

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

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State of Alaska
DEPARTMENT OF LAW
Box 2170
Juneau

1961 Opinions of the
Attorney General, No. 24

December 7, 1961

Dr. Theo J. Norby
Commissioner of Education
Department of Education
Alaska Office Building
Juneau, Alaska

Dear Dr. Norby:

You have asked us:

"According to Sec. 1.02, Chapter 146, SLA 1961 (relating to organized and unorganized boroughs), the Legislature may establish service areas in unorganized boroughs.

1. Under this section of the law, can the Legislature establish school service areas comparable in structure to an incorporated school district: (ref. Sec. 37-3-11, ACLA, as amended by Chapter 61, SLA 1949.)"

Brief Answer: No. Under this law the Legislature would be unable to create school service areas comparable to the present incorporated school district since it could not grant the same powers of fiscal autonomy to such a service-area. Nor could the Legislature accomplish this fiscal autonomy by authorizing school service areas to submit their budgets to the people by referendum since this would violate Section 7, Article XI of the Alaska Constitution.

2. Could the Legislature establish such school service areas by a general law, or would a separate act be required for each such service area?"

Brief Answer: The Legislature could establish such service areas in the unorganized borough by general law subject to the restrictive limitations of Section 5, Article XI of the Alaska Constitution.

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Commissioner of Education
Juneau, Alaska

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I.

The Legislature could not grant to a school service area the same fiscal powers which it has granted to incorporated school districts. The present incorporated school district has powers of local taxation and independent fiscal control. It is, however, a little used form of school organization since there is only one in the State, at Angoon. This form of organization will expire July 1, 1963 at the end of the transitional period provided by Sec. 1.03, Ch. 146, SLA 1961. The incorporated school district should not be confused with the widely used independent school district which lacks fiscal independence since any city of the first class within such a district has the power to review and adjust its budget for the district.

The service area in the unorganized borough would be created by the Legislature under the authority granted by Section 6, Article X of the State Constitution, and all taxing and fiscal powers would be vested in the Legislature since the Legislature has the same powers as the assembly in an organized borough. In considering the matter of fiscal independence for service areas the following constitutional provisions are pertinent.

Section 1, Article X:

"Section 1. Purpose and construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units." (Emphasis added.)

Section 2, Article X:

"Section 2. Local government powers. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only." (Emphasis added.)

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Commissioner of Education
Juneau, Alaska

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Section 5, Article X:

"Section 5. Service areas. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services."

These provisions make it clear that the following three courses of action are constitutional.

1. The Legislature may delegate taxing powers only to organized boroughs and cities.
2. A borough assembly may authorize the levy of taxes in service areas within its jurisdiction.
3. The Legislature, acting as borough assembly of the unorganized borough may authorize the levy of taxes in service areas within the unorganized borough.

There is a critical issue in the difference between the two words "delegate" and "authorize." If these two sections are to be interpreted to obviate direct conflict between them the word "authorize" must be interpreted as allowing a lesser relinquishment of the taxing power than the word "delegate." In order to do this, these words as used in the above sections of the Constitution should be defined as follows:

1. "Delegate" - A grant of the power to levy and collect taxes subject only to general limitations.
2. "Authorize" - The approval of a specific millage rate to raise a determined sum, and subject to the continuing approval of the borough assembly.

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If the Legislature, exercising the powers of a borough assembly, attempted to grant to a school service area the same powers of taxation as are now exercised by an incorporated school district it would be delegating the taxing power in violation of Section 2, Article X of the Alaska Constitution. It may only authorize a specific level of taxation within the school service area sufficient to meet the current needs of the area for school services, and subject to its continuing approval. Any other construction of these constitutional provisions would deprive Section 2, Article X of all effect and the Legislature could create as many overlapping taxing jurisdictions as it should see fit.

This result is in keeping with the intent of the Constitutional Convention where the matter of fiscal independence for school districts was fully discussed. It is interesting to note that a motion to amend Section 2, Article X of the Alaska Constitution to permit the delegation of the taxing power to school districts was defeated by a vote of 43 to 9. This is a clear expression that the Convention did not intend to authorize fiscal independence for local school districts.

If the grant of fiscal independence were attempted by authorizing the voters in each school service area to pass on the budget proposals of the local school board by referendum it would still be unconstitutional in violation of Section 7, Article XI of the Constitution, which provides:

"Section 7. Restrictions. The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety."

