

1082 HRES SUNSET, GUIDE BOARD

For State Use Only

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME

Hide 35096 (Seal Number) JUNEAU (Place of Sealing) 5/14/79 (Date of Sealing)

Skull 35097 CERTIFICATE NUMBER 40658

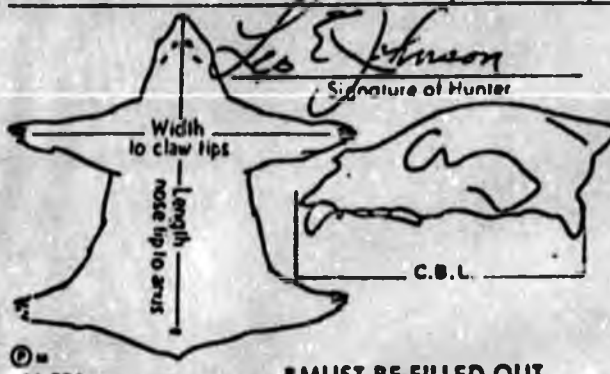
SPECIES	*SEX	SEX IDENTIFIERS
Brown-Grizzly <u>X</u>	Male _____	Penis Sheath _____
Polar _____	Female _____	Vaginal Orifice _____
	Unknown <u>X</u>	Teeth: L _____ M _____ S _____
		None _____
SKULL	HIDE	SPECIMENS COLLECTED
Length <u>13</u> in.	Length <u>4</u> ft. <u>11</u> in.	Tooth <u>LOWER LEFT</u>
Width <u>7</u> in.	Width <u>6</u> ft. <u>11</u> in.	Skull _____
Total <u>20</u> in.	Total <u>11</u> ft. <u>10</u> in.	Repro. _____
C.B.L. <u>11 1/4</u> in.	Rubbed <u>NONE</u>	Com. Age _____
	Unrubbed _____	

TRANSPORTATION USED	
Aircraft _____	Days Hunted <u>10</u> *Date of Kill <u>5/10/79</u>
Off-road Vehicle _____	*Location of Kill: Unit <u>4</u> Sub Unit _____
Boat <u>X</u>	Mt. Range and Drainage <u>HEAD TENNREE</u>
Snowmachine _____	Specific Location <u>INLET ON CHILHAMOE</u>
Dog Team _____	
Horse _____	
Other _____	

Name of Hunter LEO E. JOHNSON
17508 184TH AVENUE WOODSHVILLE WASH.
(Address) (City) (State)

License No.	Tag No.	Guided Hunt*
Resident _____	<u>79AAA</u>	Yes <u>X</u> No _____
Non-Resident <u>029416</u>	<u>347</u>	Guides Name <u>J. ERIKSON</u>

Signature of Hunter Leo E. Johnson Seal or Bvt M. Fox FWP



Remarks HUNTER SAYS IT WAS DEFINITELY MALE

Code _____

11-78A

*MUST BE FILLED OUT

Outdoors

Controversy looms for Southeast guides

By CRAIG MEDRED
Empire Staff Reporter

Like brown bears fighting to the death to protect their territory, Southeast Alaska guides appear headed for a bitter struggle with the chairman of the state's Guide Licensing and Control Board — himself a Southeast guide.

A board decision granting chairman Marcus Jensen of Juneau exclusive guiding rights on the outer coast of Chichagof Island, about 80 miles west of here, has other guides hopping mad.

"We're going to go all the way to the Supreme Court on it if we have to (to take the exclusive privilege away from Jensen)," said Kari Lane, one of the most highly respected guides in Southeast.

"Historically, we've all hunted the outside of Chichagof. I'm going to hunt it this year, regardless...." the Juneau-based guide said. "It's a real rotten thing to do."

"I think it was the crummiest, lousiest thing I ever saw," said John Erikson, a Tok-based guide who hunts Southeast brown bears in the spring.

By granting Jensen an exclusive guiding area, the board effectively closed the outer coast of Chichagof to 17 other Southeast brown bear guides and raised a host of questions as to board conduct.

"In the past, the board has always accommodated the guides," said board member Clark Engle, the only board member to vote against Jensen's special area. "...A majority of the guides in Southeast didn't want it."

"I don't know (why the board did it). I've tried to analyze it myself."

"There's an awful lot of people who are unhappy," he said, including the state's largest guide organization.

An "abuse of power?"

