the court will be notified and will consider the possibility of appointing a lawyer for the child. It specifies the method of payment for the lawyer. Mr. Fink raised the question of why legal services would have a special exception.

The meeting adjourned at 12:10 p.m. and was reconvened at 1:20 p.m. All members were present except Mr. Parr and Mr. Brown.

Art Snowden testified that the Court system had no objections to the bills.

Don Clocksin of Alaska Legal Services stated that they supported HB 237 with the following amendments:
- p 1, line 14 - within 30 days after all necessary papers (cross complaints) had been filed
- p 1, line 20 - may, at any time,
- p 1, line 23 - delete "himself"
- p 2 - delete section (e)

Mr. Fink stated that if (e) were deleted, "himself could be retained for those circumstances where only the judge would be qualified to do the mediation. There was no objection from anyone present.
Mr. Clocksin continued that he thought that the right to counsel in attendance at mediation was implied, but if there was a question to add language to that effect. "Parties to the action and their counsel, if they choose . . "

February 7, 1975

Rudy Johnson
3710 Alaska Ave.
Ketchikan, Ak. 99901

Dear Rudy,

Thank you for your letter of January 28 concerning the possibility of proposing legislation on the issue of domestic relations.

I have been in touch with Representative Mike Bradner regarding this subject and plan to work with him in drafting proposed legislation. I understand that Rep. Bradner has been collecting information and working with other persons interested in this type of legislation. I'm sure that whatever input you might wish to make would also be appreciated.

Thank you for your concern.

Sincerely,

Terry Gardiner
Representative

Rudy Johnson
3710 Alaska Ave.
Ketchikan, Alaska

January 28, 1975

Rep. Terry Gardiner
Alaska House of Representatives
Juneau, Alaska 99881

Dear Terry:

Enclosed is a letter I received from Senator Zeigler. It might be good if you got together with Mike Bradner and discussed this issue of domestic relations. I would certainly like to see meaningful legislation introduced and passed this year.

As of yet I haven't gotten a reply from the Department of Vital Statistics concerning divorce cases in the state. I would sure appreciate that information.

I will be more than happy to assist you or Mike to see this kind of legislation passed.

Thank you very much.

Sincerely yours,

Rudy Johnson

RJ/sm

JUNEAU, ALASKA

Alaska State Legislature
Senate

January 23, 1974

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Rudy:

Since arriving in Juneau, I have had occasion to chat with the Speaker of the House, Mike Bradner of Fairbanks, who is very much interested in our domestic relations statutes. He currently contemplates introducing legislation which would doubtless prove of help to the innocent victims of a divorce proceedings, the children.

I rather have a hunch you told me you have been accumulating material on this subject, and I think it might be of help to him. If his legislation gets through the House, whatever information you send Mr. Bradner will be transmitted to me, and your work may be of great value to the two of us, the legislature and the state.

Regards,

Robert H. Ziegler, Sr.

RHZ/pkz

cc - Representative Mike Bradner
House of Representatives
Pouch V
Juneau, Alaska 99811

File with other marriage/divorce letters

March 10, 1975

Mr. Mike Bradner
House of Representatives
Pouch V
Juneau, Alaska

Dear Mr. Bradner:

Thank you very much for your letter of March 4th. The statistics and information you sent will be very useful to me.

I would like to commend you on what appears to me to be two excellent pieces of legislation. If these pass, I believe they will certainly contribute to more equity and fairness in divorce proceedings. As for the House Bill 237, all I can say is, this is excellent and long overdue. I am sure if this becomes law, many men and women will be thankful for it, if they ever find themselves in divorce proceedings. It should effectively take a lot of the profit out of divorce proceedings for some uncouth attorneys, as well as make the whole experience much more bearable and less painfull for the adults and children involved.

I am very impressed with House Bill 238. It's hard to believe it's 1975, and we are just now seeing this kind of legislation being intorduced. This bill is essential to the well being of the hundreds of children affected by divorce in our state every year.

I would like to share the following thoughts with you and make a couple of suggestions on this bill:

I had a telephone conversation with Dr. Paul Hansen, who is President of Fathers United of Baltimore, Maryland, last week. His organization's goals are to see that men are treated fairly and equally in divorce proceedings. They are also currently involved with their local legislatures trying to get legislation passed that will serve this purpose. They are trying to persue a class action suite, that will seek to end biased and unfair decisions in our courts all over the United States. He was telling me that the biggest problem they are having with our judicial system is with the individual judges. Many of these judges are awarding children to mothers rather than fathers for no other reason than they are women. They have recently managed to require a judge to give a written decision to spouses involved in disputed child custody cases, stating his specific reasons for awarding custody as he has. They have had tremendous success with this and in the last year, 18 men in his organization were awarded custody of thier minor children without having to prove the mother to be unfit, but merely showing the court thier being awarded custody will be in the best interest of the children. This seems to substantiate Judge Shultz's remarks about this in our February meeting. He felt a clause in our statutes requiring a judge to give a written decision explaining his reasons for that decision would be very beneficial in guaranteeing all parties involved equality and fairness. After speaking to Dr. Hansen, I am convinced that a clause like this is essential to guarantee the children

of a divorce proceeding a decision that will truly be in their best interest. This would cause the part ot our statutes to say,"In determining custody of minor children, the court shall be guided by whats in the best interest of the children, and that should be of paramount concern", to become reality rather than theoretical.