This prohibition would apply to any . . . of local government in Alaska as well as the State itself since such unit of local government would be exercising a part of the

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Commissioner of Education
Juneau, Alaska

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legislative powers of the State. See Kansas City v. McGee, 364 Mo. 896, 269 S.W.2d 662 (1954), In re Referendum Petition, 182 Okla. 419, 77 P.2d 1152 (1938). In the case of Kansas City v. McGee, supra, the court held that a constitutional prohibition similar to our own would bar a municipality from making appropriations by initiative. In that opinion the court stated:

"We see no merit in defendants' argument that Sec. 51 [of the Missouri Constitution] has no application to municipal ordinances. In the case of City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539, loc. cit. 545 (7), in speaking of constitutional provisions, the court en banc said, 'These same governmental principles and constitutional provisions apply also to municipalities because their legislative bodies exercise part of the legislative power of the state.' Legislative acts or special charters may authorize enactment of city ordinances by initiative. However, such authorization carries with it constitutional restrictions imposed on the authority granted."

In summary, we must conclude that the Legislature cannot grant to a school service area that type of fiscal control which is presently enjoyed by the soon-to-expire incorporated school district.

II.

As stated in the brief answer, the Legislature could create school service areas in the unorganized borough by general legislation. This is authorized by Section 1.02, Ch. 146, SIA 1961, which provides:

"Sec. 1.02. Service Areas. Allowing for maximum local participation, the legislature, under the powers of a borough assembly, may establish, alter, or abolish service areas within the unorganized borough to provide special services, which may include but are not limited to, schools, utilities, land use regulation, and fire

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protection. A new service area shall not be established if the new service can be provided by an existing service area, by incorporation as a city, or annexation to a city."

This section carries out the intent of Section 6, Article X, Alaska Constitution, which provides:

"Section 6. Unorganized boroughs.
The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough. (Emphasis added.)

The underlined language indicates that the Legislature, when acting as borough assembly for the unorganized borough, will be limited in the same manner as the assembly of an organized borough. It will thus be limited by Section 5, Article X, Alaska Constitution, which provides in part:

". . . A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city . . ."

It should be noted that school service areas would not be a widely applicable means of school organization for Alaska in view of the limitation that such service areas shall not be established if the service can be provided by an existing service area, by incorporation as a city or by annexation to a city. It is difficult to visualize many situations in Alaska where school services could not be furnished by incorporation of a city or annexation to a city, except in those areas where the State already operates rural schools.

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III.

The following types of school organization would meet the requirements of the Alaska Constitution:

(1) City school districts. Since cities are a constitutional form of local government, cities may continue to operate their own school systems. See Sec. 2, Art. X, Alaska Constitution. A city may be empowered to extend its boundaries for a special purpose and, if thus empowered, the cities could take in the areas outside cities which are presently administered as a part of the independent school districts.

The school board of a city school district has final policy-making powers on educational matters within state minimum standards. However, final approval of the school budget and the taxing power are vested in the city council.

(2) Borough school districts. The borough is a constitutional form of local government. See Sec. 2, Art. X, Alaska Constitution. School organization within the borough is provided by Sec. 3.33, Ch. 146, SLA 1961, as follows:

"a. The first and second class borough shall establish, maintain, and operate a system of public schools on an areawide basis, and shall do so in the manner provided by law for city school districts, except that the school board shall be apportioned the same as the assembly."

Since it will operate in the same manner as provided for city schools, the borough school board has final educational policy-making powers within state minimum standards, but the final approval of the school budget and the taxing power are vested in the borough assembly.

(3) Service area schools in the unorganized borough. In areas where school services cannot be furnished by an existing service area or by incorporation as a city or annexation to a city, the Legislature may provide for service areas to carry out school functions. These will be created under the authority of Sections 5 and 6 of

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of Article X of the Alaska Constitution and Section 1.02,
Ch. 146, SLA 1961.

The Legislature may provide for school boards in these areas which will have final educational policy-making powers within state minimum standards. The Legislature may authorize a specific level of taxation to finance this school service.

(4) State operated schools. The Department of Education has historically operated schools in areas where the people cannot support their own school system. These schools may continue to function under the executive authority of Article III of the Alaska Constitution. These state operated schools have a purely advisory school board as provided by Ch. 98, SLA 1960. Full fiscal control of these schools is in the Department of Education.

