



S B

580

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MEETING

May 23, 1978

Present: Senators Orsini, Hackney, Willis and Ferguson; Tom Singer, House Permanent Fund; Pat Conheady, DNR; Annette Smith, House C&RA; Jack Chenoweth, Legislative Affairs Agency, Royce Weller, Hugh Malone's Staff; Representative Dick Eliason, Richard Engen, Division of State Libraries and Museums.

Absent: Senator Sumner

The bills before the Committee were CSHB 133, HB 766 and SB 580. The meeting was called to order at 3:08.

SENATE BILL 580

Richard Engen, Division of State Libraries and Museums, stated that this bill would increase the present grant and aid program for assistance to the Public Libraries Association throughout the state from \$250 a year on a reimbursable basis to a \$500 grant for purchase of library materials.

He stated that it eliminates much of the paper work now required by statute. He explained that his office has to submit invoices on a reimbursable basis and this would be eliminated through the grant provision of the bill. He also stated that the bill removes the restriction from purchasing religious materials which is in the original statutes.

Senator Hackney moved to increase the \$500 grant amount to \$1,000. There were no objections. Senator Hackney then moved to pass the bill out with a "DO PASS" recommendation.

HOUSE BILL 766

Chairman Orsini went through the proposed recommendations for the bill. He stated that there was a CS for increasing the \$250,000 to \$400,000 and adding certain conditions to the increase.

Representative Eliason stated that the bill was introduced at the request of the borough Administrator of Sitka. He stated that small contractors in rural areas and smaller communities of the state who have ample equipment and the experience to handle a number of municipal jobs are falling short of other contractors from out of the community and even out of the state because of the difficulty in establishing a bond.

Senator Ferguson moved that the Committee adopt a CS for HB 766 including the recommendations by Chairman Orsini and pass it out with "INDIVIDUAL RECOMMENDATIONS".

CS FOR HOUSE BILL 133

Jack Chenoweth, Legislative Affairs Agency, went over the proposed committee substitute for CSHB 133 and explained section by section

Senate C&RA Meeting
Page Two
May 23, 1978

SB 580, HB 766
CSHB 133

changes in the bill and new language that had been put into it. As a result of committee discussion, a revised work draft of the proposed committee substitute was requested.

Chairman Orsini stated that CSHB 133 would be scheduled for Committee action Thursday.

The meeting was adjourned at 4:00.

5/23/78

SB 580

open to muni ; takes strings off use of funds
removes restriction on religious matls - libraries
deal w/religion as a subject matter

^b 250 was enacted ~ 1965

book price

'65 - 7.50

'78 - 16.50

SB

599

To Ben

Date 5/2 Time 3:20

WHILE YOU WERE OUT

M Jim Rolfe

of _____

Phone _____

TELEPHONED	PLEASE CALL	
CALLED TO SEE YOU	WILL CALL AGAIN	
WANTS TO SEE YOU	RUSH	

RETURNED YOUR CALL

Message They have no
problem w/ committee
subst for 599

Cindy
Operator

Also available from...

LAST 2101 16.08 JAO1 024 16.08 05/01/71

TO: DINDY, JAO
FROM: APRIL, RDX

PLEASE DELIVER THE FOLLOWING MESSAGES:

TO: SENATE 083A

FROM: HEBERT, RICHARD, FAIRBANKS NORTH STAR 30-03041, BOX 1267, RI 45-4761

AT THE REGULAR MEETING ON APRIL 27, 1971 THE FAIRBANKS NORTH STAR BOROUGH ASSEMBLY VOTED TO SUPPORT IN CONCEPT SENATE BILL 599. EDJ

F: 58559

Call Nome City Mgr - see if SB599 may be of any help.

SB 599

Nome May Compromise On Liquor Ban

NOME (AP) — More than enough signatures have been gathered on this historic Bering Sea goldmining town. But townspeople say a compromise may be in the works. Supporters of a petition that would make it illegal to sell liquor in Nome met with businessmen Thursday to discuss the situation. The liquor business employs 89 persons on a full-or parttime basis in Nome, a city with 2,500 residents. The industry also provides a healthy

chunk of city revenues. All those attending the meeting agreed that there is a problem with excessive alcohol abuse in the community. But they also seemed to agree that elimination of liquor was unacceptable for economic reasons. Members of the newly formed Nome Business Owners Association plan to work on the problem with bar owners, law enforcement officers, judges and members of the Ministerial Association. The citizens plan to form a nine-

member committee, the Nome Alcohol Control Board, to help resolve the problem.

Under a draft proposal, the Nome City Council would empower the board to effectively enforce liquor regulations, such as those making it illegal to serve inebriated persons. Shorter bar hours also are contemplated. And those in the liquor business would be called upon to police their own activities and help limit alcohol abuse.

Another meeting was planned

later this month to firm up the proposal and to select members of the board.

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MINUTES

May 2, 1978

Present: Senators Hackney, Willis Sumner and Orsini; Pat Conheady, Department of Natural Resources; Jack Chenoweth, Legislative Affairs Agency; Ben Marsh, Cook Inlet Air Resources; Janet Pursley, Cook Inlet Air Resources; Karla Pursley, Cook Inlet Air Resources.

Absent: Senator Ferguson

Senate Bill 599, SCR 103 and CSHB 133 were before the Committee.

SENATE BILL 599

Jack Chenoweth, Legislative Affairs Agency, stated that since the coastal management regulations are prepared by the Coastal Policy Council and are not defined by the Coastal Management Act as part of the program, they need not be presented to the Legislature for approval. He also stated that, if the Legislature were not required to approve them, they are no more or less than any other set of regulations that are adopted by any other state agency and are therefore subject to any resolution put in by a member or by the Administrative Regulation Review Board.

Chairman Orsini stated that his interpretation of a conversation with Jack Chenoweth earlier lead him to believe that there were possible legal ramifications to adopting the resolution that formally approves the regulations, and thereby not being able to disapprove them in the future.

Mr. Chenoweth stated that he could not say that there were no legal ramifications but the regulations are not obligated to come before the legislature for approval.

The Committee concluded that either with or without Legislative endorsement the regulations would take effect. The Committee agreed to see the Federal Coastal Zone Officials at Tuesday's C&RA meeting if they were available.

CS FOR HOUSE BILL 133

Chairman Orsini stated that since other committees have insufficiently addressed the Anchorage land situation involving this bill that this Committee would have to go more deeply into it. He also stated that this version of the bill is roughly comparable to the version that came out of House C&RA with the exception of monetary possibilities and slightly changed acreages. Pat Conheady, Department of Natural Resources stated that some additions added from the House Finance Committee were still in the bill and that the most important of those was the availability of trust lands for selection. He also stated that the Department thinks this is a good provision. Mr. Conheady, stated that trust lands would enable the state in those communities which do not have suitable land to obtain their entitlement. Senator

Sumner stated that Anchorage had selected 20,000 acres of land on the basis that trust lands were not available for selection, and it wound up, in terms of usable land, with around 14,000. He expressed concern as to whether Anchorage was facing a situation similar to Kodiak's. He stated that he felt Mr. Hartig who has represented Kodiak, should come and talk to the Committee. Chairman Orsini asked Mr. Conheady if it would make any difference if the state had a law like this if the Beirne Initiative passes. Mr. Conheady replied that it would be good to have one to protect the municipalities' rights to selection land first before the Beirne Initiative.

Mr. Conheady stated that the fiscal note would be different from that of the House version of this bill because DNR is involved in the selection process in the Senate version and is not in the House version.

He also stated that the Department probably would not have the lands transferred by November but would have identified what lands they were looking at.

Chairman Orsini asked Mr. Conheady if the letter sent to Senator Tillion on April 19 outlining certain acreage available was still valid. Mr. Conheady replied that it was. Chairman Orsini stated to Mr. Conheady that if the Committee finds reasons to believe that those figures are not valid that his credibility with this Committee will have suffered. Mr. Conheady replied that he believed the letter to be valid to the extent of his knowledge.

The meeting was adjourned at 4:00.

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MINUTES

April 25, 1978

Present: Senators Orsini, Sumner, Willis and Ferguson; Roger Allington, Co-Chairman of the Alaska Coastal Management Council; Murray Walsh, Office of Coastal Management; Bruce Aronson, Department of C&RA; Pat Sharröck, ABC Board; Jim Rolle, Alaska Municipal League.

Absent: Senator Hackney came latter part of meeting.

The meeting was called to order at 3:10.

SB 533, SB 208, SB 599 and SCR 103 were the bills before the Committee.

SENATE BILL 533

Senator Sumner moved and asked unanimous consent that the Committee pass out CSSB 533 with individual recommendations.

SENATE BILL 208

Bruce Aronson, Dept. of C&RA, testified that the Department supports SB 208. Senator Sumner moved and asked unanimous consent that the Committee pass out SB 208 with individual recommendations.

SENATE BILL 599

Chairman Orsini stated that SB 599 is an outgrowth from discussions on SB 183, which is part of the Governor's Alcohol package. The bill does essentially two things -- first, it allows a municipality to adopt ordinances by which either new, renewel or transferred liquor licenses could be rejected by a municipality. If a municipality does not act to reject the license request within 30 days the application is automatically placed before the ABC Board.

Senator Sumner questioned the need to transfer a state level function, such as liquor licensing, to the local government level.

Chairman Orsini stated that Section 1 and 2 both deal with municipalities but were separate from each other. Section 2 gives an intermediate means of municipal alcoholic control if the municipality votes to do this. It would limit sales to nondistilled alcoholic beverages, such as beer and wine.

Chairman Orsini stated that he had spoken with CHAR Lobbyist, Dorothea MacDonald, and she initially had no objection to the bill but stated that the CHAR executive committee later decided to oppose it.

Pat Sharrock, Director of the Alcohol Beverage Control Board, stated that one provision of the bill that he does like is the requirement for a municipality to place a license application on its agenda for a public hearing. He stated that one are of the bill seemed to be a conflict or a duplication, which is where the applicant and the ABC

Board both would be required to send a copy of the application to the governing body involved. In regards to the 30 day waiting period provided for a municipality to disapprove an application he asked that it be specified when the 30 day count-down would begin.

Mr. Sharrock had no comments on Section 2 of the bill.

Jim Rolle, Alaska Municipal League, in response to the concern that the municipalities may be given too much power by being able to reject applications, stated that now the only protest to the ABC Board is generally in the area of health and zoning. He stated that this bill would give municipalities an option. Then if they chose not to adopt appropriate ordinances the ABC Board would continue to make the decisions. He stated that the municipal officials are, in his opinion, as effective as the ABC Board in judging what is good for their community and what isn't.

He also stated that he agreed with Mr. Sharrock that the 30 day period is confusing. He also had no comment on Section 2.

COASTAL MANAGEMENT GUIDELINES AND STANDARDS

Chairman Orsini stated that the Committee now has SCR 103 before the Committee approving the regulations.

Roger Allington, Co-Chairman of the Alaska Coastal Policy Council, stated that the Coastal Management regulations are slightly different from other regulations. For one, he pointed out that they are being promulgated by a specially-organized body, the Alaska Coastal Policy Council, composed of government and public members. He also noted that the intent of the regulations was to establish broad policy principles and allow local municipalities and district to draw up their own management programs essentially on a zoning basis. Furthermore, the areas themselves would draw their own boundaries for coastal management jurisdiction, providing certain criteria were met.

Although the Council extensively revised the final version of the regulations, Allington stated that on the last part of Section 85, concerning council review, was new. He also stated that there was a major change in the Timber Harvest Section of the regulations which was requested by the timber industry. There was also work done on the subsistence section. The question was raised of what would happen if local or state agency regulations conflicted with the Coastal Regulations. Mr. Allington replied that the agencies or local governments must bring their regulations into conformity with the coastal management program.

Murray Walsh, Coastal Zone Management Office, stated that the critical time would be the next six or seven months which would bring out the flaws and problems of the regulations. He also stated that the Legislature should consider an increase in state funding of this program just to give the coastal management more flexibility and eliminate some of that federal dependence.

The meeting was adjourned at 4:35.



Official Business

Alaska State Legislature

Senate Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

May 3, 1978

Mayor George M. Sullivan
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502

Dear Mayor Sullivan:

The Senate Community and Regional Affairs Committee passed out of Committee CSSB 599 ("An Act relating to regulation of the sale of alcoholic beverages by municipalities") on May 2. This bill would allow a municipality, if it chose to exercise the option, to disapprove liquor license applications before the applications could be considered by the Alcoholic Beverage Control Board.

If a municipality did not wish to become involved in the regulation of liquor licensing, the present situation of direct licensing by the Alcoholic Beverage Control Board would continue.

A second section of CSSB 599 provides for communities, if they desire, to exercise a third option regarding the sale of alcohol in their areas. CSSB 599's provision would allow residents of a community to vote on an intermediate option of prohibiting the sale of distilled (i.e. "hard") liquor but allowing the sale of low alcoholic, non-distilled beverages (i.e. beer and wine).

CSSB 599 has no further committees of referral, except for review by the Rules Committee, before it goes to the Senate floor for a full vote.

Members of the Senate welcome at all times your comments on this legislation and your views on how these options could strengthen the effectiveness of local government. I would like to draw your attention to the fact, however, that CSSB 599 is likely to be scheduled for Senate floor action shortly and that your comments will be most useful if they can be submitted as soon as possible to the Legislature.

Sincerely,

A handwritten signature in cursive script that reads "Joe Orsini".

JOE ORSINI
Chairman, Senate
Community and Regional
Affairs Committee

JO:gd

Enclosure: CSSB 599

LETTER TO: CITY OF KETCHIKAN, KETCHIKAN GATEWAY BOROUGH, CITY-AND
BOROUGH OF SITKA, MUNICIPALITY OF ANCHORAGE, NORTH SLOPE BOROUGH,
CITY OF KOTZEBUE, BRISTOL BAY BOROUGH, CITY OF DILLINGHAM,
KENAI PENINSULA BOROUGH, CITY OF KENAI, MATANUSKA-SUSITNA BOROUGH,
CITY OF PALMER, CITY OF NOME, CITY OF BETHEL, FAIRBANKS NORTH
STAR BOROUGH, CITY OF FAIRBANKS, KODIAK ISLAND BOROUGH, CITY OF
VALDEZ



STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

F: 86599
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

May 4, 1978

SUBJECT: Judicial "review" of decisions of municipalities
with respect to liquor license applications
reviewed and disapproved under CSSB 599

TO: Senator Joseph L. Orsini

FROM: John B. Chenoweth
Legislative Counsel

As drafted, CSSB 599 makes no specific provision for appeal of a decision by the governing body of a municipality disapproving a new license or a license renewal or transfer application under AS 04.10.265 added by the bill. The absence of specific language does not preclude judicial review of the decision of a city council or borough assembly. The general jurisdiction of the superior court encompasses civil actions, including actions based upon constitutional requirements of due process. Section 1 of the referenced bill, adding AS 04.10.265, would require, first, a general municipal ordinance describing standards for review of liquor license applications in the community and, second, review and disapproval of licenses based upon the standards. Protection against arbitrary interference with rights in a liquor license by a municipality making a decision under the section cited could be reached by an action commenced in superior court contesting the validity of the underlying municipal ordinance, challenging the compliance by the municipality with its own requirements respecting notice, opportunity for hearing and presentation of evidence, and manner of making a decision, and consistency of decision by the governing body of the municipality with the provisions of its own ordinance. The scope of "review" based upon the constitutional requirements of due process may be somewhat narrower than the general review afforded under the state's Administrative Procedure Act (AS 44.62.570), but the opportunity for an aggrieved license applicant to "test" the decision of the municipal council or assembly is not lost by the failure to provide a specific appellate procedure.