"This was, in the eyes of the guiding industry, a flagrant abuse of power by the chairman to serve his own personal financial interests," the Alaska Professional Hunters Association, Inc., charged in a letter to state Rep. Al Osterback, D-Sand Point, co-chairman of the House Resources Committee.

"We would like to point out that the APHA has no objection to Mr. Jensen having an exclusive guide area, but it was the manner in which this was done."

"The area awarded was the total outside coast of Chichagof Island. This was done over the objections of all Southeastern guides, who testified in person or by letter, who had joint use of this area. Their right to hunt this area has been taken away and given to one man without the consideration of the other 20 guides," the letter said.

The vote granting Jensen the exclusive area was taken in a public meeting in Fairbanks after considerable discussion, also in a public meeting, about what the board should do.

The action was reaffirmed on a 3-1 vote during a conference call among board members Thursday.

No earlier action "probably a mistake"

Charles Keim, a member of the board, a guide, a former journalism professor at the University of Alaska and a respected Alaska outdoors writer, defends the board's action, saying there may be too many guides now working in Southeast.

Keim contends the board "probably made a mistake" years ago when it combined all Southeast hunting districts into one exclusive guiding area and gave all guides the right to roam that area.

"Jensen did not go along with that. We probably made a mistake," Keim said. "It might be a good idea to re-examine the whole guiding system in Southeast Alaska."

"What we did for Jensen will probably have to be done for the rest of the guides," Keim said.

Too many guides and too few bears

He suggested restricting all to separate, small portions of Southeast which would support limited hunting. He also suggested eliminating some guides — comparing the bear-guide problem to the salmon-fishermen crisis which sparked limited entry.

It was for just that reason Jensen says he pushed for his exclusive guiding area, something the guide board refused four times before. "I have been very conservative in the number of contracts I take

because of the public hunting pressure in the area...." Jensen said in a letter to Osterback.

"No guide in Southeast Alaska could object to my area if he would agree to an exclusive area for himself which would automatically reduce his number of contracts from eight to 10, to three or four at most. This is really what the controversy is all about. There has been too much guiding pressure on the 'inside.' Too many guides still have the attitude that they will shoot the last cub bear for a dollar," Jensen said.

Alaska Department of Fish and Game records would tend to support that contention.

"Quality" of the hunt suffers

Those records show guided hunters shooting increasing numbers of bears under 6 feet from the nose to the tail. A 6-foot brown bear is considered a "respectable" trophy. State law requires all non-resident hunters to hire a guide when hunting brown bear.

Lane, one of the few Southeast guides whose hunters did not take a bear under 6 feet last year, says the quality of guided bear hunting here has definitely been deteriorating.

Lane points no fingers, but Jensen has singled out Erikson. Erikson says he needs guiding to survive, but "to Jensen, it's a game." Jensen works as a lobbyist when he isn't guiding.

Hunters guided by Erikson, according to Fish and Game records, last spring took brown bears 3 feet 8 inches, 4 feet 11 inches and 5 feet 1 inch, in addition to three bears over 6 feet.

A bear is a bear is a bear

Erikson, who said he guided eight hunters last spring, pointed to a success rate of 75 percent, not counting one missed bear.

"I have no trouble finding bear," he said. "Maybe somebody wants size; somebody else wants quality."

"If you wanted to kill a big brown bear, you wouldn't go Southeast anyway. The whole thing of it is, if the hunter's happy, that's the whole thing."

"Like I said, I don't give a damn about the bear size," Erikson said.

He defends the small bears by adding a silted hide can shrink 2 feet. A 4-foot hide would probably come from a bear about 6 feet, he said.

Lane, one of the main advocates of "quality hunting" over the years, said a 9-foot bear taken on the first day of a 14-day hunt can "shrink over 8 inches."

"There's never been a hide shrank 2 feet," he countered.

More small bears taken in 1979

Still, Erikson said, "I don't think there's too many bears being taken. I see lot of bear."

To that, Fish and Game biologists have mixed reactions. They say bear numbers appear to be healthy, although nowhere near as high as the mid-1970s, but they note the population does appear to be heavy with young bears.

A comparison between 1975 and 1979, when the brown bear season was drastically shortened, does show a marked difference in the bears taken. In 1975, 83 percent of the bears taken on guided hunts were over 6 feet. They had an average age of 8.3 years.

In contrast, only about 49 percent of the bears taken by guided hunters in 1979 were over 6 feet. Their average age was 7.1 years. Remove Lane — whose hunters took six bears, all over six feet — from the sample and 50 percent of the bears taken on guided hunts were under 6 feet.