We hope that this opinion will aid you in understanding the constitutional standards and limitations governing the use of service areas for school purposes. Please let us know if we may be of further assistance.

Yours very truly,

RALPH E. MOODY
ATTORNEY GENERAL

By
James N. Wanamaker
Assistant Attorney General

JNW:gb;jr

cc: The Honorable William A. Egan
Governor of Alaska
State Capitol
Juneau, Alaska

The Honorable Floyd Guertin
Commissioner of Administration
Alaska Office Building
Juneau, Alaska

ALASKA STATE LEGISLATURE

TWENTY FIFTH Legislature FIRST Session

SENATE BILL NO. 350

By FERGUSON

"An Act establishing a Regional Service Authorities; and providing for an effective date."

Introduced in the Senate 3/10/81

HISTORY IN THE SENATE

| | | | | | | | | | | | | |
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| 19 | 81 | Read first time and referred to Committee on | | | | | | | | | | |
| 3 | 31 | COMMUNITY & REGIONAL AFFAIRS and FINANCE Reported back with recommendation that | | | | | | | | | | |
| | | Read second time and | | | | | | | | | | |
| | | Read third time and | | | | | | | | | | |
| | | <table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table> | PASS | Effective Date | Yeas | Yeas | Nays | Nays | Absent | Absent | Excused | Excused |
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| | | Reported correctly engrossed | | | | | | | | | | |
| | | Signed by President | | | | | | | | | | |
| | | Sent to House | | | | | | | | | | |

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

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| 19 | | Read first time and referred to Committee on | | | | | | | | | | |
| | | Reported back with recommendation that | | | | | | | | | | |
| | | Read second time and | | | | | | | | | | |
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| | | Reported correctly engrossed | | | | | | | | | | |
| | | Signed by Speaker | | | | | | | | | | |
| | | Returned to Senate | | | | | | | | | | |

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

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| 19 | | Received from House |
| | | To enrolling |
| | | Reported correctly enrolled |
| | | Sent to Governor |
| | | by Governor |
| | | Filed with Lt. Governor |
| | | Chapter No. |

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 2, 1981

SUBJECT: Review of SB 350: Establishing Regional
Service Authorities (Work Order No. 12-1943)

TO: Senator Donald E. Gilman, Chairman
Community and Regional Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel *AB*

You have asked for a review of SB 350, particularly in view of sections 1 and 2 of Article X of the state constitution and with respect to whether this bill is a proper delegation of legislative power.

SB 350 allows a Native association currently authorized to form a regional electrical authority (AS 18.57) and a regional housing authority (AS 18.55.995, et seq.) to form a regional services authority which would provide services within the operating area of the association, but which would not exercise governmental functions.

The intent of the bill is to create a body which is not a local government to avoid the requirement contained in section 2 of Article X:

LOCAL GOVERNMENT POWERS. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Since all of the services itemized in this bill may be provided by private persons and do not involve the powers to regulate, tax, or otherwise act in a governmental capacity, it would appear that a grant of power to provide these services to an authority is constitutional under this section. In addition, an authority with no police power, is not a "local government unit" for purposes of section 1 of Article X.

SB 350 provides that a regional services authority may exercise its powers only after the Native association has given it authority to function. Legislation which is contingent upon action by private persons has been upheld. Curran v. Wallace, 306 U.S. 1, L.Ed 441 (1939 - allowing standards for tobacco and inspection of tobacco to become effective only after approval by tobacco growers), United States v. Rock Royal Cooperative, Inc., 307 U.S. 533, 83 L.Ed. 1447, (1939 - making price fixing of milk contingent upon approval of milk producers). The rationale for upholding such a contingency provision has been that it does not involve any delegation of legislative authority, only a restriction placed upon the effect of regulation by the legislature itself. However, when a private person or group is involved in formulating regulations which can be imposed upon others, the court is less likely to uphold the delegation of power. Carter v. Carter Coal Co., 298 U.S. 238 (1936). Since neither a Native association nor a regional services authority formed by the association under SB 350 is given the authority to regulate or otherwise exercise police powers, the bill does not appear to be an improper delegation of legislative power.

SB 350 does contain some provisions which need to be clarified or corrected. The provision in sec. 18.53.010(d) relating to transfer from municipalities needs to be rewritten after policy consideration. It appears that a transfer of the power to provide a service similar to the transfer authorized in the second sentence of AS 18.55.996(b) together with the transfer of property associated with a given service is intended. A service as such cannot be transferred.