JBC:jpd



↑

SB 599

CHAR - opposes

Shanock - ABC Board



likes putting license on assembly agenda
redundancy + question of 30 days



question of hearings by muni if not adopted
stds



should be able to appeal a muni decision

Sec 2 OK

→ Rolle - Muni League

Anch - could benefit by establish specific board guidelines
Other - have no authority
health + zoning are only criteria

redun. assumes public will go to both

muni officials to judge what's good for their community

Brooks the fact:

- no objection re: Hocking

Fairbanks Daily News Mirror

Wareham picked to fill Weldon's vacant seat

4-28-78

Lee Wareham, general manager for RCA Alascom in Fairbanks, was appointed to the Borough Assembly at the group's meeting Thursday night.

Wareham was one of 11 candidates applying for the seat, which became vacant when Assemblyman Don Weldon left Fairbanks at the beginning of April. After reviewing candidates at an informal session last Saturday, the assembly conducted a vote.

On the first ballot, Geraldine Ben-shoof, Leslye Korvola, Steve Van Sant, and Wareham were top vote-getters. Wareham was chosen on the second ballot.

His term will expire in October.

In other business Thursday, Assemblyman Dave Brennen said the ad hoc sales tax committee had recommended that the assembly continue to exempt the sales tax on food and drug items for at least a year, when adequate information on results can be obtained.

Brennen said the committee had been asked to consider re-establishing the tax, but there has not been time to gather data on the effect of the exemption.

He also said the committee soon will present the assembly with an ordinance to halt the expeditor's exemption, which allows expeditors to avoid sales taxes on items bought for use outside Fairbanks.

Brennen said there are few expeditors in town who use the exemption, but it is subject to abuse by many other people. The only requirement for obtaining an exemption card is proof of residence outside the borough.

The assembly unanimously approved a resolution requesting the state Department of Transportation to declare rural access roads closed to truck traffic, and to establish and mark truck routes through Fairbanks.

A request to consider rezoning Small Tracts subdivision from Rural Residential to General Residential will

be placed on the next assembly agenda if the borough attorney says it is legal, the assembly agreed. Bill Sexton applied to rezone his lots in the subdivision, and was turned down. The request now before the assembly would request the same rezoning for 15 lots, including Sexton's.

In another move, the assembly established the Fairbanks Metropolitan Air Quality Planning Organization, which would allow the borough, Fairbanks and North Pole governments to form a plan to bring Fairbanks under federal air quality standards.

The assembly also:

- Unanimously voted to support Senate Bill 599, which allows local control in approving or disapproving alcoholic beverage licenses;

- Denied a rezoning sought by College Utilities to build a residential office building over a proposed water storage reservoir and fire pumping station on University Avenue;

- Approved a rezoning to allow construction of a University of Alaska microwave reflector for radio waves on Ester Dome;

- Approved Hamilton Acres Park and the Jaycees Park near the state building;

- And requested a proposal from Tanana Valley Community College to contract for instructional and recreational operations at the borough swimming pools.

F: SB 599

Jack McHenna

4864

Compliments of
DOROTHEA

F: SB599

BERNIE'S BAR

(907) 688-9996

Star Route • Mile 22½ • Box 1122 • Chugiak, Alaska

DEAR SENATOR HACKNEY

I HAVE JUST LEARNED THAT
YOU WERE BESIEGED BY TELEGRAMS
WITH REGARD TO SB 548
(NOT YOUR COMMITTEE) + SB 549.

INDEED, I AM VERY SORRY/
ABOUT SUCH CRUDE TACTICS.

PLEASE UNDERSTAND, THAT
CHAR + MYSELF HAVE NOTHING
WHATSOEVER TO DO WITH THAT,
APPARENTLY THE CULINARY
WORKERS UNION, DUE TO AN
ARTICLE IN THE ANCH. TIMES
HAVE DECIDED TO INSTIGATE

Compliments of
DOROTHEA

BERNIE'S BAR

(907) 688-9996

Star Route - Mile 22½ - Box 1122 - Chugiak, Alaska

II

THESE PROCEDURES,

ON BEHALF OF CHAR +
MYSELF I HOPE THIS WILL
NOT REFLECT ON US AS AN
ORGANIZATION. WE ARE NON-
PARTISAN AS A GROUP, AND
I FOR ONE DO NOT CONDONE
SUCH PROCEDURES

VERY SINCERELY

Dorothea McDonald
DOROTHEA MCDONALD

P.S. I HAVE A TERRIBLE HANDWRITING

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

F: 56599
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

April 26, 1978

SUBJECT: Proposed CSSB 599, relating to liquor licenses
TO: Senator Joseph L. Orsin
FROM: John B. Chenoweth, Legislative Counsel

One additional amendment should be considered by the Committee before this bill is reported out. That would be a change to conform provisions of AS 04.10.350(a), relating to automatic renewal of outstanding licenses.

In this regard, I would suggest the following:

* Sec. 3. AS 04.10.350(a) is repealed and reenacted to read:

(a) A license issued under this chapter is renewable automatically if the fee is paid in accordance with secs. 40 - 140 of this chapter. A license is not automatically renewable under this section if

(1) the license application is disapproved by the governing body of the municipality under sec. 265 of this chapter;

(2) the license application is protested in the manner provided in sec. 300 of this chapter;

Senator Joseph L. Orsini
April 26, 1978
Page 2

(3) the licensee has been convicted under AS 04.15.100 and the board or a court of competent jurisdiction is considering suspension or revocation of the license; or

(4) the license has been lawfully revoked.

JBC:hjd

SB

604

ESTIMATED COSTS

Capital Recovery Costs

Capital recovery costs for the proposed offshore barge terminal facilities are based on:

- The sale of municipal bonds by the City of Nome to provide the funds, not available from the State of Alaska, for the construction of the proposed barge terminal facilities plus the purchase of the portable hydraulic dredge and support equipment.
- Repayment of the municipal bonds will be extended over a 25 year period using a 7-1/2 percent interest rate.

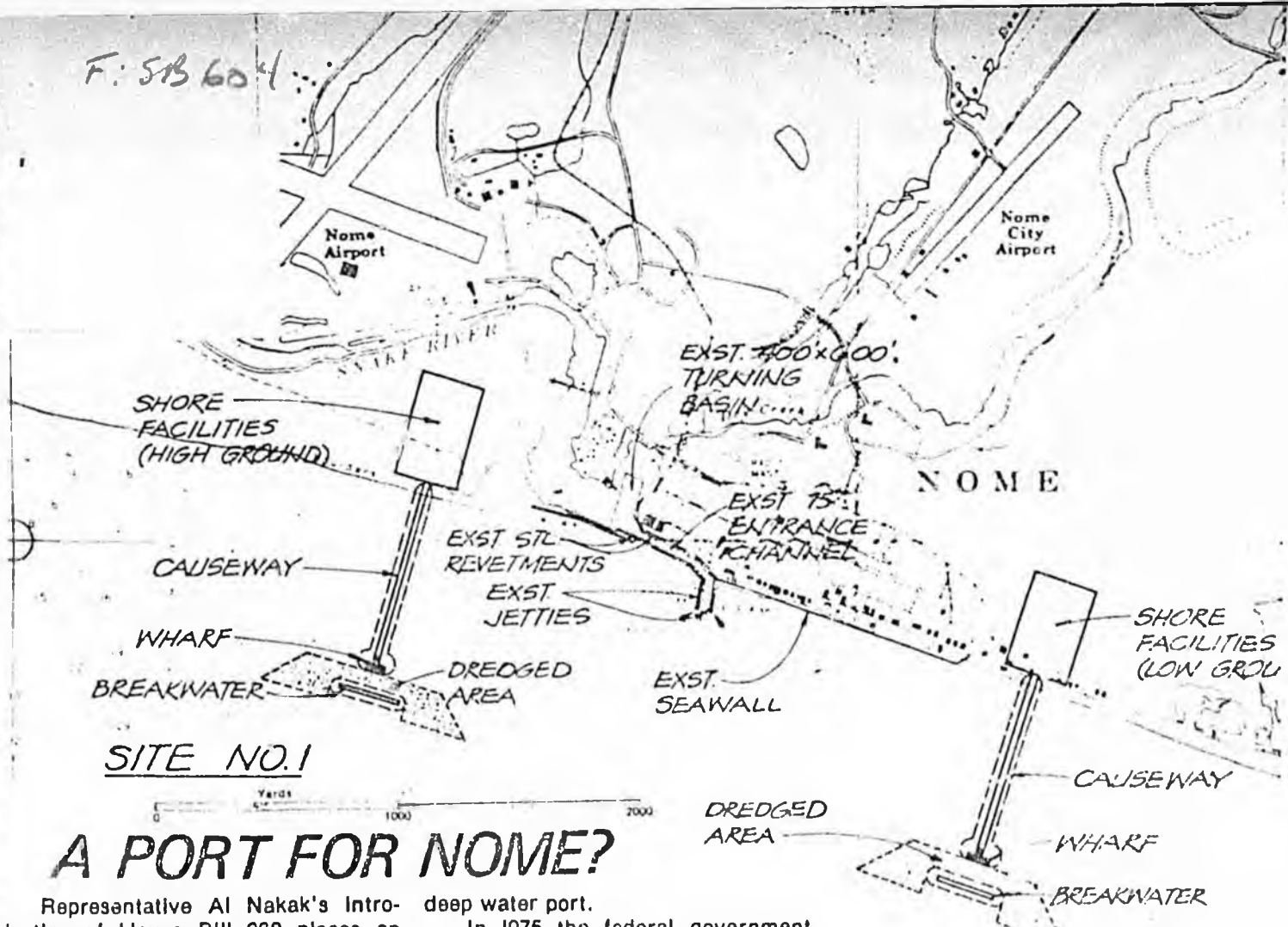
Capital costs requirements to cover development of the proposed barge facilities are shown in Table 6.

Table 6
 CAPITAL COSTS
 PROPOSED OFFSHORE BARGE FACILITIES
 NOME, ALASKA
 (Estimated 1976 Costs)

<u>Item</u>	<u>Amount</u>
Total Project Cost (Table 2)	\$8,540,000
Portable Hydraulic Dredge and Floating Breakwater	750,000
Total Project Capital Cost	<u>\$9,290,000</u>
1974 Port Facilities Development Fund, State of Alaska	<u>(-) 2,000,000</u>
Total Project Capital Costs To Be Funded By The City Of Nome	\$7,290,000

*NOME BARGE FACILITY STUDY
 CH2M HILL July 1976*

F: 513 604



SITE NO. 1

A PORT FOR NOME?

Representative Al Nakak's Introduction of House Bill 280 places on a front burner once again a project that has long intrigued Nomites - a

deep water port.

In 1975 the federal government floated a two million dollar Port Facilities Development Fund for the construction of a port, but it required a ten per cent matching grant from Nome. With city coffers then as now empty, and no local monies in sight, Nakak is asking the state of Alaska to cough up Nome's share of \$200,000.

If Nome's deep water port never leaves the drawing table, it won't be through lack of doodling. Most recent study for a deep water port was done by CH2M Hill in 1975, at the request of the City Council. It follows three earlier studies done by the U.S. Corps of Engineers, the State of Alaska, and an engineering team from Oregon.

Army Engineers came up with six options, costing in 1975 from six to twelve million, and the State compared sites at Nome proper and Cape Nome. Clark and Graff Engineers site possibilities included Port Clarence and Teller.

CH2M Hill's imaginative effort in 1975 discussed helicopter liftage, the use of balloons, tramways and air-cushion vehicles to offload ships - all the latest wrinkles. But the report settled on an "ocean-going barge facility," that extended from the city's breakwater 2200 feet offshore, out to a minimum water depth of sixteen feet. At the end of the causeway stood a T-shaped wharf, to which Seattle-based barges could tie

SITE NO. 2

wharf. A twenty foot wide roadway the length of the causeway would connect the wharf with the shore.

All rock for the project would come from Cape Nome thirteen miles to the east. Construction would be in three phases, and the entire project would take a minimum of four years to build; this includes the search for funds, city council action, and additional studies and surveys. CH2M Hill projected in 1976 a cost of \$8,540,000. The engineers also called for dredging, to take care of littoral drift accumulation on the west side of the causeway.

It is an expensive undertaking. The dredge alone would cost \$750,000. And CH2M Hill's report does raise the preliminary question - can Nome afford to pay for such a port?

A major consideration was whether oil suppliers would use more shallow-draft barges to offload liquid petroleum products directly to the new facility, or whether they would continue to use tankers and liftage oil in small barges AS HAPPENS TODAY. According to the report's figures, nearly 73 per cent of total shipping delivered at Nome in the last five years was oil products or its derivatives.

Nearly 30,000 tons of sea-going freight are delivered annually here, and CH2M Hill claimed that liftage costs would be considerably reduced and simplified,

The Bering Straights News
Nome, Alaska
March 31, 1978

PORT FROM PAGE 3

would be less cargo damage due to direct offloading.

Offsetting this would be the cost of the facility itself, dredging and maintenance costs and trucked cargo handling.

The report argues but not convincingly that Nome could spend ten million dollars in hopes of reducing its shipping costs. But more intriguing than this dubious prospect are the prospects that a deep water port might unlock for the future.

Following their own dynamics, oil companies will surely take a close look at Norton Sound offshore prospects. But if they do decide to drill in earnest,

will they necessarily build a port here for us in Nome? Or might they pick a site of their own choosing, and develop their own staging areas perhaps far from Nome, with the result that Nome might miss the revenues that could accrue from oil development here.