That, Keim says, raises serious questions as to the quality of a Southeast hunt.

Is a 4-foot brown bear a quality hunt?

"I'm absolutely, totally opposed to an assembly-line use of our resource. It's totally demeaning to the hunt," Keim said.

"I think a thorough investigation into this matter will probably disclose some guides are more interested in the money than the resource," he said.

Keim contends something has to be done. "We simply can't have a true wilderness experience if guides are going to have their hunters take home 3-foot-8-inch bears," he said. Lane said he would like to see the number of Southeast guides

reduced to five or six. "That's not possible," he added. Limited entry is the perfect parallel, "but they won't do it," Lane said.

He said there is too much political pressure. "There was nobody in favor of it (Jensen's exclusive guide area), because this joint-use thing was working as good as can be expected," Erikson said.

Residents hunters shoot small bears, too

Half the problem, he added, is an increase in resident hunters. "You're not going to stop the residents," Erikson said. "You're overpopulated with government employees, and the first thing they want to do when they come to Alaska is shoot a bear."

Fish and Game figures show resident hunters, who are not required to have a guide, took 18 brown bears last year, of which five — or about 28 percent — were under 6 feet. Guided hunters in 1979 took 34 bears, of which 14 — or about 41 percent — were under 6 feet.

In fact, figures indicate resident hunters appear to have been getting more selective, while guides have been getting less. In 1975, when resident hunters took 49 bears and guided hunters 41, 83 per-

cent of the bears shot by residents were under 6 feet.

"Weed out the bandits"

"As chairman of the Guide Licensing and Control board, and as an Alaska resident for over 50 years, and as a registered guide for some 35 years, I have been criticized by some guides for my strong stand against guides who want to rape the game resources," Jensen said in the letter to Osterback.

"I would hope that the House Resource Committee appreciates what most of our board members are trying to do for the state of Alaska, and that is weed out the 'bandit' who are raping our resource and develop exclusive guide areas for the protection of the resource and improved game management."

As it gets harder and harder to find a big bear, though, not even Jensen is immune to the pressure from guided hunters who want a brown bear no matter what size.

A hunter guided by Jensen last year took a 9-foot-6-inch bear, and another hunter, guided by an assistant guide working for Jensen, took a 4-foot-7-inch bear.

"The older bears don't come to the beach anymore," Erikson said. "A bear is a bear whether he's an 8-foot, a 6-foot or a 10-foot."

Juneau Empire Friday 4/25/80

(For State Use Only)

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME

Hide 48621 TENAKEE 5-19-79
(Seal Numbers) (Place of Sealing) (Date of Sealing)

Skull 48622 CERTIFICATE NUMBER 36104

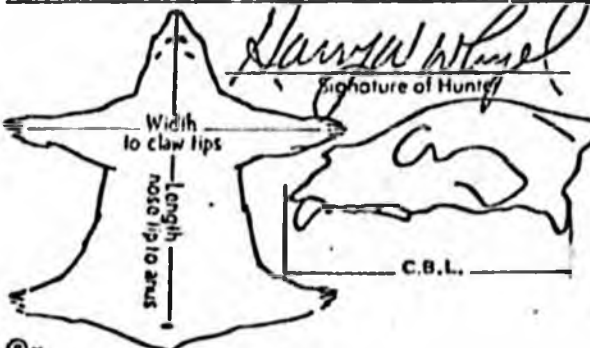
SPECIES	*SEX	SEX IDENTIFIERS
Brown-Grizzly <u>X</u>	Male <u>X</u>	Penis Sheath <u>X</u>
Polar _____	Female _____	Vaginal Orifice _____
	Unknown _____	Teats: L _____ M _____ S _____
		None _____
SKULL	HIDE	SPECIMENS COLLECTED
Length <u>12 7/8</u> in.	Length <u>5</u> ft. <u>1</u> in.	Tooth <u>X</u>
Width <u>7</u> in.	Width <u>6</u> ft. <u>3</u> in.	Skull _____
Total _____ in.	Total _____ ft. _____ in.	Repro. _____
C.B.L. <u>11 1/8</u> in.	Rubbed _____	Cem. Age _____
	Unrubbed <u>X</u>	