Since a regional service authority is not intended to be a governmental unit, the word "governmental" on line 13, page 2 is inappropriate. Likewise, the references to "regional governmental" on page 2, line 15 and on page 3, line 1 are inaccurate. In both places the term "governmental" should be replaced by the term "services".

The term "or cooperative" on line 10, page 2 makes no sense in the content of the sentence and cooperatives are not dealt with elsewhere in the bill. It should be deleted or clarified.

Sec. 18.53.020(b) on lines 23 - 29, page 2 appears to be a carryover from a section dealing with the bonding power given

Senator Donald E. Gilman, Chairman

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the electric authorities but not given to the authorities created in this bill. That subsection needs to be deleted or clarified.

Page 3 contains typographical errors. On line 1, "or" should be "of" and on line 25, the first "in" should be ",or". The words "provide for" should be added preceding the word "preservation on line 25, page 4 for grammatical consistency.

Lastly, you have asked that this bill be reviewed for consistency with other laws. The powers granted a regional services authority are those powers to provide services granted to municipalities under AS 09.48.030 with the following omissions: cemeteries, lice protection and jail facilities, fire protection service and facilities, consumer protection, and emergency medical services and facilities. It should be noted that, depending upon its class, a municipality may be authorized by statute to exercise certain of these powers only upon voter approval or only in particular areas of the municipality; whereas, once an authority is created, it may exercise all of the powers granted by statute and the governing body of the Native association designates the area in which the authority operates. However, since a restriction upon the power of a municipality to provide services largely acts as a method of protecting its citizens from incurring the cost involved, and since a regional services authority does not have the power to raise local revenue, it does not seem inconsistent to treat an authority differently from a municipality in this regard.

It should also be noted that in cases where the "operating area" of a Native association overlaps into an area within the boundaries of a municipality, both the municipality and the regional services authority may be involved in providing identical services. I have no idea whether this could result in any conflicts between the two entities or create practical difficulties in providing services to the people in the affected area. Of course, to the extent that a municipality regulates the provision of a given service, an authority would be subject to the regulation and this may minimize potential conflicts.

Please contact me if I can be of further assistance with this bill.

TBC:jdn



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Official Business

M E M O R A N D U M

TO: Senator Don Gilman, Chairman
Community and Regional Affairs Committee

FROM: Senator Vic Fischer *VR*

DATE: April 14, 1981

RE: SB 350, Regional Service Authorities

Don - as far as I am concerned, Ferguson's bill is totally, patently, unequivocally unconstitutional. A Legislative statement to the effect that "regional quasi-governmental authorities ... are not local governments" does not get around the fact that what he proposes to establish are strictly local governments. And the constitution very clearly states that all local government powers shall be vested in boroughs and cities.

I'll be glad to elucidate, should it prove necessary to pursue this bill.

/sq

Thomas W. Budd
P.O. Box 307
Hoonah, AK 99829
April 9, 1981

Senator Frank Ferguson
Alaska State Legislature
Pouch V
Juneau, Ak 99811

Dear Senator Ferguson:

I just had an opportunity to read a synopsis of S.B.350 which you introduced to your colleagues on March 31, 1981.

Please understand that as a citizen of the State of Alaska, and as a resident of the First Class City of Hoonah, it is indeed a traumatic experience to see something in print such as S.B. 350.

Services in the absence of borough governments may be fine in your district Senator, however, please don't include us. Hoonah is a fairly aggressive community with a great many possibilities for growth expansion. I, for one, feel that our city is perfectly capable of handling any expansion that might occur. Furthermore, if our growth in the area should mushroom so that services were needed outside the city limits, it is not without the possibility that we could become a borough. S.B. 350 would preclude that option as I see it.

And, furthermore...the citizens of Hoonah and other Southeastern communities have already had the experience of having services rendered by non-profit regional native associations. Five years ago, Senator, we paid 11¢ per KW for electricity. Now, even though the vast majority of citizenry voted against it, our power is being supplied under the auspices of a regional native non-profit organization and our cost has risen in excess of 300%.

At the same time, communities such as Wrangell, Petersburg, Haines and Yakutat, who have power generated from the same type of source (diesel power) are paying roughly one third of what we have to pay.

If, indeed, this is any example of the services you are talking about...no thank you!