Concerning mineral development, there are known and marketable minerals in the Seward Peninsula that presently lack only a means of getting them stateside for their commercial development. What effect would a deep water port have on mineral development, in future years?

And with the marketing problems faced by the Norton Sound King Crab Fisherman's Association fresh in mind, how can Nome ever really develop a fishing industry here for bottomfish, herring, crabs, and even salmon without a deep water port, without a base where fishermen can tie up their boats and weather storms, and without the canning and processing facilities that must precede and accompany the development of a commercial fishery here.

With House Bill 260 up for consideration in Juneau, and the prospects for the future as glimmering as ever, it is time for another look at a deep water port for Nome. WHETHER OR NOT HB 260 prevails in Juneau relates to a question that Nome must ask itself and answer affirmatively, "Do we want a deep water port for Nome?"

The BERING STRAIGHTS recommends a definitive YES and we should make it felt in Juneau. RR

SCR

12

March 18, 1977

LETTER OF INTENT TO SCR 12

The intent of the Senate Community and Regional Affairs Committee, in the approval of SCR 12, is that the language of 19 AAC 38.020 is repugnant to the concerns of Alaskans, and should be annulled.

However, the Committee felt that the implementation of the regulations was inoffensive and reasonable, and well served the intent of the statutes. Therefore, while the Committee believes the regulation itself should be annulled, it could see no reason to change the existing procedures, and recommends the adoption of a new regulation which more closely describes these procedures.

Senator Joe Orsini
Chairman
Senate Community and
Regional Affairs
Committee

INDEX

1. SCR 12
2. 19 AAC 38.020 Supplementary Information supporting Application for the Assessment and Tax Deferment
3. AS 29.53.035
4. Farm Use Assessment Application Form
5. Authorization for Income Verification Form
6. Farm Use Land Assessment Program Summary

FARM USE ASSESSMENT APPLICATION

AS 29.53.035

Application must be filed on or before February 1, of the assessment year.
Complete one form for each parcel of property within the farm unit.

④

MUNICIPALITY _____

ACCOUNT NUMBER _____

NAME OF APPLICANT _____

LAND USE _____ ACRES _____

MAILING ADDRESS _____

CROPS: _____
Row Crops _____ Grains _____

CITY _____ STATE _____ ZIP _____

OTHER FARM USE: _____
Pasture _____ Hay-Silage _____

TELEPHONE _____ SOC. SEC. NO. _____

BUILDING SITE: _____
Farm Use _____ Residential _____

PROPERTY LOCATION AND DESCRIPTION

CITY OR SERVICE AREA _____

COMPATIBLE USES: _____
Uncleared/Windbreak/Graze _____

PARCEL NUMBER _____

SUBDIVISION/USS _____ BLOCK _____ LOT _____

TOTAL: _____

SECTION _____ TOWNSHIP _____ RANGE _____

PROPERTY OWNERSHIP

OWNER OF RECORD RECORDING DISTRICT _____

LEASED LAND DATE OF INSTRUMENT _____
Copy of lease attached

TYPE _____ VOL. _____ PAGE _____

Ownership Verified By: _____ Assessor or Clerk
--

INCOME

I hereby apply for Farm Use Property Tax Assessment on the property described above as provided in AS 29.53.035 for the 197_____ assessment year. I am actively engaged in farming the land for profit and declare that my gross income attributed to the farm use land for the year(s) indicated below is 10% or more of my yearly gross income:

I will provide income verification documents for inspection of the clerk or assessor on or before May 15 of the assessment year or,

- For last year Averaged for two years
- Estimated for this year Averaged for three years

Attached is a notarized authorization granting to the state assessor the right of inspecting my state income tax return, which will be available at the Department of Revenue prior to December 31 of the assessment year.

CERTIFICATION

I the undersigned hereby certify that I have read this application and the answers given are true and correct to the best of my knowledge. I understand that willful misstatement is subject to punishment by fine or imprisonment under AS 11.30.270. My signature, hereon, authorizes the assessor to review municipal records with those of the local Soil Conservation Subdistrict.

DATE _____ SIGNATURE OF APPLICANT _____

This space for local assessors use only

Approved Denied _____

PROPERTY	FULL VALUE	FARM VALUE	DEFERRED
Land	_____	_____	_____
Buildings	_____	_____	_____
Total	_____	_____	_____
Mill Rate	_____		
Amount of Tax	\$ _____		

"Does the gross income attributed to the farm use land for which application is made equal or exceed 10% of the applicant's annual gross income?"

YES NO DATE: _____

Verified By: _____
Assessor or Clerk

Department of Community & Regional Affairs

YES NO DATE: _____
Verified By: _____

NAME _____ DATE REC'D _____ BY: _____

AUTHORIZATION
FOR
INCOME VERIFICATION

Farm Use Land Assessment AS 29.53.035

I hereby request and authorize the Department of Revenue to release to the State Assessor information taken from my Alaska Income tax return for _____, _____, _____, calendar year(s). Accordingly, I waive my right to privacy regarding the information as stated below.

DATE _____ SIGNATURE OF APPLICANT _____ SOCIAL SECURITY NUMBER _____

SUBSCRIBED AND SWORN to before me, this _____ day of _____, 19_____.

Notary Public in and for Alaska
My commission expires: _____

This space for Department of Revenue use only

"Does the gross income attributed to farm use land equal or exceed 10% of the applicants adjusted gross income?"

No record available _____
Date

YES NO

Signature - Department of Revenue

6

FARM USE LAND ASSESSMENT
AS 29.53.035

*1976 PROGRAM SUMMARY

<u>MUNICIPALITY</u>	<u>Number of Applications</u>	<u>Number of Acres</u>	<u>Full and True Land Value</u>	<u>Total Deferred Value</u>	<u>Total Deferred Tax</u>
Anchorage	4	40.950	849,475.00	835,150.00	\$13,050.63
Fairbanks	11	1,900.500	1,105,117.00	866,867.00	5,527.58
Kenai	9	727.808	305,650.00	178,900.00	1,127.83
Matanuska-Susitna	64	13,420.628	12,615,420.00	9,681,540.00	79,473.00
STATEWIDE TOTAL	88	16,149.886	14,875,662.00	11,562,457.00	\$99,179.04
AVERAGE PER APPLICATION:		183.520	169,041.61	131,391.56	\$ 1,127.03
AVERAGE PER ACRE:			921.10	715.95	\$ 6.14

* Estimated pending final approval of accounts

FIVE-YEAR SUMMARY OF PROGRAM PERFORMANCE

<u>YEAR</u>	<u>Number of Applications</u>	<u>Number of Acres</u>	<u>Total Deferred Value</u>	<u>Total Deferred Tax</u>
1972	55	*NA	2,299,265	\$25,290
1973	66	*NA	3,332,290	34,945
1974	71	11,250	4,737,290	57,735
1975	91	18,759	6,140,300	77,805
1976	88	16,150	11,562,457	99,179

* Data not available

SCR 12

Chris Pomeroy - Assessor

Changed from 25% \rightarrow 10% ; lien provision (for state)
also never enacted.

exist reg^s promulg in 1975

Have made recommen for some changes - but are also involved
in other reg changes & reg renumbering - mainly by fall

Gary Jenkins Revenue audit

Revenue will not release actual forms

Capitol. Law supersedes reg^s

SENATE FINANCE

SACKETT	415	Hohman	645
Croft	106	Meland	205
Butrovich	525	<u>Orsini</u>	<u>101A</u>
Tillion	109		

LAI 1843 12.20 JA01 0021 12.20 04/27/77

TO CINDY JNU
FROM CHARITY ANCH

THIS MESSAGE IS FROM THE ANCH ASSEMBLY TO THE SEN FINANCE COMMITTEE. THIS RESOLUTION WAS ADOPTED 4/26.

"A RESOLUTION OPPOSING SCR 13 AND SCR 14 RELATING TO REVENUE SHARING FOR HOSPITAL CONSTRUCTION"

THE ANCHORAGE ASSEMBLY RESOLVES:

WHEREAS, SCR 13 WOULD PREVENT THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS FROM LIMITING TOTAL HOSPITAL CONSTRUCTION COSTS TO THOSE ALLOWED UNDER FEDERAL LAW, FOR THE PURPOSE OF COMPUTING REVENUE SHARING FOR LOCAL HOSPITAL CONSTRUCTION; AND

WHEREAS, PASSAGE FOR SCR 13 WOULD PROHIBIT THE STATE FROM ADMINISTERING GRANTS-IN-AID PROGRAMS HARMONIOUSLY WITH FEDERAL REGULATIONS AND WOULD CREATE INCONSISTENCIES THROUGHOUT THE ENTIRE MEDICAL REIMBURSEMENT SYSTEM INCLUDING MEDICARE, MEDICAID, AND GENERAL RELIEF MEDICAL ASSISTANCE; AND

CONT'D / EOM

LAI 1902 12.23 JA01 0022 12.23 04/27/77

TO CINDY JNU
FR CHARITY ANCH

CONTINUATION.....

WHEREAS, SCR 14 WOULD REPEAL AN ADMINISTRATIVE REGULATION OF THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS THAT PRESENTLY REQUIRES NON-GOVERNMENTAL SPONSORS OF HOSPITAL CONSTRUCTION PROGRAMS TO APPLY THROUGH THEIR LOCAL GOVERNMENT; AND

WHEREAS, PASSAGE OF SCR 14 WOULD PROHIBIT THE STATE FROM ADMINISTERING REGULATIONS DESIGNED TO GIVE LOCAL COMMUNITIES MEANINGFUL SELF DETERMINATION IN THE ALLOCATION OF HEALTH CARE RESOURCES AND FACILITIES;

NOW, THEREFORE, BE IT RESOLVED THAT THE ANCHORAGE ASSEMBLY OPPOSES PASSAGE OF SCR 13 AND SCR 14 NOW BEFORE THE TENTH LEGISLATURE.

PASSED AND APPROVED BY THE ANCHORAGE ASSEMBLY THIS 26TH DAY OF APRIL, 1977

ERNE BRAHNON, CHAIRMAN

SCR

13

March 24, 1977

The Municipal Health Commission, at their regular meeting of March 23, 1977, emphatically endorses the DEFEAT of SCR 13, SCR 14 for the following reasons:

1. The removal of such regulations would create inconsistencies through out the entire reimbursement system, particularly with regard to Medicare, Medicaid and General Relief Medical Assistance.
2. The mandate of the people for cost-consciousness and cost-containment in the provision of health services would be directly violated if these resolutions were to be adopted.
3. Existing regulations clearly define allowable and non-allowable construction costs under Hill-Burton on the basis of their legitimate and direct relationship to facility construction costs. Adding to the list of allowable costs adds to the dollar amount that the taxpayer will pay TWICE: first in general taxes to support construction under revenue sharing, and secondly as a part of the amortized costs built into the daily bed rate thru depreciation (NOTE: the daily bed rate is paid a THIRD time under Medicare, Medicaid and General Relief Assistance by the taxpayers.)
4. Local determination of applicable beds and properly certified construction efforts is necessary if planning is to have any effect on cost containment.

Position paper to follow.

Signed:

Adrian Barber, Chiropractor
Ben Barrera, Vice President National Bank of Alaska
Joseph O'Gorman, University of Alaska, Anchorage
Jim Lewis, Associated General Contractors
Julie Kitka, Alaska Federation of Natives
Dalia Wolverton, Housewife
Edna Adrian, Senior Citizen
Rose Anderson, Counselor, McLaughlin Youth Center
Keith Brownsberger, M.D., Internist Providence Hospital
Bonnie McGee, Chairman Municipal Health Commission, Housewife
Betty Payes, School Nurse
Lois Kiehl, Nutritionist
Cynthia Meinke, Housing Referral Counselor
Sharon Schmidt, Teacher
Liz Jacks, Administrative Office C.E.T.A., Municipality of Anchorage
Kent Autor, Management Consultant
Christie Hoke, Nurse
Diddy Hitchins, Professor University of Alaska, Anchorage
Patricia Yenny, Medical Librarian
Marv Janzen, Ex. Director Professional Standards Review Organization/Alaska
Charles Rigden, Associate Administrator Alaska Hospital and Medical Center

INDEX

1. SCR 13
2. SCR 14
3. AS 43.18.010(h)
4. AS 43.18.010(j)
5. 19 AAC 30.020(9)(C)(D)
6. 19 AAC 30.140(3)
7. AG's letter to Dept of HESS, 8/28/72, approving HESS's use of Hill-Burton Regs. as a guideline in determining "total project costs" re: AS43.18.010(j)
8. AS 43.18.100
9. AS 43.18.300
10. AS 46.03.030
11. Hill-Burton Regulations
12. Memo to Chairman, Senate C&RA from AA, Senate C&RA plus attachments 1-14

ATTACHMENTS

- # 1 SB 42
- # 2 CSSB 42 (Local Government)
- # 3 CSSB 42 (HEW)
- # 4 CSSB 42 (Finance)
- # 5 HCS CSSB 42
- # 6 CSSB 42 (Finance) am H
- # 7 HCSSB 383 am H, p.10, line 26, Ch 71, SLA 72
- # 8 HB 42, p.2, line 14
- # 9 CSHB 42, p.2, line 11
- #10 CSHB 42 (HESS) p.2, line 13
- #11 CSHB 42 (Finance) p.2, line 8
- #12 CSHB 42 (Finance) am S, p.2, line 11, Ch 87, SLA 73
- #13 Ch 127, SLA 1974
- #14 Ch 265, SLA 1976

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99801

August 28, 1972

WILLIAM A. EGAN, GOVERNOR

DATE	ROUTE TO:	✓
	JF	✓
	F.L.E.	

Office of the
Commissioner

The Honorable Frederick McGinnis
Commissioner
Department of Health and Social
Services
Juneau, Alaska 99801

SEP 11 1972

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Dear Commissioner McGinnis:

You have asked our opinion of whether your present method of determining "total project costs" of eligible medical construction by relying on promulgations of the Department of Health, Education and Welfare pursuant to Title VI of the Public Health Services Act as amended, meets the requirements of AS 43.18.010(j). It is our opinion that the use of these promulgations is within the scope of your discretion in the administration of this program.