TRANSPORTATION USED	Days Hunted	*Date of Kill
Aircraft _____	<u>5</u>	<u>5-17-79</u>
Off-road Vehicle _____		
Boat <u>X</u>	*Location of Kill: Un. <u>4</u>	Sub Unit _____
Snowmachine _____	Mr. Range and Drainage <u>CHIGNESS</u>	
Dog Team _____	Specific Location <u>TENAKEE TULET</u>	
Horse _____	<u>HEAD OF TULET</u>	
Other _____		

Name of Hunter HARRY W. WHYEL
Box 805 PINEDALE WY 82941
(Address) (City) (State)

License No.	Tag No.	Guided Hunt
Resident _____		Yes <u>X</u> No _____
Non-Resident <u>068170</u>	<u>134</u>	Guides Name <u>ERICKSON</u>

Signature of Hunter Harry W. Whyel (Sealed by) Richard Graham



Remarks _____

Code _____

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*MUST BE FILLED OUT

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

MEMORANDUM

Department of Law
Juneau, Alaska

State of Alaska

APR 25 1980

AM

PM

7,8,9,10,11,12,1,2,3,4,5,6

APR 25, 1980

TO Tom Kooster
Assistant Attorney General
Juneau

TELEPHONE NO 276-3550

FROM AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT Petition of Marcus Jensen
For Exclusive Guide Area
In Southeast Alaska

By:
Sarah Elizabeth Fuskner
Assistant Attorney General

At the March 1980 Guide Licensing and Control Board meeting in Fairbanks, the board heard and considered a "petition" from Chairman Mark Jensen requesting that he be granted exclusive use of a portion of Chicagoof Island, in Southeast Alaska. Mr. Jensen did not participate as a board member during the consideration of his petition. The basis for his bringing a petition was 12 AAC 38.056 "Changes to Guiding Area Permit" which authorizes the board to hear petitions for changes that will affect a guiding area and requires that if an area is held in joint use, each holder of the permit for the guiding area must be furnished a copy of the petition and notified of the date and place where he can present testimony on the petition. There are no other regulations that set standards by which a board will decide whether to grant or deny petitions.

The board has a procedure for granting exclusive guide areas. This is set out in regulations 12 AAC 38.051 - .058. In essence, the regulatory scheme provides that the board set a deadline for applications for a given game management unit, it receives applications that indicate a guide's desired exclusive guide area, including a map of proposed geographic boundaries, and the board will in its discretion issue a permit if a guide has demonstrated his "use, occupancy or financial investment" in the area for the requisite number of years as provided in 12 AAC 38.053(d). The board has construed this to mean if a guide can substantiate his use of an area by means of statements of financial remuneration for two years he is entitled to a temporary area.

In considering Mark Jensen's "petition", the board did not follow the normal procedure for granting exclusive guide areas as described above. The board had not set a deadline for applications from all Southeast guides for exclusive guide areas. In fact, when the board initially decided to initiate a program of exclusive guiding areas in

1975-76, the board at the urging of the approximately 20 active guides in Southeast, decided to leave all of game management units 1 - 4 as one large joint use area, so all guides would have an opportunity to hunt the area rather than attempt to carve it into small exclusive guide areas and assign them as has been done in the interior. One reason for this difference is the manner of hunting in Southeast Alaska, primarily by using boats, mooring them in small bays and inlets.

The board's administrative arm, the Guide Investigation Office at Department of Public Safety, Anchorage, complied with the provisions of 12 AAC 38.056 by notifying other Southeast guides that Mr. Jensen intended to seek an exclusive area in the area already assigned to all the guides in joint use. Virtually all the Southeast guides objected to granting Mark Jensen an area. To my knowledge the board has never in the past used the petition mechanism as a vehicle for granting exclusive guide areas, nor ever carved out an exclusive guiding area within an area already assigned in joint use.

It is my opinion that the board's action in granting Mark Jensen an exclusive guide area in unit 4, when the board had not solicited applications from all Southeast guides, was not consistent with statutory or constitutional standards for the following reasons:

1. Granting Mark Jensen an exclusive guide area denied other Southeast guides the Constitutional right of equal protection, since other Southeast guides are similarly situated in joint use of the entire Southeast panhandle, and were not provided an equal opportunity to come before the board with their own petitions or applications for exclusive guiding areas.
2. The board's action violated principles of due process notice, in that the board had not taken action to set a deadline for applications from all guides in joint use for them to seek exclusive guide areas, and therefore had not given adequate notice to all guides that they could submit similar petitions or applications for an exclusive guide area.
3. The board's action does not comply with AS 08.54.040 which allows the board to "establish a quota of license operating guides who may operate within designated geographical units or subunits of the state and provide for equitable and reasonable procedure

Tom Koester
Assistant Attorney General

April 25, 1980

-3-

for limiting the number of guides to that quota; preference shall be given to qualified, available and willing licensed guides who reside within the designated unit or subunit." The board had not established a procedure for limiting the number of guides to the quota under the mechanism of the petition procedure. The petition procedure in essence singled out one guide for consideration for an exclusive guide area without considering other guides who may wish to have exclusive guiding areas in Southeast.