Sincerely,



Tom Budd
Hoonah Resident

CC: Rep. Ernie Haugen
Sen. Dick Eliason
Chairman--Community & Regional Affairs
Chairman--Finance Committee

STATE OF ALASKA
THE LEGISLATURE

POUCH 4 STATE CAPITOL
JUNEAU, ALASKA 99801
907 463 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 16, 1981

SUBJECT: Review of SB 341 - Native Village Governments
(Work Order No. 12-1944)

TO: Senator Donald E. Gilman, Chairman
Senate Community and Regional Affairs
Committee

FROM: Tamara Branat Cook *TBC*
Legislative Counsel

You have asked me to review SB 341 "An Act relating to Native village governments" for possible constitutional problems or inconsistency with existing law.

As a preliminary matter it should be noted that the legal effect of this bill is far from clear. * Sec. 29.70.010 provides that a governing body of a Native village is recognized by the state as the local governing body. According to sec. 29.70.050(2) this entity may be a governing body organized under the Indian Reorganization Act or a governing body of a village which meets the requirements of the Alaska Native Claims Settlement Act. A body organized under the IRA is not necessarily governmental, but may be a private association or corporation. The requirements of ANCSA are essentially that the village (1) had 25 or more Natives on the 1970 census enumeration date; (2) not be of a modern and urban character; and (3) have a majority of Native residents (43 U.S.C. 1610). Once again, the village does not necessarily have a governing body as that term is generally understood. ANCSA itself does not organize village governments, but rather it provides for the incorporation under state law of regional and village corporations. The corporations do not have the regulatory, tax and police power of local governments. (See 1980 Op. Atty. Gen., May 6, 1980). Aside from the practical problems of determining what a governing body is under this bill (the board of directors?) and determining who that is in each

village, state recognition of this entity under sec. 29.-70.010 seems to be in direct conflict with sec. 29.70.-040: "Nothing in this chapter . . . alters the jurisdiction of the state, its political subdivisions, or a Native village government". To the extent that a given village has a government recognized under federal law, the state "recognizes" it without this legislation and to the extent that it has no government or a limited form of government, state recognition would seem to alter existing jurisdictions.

Of course, it is far from clear what "recognition" by the state implies with regard to the nature and powers of a village governing body. Sec. 29.70.010 mentions that a village will be allowed to participate in state programs in the manner of a second class city. Does this mean that the village will be deemed to have the governmental power of a second class city or does the village have only whatever power it now has under federal law? What if the village has no governmental power under federal law, is this a grant of power under state law? Until the apparent conflict between sec. 29.70.010 and sec. 29.70.040 is resolved and a statement is provided of what recognition of a village governing body entails, review of SB 341 is largely a matter of speculation.

To the extent that SB 341 attempts to create new local governmental entities or to alter the relationship between the state and existing federally recognized Native governmental or corporate entities, the bill faces serious constitutional problems. Recognizing a traditional Native government and extending state benefits to a village on the basis of this recognition while refusing to recognize the informal governments which may exist in other unincorporated communities may be unconstitutional under the equal protection clause of the state constitution, Article I, sec. 1. To meet equal protection requirements, the basis for distinguishing between Native and other unincorporated communities must bear a fair and substantial relationship to a legitimate governmental goal. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976). It is hard to identify a legitimate goal which would be served by this bill. If the goal is to strengthen or encourage the development of traditional Native governments, that goal would seem to directly conflict with Article X of the state constitution dealing with local government. If the goal is to provide public

benefits on a nondiscriminatory basis while ensuring some local control, this can be done by contracting with any responsible local group and there is little justification for distinguishing between Native and non-Native communities.

The Constitution of the State of Alaska, Article I, sec. 3 provides:

No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex or national origin. The legislature shall implement this section.

Sec. 29.70.030 which prohibits discrimination does not avoid this problem because, although a Native village government may not discriminate in creating a benefit dependent on racial classification, there is no requirement that all residents of the village who are qualified to vote under state law be permitted to take part in selecting government officials. Unless a person may vote he is deprived of his political right to equal representation. Article V, sec. 1 of the state constitution provides:

Every citizen of the United States who is at least 18 years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election. (Emphasis added)

Since all Native villages may not extend full participatory rights to non-Natives, arguably, state recognition of a village government would amount to the enactment of a racially discriminatory law in violation of the federal as well as the state constitution. Peterson v. Greenville, 373 U.S. 244, (1963). Federal legislation favorable to Natives has been upheld under Fifth Amendment challenges largely because of the unique trust obligations which the federal government owes to Natives. A legislative preference is not considered to amount to racial discrimination so long as the preference furthers the federal government's trust obligation. Morton v. Varconi, 417 U.S. 535 (1974). It should be noted that even the federal trust obligation is a limited one which can arise only from a statute, treaty, or executive order and that it would not justify every form of legislative preference. United States v. Mitchell, 445 U.S.