With these thoughts in mind, I would like to ask you to consider ammending your original bill to include a paragraph that would simply read:

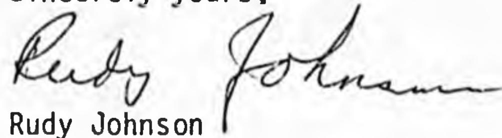
"In making a decision on the custody of minor children, in a disputed custody case, the court will state clearly and in detail its reasons for assigning custody to a paticular spouse".

When I spoke to Judge Shultz, he told me he knew of judges that felt no child should have the right to state his desires in a court room, as they weren't old enough to know what they wanted, or what was in their best interest. I seriously doubt there are many judges that feel that way, but to protect the children from the few there are, I would like to suggest changing the word "may" to "will" in paragraph 1, on the courts guidelines that say, "By what appears to be for the best interest of the child and if the child is of sufficient age and intelligence to form a preference, the court 'May' consider that preference." Since this paragraph is only instructing the court to consider the child's feelings, this change would not have the effect of tying the courts hands, so to speak. I think it is necessary to allow the court to be flexable, but at the same time the courts should be obligated to consider a child's feelings since it is the children whose lives are being effected.

I would like to mention that a lot of organizations around the country that are involved in obtaining more just divorce laws are looking eagerly towards the out come of your legislation in the hope it will help their cause in their own state. What you are doing will benefit other states as well as our own, I am sure. Your efforts are most appreciated.

I am wondering if you feel some publicity would be helpful in getting your bills through the House and Senate? Maybe letters to the editor in a few papers etc. If you think you will need more support for these bills, I would be glad to work on that.

Sincerely yours,



Rudy Johnson

cc: Rep. Terry Gardiner

Rudy Johnson
3710 Alaska Ave.
Ketchikan, Alaska 99901

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

~~45~~ 465-3430

Maria Iverson

Call support instead of alimony

allow negotiable up to 3 years

alimony doesn't exist in other countries

provision that says you can't go back in divorce for alimony - this forces lawyers to go for alimony at divorce time
Man bargains away on divorce issue

Alimony doesn't survive death

Alimony isn't received after re-marriage - common law practice

the fact that people live together means alimony continues

Florida - court rulings and statutes have provision on alimony time restriction, limit alimony to women who don't have skill or education by past experience to support themselves

File on divorce

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
MERCHANT MARINE AND FISHERIES

Congress of the United States
House of Representatives
Washington, D.C. 20515

WASHINGTON OFFICE
1210 LONGWORTH BUILDING
TELEPHONE 202/225-5765

DISTRICT OFFICES
115 U.S. FEDERAL BUILDING
ANCHORAGE, ALASKA 99501
TELEPHONE 907/279-1587

202 U.S. FEDERAL BUILDING
FAIRBANKS, ALASKA 99701
TELEPHONE 907/456-6949

September 10, 1974

Ms. Maria Iverson
RR 4, Box 4430
Juneau, Alaska 99801

Dear Ms. Iverson:

Thank you for your letter and enclosed declaration.

Laws that govern domestic relations are always a matter of the State Legislature, not one of Federal Government. It is not within the power of the Federal Government, nor should it be, to dictate divorce and settlement laws to the states. More and more power has been taken away from the states and it seems to me that the country would be a stronger one if it were more self-governed in terms of state authority.

I am very sympathetic to your declaration and agree that in most states, divorce laws are out-dated and inequitable in terms of settlement costs, property division, etc. You do have to keep in mind that at the times these laws were made, they were done so in order to protect women who had no means of supporting themselves and their children. Fortunately, our society has changed and women's rights have provided them with the ability and right to equal employment and a state of self-sufficiency. Unfortunately, the laws have not changed that much and it is up to us all to see that they do.

I wish you much luck in your endeavors, Ms. Iverson and hope that we will see changes in our own state. You should write to your State legislators, and, since you live in Juneau, it would be much easier to visit them and actively support your case.

Sincerely,

Don Young

DON YOUNG
Congressman for all Alaska

DY:dvc

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

1 IN THE HOUSE BY: ~~BRAUNER~~

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETH LEGISLATURE - FIRST SESSION

4 A BILL

5 For an Act entitled: "An Act relating to marriage and divorce

6 status."

7 * Section 1. AS 25.15.070. Property acquired during coverture

8 by her own labor is repealed and re-enacted to read:

9 Sec. 25.15.070 PROPERTY ACQUIRED DURING COVERTURE BY

10 HER OR HIS OWN LABOR. No real or personal property ac-

11 quired by a married man or woman during coverture by his or

12 her own labor is liable for the spouses debts incurred

13 separately, on contracts, or liabilities of spouse [of her

14 husband], but in all respects is subject to the same exemptions

15 and liabilities as property owned at the time of his or her

16 marriage or afterwards acquired by gift, devise, or inheritance.

17 * Section 2. AS 09.55.170. Separate domicile or residence, is

18 repealed and re-enacted to read:

19 Sec. 09.55.170 Separate domicile or residence. In

20 actions for divorce, husbands or wives may acquire a separate

21 residence or domicile from that of the other party without

22 reference among other factors to misconduct or consent of

23 the other party.

24 * Section 3. AS 09.55.200 (1) Orders during action is repealed.