AS 43.18.010(j) states as follows:

If construction of a facility began after January 1, 1968 and state matching aid for construction approved for payment to the local government or other facility sponsor constitutes less than 25 per cent of the total project cost, the state shall pay to the local government or other facility sponsor each fiscal year a sum equal to \$2,500 a bed for the maximum number of beds provided for in the construction design of the facility. State aid provided for in this subsection shall continue until the local government or other facility sponsor has received an amount which, combined with state matching money for construction of the facility, equals 25 per cent of the total project cost. No funds received for construction shall be used for any other purpose. (Emphasis added)

RECEIVED

SEP 11 1972

Comprehensive Health
Planning Office

As AS 43.18.010(j) is the state counterpart of Title VI of the Public Health Services Act, 42 USCA 201 et seq., it is appropriate that you may follow standards promulgated in interpretation of that Act. To read the term "total project costs"

as used in AS 43.18.010(j) literally would mean allowing all costs even if lavish, wasteful or illegal. Since clearly that could not have been what was intended when the legislature enacted this section, your department has the implied duty to allow only those costs which are in line with the statutory purpose of this section. In this case, since no statutory guidelines are set out, you have broad discretion to define the meaning of such terms in accordance with the statutory purpose. Naturally then, these rules of the Department of Health, Education and Welfare, interpreting 42 USCA 201 et seq., may be used to assist you in defining the meaning of these statutory terms. In this case, however even more evidence of the legislature's intention in passing AS 43.18.010(j) can be seen by looking at similar state grants for other purposes.

AS 43.18.100 granting aid for school construction goes into great detail to specifically provide for the meaning of "costs of school construction." AS 43.18.100(f)(2). Since no mention of these items is made in AS 43.18.010(j) it is reasonable to assume that they were not intended to be included in the computation of "total cost" under that section and this is the general effect of following the Federal regulations.

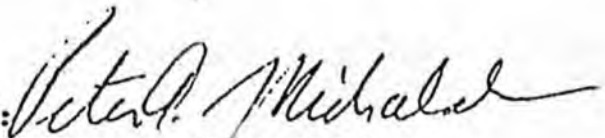
Similarly in AS 43.18.300 providing grants for the construction of Community Facilities, express allowance is made for the cost of "feasibility studies". This term is unnecessary if "cost of construction" were to be read literally. Again, since no similar language is included in AS 43.18.010(j) it can be assumed that these costs were also not to be included.

Finally, in AS 46.03.030(b) providing funds for the cost of water systems, it is provided that the amount received is computed on the basis of those costs "not borne by the federal government". In this case, the regulations you are relying on in effect specifies those costs which will not be borne by the federal government. If it were the legislature's intention in passing AS 43.18.010(j) to pick up those costs not borne by the federal government, it would have added a similar phrase to that in AS 46.03.030(b), particularly as these two sections were before the legislature during the same session and were passed within a few days of one another.

In conclusion, it is within the scope of your administrative discretion to utilize the guidelines promulgated by the Department of Health, Education and Welfare in defining the term "total project cost" of eligible medical facilities under the provisions of AS 43.18.010(j).

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

BY: 
Peter A. Michalski
Assistant Attorney General

17

TO: Senator Orsini
Chairman
Senate C&RA

DATE: March 9, 1977

FROM: Paul Conger
A.A.
Senate C&RA

RE: SCR 13, SCR 14
19AAC 30.020(9)(C)
19AAC 30.020(9)(D)
19AAC 30.140(3)

The concept to provide revenue sharing money to those constructing hospital facilities formally emanated in SB42, 1971. The following is a history of that bill and subsequent amendments to it.

SB 42 (See Attachment 1)

The Bill was originally intended to create a loan/grant fund to be established and administered in the Department of Health. It would create a revolving loan (5% interest) and grant funds to make payments to local governments, non profit corporations and non profit sponsors for the acquisition, construction, modernization, and other capital improvements of hospitals and related health facilities. A grant would be provided if it had been determined by the commissioner of health that a local government, non profit corporation, or non profit sponsor would have difficulty in paying back a loan.

CSSB 42 (See Attachment 2)

Local Government Committee dropped the original bill's suggestion of establishing a loan/grant fund to be administered by the Dept. of Health and transferred the issue of providing state assistance for hospital construction cost to Community and Regional Affairs. In their version of this bill, they adopted language that reflects section (j) which is currently at issue here.

At this stage, the provision dealing with revenue sharing for construction of hospitals was an "in addition" clause to section (h) which treats revenue sharing dollars for hospitals already in operation.

In this initial stage of the bill, only local governments were to be recipients of this revenue sharing money pertaining to construction cost assistance as indicated by the following:

AS 43.18.010(h) During each fiscal year the state shall pay to an organized borough or a city outside an organized borough, in which a health facility is operated.....

In addition, if construction of a facility was begun by a local government after January 1, 1968 and state matching aid for construction approved for payment to the local government constitutes less than 25 per cent of the total project cost, the state shall pay to the local government during each fiscal year a sum equal to \$5,000 per bed for the maximum number of beds provided for in the construction design of the facility, until the local government has received from this aid an amount which, combined with state matching money for construction of the facility, equals 25 per cent of the total project cost. Sums received by a local government under this subsection shall be used for expenses of operation, maintenance or health services or facilities, as the local government determines.

As the language indicates, the key component thus far is local government. (Note that the next version of this bill (CSSB 42 HEW) which creates a section (j) which address the issue of revenue sharing for hospital construction, extends potential recipients of section (j) beyond local government to include "other sponsor facility". So we start moving away from the notion that this money is to be available only for local governments early in the makeup of this bill.

Attention should also be directed towards the term "total project cost". This phrase sustained itself through all the stages of revision and the word "total" was not substituted with any language that would suggest less than total project cost in computing the revenue sharing allowance to be provided. The only restraining language in this bill regarding construction cost states: "No funds received for construction shall be used for any other purpose."

CSSB 42 (HEW) 1971 (See Attachment 3)

HEW, recognizing that they were dealing with two separate issues, viz. hospitals in operation and hospitals under construction, amended this bill creating section (j) as a subsequent section to section (h). Section (h) continues to deal with providing revenue sharing money to an organized borough or a city outside an organized borough that has hospitals in operation. Then section (j) treats the issue of rendering revenue sharing money to offset cost relative to the construction of hospitals. The salient disparity between section (h) and section (j) (for our purposes) is that the committee did not rely on the same language that was used in sec (h) i.e. "during each fiscal year the state shall pay to an organized borough or a city outside an organized borough in which a health facility is operated"; or they did not limit the recipient of this money solely to a local government as was proposed in CSSB 42, but broadened the language in section (j) to state "If construction of a

facility began after Jan 1, 1968, and state matching aid for construction approved for payment to the local government or other facility sponsor ... of the total project cost ... the state shall pay to the local government or other facility sponsor ... State aid provided for in this subsection shall continue until the local government or other facility sponsor has received an amount which ... equals 25% of the total project cost.

It would appear that if the committee wanted the petitioner for construction money to be limited to an organized borough or a city outside an organized borough, they would have adopted this language and made it applicable to sec (j) as well as sec (h). However, the committee did not limit sec (j) (dealing with hospital construction) to these recipients but broadened it to include "local government or other facility sponsor." It was this language that remained through the life of the bill and became law.

Also section (j) retains the language "total project cost" and does not qualify this term by inserting any limitations on what "total project cost" entails. The only restrictive language in this section is "no funds received for construction shall be used for any other purpose".

The remainder of this bill amends section (i) (defining a health facility) to include sections (h) and (j) indicating that this meant a hospital (or facility) owned or operated or both by a local government or by a nonprofit corporation or other nonprofit sponsor.

CSSB 42 (Finance) (See Attachment 4)
Finance drops section (h) from this bill and just concentrates on section (j). The salient feature in this version of the bill is that the Senate Finance Committee approved the language that expanded those permitted to reap the benefits of the bill beyond local government to include other facility sponsor. (Remember in the first CSSB 42 only local governments were included to receive assistance with hospital construction cost, then in HEW's version, they included "other facility sponsor" in contrast to "an organized borough or a city outside an organized borough" that was used in sec (h). The Senate Finance Committee retained "other facility sponsor".)

In addition, the "total project cost" term is still retained in the bill. This has existed throughout the tenure of this bill and has not been diluted or pared at all.

The Senate Finance Committee dropped sec (i) dealing with the definition of a hospital facility but it is picked up again in HCS CSSB 42 discussed below:

HCS CSSB 42 (See Attachment 5)

No change was adopted in this revision that applies to "other facility sponsor" or "total project cost".

In the House HEW and Local Government Committees deliberations, sec (2) is brought back into this bill as sec (i) to include both secs (h) and (j).

CSSB 42 (Finance) amH (CH 127 SLA 1971)

This final version of the bill does not change the language referring to "other facility sponsor" or "total project costs" and is enclosed herewith as Attachment 6.

Subsequent amendments were made to this section, however, subsection (j) was untouched.

Nevertheless, section (h) and (i) became subjects of revision, and pertinent modifications in subsequent years regarding section (j) are listed below:

HCSSB 383 am H (Ch 71, SLA 72) (See Attachment 7)

Inserted the following language into sec (i) which became law: "(1) In (h) and (j) of this section "health facility" or "facility" includes hospitals ... which are licensed, when required by the state under AS 18.20.010 - 18.20.130 (Department of Health and Social Services dealing with hospital regulations) and are owned or operated or both by a local government or by a nonprofit corporation or other non profit sponsor; the term excludes facilities operated or wholly supported by the state or the federal government, and excludes nonprofit facilities leased from private profit-making groups or corporations". This became law in 1972 but was extracted in 1973 by CSHB 42 (Finance) am S discussed next:

HB 42 (Introduced 1973), (Attachment 8, p.2, line 14)

A bill designed to repeal and re-enact sec (h) and (i) of AS 43.18.010. In its original form, the bill omitted the language that became law in 1972 viz. "and excludes non-profit facilities leased from private profit-making groups or corporations". However, in the Local Government Committee's version of CSHB 42, (see Attachment 9, p.2, line 11), reinserts the above mentioned language. Subsequently, in CSHB 42 (HESS) affixed as Attachment 10, on p.2., line 13, they revised this section to read:

(B) excludes nonprofit facilities leased from private profit-making groups or corporations only as to use of shared revenue for capital improvements under (j) of this section, but not as to use of shared revenue for operating expenses under (h) of this section;

The Finance Committee (CSHB 42-Finance), (affixed as Attachment 11, p.2, line 8) in their version eliminated the above mentioned language and other language regarding "excludes nonprofit facilities leased from private, profit-making groups or corporations."

The bill was in this form, deleting the above language, when it passed the Senate as CSHB 42 (Finance) am S, (affixed hereto as Attachment 12, p.2, line 11) and became law, Ch 87, SLA 73.

Other provisions of Ch 87, SLA 73 of significance:

AS 43.18 is amended by adding new sections to read:

Sec. 43.18.040 REGULATIONS. The Department of Community and Regional Affairs shall adopt regulations necessary to carry out the purposes of this chapter.

Sec. 43.18.050 SPECIFIC EXPENDITURES. A municipality shall expend funds received for the operation and maintenance of hospitals and health facilities and services.

Subsequent changes to this bill are listed below. However none of the revisions pertain to AS 43.18.010(j).

Ch 127, SLA 1974 (Attachment 13)
Sec 44. AS 43.18.010(h)(4) is amended to read:

(4) funds received by a local government under (1), (2) or (3) of this subsection shall be used for expenses of operation maintenance, or health services or facilities, as the local government or hospital outside a municipality determines;

*Sec. 45. AS 43.18.040 is amended to read:

Sec. 43.18.040 REGULATIONS. The Department of Community and Regional Affairs shall adopt regulations necessary to carry out the purposes of secs. 10 - 99 of this chapter.

*Sec. 46 AS 43.18.050 SPECIFIC EXPENDITURES. A municipality shall expend funds received for the operation and maintenance of hospitals and health facilities and services under secs. 10 - 99 of this chapter only for those specific facilities and services.

Ch 265 SLA 1976 (See Attachment 14)

*Sec. 2 AS 43.18.010(h)(1), (2) and (4) are repealed and re-enacted to read:

(1) \$2 per capita to a municipality which has the power to provide health facilities and services and in which a hospital is located;

(2) in addition to the payment made under (1) of this subsection

(A) The state shall make payments to a municipality which has the power to provide hospital facilities and services and which exercises the power on the basis of \$1,000 per bed for each bed actually used for patient care limited to the number of beds provided for in the construction design of the hospital, or \$75,000 for those hospitals with 10 or more beds, or \$25,000 a hospital for those hospitals with less than 10 beds, as the municipality may elect; funds received under this subparagraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

(B) the state shall make payments on the basis set out in (A) of this paragraph to a municipality for non profit hospitals not operated by a municipality if the municipality first certifies to the department that the hospital is in compliance with all standards for hospitals which have been adopted by the municipality; in the absence of this certification the funds which would have gone to the hospital lapse into the state general fund; payments to the municipality shall be transferred to the hospital in accord with the basis by which the entitlement was generated by the hospital and shall be applied to the annual cost of operation and maintenance of the hospital or for the provision of health care service at the hospital as the directors of the hospital determine;

(C) a hospital may not receive payment under both (A) and (B) of this paragraph;

(4) funds received by a municipality under (1) or (3) of this subsection shall be used for expenses of health services or operation and maintenance of facilities as the municipality determines;

*Sec. 3 AS 43.18.050 is repealed

*Sec 4 This act takes effect July 1, 1976.

ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

IN SESSION:

POUCH V
JUNEAU, ALASKA 99811
TELEPHONE: (907) 465-4948

SUITE 203
207 EAST NORTHERN LIGHTS BLVD.
ANCHORAGE, ALASKA 99503
TELEPHONE: (907) 277-6219

REP. M. F. "MIKE" BEIRNE
DISTRICT 7, ANCHORAGE

MEMBER OF:
FIFTH STATE LEGISLATURE
NINTH STATE LEGISLATURE
TENTH STATE LEGISLATURE

COMMITTEES:
HEALTH
EDUCATION AND
SOCIAL SERVICES
FINANCE SUB-COMMITTEE
ON TRANSPORTATION

February 22, 1977

The Honorable Joseph Orsini
Senator, Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Orsini:

You have in your possession Senate Concurrent Resolutions 13 and 14 which void sections of certain regulations promulgated last year by the Department of Community and Regional Affairs.

For your information, Mr. Jack Chenoweth of Legislative Affairs has reviewed these resolutions as well as regulations and I think would be a substantial witness when the committee takes up these resolutions.

Also, and perhaps equally as important a witness, Mike Bradner of Fairbanks advised me that he was the prime sponsor of this original hospital grant revenue sharing program back in 1969, and the intent of the law is as the law states: "Total project costs". He volunteered to be a witness and recommended that the financial records of revenue sharing by the Fairbanks Community Hospital be procured to demonstrate that, in fact, everything from the kitchen sink to the grass in the front yard was included in the total project costs, and that was the intent of the law.