Senator Donald E. Gilman
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535 (1980). The extent, or even existence, of a general federal trust responsibility to Alaska Natives has been questioned and is not yet resolved. North Slope Borough v. Andrus, 542 F.2d 589 (1980). In any case, state governments do not have a special trust relationship with Natives which would justify special treatment along racial lines. Oklahoma Tax Commission v. United States, 519 U.S. 590 (1943); White v. Califano, 437 F. Supp. 543 (1977).

Lastly, SB 341 appears to conflict with several sections contained in Article X of the state constitution:

Sec. 1 -- requiring a minimum of local government units;

Sec. 2 -- requiring all local government powers to be vested in boroughs and cities;

Sec. 7 -- cities shall be incorporated and have the powers conferred by law or charter; and

Sec. 8 -- the governing body of a city shall be the council.

The use of traditional Native governing bodies to provide local governmental services together with the granting of state money to finance governmental activities would raise Native governments to a status dangerously close to that of local governments in violation of these constitutional mandates. Since this type of recognition would effectively remove any incentive for a Native village to incorporate, it would undermine the policy of the state to encourage the formation of local governments. In addition, the relationship between these Native governments, especially villages within boroughs, and incorporated municipalities is not clear and may create conflicting jurisdictions and duplication of efforts to provide services.

Please contact me if you have additional questions regarding SB 341.

TBC:ljb

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

November 13, 1981

Hon. Donald E. Gilman
Alaska State Senate
Senate C&RA Committee
P.O. Box 630
Kenai, AK 99661

Re: Review of SB 341
Native village governments
Our file: J-66-163-82

Dear Senator Gilman:

You have asked us to review SB 341, "An Act relating to Native village governments." It is our opinion that the bill directly conflicts with article X, section 2 of the Alaska Constitution, which provides in part that "all local government powers shall be vested in boroughs and cities." Therefore, we believe that the bill, if passed, would be of no effect unless the constitution were amended. We understand that this bill addresses the serious concerns of residents of Alaskan Native villages for an effective local government which can participate in full cooperation with the state government. Therefore, we will briefly discuss the controlling principles of law, and suggest several alternatives for addressing these concerns.

The Alaska Constitution explicitly limits the exercise of local governmental powers to cities and boroughs, which are incorporated under state law. Alaska Const., art. X, § 2. The framers intended the local government article to provide for maximum democratic local self-government with a minimum number of governmental entities. Fisher, Alaska's Constitutional Convention at 116, et seq. We are unaware of any consideration given by the framers of the local government article to the recognition of traditional Native villages as units of local government.

The lawful designation of Native village governments as local governments under Alaska's state law would require an amendment to article X, section 2 of the Alaska Constitution. However, such an amendment would raise serious problems under our Equal Protection Clause, art. I, § 1, if the Native village

governments were elected from, and represented, only Native persons, which we believe is the present requirement in their federal charters. In that circumstance, non-Native persons residing within or in the vicinity of the village would be denied direct participation or guaranteed representation in their local government. SB 341 includes a nondiscrimination clause which provides that a Native village government may not provide services dependent on racial classification, except as authorized by federal law. However, the bill does not prohibit discrimination in the election of officers of a Native village government.

These equal protection problems could be solved by opening the village councils to participation and membership by non-Native members of a community. However, this will very likely require amendment of the federal laws establishing or recognizing the Native village councils. In addition, it might alter whatever relationship currently exists between those village governments and the federal government to the extent that this relationship is based upon dependent Indian status. We have identified the following three alternatives as means of allowing participation by residents of Native villages in local government in Alaska under state law:

(1) amendment of the Alaska Constitution to allow recognition of Native village governments, together with the amendment of federal laws to allow participation by non-Native residents of the community;

(2) amendment to the Alaska Constitution to allow recognition of Native village governments as local governments in Alaska;

(3) incorporation as a municipality under AS 29, together with retention of present Native village status for the purpose of dealing with the federal government.