25 * Section 4. AS 09.55.200 (3) is repealed and re-enacted to read

26 Sec. 09.55.200 (3) for the freedom of the husband or wife

27 as the case may be, from the control of the other party during

28 the pendency of the action.

29 * Section 5. AS 09.55.210 (3) is repealed and re-enacted to

30 read:

31 Sec. 09.55.210 (3) for the recovery by one party from the

32 other of an amount of money for maintenance, in gross or in-

stallments, as may be just and necessary without regard to

which of the parties is in fault, is to be construed for children only.

Section 6. AS 09.55.210 (5) to be repealed and re-enacted to read:

Sec. 09.55.210 (5) for the appointment of one or more trustees to collect, receive, expend, manage, or invest, in the manner the court directs, any sum of money adjudged for the maintenance [OF WIFE], the nurture and education of minor children committed to [her] either party's care and custody;

Section 7. AS 09.55.210 (6) repealed and re-enacted to read:

Sec. 09.55.210 (6) for the division between the parties of their joint property or separate, acquired only during coverture, in the manner as may be reasonable, and without regard to which of the parties is in fault, however the court, in making the division may invade the property of either spouse acquired before marriage when the balancing of the equities between the parties requires it, and to accomplish this end the judgment may require that one or both of the parties assign, deliver, or convey any of his or her real or peraonal property to the other party, the wife is not entitled to all properties the husband owned, it shall be not more then half of the property acquired during coverture to be considered reasonable.

Section 8. AS 11.35.010 Desertion or nonsupport of wife or child. is repealed and re-enacted to read:

Sec. 11.35.010 A person who is the parent or guardian of a child under the age of 16 years dependent upon him or her for care, education or support, and who deserts or abandons the child, or ward, or wilfully fails without lawful excuse, to furnish necessary food, care, clothing, shelter, medical attendance, education or support for the child or ward, guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500.00 or by imprisonment in a jail for not more

Cont'd

1 than 12 months, or by both. However, before the trial, with
2 the consent of the defendant, or after conviction, instead
3 of imposing the penalties prescribed, or in addition to those
4 penalties, the court, having regard to the circumstances and
5 the financial ability and earning capacity of the defendant,
6 may make an order, subject to change by it from time to time
7 as circumstances require, directing the defendant to pay a
8 definite sum or a certain weekly sum during such time as the
9 court may direct, into the court for the benefit of the guardian
10 or custodian or place him or her on probation during such time
11 as the court directs, upon his or her entering into an under-
12 taking with one or more sufficient sureties who shall qualify
13 as bail upon arrest in a sum the court directs. The under-
14 taking shall be conditioned so that the defendant shall per-
15 sonally appear before the court whenever ordered to do so and
16 shall at all times comply with the terms of the order or any
17 modification which the court may make, and shall provide that,
18 should the conditions of the bond be broken, the defendant
19 and his or her sureties consent to entry of judgment against
20 them by the court in the amount specified in the undertaking.
21 Section 9. AS 11.35.040 Application of money recovered.
22 is repealed and re-enacted to read:
23 Sec. 11.35.040. In case of a judgment against the defendant
24 and his or her sureties as set out in $ 20 of this chapter
25 and its enforcement by execution, the sum recovered may be
26 paid, in whole or in part, and at the times and in the amounts
27 the court orders, to the guardian or custodian of the minor child
28 for support, or whoever receives custody of the child or children.
29 this is to be construed to mean for children only.
30 Section 10. AS 11.35.070. Evidence of abandonment or non-
31 support, is repealed and re-enacted to read:
32 Sec. 11.35.070. Proof of the abandonment or nonsupport of

Cont'd

1 [A WIFE]or the desertion of a child or ward, or the ommission
2 to furnish necessary food, clothing, shelter or medical att-
3 endance for the child or ward is prima facie evidence that
4 the abandonment or nonsupport or ommission to furnish necessary
5 food, clothing, shelter or medical attendance is wilful. No
6 other evidence is required to prove marriage or parenthood
7 than is required in a civil case.
8 Section 11. AS 11.35.090. is repealed and re-enacted to read.
9 Sec. 11.35.090. Effect of divorce [AND ALIMONY] and child
10 support. Section 10 of this chapter is applicable to the
11 maintenance and support of a child whether the parents of the
12 child are married or divorced and regardless of a decree made
13 in a divorce action regarding [ALIMONY OR THE SUPPORT OF THE
14 WIFE] support of the child or children.
15 Section 12. AS. 11.35.--- Effective date of the enactment
16 of these amendments are to be as follows:
17 Any decree issued within the State of Alaska, whether
18 date of issue is in the future or was prior to the passing of
19 this amendment, will have the right to modification as specified
20 therein, and or any resident of this State, will have the right
21 to ask for modification of his or her decree, regardless of where
22 the decree was issued.
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32

'OPPRESSED' MAN SEEKS ALIMONY LIB

BY RICHARD DOYLE

"I don't care if you prove I'm a whore, I'll still get the kids," my wife taunted, back in 1956.

"We'll see about that," I retorted, giving her a black eye. I'd just returned from overseas duty in the Korean War, defending an allegedly constitutional form of government, to find her shacked up with a guy she'd picked up at the North St. Paul VFW Club.