As you know, my position with the State has been that I want the same treatment for my hospital that the other hospital sponsors received for their hospitals -- nothing more, nothing less.

Also, Mr. Chenoweth suggests that perhaps the definition of "cost of school

The Honorable Joseph Orsini
February 22, 1977
Page 2

construction" might be a reasonable substitute for the definition of "cost of hospital construction". He refers to Alaska Statute 43.18.100(g)(2) for a definition.

Sincerely,


Dr. Mike Beirne

MB:js

MILES S. SCHLOSBERG, INC.

ATTORNEYS AT LAW

425 G STREET, SUITE 500, ANCHORAGE, ALASKA 99501

(907) 276-3125

MARK A. ERTISCHEK
MILES S. SCHLOSBERG

March 14, 1977

Honorable Joseph Orsini, Senator
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Orsini:

Representative Beirne has asked us to provide you with an analysis of the legality of Senate concurrent resolutions Nos. 13 and 14 which have been introduced in the legislature of the State of Alaska. In our opinion, it would be both legal and proper for the legislature of the State of Alaska to annul administrative regulation 19 AAC 30.020(9)(C) and (D). 19 AAC 30.020(9)(C) is intended to import the criteria used in the administration of the federal Hilburton Construction Program into A.S. 43.18.010(j).

A.S. 43.18.010(j) provides:

"If construction of the facility began after January 1, 1968 and state matching aid for construction approved for payment to the local government or other facility sponsor constitutes less than 25% of the total project cost, the state shall pay to the local government or other facility sponsor each fiscal year a sum equal to \$2,500 a bed for the maximum number of beds provided for in the construction design of the facility. State aid provided for in this subsection shall continue till the local government or other facility sponsor has received an amount which combined with the state matching money for construction of the facility equals 25% of the total project cost. No funds received for construction shall be used for any other purpose."

The Lake Otis Clinic, a non profit corporation, applied for funds under the provisions of this section. Its appli-

MILES S. SCHLOSBERG , INC.

Honorable Joseph Orsini, Senator
March 14, 1977
Page Two

cation was approved after January 1, 1968. Some of the funds which are required to be transmitted to the Lake Otis Clinic pursuant to the provisions of this section were transmitted to the clinic. The majority of the funds have not yet been transmitted to the clinic. In addition, the creators of the Lake Otis Clinic have in reliance upon the provisions of this statute and the approval of their application for funds expended considerable amounts of their own funds in an effort to acquire and pay the financing costs for the property necessary to complete the proposed medical facility. The Department of Community and Regional Affairs has, after the fact, promulgated regulations which prohibit the state from expending money under this section for site acquisition costs. The exclusion of site acquisition costs is explicitly noted in the regulation 19 AAC 30.020(9)(C) as being based on a similar requirement of the federal Hilburton Construction Program. A brief review of the federal statutes in question shows that it would be totally inappropriate to take these federal criteria and apply them to the state statute.

The federal criteria are set out in the definition of the term "construction" in 42 U.S.C. 291(o)(i). In this section the term "construction" is defined to specifically exclude the cost of the acquisition of land. Alaska law is quite different, however. A.S. 43.18.010(j) refers not to construction costs, but to "total project cost". The term "total project cost" is not defined further in the statute nor does the Department of Community and Regional Affairs make any attempt to define it in the regulations. Nevertheless, a review of the way in which the term "construction cost" has been used in related sections of the statute is instructive. A.S. 43.18.100 and A.S. 43.18.460 provide for reimbursement to municipalities within the state of Alaska for school construction costs and sports facilities construction costs. In both cases statutory definitions are provided for the term "cost of construction". In both cases, this term is defined specifically to include the cost of site acquisition. Even though the term "total project cost" in A.S. 43.18.010(j) is not defined, it would be very strange if these words which appear a few short pages from the other terms previously defined could be read to embody a legislative intent to narrow the broad definition of construction costs used in the other sections.

MILES S. SCHLOSBERG , INC.

Honorable Joseph Orsini, Senator
March 14, 1977
Page Three

In 19 AAC 30.020(9)(D) the Department has attempted to limit the eligibility of the "other facility sponsors" to those situations in which the facility lies outside the boundaries of a municipality. The statute is equally bare of any basis for this interpretation.

A.S. 43.18.010(j) uses the clause "local government or other facility sponsor" three times to refer to the eligible recipient of the funds. The use of the word "or" indicates that both local governments and "other facility sponsors" would be proper recipients of the funds. The statute does not define "other facility sponsors" further or mention any special condition which other facility sponsors have to meet. It certainly does not contain any words which even imply that an "other facility sponsor" within the boundaries of a municipality would not be eligible for aid under this section. In this regard it is significant that sections A.S. 43.18.010(i)(1) and (2) which define the terms "hospital" and "health facility" also make absolutely no mention of the distinction which the Department has imported into its regulations. As the Attorney General's office noted in a legal opinion issued on December 20, 1974, one of the problems contained in the statute was the fact that "it fails to distinguish between the governmental sponsors and the non-governmental sponsors". The opinion was ended with the suggestion that the Department seek legislative amendment. The Department has failed to do so and instead has attempted to amend the statute through the regulations process.

The purpose of permitting administrative agencies to adopt regulations is quite simple. The legislature recognizes that it cannot deal explicitly in every statute with every problem that may occur some time in the future and that it is necessary to explain the general provisions of legislative enactments, to provide procedures for implementing those enactments, and to make more specific the sometimes general language included in the statutes. This statute certainly cannot be broadened to allow the regulation making process to be used for the purpose of changing the scope or intent of a statute to accord with the desires of the executive branch of the government. The administrative regulation in question goes beyond the scope allowed to regulations and represents an attempt to amend a clear requirement of the statute. If the Department of Community

MILES S. SCHLOSBERG , INC.

Honorable Joseph Orsini, Senator
March 14, 1977
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and Regional Affairs believes it desirable to remove the term "total project cost" from A.S. 43.18.010(j), or differentiate between government and non-government sponsors, it should follow the suggestion of the Attorney General's office and request the legislature to amend the statute to eliminate this provision and include the definition of cost used in the federal act. It cannot proceed to do this through the regulations process on its own.

The propriety of the legislature's acting to annul administration regulations which are not in compliance with the intent of the legislature cannot be doubted at this state. As Congressman Elliot Levitas of Georgia noted in remarks to the section of administrative law of the American Bar Association during their 1976 Bicentennial Institute on the Oversight in Review of Agency Decision-Making, "We have identified in my office approximately one hundred thirty different acts of the congress, almost two hundred separate provisions of this type which have been cast heretofore mandating or authorizing some type of congressional review of contemplated or pending executive actions." The Congressman also noted that provisions requiring or permitting the legislative review of administrative regulations are found in the laws of the states of Connecticut, Nebraska, Alaska, Kansas, Virginia, Michigan, and Oregon, as well as such foreign nations as Great Britain, Australia, and New Zealand. Speaking in regard to proposed legislation providing for congressional review of certain administrative regulations, he said, "It seems to me that the basic proposition is the one I started off with. Who has the ultimate responsibility for the laws of this nation, whether they are acts of congress or laws which masquerade as administrative rules. I think the answer under our Constitution is it is the elected congress of the United States." Here, it is the elected representatives of the State of Alaska who have the responsibility to annul regulations which do not conform to the requirements of the statutes on which they are based. As Justice White noted in the case of Buckley vs. Valeo, 424 U.S. 1, "In the light of history and modern reality, the provision of congressional disapproval of agency regulation does not appear to transgress the constitutional design ... "

We would conclude in line with this that it would be both legal and proper to annul 19 AAC 30.020(9)(C) and (D). This regulation is by its own terms contrary to the specific provisions included in the statute upon which it is based.

MILES S. SCHLOSBERG, INC.

Honorable Joseph Orsini, Senator
March 14, 1977
Page Five

It is, therefore, invalid and should be annuled by the legislature. Finally, we would like to note that the terms of the statute seem mandatory in requiring that the full amount of the entitlement be paid to the Lake Otis Clinic. This seems not only clear but equitable considering the fact that the sponsors of the project, whether governmental or non-governmental, put up a substantial amount of the financing. Certainly, hospitals would never be built if the sponsors had to operate subject to the possibility that shifts in administration policies subsequent to the commencement of a project could endanger a portion of the financing needed for completing the project. The Lake Otis Clinic project was scrutinized by the administration at the time of its initiation. Substantial amounts of money and effort have been expended in reliance upon the state's obligation to fulfill the terms set out in the statute. The administration should certainly not be able to back out of the project at this late date.

Very truly yours,

MILES S. SCHLOSBERG, INC.



By Mark A. Ertischek

MAE:bmc

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H-01 - JUNEAU 99811

March 17, 1977

Document# Senate CRA #1

The Honorable Joseph L. Orsini
Chairman, Community & Regional
Affairs Committee
Pouch V
Assembly Building - Room 101
Juneau, Alaska 99811

Dear Senator Orsini:

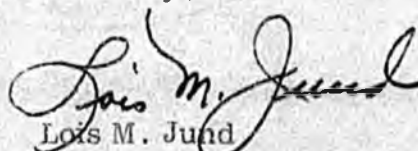
I am writing this letter to clarify for the Community and Regional Affairs Committee the Department of Health and Social Services involvement in hospital and health facilities construction.

The Office of Planning and Research, within the Department, is responsible for administering Alaska Statutes, Sec. 18.20.080. This statute (attachment #1) is implemented through 7AAC 12.020 Regulations for Hospital Construction and Equipment (attachment #2). These regulations contain the same requirements as for Federal Hill-Burton construction. These regulations are updated as Hill-Burton requirements change. A current revision to conform to new Hill-Burton requirements is presently in the Attorney General's office. Thus, all hospitals built in the State of Alaska must meet Hill-Burton standards.

The Office of Planning and Research also administers Chapter 25, Assistance to Hospitals and Health Facilities (attachment #3) Hospitals, in most instances, are built utilizing local, state, and federal funds. The same criteria of allowable and non-allowable costs are applied to state funds as are applied to federal funds in hospital construction. Hence, state funds would not be expended for such items as site acquisition (except for public health centers), interest costs, off-site improvements, etc.

I hope the above information is helpful.

Sincerely,


Lois M. Jund
Acting Commissioner

Enclosures

ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

IN SESSION:

POUCH V
JUNEAU, ALASKA 99811
TELEPHONE: (907) 465-4948

SUITE 203
207 EAST NORTHERN LIGHTS BLVD.
ANCHORAGE, ALASKA 99503
TELEPHONE: (907) 277-6219

REP. M. F. "MIKE" BEIRNE
DISTRICT 7, ANCHORAGE

MEMBER OF:
FIFTH STATE LEGISLATURE
NINTH STATE LEGISLATURE
TENTH STATE LEGISLATURE

COMMITTEES:
HEALTH
EDUCATION AND
SOCIAL SERVICES
FINANCE SUB-COMMITTEE
ON TRANSPORTATION

March 21, 1977

Senator Joseph Orsini, Chairman
Senate Community & Regional Affairs Committee
Room 101, Assembly Building
Juneau, Alaska

Re: Senate Concurrent Resolutions 13 and 14

Dear Senator Orsini:

The purpose of this brief letter is to clarify some issues raised at the committee meeting on Tuesday, March 15. There was much discussion regarding related matters, but the question before the committee only concerns the legality of the regulations. I believe it is obvious that the regulations do change the law. If the Department wishes to change the intent of the law, it should come to the Legislature for that.

1. The Department of Community and Regional Affairs expressed confusion as to whether or not the 1975 application for grant funds was made through the Municipality or directly to the Department. This was the application that resulted in the payment of grant funds in the amount of \$312,000.00.

CLARIFICATION:

A. This application was made directly to the Department under the law and the funds were paid by the Department directly to the Hospital Corporation.

B. At that time, the Borough Mayor was Jack Roderick, and he advised me in his office that if the Department sent the grant funds through the Borough,

Senator Joseph Orsini, Chairman
March 21, 1977
Page 2

that he would not cooperate, and that he would not transfer the funds to the Hospital. Therefore, the application was made directly.

C. This is a good example of local political interference with the orderly process of law, and is precisely why the legislature, in its wisdom, gave the local health facility the right to apply directly. Borough Mayor Jack Roderick acted improperly and contrary to the law.

D. The Department researched the project at that time and determined that by law the Hospital Corporation was indeed entitled to apply and receive grant funds directly from the State. Therefore, their new regulation attempts to frustrate the intent of the law.

2. Mr. McCarter, Departmental Division Director of Revenue Sharing, volunteered the information that there were no funds now being held for the hospital.

There is a letter of encumbrance in the Department files showing that in December of 1976, \$200,000 was encumbered by the Department pending review of the question. To the best of my knowledge, these funds are still encumbered. They rightfully belong to the Hospital Corporation.

3. Mr. McCarter also noted that the audit showed no checks for some expenses claimed. That is only a nasty half-truth and I resent it.

Some expenses claimed include telephone, rent, secretarial services, etc., all routine and ordinary expenses which were paid out of other accounts since the Hospital had very limited funds of its own.

But all the major expenses, much more than sufficient to satisfy the matching fund requirements, were paid from the Hospital checking account, and they were double signature checks with one signature being that of an officer of the California company which was assisting us on the project at that time.

Further, the books and records of the corporation are perfectly clean and clear. The accountants from Peat, Marwick, Mitchell & Co. have always been the accountants and auditors of record for the hospital corporation, since inception, and I am sure under oath would testify to the records.

4. The Department expressed lack of knowledge as regards the Fairbanks and Soldotna hospital projects and their cost accounting records. This is ridiculous.

The administrator of the Soldotna hospital, at the time of receipt of State grant funds in 1972, told me personally of that project history and application. All costs were included and were accepted by the Department. No questions

Senator Joseph Orsini, Chairman

March 21, 1977

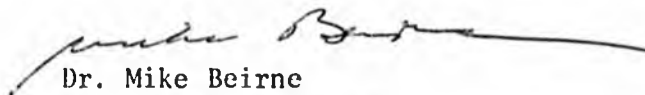
Page 3

were asked. The Department knows this, but it is just being coy. If they don't, or won't, produce the records, I think it speaks for itself.

5. Testimony clearly showed, I believe, that the regulations were developed by the Department solely to apply to this hospital project. I believe that they are not only unfair and improper but that they are illegal as well. The Department's efforts to make these regulations apply two years retroactively are further evidence of the personalized character of the attack against me.