To my knowledge, the board has never granted an exclusive guide area within a joint use area by means of a petition. It had been my advice to the board that such action should not be taken until sufficient criteria are established for this procedure by regulation. The board had rejected the petition initially during the board meeting, but reconsidered it late in the afternoon on Friday after I had had to leave the meeting in order to attend to another matter in Anchorage. At my request the board convened a conference call on April 24 to consider a telegram from F. W. Ingelous, an affected guide, who objected to the board's action and requested reconsideration; I again reiterated that it was my opinion that the board's action was not legally defensible, was not based on sufficient standards for handling petitions, and should be rescinded.

In retrospect, I think that probably where a petition such as the one Mr. Jensen brought before the board is contested by other affected guides, the matter should be heard as a formal APA hearing, with a hearing officer appointed, rather than treated as day to day business of the board and not as a formal hearing. You may wish to consult with Bruce Botelho, with whom I have already spoken about this problem. Thank you for your assistance.

SEP:ln

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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

April 29, 1980

465-3600

Guide Licensing and Control Board
Department of Commerce and
Economic Development
Pouch D
Juneau, Alaska 99811



Gentlemen:

At the April 1980 Guide Board meeting in Fairbanks, the board granted a petition from Chairman Mark Jensen requesting he be granted exclusive use of a portion of Chicagof Island. At the time the board action occurred, Assistant Attorney General Liza Fussner advised you that the board's action was illegal. The board nonetheless granted the petition.

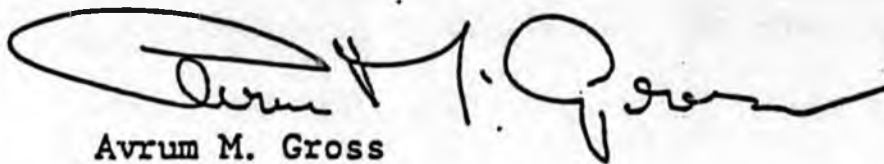
I have enclosed a copy of a memorandum from Ms. Fussner to Tom Koester, head of the Resources Division in my office. Because of the sensitive nature of this action involving as it does the Chairman of the Guide Board, I reviewed the matter personally and I believe that Ms. Fussner's advice to you is sound. The action of the board cannot be supported by law.

I have been advised that litigation will be commenced immediately to contest the board's action. Since we have already advised you the action is illegal, we will be forced to concede that illegality in court. Moreover, since we have advised you of the impropriety of your action and the board has nonetheless taken the action, there is a very real possibility that individual members of the board may be liable for damages, court costs, and possible attorney fees of any successful litigant.

I realize this is a difficult situation, but it is only going to get more difficult if nothing is done promptly. I strongly urge the board to immediately convene, by phone if necessary, to reconsider its action and rescind the decision. Full notice should be given to Mr. Jensen who will be free to contest the matter if he so chooses.

I would be happy to discuss this with you by phone or in person at your earliest convenience. Obviously, it is not pleasant for me to suggest this type of action to a state board, but my responsibilities under the laws of the state simply afford me no room for latitude.

Yours very truly,

A handwritten signature in black ink, appearing to read "Avrum M. Gross". The signature is fluid and cursive, with a large initial "A" and "G".

Avrum M. Gross
Attorney General

AMG:chw

Enclosure

cc: Bill Bellingar
% Liza Fussner

PRESS RELEASE

Fill

Representative Osterback, Chairman of the House Resources Committee has been requested by the Alaska Professional Hunters Assn. Inc. to investigate actions of the Guide Licensing and Control Board which gives an exclusive guide area to Mr. Marcus Jensen, Chairman of the Board. The letter was signed by Mr. Phil Driver, President of the Hunter's Assn. This letter further alleges that the action (giving Jensen an exclusive guide area) could bring about unfavorable reactions from the reviewing committee which might jeopardize a basically sound board and the concept of exclusive guide areas developed over the last several years. The Alaska Professional Hunters Assn., Inc. further questions -- "have the rights of other joint permit holders in Game Management Unit Four been safe guarded and considered during deliberation on the Jensen decision"?

file

Representative Osterback today further stated, that the entire controversy which has surrounded the Guide Licensing and Control Board causes a serious credibility gap. I, personally, do not want to be involved with this controversy. However, since the issue of exclusive guide areas came to the attention of the Legislature by Senator Frank Ferguson in 1977 much controversy has existed.