As it turned out, the black eye was the only personal satisfaction I ever got. My wife was able to make good her promise in spades. She not only won custody of our three children, but succeeded in bringing down on me the entire weight of the righteous, mother-loving legal establishment in the process.

The ensuing litigation was bitter, lengthy and financially devastating. The complaint summarizes how this bounder was jailed for allegedly not supporting a son (who was living with me during the entire period of supposed non-support), how I was driven from a lucrative job and how my children were destroyed by the alley-cat morals of their mother.

As a result of the experiences I had while going through my own divorce, I became cognizant of the viciously anti-male prejudice of the courts, from the lowest municipal bench to the U.S. Supreme Court. The effects of this on my children and those of other men, hundreds of thousands of them, not only destroyed any illusions I had about justice in our courts, but also catapulted me into a lifelong dedication to right these wrongs. I'd been an air traffic control specialist for fourteen years, with an option to become a commercial pilot, but I sacrificed both to embark on my obsessive mission. In 1971, some kindred spirits and I founded a counseling service in Chicago for divorced and separated men.

In a little over a year, our organization compiled voluminous files on over 1,000 men who'd been destroyed and pauperized by divorce. Incorporated into a forthcoming book, which I wrote, they provide examples of incredible, but proven, horror stories.

ENDLESS ATROCITIES

We've seen case after case of children routinely awarded to unfit mothers and of alimony given to women whose assets were already considerably greater than those of their husbands. In one incident, a $9,000,000 award was made to a woman already worth $14,000,000. In another case, the alimony amounted to 105% of the man's income. One judge demanded $1,000 a month in alimony from a man who earned $15,000 a year.

The atrocities are endless. A forty-six day marriage cost one man $167,750 while, in another case, an $11,550,000 settlement was made for "verbal abuse."

Alimony is not an ordinary debt. Marriage is the only civil contract wherein unpaid debts, despite legal prohibition, result in jail. The rationalization through which the courts can order this is tortuous enough to make "Catch-22" seem

Maria Iverson
Make a copy of 1st part of article for me — Bill

logical in comparison. One man spent five years in jail for incurred debts, and another was sentenced for life. The New York debtor's prison, a disgrace for the world to see, is popularly referred to as "alimony jail."

Because the word alimony is falling into disfavor, the courts are now calling the husband's payments "child support," even though the amounts demanded are two to four times the realistic cost of each child. Child support is actually worse than alimony, because child support does not terminate upon the wife's remarriage. And it's not unusual for a man to be jailed for inability to meet child support payments.

The varieties of injustice perpetrated during divorce proceedings are endless. Our Chicago counseling service found many cases of men who were evicted from their inherited or personally constructed homes and torn from their children on the mere whim of a woman, without opportunity to oppose the action in court. There is no way in which this kind of judicial custom and practice can be construed as Due Process or even-handed law.

As we compiled facts, it became clear that, while women are admittedly discriminated against in some areas, so are men. Male oppression is not restricted to domestic relations, but runs the gamut from eligibility for retirement benefits to liability for criminal offenses.

Male criminals are shafted, from conditions of arrest to conditions of confinement. For example, if a man looks into a home while a woman is undressing, he's arrested for window peeping. Reverse the situation, with the woman looking into a man's home, and the man will still be arrested, this time for indecent exposure. In Texas, a man and woman went swimming in the nude. The man was arrested, the woman was not. A woman's prison is sometimes like a campus, complete with T.V.-equipped, furnished cottages. Men's prisons are often like dungeons, with the prisoners caged like animals behind steel and concrete.

As a result of our investigations, our cause widened and deepened into a true men's liberation movement. Men don't need to be liberated *from being* men, but liberated *to be* men.

Our Chicago men's rights movement became strong. However, other cities were still behind the times in the important area of men's li ration. For this reason, still devoting all our time and energy to the crusade, we incorporated the Men's Rights Association in St. Paul, Minnesota in 1973. We did so by begging and borrowing funds. Since then, sometimes we draw salaries, sometimes we can't. The Association now boasts 1,400 members.

The stated purpose of the Men's Rights Association is to obtain equal rights for men under all areas of the law. We lobby for sensible legislation, educate the judiciary and the public and counsel individual members in legal matters. We've filed complaints with the Human Rights Commission and are planning class-action lawsuits on behalf of men.

Men's Rights Association functions as a collective bargaining agency for its members. We're able to divert money from divorce racketeer lawyers to attorneys around the country who will work diligently for us for reasonable fees. This saves our members an average of thousands of dollars each. Equally important, it often saves the mens' rights to their children.

ONLY ONE WEAPON

A woman has many weapons in a divorce battle: her looks, her favors, her tears, a carte-blanche access to government-subsidized lawyers and the prejudicial orientation of the establishment. Conversely, a man has only one weapon, his money. He must know how or how not to use it and only competent counseling can provide this knowledge. The $40 Men's Rights Association membership donation may be the best investment a potential victim can make.

Men's Rights Association already has created powerful enemies. Divorce has

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

file with divorce info

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

THOMAS B. STEWART
PRESIDING JUDGE

March 24, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Mr. Johnson:

This is in response to your letter of March 2, 1975, concerning legislation on divorce, alimony, and child custody. I regret the unavoidable delay that has occurred in making response to your letter.