Prompt action on the part of the committee would indeed be appreciated.

Very truly yours,



Dr. Mike Beirne
State Representative

MB:js

MEMORANDUM

TO: [Palmer McCarter
Director
Div. of Local Government Assistance
Dept. of Community & Regional
Affairs

DATE: April 6, 1977

FILE NO:

TELEPHONE NO:

FROM: Lowell W. Swartz
Coordinator
Health Facilities Development
Office of Planning and Research
Dept. of Health & Social Services

SUBJECT: Construction Revenue Sharing

Construction funds authorized by AS43.18.010(j) were disbursed to the Fairbanks Memorial Hospital and the Central Peninsula Hospital at Soldotna in accordance with the Hill-Burton construction program allowable and non-allowable cost regulations. Use of the Hill-Burton regulations was authorized by the Attorney General in his opinion of August 29, 1972.

LWS:sy

MEMORANDUM

TO: [Palmer McCarter, Director
Division of Local Government
Assistance
Department of Community &
Regional Affairs

DATE : April 8, 1977

FROM: Richard A. Smith *RS*
State Internal Auditor
Department of Administration

SUBJECT: Comments to Senator
Joseph Orsini, Chairman
Senate Community & Regional
Affairs Committee.
Dated March 21, 1977, From
Representative M. F. "Mike"
Beirne

(Point 3, Paragraph 1)

"Mr. McCarter also noted that the audit showed no checks for some expenses claimed. That is only a nasty half-truth and I resent it."

Reply

Mr. McCarter's statement is completely factual. In numerous instances, as indicated in our report of 7/26/76, the documentation to support reported expenditures was non-existent. This includes checks, invoices or other supportive evidence.

(Point 3, Paragraph 2)

"Some expenses claimed include telephone, rent, secretarial services, etc., all routine and ordinary expense which were paid out of other accounts since the hospital had very limited funds of its own."

Reply

These costs were excluded due to the lack of supporting documentation. Costs were reportedly paid by companies controlled by M. F. Beirne. However, the financial records of LOC did not reflect these expenditures nor did they recognize a liability to the companies which reportedly paid these expenditures on LOC's behalf.

April 8, 1977

As An Example:

The total support for telephone expenses consisted of one invoice, for one months time, paid by Raypath, Inc.. There was no break down of the billing which would indicate that part of the bill related to the construction of the Lake Otis Hospital.

(Point 3, Paragraph 3)

"But all major expenses, much more than sufficient to satisfy the matching fund requirements, were paid from the hospital checking account, and they were double signature checks with one signature being that of an officer of the California company which was assisting us on the project at that time."

Reply

We examined all checks written from the hospital checking account presented to us by representatives of LOC. The total being \$930,215.49 of which \$861,843.87 reasonably appeared to be related to the construction of the hospital. Eligible construction costs are to be reimbursed at a rate of 25%. That amount determined by us as allowable for reimbursement was \$215,460.97. LOC has received \$312,500 making an over-payment to LOC of \$97,039.03. However, our examination of 2/14/77 recommends that LOC pay back the entire \$312,500.

(Point 4, Paragraph 4)

"Further, the books and records of the corporation are perfectly clean and clear. The accountants from Peat, Marwick, Mitchell & Co. have always been the accountants and auditors of record for the hospital corporation since inception, and I am sure under oath would testify to the records."

Reply

Supported by review of reports and direct discussion with staff of Peat, Marwick, Mitchell & Co., that firm has not performed any services for Lake Otis Clinic, Inc. since December 31, 1974 when they released an unaudited financial report for Lake Otis Clinic, Inc.

April 8, 1977

The accountant for LOC is Don Taylor, a private CPA who has worked with our Department on this examination for some time and as recently as March, 1977 telephoned and informed us that he is still trying to assemble LOC's records.

Taylor's address is:

Don Taylor
Room 104, Suite 201
3201 C Street
Anchorage, AK 99502
Phone Number 277-7700

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

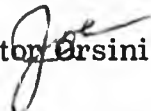
DIVISION OF LOCAL GOVERNMENT ASSISTANCE

JAY S. HAMMOND, GOVERNOR

POUCH B - JUNEAU 99811

April 11, 1977

The Honorable Joseph Orsini
Chairman
Senate Community and Regional
Affairs Committee
Assembly Building, Room 101
Juneau, Alaska 99801

Dear Senator  Orsini:

RE: Senate Concurrent Resolutions 13 and 14

Although the Senate Community and Regional Affairs Committee has already taken action on the subject resolutions, I feel it necessary to respond to a letter dated March 21, 1977, from Dr. Michael Beirne, concerning the Lake Otis Clinic application and its relationship to the subject resolutions.

Prior to discussion on the statements made in Dr. Beirne's letter, I will apologize in advance for not being more fully prepared to answer the specific questions raised by Senator Bill Sumner and other committee members regarding the LOC project. It was my understanding that the committee was to discuss the resolutions before it and I hope that I did adequately testify to the satisfaction of committee members regarding the historical background and the current application of the hospital construction regulations which are proposed to be annulled by the two resolutions.

Since Dr. Beirne did, in his March 21 letter, attempt to "clarify" several points brought out in testimony before the committee and at one point accused me personally of having stated "nasty half-truths", I feel it incumbent upon me to respond to certain parts of that letter.

Since his point number one primarily deals with former Borough Mayor Jack Roderick and the position that the Greater Anchorage Area Borough took with respect to the LOC application, I will not attempt to provide other statements concerning the issue.

Regarding his second clarification, I did indicate that there were no funds being held for Lake Otis Hospital. Dr. Byrne is correct that an amount of \$200,000 was encumbered, and is currently encumbered; however, this amount was encumbered only if

April 11, 1977

the internal audit of the State should indicate that the State owed additional funds to Lake Otis Clinic. As you are aware, the results of that audit by the State Internal Auditor indicated that not only were no additional funds due to LOC but, in fact, the report recommended that the State attempt to retrieve funds formerly paid to the Lake Otis Clinic project. Certainly we take the position that the \$200,000 does not "rightfully belong to the Hospital Corporation".

Rather than respond directly to the concerns raised in Dr. Beirne's point number three, I have attached a letter from the State Internal Auditor which more adequately responds than I could ever hope to. I would hope that when and if the subject resolution should come before the Senate Finance Committee that the committee accept Dr. Beirne's suggestion that Peat, Marwick, Mitchell and Company be called upon to testify, under oath, as to the records of LOC.

With respect to the concerns raised in item number four of Dr. Beirne's memo, I again refer you to the attached statement from Lowell Swartz of the Department of Health and Social Services who, since the inception of the Municipal Revenue Sharing Program, has been the person who has reviewed all applications for construction aid under the program. I feel his statements, although brief, answer to the contradiction of Dr. Beirne's statements, as to what actually took place with respect to the Fairbanks and Soldotna hospital projects.

Finally, the regulations which are currently being considered by SCR 13 and 14 were the result of a mandate from the Legislature last year for the Department to adopt "minimum standards" concerning all aspects of the Municipal Revenue Sharing. The regulations do just that and as earlier stated in testimony, with the exception of Dr. Michael Beirne, were not the subject of criticism by any other hospital or municipality.

Sincerely,

LEE McANERNEY
COMMISSIONER

By: 

Palmer McCarter
Director
Local Government Assistance

Attachments

cc w/attachments: Senator John Sackett
Chairman
Senate Finance Committee

PMcC: gh



Daily News photo by Rob Stapleton

Doc's No. 1

Dr. Roland Lombard, the Massachusetts veterinarian and veteran musher, shows his starting number for the World Championship Sled Dog Race, to be held Friday, Saturday and Sunday. Twenty mushers drew for positions Wednesday night at the Anchorage Westward Hotel, with last year's winner, George Attila, drawing the number 10 slot. Details in Sports, Page 15.

Beirne says he won't return funds to state

By PAUL NUSSBAUM
Our Juneau Bureau Chief
JUNEAU — Rep. Mike Beirne, R-Anchorage, will not return \$312,000 in state revenue sharing funds, he said Wednesday. He was given the funds for a hospital he plans to build, but state auditors say the clinic may never be completed.

Legislative leaders said Wednesday they are concerned about a possible conflict of interest as a

result of two resolutions introduced in the Senate which would remove legal barriers that are blocking Beirne's efforts to collect more state revenue sharing money for the Lake Otis Clinic. The resolutions were introduced in the Senate at Beirne's request.

THE STATE'S internal auditor Wednesday formally recommended that the state recover all \$312,000 given Beirne "and that no sub-

sequent payments be made until such time as LOC (Lake Otis Clinic Inc.) provides an accurate accounting of construction costs, obtains permanent financing and has title to the land for the hospital site dedicated irrevocably to a public purpose."

None of those conditions are met now, auditors say.

Beirne was asked last year to return about \$97,000 of the \$312,000 he was given in 1975 for hospital construction. The Anchorage pathologist is battling to retain that money.

"I'M NOT GOING to consider giving any of those funds back," Beirne said of the revenue sharing money Wednesday. "The Hammond administration is picking on small businesses in Alaska, and this is just another example."

Two resolutions introduced in the Senate at Beirne's request through the Administrative Regulations Review Committee would allow Beirne — or any other hospital



13 years later, federal report still haunts rebuilding in quake areas

JUNEAU strongly urge contracts to natural gas line from the

Wall-lobby-legisl

JUNEAU — taste of wall-nesday when (At least 50 Organization of Alaska's Re-legislative gal-urge quick pa-ts, to sell Alash-support of a gas pipeline.

THEY HEL breakfast bri-lawmakers i-They wined a-the Baranof-mods, smiles a-gas contract-closer to a-OMAR invade-

Rep. Rick-ried and fail-when he mov-ts from the sp-studying ther-applauded the-defeated it, 24-

Democrats-Urien motion-a "show busi-

"MP. URI-gallery and I-know that-Meekins, D-S-Rep. Clat-orage, wh-(Cont'r

Keo
nc

persuade federal officials to approve an all-Alaska natural gas line.

THE OMAR delegation came to Juneau to try to convince the legislators to speed their review of

both houses. Gruening has expressed reservations about the weight the state action may carry with the Federal Power Commission or the Congress.

•Beirne won't repay

(Continued from Page 1)

costs involved in hospital construction. Under current regulations, only allowable costs are subject to state revenue sharing grants.

If Beirne collected 25 per cent of the projected \$10 million cost of the 125-bed hospital, he would collect \$2.5 million from the state.

THE AUDIT released Wednesday by the internal auditor says the state "may find that its revenue sharing money has gone to pay a past debt and no hospital will ever be fully constructed and in use by the people of Alaska. There must be good faith on the part of (Beirne) to fulfill his stated goals. (Beirne) in this case has voluntarily jeopardized the interest of the state . . ."

Lake Otis Clinic, at the intersection of Lake Otis Drive and 42nd Avenue, was started in 1973, but only foundation work has been completed so far. Beirne says construction will resume this spring and that the clinic will take about 18 months to complete.

The state attorney general's office says it has reached no decision on whether it should examine possible conflict of interest involved in the resolutions introduced at Beirne's request.

HOUSE Speaker Hugh Malone said that "probably the best course" would be to hold hearings with Beirne, the Dept. of Law and the Dept. of Community and Regional Affairs. But the House will take no action, as the bills were not introduced on that side.

The resolutions were referred first to the Senate Community and Regional Affairs Committee, chaired by Sen. Joe Orsini, R-Anchorage. Orsini said Wednesday he is "trying to get information about the resolutions," but has not

scheduled any action on the resolutions in the near future.

"I'm not all that concerned with his individual case," Orsini said. "If they are bad regulations, they ought to be repealed, regardless of who is hurt or benefitted. I don't even plan to look at his individual situation unless maybe as an example of how the laws are unjust."

THE DEPT. of Law will sue if necessary to collect the \$312,000 Asst. Atty. Gen. Rodger Pegues said Wednesday. But Beirne is immune from a suit until the legislative session is over.

Beirne says the efforts to block more revenue sharing money for the Lake Otis Clinic are spawned by the Hammond administration and the two hospitals already operating in Anchorage, Providence Hospital and Alaska Hospital and Medical Center.

"Those hospitals make millions of dollars a year . . . they know they'd lose several million a year if we open, and that would come right off the top — that would be part of their profits.

"The state has never audited those hospitals — they're just picking on the little guy."

Beirne said he asked Sen. Jalmar Kerttula, D-Palmer, to introduce the resolutions in the Senate rather than introducing them himself in the House because "I didn't want to put pressure on my fellow members . . . I got it as far away from myself as possible."

ANCHORAGE DAILY NEWS

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15th Avenue and I Street.

There, officers arrested a 17-year-old juvenile, who was later charged with armed robbery and released to his parents, and Phyllis Rae Gray, 25, of 3723 Thompson, who was taken to state jail annex. Her bail was set at \$2,000.

The third suspect is still at large.

•Stevens

(Continued from Page 1)

of . . . the import duties on fisheries projects and all the fees, fines and penalties paid under the extended fisheries jurisdiction. Regional fisheries councils would be able to use these funds and award loans for research, development, and construction of fishing vessels or onshore facilities."

— The state's permanent fund. Stevens urged the state legislature not to use the permanent fund as a loan source of last resort.

— The capital move. Stevens said federal money used for the capital move will take the money that might otherwise have gone for other projects in the state.

"You can't view federal funds for a new capital in the same light as for, say, a new hospital in Bethel . . . The federal funding will just come out of existing federal expenditures."



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AG Aware Of Beirne

By The Associated Press

Atty. Gen. Avrum Gross said Tuesday that a conflict of interest allegation against state Rep. Mike Beirne, R-Anchorage, has been "brought to our attention," but no decisions has been made on whether to conduct an investigation.

"There has been an allegation of conflict of interest," Gross said. "I don't know what we're going to do. We've made no decision of what, if any, action we plan to take."

Gross made the statement in

the wake of a disclosure by the Anchorage Daily News that doctor-lawmaker Beirne is pushing legislative proposals which could earn him as much as \$2.5 million in taxpayers' money.

Alaska's conflict of interest law provides that "no public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father, or business with which he is associated or owns stock."

At issue are two Senate reso-

lutions introduced at Beirne's request to change Department of Community and Regional Affairs' regulations which are thwarting Beirne's efforts to collect state revenue sharing money for a \$10 million, 125-bed hospital he is trying to build in Anchorage.

One resolution would allow Beirne to collect state revenue sharing funds for 25 per cent of total costs of the project as opposed to the currently-allowable reimbursement for "allowable costs."