I have by letter today, requested the Attorney General to investigate the complaints I have received from guides insisting that the action was unwarranted, unethical and perhaps illegal.

"Personally", Osterback further contended, "I do not want to be involved, but since 1977 nothing has emerged but problems, accusations and serious credibility

has shaded the Guide Licensing and Control Board.

"I'm personally sick and tired of it and plan on getting to the root problem of this entire controversy before I leave Juneau this session."



Alaska

Professional Hunters Association, Inc.

P. O. BOX 4-1832
ANCHORAGE, ALASKA 99509

Phone (907) 243-3977

April 28, 1980

OFFICERS

PHIL DRIVER
President

KIRK GAY
Vice President

VERNON HUMBLE
Secretary/Treasurer

The Honorable Jay S. Hammond
Governor of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Hammond:

BOARD OF DIRECTORS

LYNN CASTLE
PHIL DRIVER
STAN FROST
KIRK GAY
HANK HANKARD
VERNON HUMBLE

A certain decision during the last meeting of the Guide Licensing and Control Board has caused a not insignificant consternation among the active licensed game guides of our industry. On a 3-1 vote of the four Board members present, an exclusive guide area was permitted to Mr. Marcus Jensen, Chairman of this board.

EXECUTIVE SECRETARY

PAMELA R WILSON

This questionable decision comes at a time when this very Board and the policies adopted to administer the professional game guiding industry are being reviewed by this legislature. One of our concerns is that this action could bring about unfavorable reaction from the reviewing committee, which might jeopardize a basically sound Board and the concept of exclusive guide areas developed over the last several years. To negate the compromise, made by some 253 permit holders, who gave rather than gained, in order to allow a maximum number of licensed guides to participate in the limited game resources of Alaska would be disastrous. The Board and the exclusive or joint-use guiding areas has and is working to protect one of Alaska's most significant natural renewable resources, and should be continued.

Equally important, have the rights of other joint permit holders in Game Management Unit Four been safe guarded and considered during deliberation on the Jensen decision?

A closer look and re-evaluation would be in order. Of course, all interested parties should be allowed to participate so the facts can be aired and evaluated.

Sincerely,

ALASKA PROFESSIONAL HUNTERS ASSOCIATION, INC.

Phil Driver
President

PD/sgn

TELEGRAM

ALASCOM, INC.
PHONE: 581-8442
JUNEAU, AK 99801

02217 NL ANCHORAGE AK 50 05-02 400P ADT
PMS REP ALVIN OSTER BACK
JUNEAU 0272

RESPECTFULLY REQUEST THAT THE GUIDE LAW, EXCLUSIVE GUIDE AREAS,
AND GUIDE BOARD BE CONTINUED. IF IT IS NECESSARY TO REPLACE ONE
OR ALL GUIDE BOARD MEMBERS, PLEASE DO SO, BUT DO NOT ALLOW THE
GUIDE BOARD CONCEPT TO BE ELIMINATED.

DARRELL FARMEN SRA BOX 1592 ANCHORAGE 99507

780 MAY 2 9 39 PM '83

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

April 30, 1980

The Honorable Alvin Osterback
Chairman, House Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

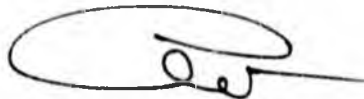
Re: Guide Licensing and Control Board

Dear Al:

Thank you for your letter of April 28th. Without commenting in detail on your letter, I am enclosing a copy of a letter sent yesterday to all the members of the Guide Board. It addresses itself to the concerns you raised in your letter.

If you would like to discuss this further, please don't hesitate to contact me.

Yours very truly,



Avrum M. Gross
Attorney General

AMG:chw

Enclosure

April 29, 1980

465-3600

Guide Licensing and Control Board
Department of Commerce and
Economic Development
Pouch D
Juneau, Alaska 99811

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Guide Licensing and Control Board
April 29, 1980
Page 2

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Yours very truly,

Avrum M. Gross
Attorney General

AMG:chw

Enclosure

cc: Bill Bellingar
% Liza Fussner