With respect to your question no. 1, I feel that it is possible to obtain a fair and equitable settlement for both parties involved as our present statutes read. Those statutes must be read together with the decisions of our Supreme Court interpreting them, and one feature to note is that fault is not to be considered in the division of property interest between the parties. The standard for determining child custody is the best interest of the child, and the case of King v. King which you cited, reported at 477 P.2d 356, stands for that proposition and not for a so-called "tender years doctrine". In fact, in the King case the decision which I made awarding the custody to the father was affirmed by the Supreme Court.

With regard to your question no. 2 on men and women being treated with equality in child custody matters, I am inclined to think that this is so. The King case cited above would confirm this view.

With respect to your question no. 3 on giving weight to the opinion of children as to where they would rather live, I can't comment about the decisions of other judges since I am not aware of them. In my own experience, the child's opinion is given substantial weight, of course depending upon the age and capacity of the child to form an intelligent opinion. Again, the ultimate decision is based on a standard of what is in the best interest of the child. Any judge is always entitled to take into consideration the child's own desires in reaching an ultimate conclusion.

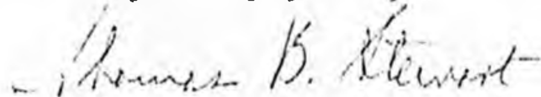
With respect to your item no. 4 on the stringency of the grounds for divorce, I see no particular need for change in this respect. Our "incompatibility of temperament" ground amounts to a no-fault basis for divorce, and I am inclined to the view that this is appropriate in the modern society.

With respect to the alimony laws, I find nothing unjust about them when construed together with court decisions. Recent decisions make it clear that alimony be awarded from a wife to a husband if the relative earning capacity of the parties and their needs would so indicate. That rather seldom happens, but it's one of the possibilities under our existing law where the facts might justify it.

As indicated above, I have already commented on the guidelines generally followed in determining the custody of minor children, i.e., what is in the best interest of the child. In this connection, you should be aware of the recent publication entitled "Beyond the Best Interest of the Child" by Goldstein, Freud and Solnit. This volume provides some interesting new insights and suggests a standard involving the concept of the least detrimental alternative to the child. In a sense this is consistent with the "best interest" concept although it involves some aspects that depart from more traditional views of the latter standard. I commend the volume to you for your reading in the course of the studies you are making.

Please do not hesitate to write further if you have additional questions of me on this subject.

Very truly yours,



Thomas B. Stewart
Presiding Judge

TBS:pw

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

CHAMBERS OF
VICTOR D. CARLSON, JUDGE

March 18, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Re: Statutes concerning divorce, alimony, and child custody

Dear Mr. Johnson:

This is in reply to your letter of March 2, 1975. In contested divorce cases both parties are able to receive fair and equitable settlements within the perimeters of emotions, assets, and the parties and court's ability to foresee what problems may arise in the future. The statutes are not a hindrance to fair and equitable settlements. I believe men and women are being treated, as much as possible, equally with regard to child custody questions. Our society generally recognizes that a mother has greater ability to raise a young child than does a father.

The question concerning a child's right to decide with which parent he will reside is difficult to answer, since each judge has his own ideas of what is best for a youngster in a particular situation. Personally, I listen to youngsters of less than 14 years of age and take into account their feelings when awarding custody, however, it cannot always be the youngsters choice, and sometimes just by giving the youngster an opportunity to voice his opinion is putting undue pressure on the youngster.

The grounds for divorce should be amended to include

the fact that a marriage has ceased to exist; that is, that the relationship between the parties is not a viable marital relationship. Presently, our statutes provide that incompatibility of temperament is a grounds for divorce and this reason should be retained and my suggestion would be an addition which would not require proof that the parties cannot get along, but merely the fact that they are not getting along and working together for common goals.

The present alimony laws are flexible and give the judge the necessary discretion to provide for the support of the needy party, if such an order appears justified under all of the circumstances.

You asked for further explanation concerning the writer's feelings about the treatment of men and women in child custody cases. I believe the Alaska Supreme Court has taken an enlightened approach concerning the custody of children by emphasizing the best interest of the child. I suggest that you read King v King, 477 P.2nd 356 (Alaska 1970). The question is not the unfitness of a particular parent, but what is the best interest of the child.

My record of being reversed on child custody questions is poor, however, the criteria I use are those enunciated by the Alaska Supreme Court, which include keeping siblings together, placing children in a two adult home in order that both parental figures can be observed and the child can model his life in relation to both a man and a women, evaluation of each parent's abilities to exercise parental responsibilities as evidenced by how well they have exhibited parental responsibilities in the past, and an overall analysis of which parent's home will provide the [illegible]r environment for the youngster to grow into a viable a[illegible]

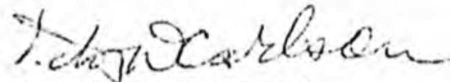
You comment that many women would not seek a divorce if they felt they might lose their children. Stated as I have done that may well be true, however, I think that the main reason why many women are seeking divorces today, who would not have done so in the past, was the lack of opportunity for earning a living and maintaining themselves as individual economic units. In the past, women did not give up the opportunity for divorce because of family reasons in whole, but simply were in no position to support a family on their own. I believe that the transition from viewing women as dependent individuals to viewing a women as a people fully competent in their own right to exercise all personal rights, which men have

Mr. Rudy Johnson
March 18, 1975

have exercised historically, is better for our society. The transition period is difficult, especially for males. In summary I am saying that many bad marriages were continued because of the woman's feeling that she had no other alternative. I believe that marriages should not be continued under coercion and that it does not make for the best environment to raise a family when the marriage is maintained because there is no alternative.