Based on Beirne's estimate that the hospital will cost \$10 million, a 25 per cent state grant would earn him \$2.5 million.

Another resolution would eliminate existing requirements that applicants for state revenue sharing money submit applications through a local municipality.

Beirne already has collected \$312,000 for the project from the state, but the payment was made under protest of then-mayor of the Greater Anchorage Area Borough, Jack Roderick, who said delays in the start of construction on the hospital "has given us cause for concern about the appropriateness of revenue sharing funds for this purpose."

Beirne said he was pushing for the legislation because the Department of Community and Regional Affairs "is violating the intent of the law" which established revenue sharing by limiting costs which are eligible

in calculating the awards.

Beirne acknowledged that conflict of interest questions "did bother me at first." But he added that "my speciality is health...I was very familiar with the law and spotted the inconsistencies immediately."

"I don't have any reservations about it..." he said. "It was my duty to respond."

In a dispatch from its capitol bureau, the Daily News also reported that a soon-to-be-released state audit on the hospital project will recommend that Beirne be forced to pay back the entire \$312,000 he received on 1975.

According to auditors, the newspaper said, Beirne no longer even holds title to the land on which he hopes to build the Lake Otis Clinic.

The audit also charges that Beirne did not act in good faith in charging unreasonable costs to the project, the Daily News said.

Based on another audit conducted last year, state officials disallowed \$2.3 million of the \$3 million in costs claimed by Beirne in his revenue sharing calculations, and ordered him to repay \$97,000 of the \$312,000 total.

Beirne said he has contested the repayment order and will sue the state if it tries to take back the entire \$312,000.

In the forthcoming audit, the Daily News said, auditors claim that the title to land for the hospital site is held by General Health Services of Culver City,

Charges

Calif., a profit-making company which owns a string of clinics.

Beirne, however, disputed the claim. He said General Health Services holds a lien against the property, but he still holds the title.

But state officials, the Daily News added, say they are concerned that the involvement of General Health Services could be in violation of requirements that revenue sharing money be used in the public interest.

Beirne originally borrowed about \$1 million from People's Bank and Trust in Anchorage for the hospital project. However, time delays and climbing interest

charges increased his debt to more than \$1.5 million, and Beirne was forced to borrow \$150,000 from the National Bank of Alaska last November to stave off default.

The loan was made one day before Beirne was re-elected to the seat to which he originally was appointed by Gov Hammond

audit

Memo Says Beirne 'Covered'

JUNEAU (AP) — A state lawmaker cannot be prosecuted under Alaska's conflict of interest law for sponsoring self-serving legislation, the attorney general's office says.

In a memorandum released yesterday, Attorney General Avrum Gross said the Alaska Constitution insulates lawmakers from prosecution in connection with legislative actions despite provisions of the state's conflict of interest law.

The decision ruled out any prospect for charges being brought against Rep. Mike Beirne, R-Anchorage, in connection with two resolutions he is sponsoring to repeal regulations which are causing him financial problems.

But in concluding that Beirne couldn't be prosecuted, the attorney general's office emphasized it wasn't ruling on whether Beirne was involved in a conflict of interest and threw the simmering issue into the lap of the House leadership.

"If the legislature itself were to determine that a member was involved in improper conduct of any nature, it is free to take such action as it deems proper, including the possibility of censure," the memo said.

The 11-page memorandum was prepared by Assistant Attorney General Pat Gullufsen at the request of Dan Hickey, chief of the Department of Law's criminal division.

Hickey said he wanted an "assessment of the actions of Representative M. F. Beirne in sponsoring Senate Concurrent Resolutions 13 and 14 as they relate to possible criminal prosecution under" the state's conflict of interest law.

The resolutions in question would repeal Department of Community and Regional Affairs (CRA) regulations under which the state has challenged \$312,000 in revenue sharing paid to Beirne for a financially troubled project, the Lake

Otis Clinic, he is trying to build in Anchorage.

The memorandum said it was clear that the resolutions both originated with Beirne and would benefit him directly.

It said Beirne has "publicly acknowledged that the resolutions are his," and concluded that they "would go a long way, if not all the way, towards resolving the dispute between CRA and Lake Otis Clinic — Beirne in favor of Beirne — and as a consequence entitle Lake Otis Clinic to just about all it wants..."

But in researching the case, Gullufsen wrote that the state conflict of interest law, which would appear to prohibit such acts, was in conflict with the state Constitution.

The conflict of interest law provides that "no public official may use his official position or office for the primary purpose of obtaining financial gain for himself...or business which he is associated or owns stock."

But the memorandum added that "the statute, if applied to acts by legislators including the introduction of bills or resolutions, creates immediate and difficult problems of proof."

"The key phrase in the act is 'primary purpose,'" the memorandum said, noting many lawmakers rightly introduce legislation in connection with their own fields of business.

The memorandum said it is assumed that the term primary purpose was used in the act in "an effort to distinguish the situation where the real purpose of a legislator is purely to benefit himself as opposed to the situation where he will only incidentally benefit from an official action."

Concluding that the issue boiled down to the always-difficult-to-prove question of motive, the memorandum said application of the conflict of interest law to the sponsorship of legislation

would create "a vast grey area in which legislators are going to be afraid to tread."

"The result will be that, whether prosecution is initiated or not, legislators will be very loath to get involved in areas which may affect them, which is going to mean that out of fear of prosecution the public may lose the benefit of those most knowledgeable in particular legislative fields," the memorandum said.

Probably because of such fears, the memorandum added, the constitution was drafted to include language that "legislators may not be held to answer before any other tribunal for any statement made in the exercise of their duties while the legislature is in session..."

The memorandum acknowledged that "arguably, a resolution (like Beirne is sponsoring) would not be a protected statement," and also conceded that the state Supreme Court never has not ruled on the question.

However, the memorandum said a similarly worded provision in the U.S. Constitution has been interpreted by the courts to mean that "Beirne would be immune from questioning, indictment or prosecution under the circumstances of this case."

"This is not an easy question," the memorandum concluded "There are two competing public policies at work, the first avoiding conflicts by legislators and the second insuring that legislators feel free to act in what they believe to be the public interest, free of the fear of criminal prosecutions for their actions.

"We believe the Alaska Constitution has clearly struck the balance in favor of the second value, at least when the action takes place in the legislature itself through the means of debate or legislative action."

SCR

14

JOE
TO: Joe Orsini
FROM: Paul Conger

DATE: March 14, 1977
RE: SCR 13 & SCR 14

In an effort to gather information that was requested by the Committee at the last hearing regarding SCR 13 and SCR 14, I have completed the following:

1) I have contacted CRA and Lee McAnerney and Palmer will be here to testify. Palmer also mentioned that Rod Peques, Assistant A.G. will probably accompany them to make sure no sensitive information is released since this issue will no doubt reach litigation after the session has adjourned.

2) I contacted Lois Jund, Deputy Commissioner for Program Management, Dept. of HESS, and she said she will attend the hearing tomorrow to testify in behalf of HESS.

3) I have secured a copy of the earlier CRA Regulations, dated Oct. '74, per Senator Sumner's request. Subsequent revisions to the regulations have certainly expanded the portion pertaining to eligibility (19AAC 30.020) because in the earlier regulations, it reads as follows:

19 AAC 30.020 ELIGIBILITY Eligibility for receipt of state aid to local governments provided by AS 43.18.010 shall be predicated upon the possession and exercise of a power set out in those statutory provisions by a unit of local government or volunteer fire department located in the unorganized borough. (Eff. 7/8/73, Register 47)

4) In response to the request to acquire a copy of the minutes regarding public input at the time these regulations ~~regarding public input at the time these regulations~~ were adopted, CRA says that the only public input regarding section (j) "construction" was a letter forwarded to the Dept. by Dr. Beirne. Palmer said that a copy of this letter should be in the A.G.'s office. I checked with Rod Peques and he doesn't have it in the "Lake Otis file" but he said he would secure it by "hearing" time.

5) I got Berrier's opinion regarding section (j). I had requested that he comment regarding the Asst. A.G.'s letter giving the go ahead to the Dept. of HESS to use Hill-Burton Regulations. He skirted this particular issue but addressed the question of the propriety of CRA adopting Hill-Burton Regulations as a standard for determining total project cost. Regarding the regulation he stated:

"Since discretion was left to the department and the department exercised that discretion in a reasonable manner apparently consistent with legislative intent, in my opinion the regulation is legally proper."

6) Additionally, I'm having copies of the audits that were conducted on the Anchorage and Fairbanks hospitals for the past two years forwarded to the Committee.

PC/js

17

TO: Senator Orsini
Chairman
Senate C&RA

DATE: March 9, 1977

FROM: Paul Conger
A.A.
Senate C&RA

RE: SCR 13, SCR 14
19AAC 30.020(9)(C)
19AAC 30.020(9)(D)
19AAC 30.140(3)

The concept to provide revenue sharing money to those constructing hospital facilities formally emanated in SB42, 1971. The following is a history of that bill and subsequent amendments to it.

SB 42 (See Attachment 1)

The Bill was originally intended to create a loan/grant fund to be established and administered in the Department of Health. It would create a revolving loan (5% interest) and grant funds to make payments to local governments, non profit corporations and non profit sponsors for the acquisition, construction, modernization, and other capital improvements of hospitals and related health facilities. A grant would be provided if it had been determined by the commissioner of health that a local government, non profit corporation, or non profit sponsor would have difficulty in paying back a loan.

CSSB 42 (See Attachment 2)

Local Government Committee dropped the original bill's suggestion of establishing a loan/grant fund to be administered by the Dept. of Health and transferred the issue of providing state assistance for hospital construction cost to Community and Regional Affairs. In their version of this bill, they adopted language that reflects section (j) which is currently at issue here.

At this stage, the provision dealing with revenue sharing for construction of hospitals was an "in addition" clause to section (h) which treats revenue sharing dollars for hospitals already in operation.

In this initial stage of the bill, only local governments were to be recipients of this revenue sharing money pertaining to construction cost assistance as indicated by the following:

AS 43.18.010(h) During each fiscal year the state shall pay to an organized borough or a city outside an organized borough, in which a health facility is operated.....

In addition, if construction of a facility was begun by a local government after January 1, 1968 and state matching aid for construction approved for payment to the local government constitutes less than 25 per cent of the total project cost, the state shall pay to the local government during each fiscal year a sum equal to \$5,000 per bed for the maximum number of beds provided for in the construction design of the facility, until the local government has received from this aid an amount which, combined with state matching money for construction of the facility, equals 25 per cent of the total project cost. Sums received by a local government under this subsection shall be used for expenses of operation, maintenance or health services or facilities, as the local government determines.

As the language indicates, the key component thus far is local government. (Note that the next version of this bill (CSSB 42 HEW) which creates a section (j) which address the issue of revenue sharing for hospital construction, extends potential recipients of section (j) beyond local government to include "other sponsor facility". So we start moving away from the notion that this money is to be available only for local governments early in the makeup of this bill.

Attention should also be directed towards the term "total project cost". This phrase sustained itself through all the stages of revision and the word "total" was not substituted with any language that would suggest less than total project cost in computing the revenue sharing allowance to be provided. The only restraining language in this bill regarding construction cost states: "No funds received for construction shall be used for any other purpose."

CSSB 42 (HEW) 1971 (See Attachment 3)

HEW, recognizing that they were dealing with two separate issues, viz. hospitals in operation and hospitals under construction, amended this bill creating section (j) as a subsequent section to section (h). Section (h) continues to deal with providing revenue sharing money to an organized borough or a city outside an organized borough that has hospitals in operation. Then section (j) treats the issue of rendering revenue sharing money to offset cost relative to the construction of hospitals. The salient disparity between section (h) and section (j) (for our purposes) is that the committee did not rely on the same language that was used in sec (h) i.e. "during each fiscal year the state shall pay to an organized borough or a city outside an organized borough in which a health facility is operated"; or they did not limit the recipient of this money solely to a local government as was proposed in CSSB 42, but broadened the language in section (j) to state "If construction of a

facility began after Jan 1, 1968, and state matching aid for construction approved for payment to the local government or other facility sponsor ... of the total project cost ... the state shall pay to the local government or other facility sponsor ... State aid provided for in this subsection shall continue until the local government or other facility sponsor has received an amount which ... equals 25% of the total project cost.

It would appear that if the committee wanted the petitioner for construction money to be limited to an organized borough or a city outside an organized borough, they would have adopted this language and made it applicable to sec (j) as well as sec (h). However, the committee did not limit sec (j) (dealing with hospital construction) to these recipients but broadened it to include "local government or other facility sponsor." It was this language that remained through the life of the bill and became law.

Also section (j) retains the language "total project cost" and does not qualify this term by inserting any limitations on what "total project cost" entails. The only restrictive language in this section is "no funds received for construction shall be used for any other purpose".

The remainder of this bill amends section (i) (defining a health facility) to include sections (h) and (j) indicating that this meant a hospital (or facility) owned or operated or both by a local government or by a nonprofit corporation or other nonprofit sponsor.

CSSB 42 (Finance) (See Attachment 4)

Finance drops section (h) from this bill and just concentrates on section (j). The salient feature in this version of the bill is that the Senate Finance Committee approved the language that expanded those permitted to reap the benefits of the bill beyond local government to include other facility sponsor. (Remember in the first CSSB 42 only local governments were included to receive assistance with hospital construction cost, then in HEW's version, they included "other facility sponsor" in contrast to "an organized borough or a city outside an organized borough" that was used in sec (h). The Senate Finance Committee retained "other facility sponsor".)

In addition, the "total project cost" term is still retained in the bill. This has existed throughout the tenure of this bill and has not been diluted or pared at all.

The Senate Finance Committee dropped sec (i) dealing with the definition of a hospital facility but it is picked up again in HCS CSSB 42 discussed below:

HCS CSSB 42 (See Attachment 5)

No change was adopted in this revision that applies to "other facility sponsor" or "total project cost".

In the House HEW and Local Government Committees deliberations, sec (2) is brought back into this bill as sec (i) to include both secs (h) and (j).

CSSB 42 (Finance) amH (CH 127 SLA 1971)

This final version of the bill does not change the language referring to "other facility sponsor" or "total project costs" and is enclosed herewith as Attachment 6.

Subsequent amendments were made to this section, however, subsection (j) was untouched.