Thus, it is our view that the provisions of SB 341 cannot be implemented without an amendment to the Alaska Constitution and that even with such an amendment, there would remain serious equal protection problems. The first alternative would resolve the equal protection problems, but at the expense of substantial effort to obtain the necessary amendments to federal law. In addition, the exclusively Native character of the organizations would be altered. The second alternative would leave resolution of the equal protection problems to litigation in the Alaska courts, which would be expensive and time-consuming, as well as uncertain of result. Given these

Hon. Donald E. Gilman

- 3 -


November 13, 1981

substantial barriers to the recognition of Native villages as local governmental units under Alaskan law, the most reasonable alternative may be for the Native villages to incorporate as municipalities under Title 29 and to retain their Native village status in their relations with the federal government.

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By:


Laura L. Davis

Assistant Attorney General

LLD/pjg

FCM
4/27/81

Phillips, Betty
Box 258
Delta Jct., Ak 99737
895-4861

No's on 350
Delta Junction

TO: Rep. Moss; Sen Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

I do not want this bill passed.

Edward Milan
M. 1415 Ak Hwy
Delta Jct., Ak 99737
895-4816

TO: Rep. Moss; Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Do not pass this bill.

Wilbur Seitz
Box 948
Delta Jct., Ak 99737
895-4581

TO: Rep. Moss, Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

VOTE NO!

Stan Majors
Box 103, M. 270.3 Rich. Hwy.
Delta Jct., Ak 99737
895-4933

TO: Rep. Moss, Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

I do not want this bill to be passed into law for any reason. We the people speak up for Delta.

Larry Shetler
Box 534
Delta Jct., Ak. 99737
895-4272

To: Rep. Moss, Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Do all possible to defeat this bill.

POH
4/27/81

Janice Huckleston
Box 814
Delta Jct., Ak 99737

TO: Rep. Moss; Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

VOTE NO!

Ericka Elledge
Box 743
Delta Jct., Ak 99737
895-4427

TO: Rep. Moss; Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

VOTE NO!

Leonard Lemon
Box 100
Delta Jct. Ak 99737
895-4877

TO: Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Passage of Senate Bill 350 will be detrimental to communities like Delta Junction. Service Corporations are not the answer to establishing local governments

Fred Cool
Delta Jct., Ak 99737
895-4980

TO: Rep. Moss; Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Do not pass this bill as the people of Delta would like to manage their own affairs.

Clenn Phillips
Box 250
Delta Jct., Ak 99737
895-4861

TO: Rep. Moss; Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Put a stop to this bill

FOH
4/27/81

Zeldon Shetler
M. 1421 1/2 Ak. Hwy
Delta Jct., Ak 99737
895-4822

TO: Rep. Moss, Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Do everything possible to defeat this bill.

Rene Major
Box 103, M. 270.3 Rich. Hwy.
Delta Jct., AK 99737
895-4933

TO: Rep. Moss, Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

I do not want this bill to be passed for any reason. We the people speak for
Delta.

Betty Gaiger
Box 543
Delta Jct., Ak. 99737
895-4447

TO: Rep. Moss; Sen Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Senate bill 350 is a bad bill..Do not pass

Croster Eldridge
Box 284
Delta Jct., Ak. 99737
895-4887

TO: Rep. Moss; Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

DO NOT PASS this bill.

Karen Eldridge
Box 284
Delta Jct., Ak

TO: Rep. Moss. Sen, Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

DO NOT PASS

PCN
4/27/81

Richard Carpenter
Box 884
Delta Jct., Ak 99737
895-4820

TO: Rep. Moss; Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Senate Bill 350 is one more step to remove home rule by the people. It would delegate the planning and decisions to a particular select group, rather than a government of, by, and for the people. This attempt frightens me as to the movement of taking the government out of the hands of the governed.

Judith Carpenter
Box 884
Delta Jct., Ak. 99737
895-4820

TO: Rep. Moss; Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Please stop this bill. It sounds terrible. It would need study and time to pursue further. In the meantime, please stop it!

Dorris E. Whitt
Box 825
Delta Jct., Ak. 99737
895-4854

TO: Rep. Moss; Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Under no conditions pass bill # 350. We need to keep and protect our rights and we need and intend to preserve all our constitutional rights, given to us by the original constitution of our founding fathers. Do not give the natives any more than has already been given.