Thank you for giving me this opportunity to comment and if I may be of further assistance please do not hesitate to ask.

Very truly yours,



VICTOR D. CARLSON
Superior Court Judge

VDC/jm

Superior Court

State of Alaska

March 17, 1975

CHAMBERS OF
JAMES A. HANSON, JUDGE

BOX 3891
KENAI, ALASKA
99611

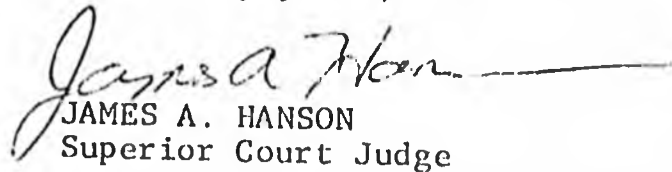
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Mr. Johnson;

In brief answer to your letter of March 2, 1975. I would answer questions 1,2,3 and 5 in the affirmative. With the power a judge now has to require marriage counseling in appropriate cases, no change in existing law appears necessary.

Very truly yours,



JAMES A. HANSON
Superior Court Judge

JAH/bls

Terry Gardiner
State Representative
Pouch V
Juneau, Alaska 99901

Dear Terry,

Enclosed is a letter to Mike Bradner and some other information I thought you may be interested in. I would appreciate your comments on there contents.

Thank you very much for the statistics you recently sent me. I believe these figures definitely reveal some very serious problems within the scope of domestic relations in our state. By this time next year, I hope to have enough information on this to be able to form some conclusions on how to best approach these problems and in fact find out just what the problems are.

I've certainly enjoyed working on this and have really appreciated your interest and help. We will be looking forward to seeing you home pretty soon.

Sincerely,

Rudy Johnson
3710 Alaska Ave.
Ketchikan, Alaska
99901

Mike Bradner
Speaker of the House
House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Mike:

First of all, let me say it was a real pleasure to meet you recently while you were in Ketchikan. Our conversation was very stimulating. It's nice to know there are people like yourself in seats of the government who are as concerned as you seem to be with issues as important as domestic relations, even though it's an unpopular and controversial subject. I admire your willingness to persue it even though there doesn't seem to be any political advantage in doing so.

I've received several letters from Superior Court Judges, along with some more statistics from Terry Gardiner, that I would like to share with you. I also would like to offer my thoughts on the results of some studies I have been making.

When I first became interested in studying this issue, I was of the opinion that our state statutues were very biased and unjust concerning domestic relations. I felt our courts were not treating men fairly when they were involved in a domestic relation dispute. Since then I have found that we have equal rights amendments to our state constitution that guarantees men equallity as well as women. This amendment has the same effect as changing the wording in our statutes to apply in all cases to both sexes. If you remember that was one of my suggestions, but according to these letters from some of our judges, and many court rulings recently made, this really isn't necessary. I am also inclined to believe that our courts are generally doing a good job in seeing that peoples rights and responsibilities are being protected in these kind of disputes. I believe several very serious problems will be eliminated if your two bills pass, mainly H.B. 237 and 238. However, I have talked to around 100 recently divorced men and women in the past eight months about these things and it seems there is very definitely a real problem in our state concerning divorce, alimoney and child custody issues. It appears that most of these disputes are settled before the courts ever hear the case. I have been absolutely amazed to learn that most people who have been through a divorce are very ignorant as to what our state laws are concerning their own situation, even though they have paid dearly for professional legal advice. I am convinced that many men as well as women are agreeing to out of court settlements that are very unacceptable to them on the advice of there attorneys, believing they have no other alternative. If my suspicions are substatiated, I believe it is imperitive this be put to a stop. Although I believe our courts are generally doing a good job, I suspect not all courts in the state are. I want very much to persue my studies and find out just what the facts really are. I have every intention of doing this.

You mentioned while you were here that there was consideration of forming an AD HOC committee to investigate this issue. I believe that it is a very good idea and in fact very necessary when you consider the magnitude of the effect divorce has on the children involved as well as the adults and our society as a whole.

According to the statistics you and Terry have provided for me, at least where children are involved, women are filing for a divorce two and a half times as often as men. I believe it's very important to find out why this is so. I hope to find out how many of these cases involve child custody disputes, and find out what the results were of those disputes. I plan on checking the records in each judicial district and see how the individual judges are ruling. This should reveal any biased courts, should they exist. I have plans of talking with many more individuals about their personal experiences with divorce and to find if in fact they are or have been mislead by their attorneys. I hope to find out if this is a common occurance and find out which attorneys are causing the problems.

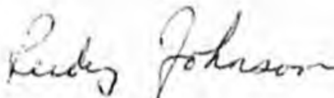
In the last 5 years, in Alaska there were 5728 divorces that involved children. This represents 11501 children. According to these figures, there will be over 2300 children involved in a broken home in our state this year and the figures are getting larger every year.

The Alaska Supreme Court has ruled that in custody disputes, the best interest of the children is to be the deciding factor in awarding custody, without regard to sex of the parent. I am very certain that the best interest of these many thousands of childre is in fact not being protected because of problems that exist. Most of these problems are probably never made known to the courts because the case is so often settled before it ever gets to them.