Nevertheless, section (h) and (i) became subjects of revision, and pertinent modifications in subsequent years regarding section (j) are listed below:

HCSSB 383 am H (Ch 71, SLA 72) (See Attachment 7)

Inserted the following language into sec (i) which became law: "(1) In (h) and (j) of this section "health facility" or "facility" includes hospitals ... which are licensed, when required by the state under AS 18.20.010 - 18.20.130 (Department of Health and Social Services dealing with hospital regulations) and are owned or operated or both by a local government or by a nonprofit corporation or other non profit sponsor; the term excludes facilities operated or wholly supported by the state or the federal government, and excludes nonprofit facilities leased from private profit-making groups or corporations". This became law in 1972 but was extracted in 1973 by CSHB 42 (Finance) am S discussed next:

HB 42 (Introduced 1973), (Attachment 8, p.2, line 14)

A bill designed to repeal and re-enact sec (h) and (i) of AS 43.18.010. In its original form, the bill omitted the language that became law in 1972 viz. "and excludes nonprofit facilities leased from private profit-making groups or corporations". However, in the Local Government Committee's version of CSHB 42, (see Attachment 9, p.2, line 11), reinserts the above mentioned language. Subsequently, in CSHB 42 (HESS) affixed as Attachment 10, on p.2., line 13, they revised this section to read:

(B) excludes nonprofit facilities leased from private profit-making groups or corporations only as to use of shared revenue for capital improvements under (j) of this section, but not as to use of shared revenue for operating expenses under (h) of this section;

The Finance Committee (CSHB 42-Finance), (affixed as Attachment 11, p.2, line 8) in their version eliminated the above mentioned language and other language regarding "excludes nonprofit facilities leased from private, profit-making groups or corporations."

The bill was in this form, deleting the above language, when it passed the Senate as CSHB 42 (Finance) am S, (affixed hereto as Attachment 12, p.2, line 11) and became law, Ch 87, SLA 73.

Other provisions of Ch 87, SLA 73 of significance:

AS 43.18 is amended by adding new sections to read:

Sec. 43.18.040 REGULATIONS. The Department of Community and Regional Affairs shall adopt regulations necessary to carry out the purposes of this chapter.

Sec. 43.18.050 SPECIFIC EXPENDITURES. A municipality shall expend funds received for the operation and maintenance of hospitals and health facilities and services.

Subsequent changes to this bill are listed below. However none of the revisions pertain to AS 43.18.010(j).

Ch 127, SLA 1974 (Attachment 13)
Sec 44. AS 43.18.010(h)(4) is amended to read:

(4) funds received by a local government under (1), (2) or (3) of this subsection shall be used for expenses of operation maintenance, or health services or facilities, as the local government or hospital outside a municipality determines;

*Sec. 45. AS 43.18.040 is amended to read:

Sec. 43.18.040 REGULATIONS. The Department of Community and Regional Affairs shall adopt regulations necessary to carry out the purposes of secs. 10 - 99 of this chapter.

*Sec. 46 AS 43.18.050 SPECIFIC EXPENDITURES. A municipality shall expend funds received for the operation and maintenance of hospitals and health facilities and services under secs. 10 - 99 of this chapter only for those specific facilities and services.

Ch 265 SLA 1976 (See Attachment 14)

*Sec. 2 AS 43.18.010(h)(1), (2) and (4) are repealed and re-enacted to read:

(1) \$2 per capita to a municipality which has the power to provide health facilities and services and in which a hospital is located;

(2) in addition to the payment made under (1) of this subsection

(A) The state shall make payments to a municipality which has the power to provide hospital facilities and services and which exercises the power on the basis of \$1,000 per bed for each bed actually used for patient care limited to the number of beds provided for in the construction design of the hospital, or \$75,000 for those hospitals with 10 or more beds, or \$25,000 a hospital for those hospitals with less than 10 beds, as the municipality may elect; funds received under this subparagraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

(B) the state shall make payments on the basis set out in (A) of this paragraph to a municipality for non profit hospitals not operated by a municipality if the municipality first certifies to the department that the hospital is in compliance with all standards for hospitals which have been adopted by the municipality; in the absence of this certification the funds which would have gone to the hospital lapse into the state general fund; payments to the municipality shall be transferred to the hospital in accord with the basis by which the entitlement was generated by the hospital and shall be applied to the annual cost of operation and maintenance of the hospital or for the provision of health care service at the hospital as the directors of the hospital determine;

(C) a hospital may not receive payment under both (A) and (B) of this paragraph;

(4) funds received by a municipality under (1) or (3) of this subsection shall be used for expenses of health services or operation and maintenance of facilities as the municipality determines;

*Sec. 3 AS 43.18.050 is repealed

*Sec 4 This act takes effect July 1, 1976.

MILES S. SCHLOSBERG, INC.

ATTORNEYS AT LAW

425 G STREET, SUITE 500, ANCHORAGE, ALASKA 99501

(907) 276-3125

MARK A. ERTISCHEK
MILES S. SCHLOSBERG

March 14, 1977

Honorable Joseph Orsini, Senator
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Orsini:

Representative Beirne has asked us to provide you with an analysis of the legality of Senate concurrent resolutions Nos. 13 and 14 which have been introduced in the legislature of the State of Alaska. In our opinion, it would be both legal and proper for the legislature of the State of Alaska to annul administrative regulation 19 AAC 30.020(9)(C) and (D). 19 AAC 30.020(9)(C) is intended to import the criteria used in the administration of the federal Hilburton Construction Program into A.S. 43.18.010(j).

A.S. 43.18.010(j) provides:

"If construction of the facility began after January 1, 1968 and state matching aid for construction approved for payment to the local government or other facility sponsor constitutes less than 25% of the total project cost, the state shall pay to the local government or other facility sponsor each fiscal year a sum equal to \$2,500 a bed for the maximum number of beds provided for in the construction design of the facility. State aid provided for in this subsection shall continue till the local government or other facility sponsor has received an amount which combined with the state matching money for construction of the facility equals 25% of the total project cost. No funds received for construction shall be used for any other purpose."

The Lake Otis Clinic, a non profit corporation, applied for funds under the provisions of this section. Its appli-

MILES S. SCHLOSBERG , INC.

Honorable Joseph Orsini, Senator
March 14, 1977
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cation was approved after January 1, 1968. Some of the funds which are required to be transmitted to the Lake Otis Clinic pursuant to the provisions of this section were transmitted to the clinic. The majority of the funds have not yet been transmitted to the clinic. In addition, the creators of the Lake Otis Clinic have in reliance upon the provisions of this statute and the approval of their application for funds expended considerable amounts of their own funds in an effort to acquire and pay the financing costs for the property necessary to complete the proposed medical facility. The Department of Community and Regional Affairs has, after the fact, promulgated regulations which prohibit the state from expending money under this section for site acquisition costs. The exclusion of site acquisition costs is explicitly noted in the regulation 19 AAC 30.020(9)(C) as being based on a similar requirement of the federal Hilburton Construction Program. A brief review of the federal statutes in question shows that it would be totally inappropriate to take these federal criteria and apply them to the state statute.

The federal criteria are set out in the definition of the term "construction" in 42 U.S.C. 291(o)(i). In this section the term "construction" is defined to specifically exclude the cost of the acquisition of land. Alaska law is quite different, however. A.S. 43.18.010(j) refers not to construction costs, but to "total project cost". The term "total project cost" is not defined further in the statute nor does the Department of Community and Regional Affairs make any attempt to define it in the regulations. Nevertheless, a review of the way in which the term "construction cost" has been used in related sections of the statute is instructive. A.S. 43.18.100 and A.S. 43.18.460 provide for reimbursement to municipalities within the state of Alaska for school construction costs and sports facilities construction costs. In both cases statutory definitions are provided for the term "cost of construction". In both cases, this term is defined specifically to include the cost of site acquisition. Even though the term "total project cost" in A.S. 43.18.010(j) is not defined, it would be very strange if these words which appear a few short pages from the other terms previously defined could be read to embody a legislative intent to narrow the broad definition of construction costs used in the other sections.

MILES S. SCHLOSBERG , INC.

Honorable Joseph Orsini, Senator
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Page Three

In 19 AAC 30.020(9)(D) the Department has attempted to limit the eligibility of the "other facility sponsors" to those situations in which the facility lies outside the boundaries of a municipality. The statute is equally bare of any basis for this interpretation.

A.S. 43.18.010(j) uses the clause "local government or other facility sponsor" three times to refer to the eligible recipient of the funds. The use of the word "or" indicates that both local governments and "other facility sponsors" would be proper recipients of the funds. The statute does not define "other facility sponsors" further or mention any special condition which other facility sponsors have to meet. It certainly does not contain any words which even imply that an "other facility sponsor" within the boundaries of a municipality would not be eligible for aid under this section. In this regard it is significant that sections A.S. 43.18.010(i)(1) and (2) which define the terms "hospital" and "health facility" also make absolutely no mention of the distinction which the Department has imported into its regulations. As the Attorney General's office noted in a legal opinion issued on December 20, 1974, one of the problems contained in the statute was the fact that "it fails to distinguish between the governmental sponsors and the non-governmental sponsors". The opinion was ended with the suggestion that the Department seek legislative amendment. The Department has failed to do so and instead has attempted to amend the statute through the regulations process.

The purpose of permitting administrative agencies to adopt regulations is quite simple. The legislature recognizes that it cannot deal explicitly in every statute with every problem that may occur some time in the future and that it is necessary to explain the general provisions of legislative enactments, to provide procedures for implementing those enactments, and to make more specific the sometimes general language included in the statutes. This statute certainly cannot be broadened to allow the regulation making process to be used for the purpose of changing the scope or intent of a statute to accord with the desires of the executive branch of the government. The administrative regulation in question goes beyond the scope allowed to regulations and represents an attempt to amend a clear requirement of the statute. If the Department of Community

MILES S. SCHLOSBERG , INC.

Honorable Joseph Orsini, Senator
March 14, 1977
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and Regional Affairs believes it desirable to remove the term "total project cost" from A.S. 43.18.010(j), or differentiate between government and non-government sponsors, it should follow the suggestion of the Attorney General's office and request the legislature to amend the statute to eliminate this provision and include the definition of cost used in the federal act. It cannot proceed to do this through the regulations process on its own.

The propriety of the legislature's acting to annul administration regulations which are not in compliance with the intent of the legislature cannot be doubted at this state. As Congressman Elliot Levitas of Georgia noted in remarks to the section of administrative law of the American Bar Association during their 1976 Bicentennial Institute on the Oversight in Review of Agency Decision-Making, "We have identified in my office approximately one hundred thirty different acts of the congress, almost two hundred separate provisions of this type which have been cast heretofore mandating or authorizing some type of congressional review of contemplated or pending executive actions." The Congressman also noted that provisions requiring or permitting the legislative review of administrative regulations are found in the laws of the states of Connecticut, Nebraska, Alaska, Kansas, Virginia, Michigan, and Oregon, as well as such foreign nations as Great Britain, Australia, and New Zealand. Speaking in regard to proposed legislation providing for congressional review of certain administrative regulations, he said, "It seems to me that the basic proposition is the one I started off with. Who has the ultimate responsibility for the laws of this nation, whether they are acts of congress or laws which masquerade as administrative rules. I think the answer under our Constitution is it is the elected congress of the United States." Here, it is the elected representatives of the State of Alaska who have the responsibility to annul regulations which do not conform to the requirements of the statutes on which they are based. As Justice White noted in the case of Buckley vs. Valeo, 424 U.S. 1, "In the light of history and modern reality, the provision of congressional disapproval of agency regulation does not appear to transgress the constitutional design ... "

We would conclude in line with this that it would be both legal and proper to annul 19 AAC 30.020(9)(C) and (D). This regulation is by its own terms contrary to the specific provisions included in the statute upon which it is based.

MILES S. SCHLOSBERG, INC.

Honorable Joseph Orsini, Senator
March 14, 1977
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It is, therefore, invalid and should be annuled by the legislature. Finally, we would like to note that the terms of the statute seem mandatory in requiring that the full amount of the entitlement be paid to the Lake Otis Clinic. This seems not only clear but equitable considering the fact that the sponsors of the project, whether governmental or non-governmental, put up a substantial amount of the financing. Certainly, hospitals would never be built if the sponsors had to operate subject to the possibility that shifts in administration policies subsequent to the commencement of a project could endanger a portion of the financing needed for completing the project. The Lake Otis Clinic project was scrutinized by the administration at the time of its initiation. Substantial amounts of money and effort have been expended in reliance upon the state's obligation to fulfill the terms set out in the statute. The administration should certainly not be able to back out of the project at this late date.

Very truly yours,

MILES S. SCHLOSBERG, INC.



By Mark A. Ertischek

MAE:bmc

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B - JUNEAU 99811

JAY S. HAMMOND, GOVERNOR

March 10, 1977

Honorable Joseph L. Orsini
Chairman, Senate Community & Regional
Affairs Committee
Pouch V
Juneau, Alaska 99811

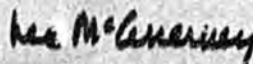
Re: State Aid to Local Government Municipal
Revenue Sharing for Hospital Construction
Matching Funds

Dear Senator Orsini:

Attached are copies of each annual report since 1972 with a summary sheet showing the hospital construction matching funds paid to applicants. Our records show that Lake Otis Clinic, Inc. is the only nonmunicipal sponsor to ever receive hospital construction matching funds since the enactment of the legislation in 1972.

Also attached is the correspondence pertaining to the denial of FY '75 redirected Revenue Sharing grant in the amount \$100,000 for Lake Otis Hospital. You may be interested in reading the Attorney General's opinion dated January 27, 1976 which could relate the question whether the legislative intent written in the FY '75 Free Conference Committee Budget Report after adjournment could be construed to be legally binding.

Sincerely,



Lee McAnerney
Commissioner

Attachments

LMcA: ES/pc

MEMORANDUM

State of Alaska

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Lee McAorney
Commissioner

DATE: July 8, 1975

FILE NO:

TELEPHONE NO:

FROM: Jack Chenoweth
Director

SUBJECT:

Yesterday, in your absence, I took a call from Dr. Michael Beirne concerning the denial of \$100,000 of redirected FY 75 shared revenue for the Lake Otis Hospital. Dr. Beirne is seeking to reverse the decision, as expeditiously as possible. He contends that the language of the statement of intent is sufficient to override the statute and Department-adopted regulations, the question of eligibility being eliminated by the legislative finding. He also thinks AS 37.25 inapplicable to the Lake Otis Hospital for the Legislature only determined that the amount "shall be considered applicable" to FY 74.

I explained that the matter had been reviewed with you and with Kent Dawson of Budget and Management.

Beirne will probably be in Juneau today and will likely contact you and officials of the Department of Administration to solicit review by the Attorney General.

JBC: ds

cc: Andy Warwick, Dept. of Administration
Avrum Gross, Dept. of Law