With these thoughts in mind, I believe it is very much in the interest of the state to persue this and follow an investigation where ever it may lead, and take appropriate action to correct any problems that are found to exist. I am not sure if you said you were personally considering forming an AD HOC committee or not, but at any rate I hope that it gets done and I would like to participate myself if this happens. If there are any plans that you are aware of to do this, I would appreciate knowing about it and would like to help if I could. Although it would make an investigation much easier and quicker with a state wide effort, I plan on persuing this myself, even if it is not organized. I would like to say, though, that its extremely difficult to get the information needed to come up with any factual results without some authority. For instance, I still haven't personally heard from the department of vital statistics in Juneau about information I've requested, other than they wrote to say they had no idea how long it would take to get the information. On the other hand, you and Terry got the same information long ago. So if there are no plans for a state wide AD HOC committee to be formed, I'm wondering if you could officially ask me to provide the information I've mentioned here along with anything else you may feel pertinent to revealing the facts of this matter. This would certainly help me to get results I am sure. If I had such a request in the form of a letter, it should provide the authority I think I am going to need to get some degree of cooperation with the different agencies I plan on contacting. These are my thoughts at this time, and I am certainly open to any suggestions you may have as to how this matter should best be approached.

With that, I'll be looking forward to hearing from you, and want to thank you for all the time you have given me. Could you please let me know what the status of HB 237 and HB 238 is.

Sincerely,



Rudy Johnson
3710 Alaska Ave.
Ketchikan, Alaska

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

CHAMBERS OF
VICTOR D. CARLSON, JUDGE

March 18, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Re: Statutes concerning divorce, alimony, and child custody

Dear Mr. Johnson:

This is in reply to your letter of March 2, 1975. In contested divorce cases both parties are able to receive fair and equitable settlements within the perimeters of emotions, assets, and the parties and court's ability to foresee what problems may arise in the future. The statutes are not a hindrance o fair and equitable settlements. I believe men and women are being treated, as much as possible, equally with regard to child custody questions. Our society generally recognizes that a mother has greater ability to raise a young child than does a father.

The question concerning a child's right to decide with which parent he will reside is difficult to answer, since each judge has his own ideas of what is best for a youngster in a particular situation. Personally, I listen to youngsters of less than 14 years of age and take into account their feelings when awarding custody, however, it cannot always be the youngsters choice, and sometimes just by giving the youngster an opportunity to voice his opinion is putting undue pressure on the youngster.

The grounds for divorce should be amended to include

the fact that a marriage has ceased to exist; that is, that the relationship between the parties is not a viable marital relationship. Presently, our statutes provide that incompatibility of temperament is a grounds for divorce and this reason should be retained and my suggestion would be an addition which would not require proof that the parties cannot get along, but merely the fact that they are not getting along and working together for common goals.

The present alimony laws are flexible and give the judge the necessary discretion to provide for the support of the needy party, if such an order appears justified under all of the circumstances.

You asked for further explanation concerning the writer's feelings about the treatment of men and women in child custody cases. I believe the Alaska Supreme Court has taken an enlightened approach concerning the custody of children by emphasizing the best interest of the child. I suggest that you read King v King, 477 P.2nd 356 (Alaska 1970). The question is not the unfitness of a particular parent, but what is the best interest of the child.

My record of being reversed on child custody questions is poor, however, the criteria I use are those enunciated by the Alaska Supreme Court, which include keeping siblings together, placing children in a two adult home in order that both parental figures can be observed and the child can model his life in relation to both a man and a women, evaluation of each parent's abilities to exercise parental responsibilities as evidenced by how well they have exhibited parental responsibilities in the past, and an overall analysis of which parent's home will provide the better environment for the youngster to grow into a viable adult.

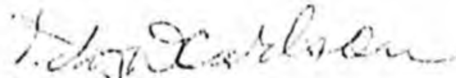
You comment that many women would not seek a divorce if they felt they might lose their children. Stated as I have done that may well be true, however, I think that the main reason why many women are seeking divorces today, who would not have done so in the past, was the lack of opportunity for earning a living and maintaining themselves as individual economic units. In the past, women did not give up the opportunity for divorce because of family reasons in whole, but simply were in no position to support a family on their own. I believe that the transition from viewing women as dependent individuals to viewing a women as a people fully competent in their own right to exercise all personal rights, which men have

Mr. Rudy Johnson
March 18, 1975

have exercised historically, is better for our society. The transition period is difficult, especially for males. In summary I am saying that many bad marriages were continued because of the woman's feeling that she had no other alternative. I believe that marriages should not be continued under coercion and that it does not make for the best environment to raise a family when the marriage is maintained because there is no alternative.

Thank you for giving me this opportunity to comment and if I may be of further assistance please do not hesitate to ask.

Very truly yours,



VICTOR D. CARLSON
Superior Court Judge

VDC/jm

Superior Court

State of Alaska

March 17, 1975

CHAMBERS OF
JAMES A. HANSON, JUDGE

BOX 3891
KENAI, ALASKA
99611

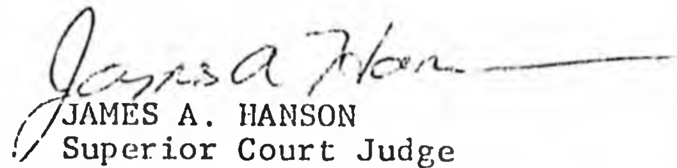
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Mr. Johnson;

In brief answer to your letter of March 2, 1975. I would answer questions 1,2,3 and 5 in the affirmative. With the power a judge now has to require marriage counseling in appropriate cases, no change in existing law appears necessary.

Very truly yours,



JAMES A. HANSON
Superior Court Judge

JAH/bls

CHAMBERS OF
RALPH E. MOODY, JUDGE

Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT

303 K STREET
ANCHORAGE, ALASKA
99501

March 21, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Mr. Johnson:

In reply to your questions of March 2, 1975, regarding divorce, I believe existing state laws provide an adequate framework within which the courts can equitably adjudicate the rights of all the parties concerned.

The following are your questions with my answers thereafter.

(1) In contested divorce cases do you feel it is possible to obtain a fair and equitable settlement for both parties involved as our present statutes read?

Yes.

(2) Do you feel men and women are being treated equally in child custody cases?

The law so provides. I have no basis for believing the law is not followed.

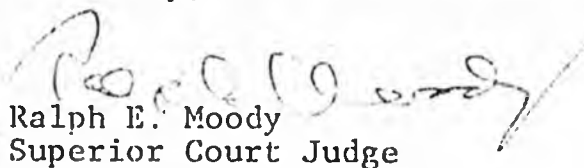
(3) Do you feel children are given enough authority in deciding which parent they would rather live with?

Yes.

(4) Do you feel grounds for a divorce should be made more stringent or more relaxed?

Present laws appear to be satisfactory.

Sincerely,



Ralph E. Moody
Superior Court Judge

REM:dpd

Supreme Court

State of Alaska

941 Fourth Avenue
Anchorage, Alaska 99501

April 14, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, AK 99901

Dear Mr. Johnson:

This is in reply to your letter of March 2, 1975, concerning the handling of divorce cases in Alaska particularly those involving custody of minor children. At the outset I would like to apologize for the delay in my reply. This is attributable to the extreme press of business of late as well as a recent two-week illness which kept me out of the office.

In your letter you asked five questions, I will try to answer those questions in order and as requested by you I will attempt to expound particularly on question number 2. Those questions and my reply to them are as follows:

1. In contested divorce cases do you feel it is possible to obtain a fair and equitable settlement for both parties involved as our present statutes read?

Answer: In my opinion a fair and equitable decision as to both parties is not only possible but is generally the case.

2. Do you feel men and women are being treated equally in child custody cases?

Answer: Generally, yes. I would disagree with those who say that it is "almost impossible for a man to gain custody of his children in Alaska, unless he can prove his wife is unfit". I have on a number of occasions awarded

custody to the husband despite the fact that the mother was found to also be a fit parent. The decision in a particular case of course turns upon the facts of that case but in all instances the primary concern of the court should be the best interest of the children. What their interest requires depends upon the surrounding circumstances with particular regard to the age of the children, the feelings of the children toward one parent or another, the ability of one parent or the other to provide a suitable home, and very often the work requirements of the two parents. In those cases involving children of tender years, it is probably true that the wife usually prevails. In my experience, however, that result is by no means automatic. It is, rather, a recognition that generally speaking a mother is probably better able to care for an infant as more often than not she is able to spend more time with the child fulfilling the needs that he has.

3. Do you feel children are given enough authority in deciding which parent they would rather live with?

Answer: Generally, yes. There may of course be exceptions, however it is very difficult to generalize when talking about a subject as complex as the custody of children.

4. Do you feel that the grounds for a divorce should be more stringent or more relaxed?

Answer: My personal belief is that the present state of affairs is perhaps about as it should be. Having practiced in a jurisdiction where the requirements were far more stringent than they are in Alaska, I eventually came to the conclusion that that strong requirement had a tendency simply to encourage fraud and perjury on the part of the litigants and did very little to hold a marriage together. The stronger laws also seem to have a disadvantage where minor children were involved in that it simply added fuel to an already hot fire and in many cases those suffering most were the children involved in the dispute between the parents.

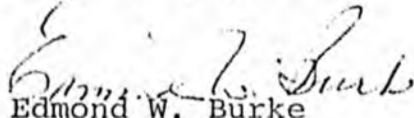
5. Do you feel our present alimony laws are just?

Answer: Yes. Again, there may be abuses and injustice in certain cases. However, I feel that those represent misapplications of the law rather than fault with the law itself.

You have also expressed an interest in knowing what guidelines I have followed in determining custody of minor children in divorce cases. The fundamental rule that I have tried to follow is to do in all cases what in my belief was in the best interest of the children. As between parent and child, the feelings and interest of the parents must yield. The various factors that I generally tried to consider are: the wishes of the parents; the wishes of the child; the apparent strength of the bond between the respective parents and the child; the ability of the respective parents to fulfill both the material and emotional needs of the child; and, in many cases, whether or not the parent's desire for custody was based upon his or her love for the child rather than from a mere desire to hurt the other parent.

In summary, I would have to say that I could not agree more fully with your observation that divorce is very tragic and particularly so when it involves minor children. I hope that these few comments can be of some assistance to you.

Very truly yours,



Edmond W. Burke
Supreme Court Justice