OK Sun Gartz
Box 607
Delta Jct., Ak 99737
895-4676

TO: Rep. Moss; Sen. Gilman, Ziegler, Ferguson, Colletta, Sturgulewski
RE: SB 350

DO NOT PASS

Bruce Robert
Box 1148
Delta Jct., Ak 99737

TO: Rep. Moss; Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

Defeat Senate Bill 350 at any cost!

1
F
POM
4/27/81

Henry Kovalanehik
Box 308
Fort Greely, Alaska 98733

TO: Rep. Moss, Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

I am against this bill, and I am urging you to vote against it.

Al Gartz
Box 601
Delta Jct., Ak 99737
895-4576

TO: Rep. Moss, Sen. Gilman, Ziegler, Colletta, Ferguson, Sturgulewski
RE: SB 350

DO NOT PASS!

32 (S)

53 (B)

COMMITTEE REPORT
SENATE

3/21/81
3/20/81

FURTHER: Finance

Date: _____

Mr. President:

The Committee on COMMUNITY AND REGIONAL AFFAIRS has had SB 353

advance funding to retire outstanding municipal general obligation bonds for schools

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- and recommends _____ new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Handwritten signature]

[Handwritten signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Handwritten signature]

CHAIRMAN

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POLCH 5
JUNEAU, ALASKA 99811

April 7, 1981

The Honorable Donald E. Gilman
Chairman
Senate Community and Regional
Affairs Committee
Room 203 - Behrends Building
Juneau, Alaska

Dear Senator Gilman:

Re: Senate Bill No. 353 and Senate Bill No. 354

Senate Bill No. 353, an Act authorizing advance funding to retire in due course outstanding municipal general obligation bonds for schools, was introduced in the Senate on March 31, 1981 and was referred to the Senate Community and Regional Affairs and Finance Committees.

Senate Bill No. 354, an Act making special appropriation to the Department of Revenue for the retirement of general obligation school bonds and related expenses, was introduced in the Senate on March 31, 1981 and was referred to the Senate Community and Regional Affairs and Finance Committees.

For the consideration of the Senate Community and Regional Affairs Committee, I am enclosing a copy of a Fiscal Note prepared by Mr. Anselm Staack, Treasury Comptroller, Department of Revenue concerning both bills.

Sincerely,

R. D. Stevenson
Special Assistant

RDS/rdh

cc: The Honorable Dr. Bennett
The Honorable M. E. Dankworth
Co-Chairmen
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Anselm Staack
Treasury Comptroller
Department of Revenue

**THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE**

SB 353, 354

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE BILL NO. 353 & 354
 Title Authorizing advance funding and making an appropriation for advance funding to
~~Requested by retire in due course outstanding municipal~~ Date 3/31/81
general obligation bonds for schools.
 Requested by Senate Community & Regional Affairs and Finance Committees

II. FISCAL DETAIL

Agency Affected Department of Revenue
 Program Category Affected Revenue Collection and Management
 BRU, Program, or Subprogram(s) Affected Treasury Management
 (Note: if more than one budget component is affected, separate line-item amounts and funding for each
 componen* in the analysis section.)

EXPENDITURES (Thousands of Dollars)

| | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 | FY 86 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | | | | | | |

→ MILLIONS ←
FUNDING (~~Thousands~~ of Dollars)

| | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 | FY 86 |
|--|-------|--------|--------|--------|--------|--------|
| <u>GENERAL FUND</u> | | | | | | |
| <u>FEDERAL FUNDS</u> | | | | | | |
| <u>OTHER (Specify Fund Source)</u> | | | | | | |
| (1) <u>Defeasance Savings</u> | | (73.6) | | | | |
| (2) <u>Debt Service Cost Reduction</u> | | (44.6) | (50.6) | (51.4) | (45.8) | (30.7) |

POSITIONS

| | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 | FY 86 |
|------------------|-------|-------|-------|-------|-------|-------|
| <u>FULL TIME</u> | | | | | | |
| <u>PART TIME</u> | | | | | | |
| <u>TEMPORARY</u> | | | | | | |

SB 353 gives the Commissioner of Revenue powers to provide for advance funding (defeasance) of outstanding school debt. SB 354 appropriates \$266.4 million to accomplish this (debt outstanding as of 6/1/81) and \$354,000 for related fees.

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Monies to be appropriated in the current FY 82 budget for the current 80% debt service coverage program would have to remain as they are related to debt service already paid and not covered in this bill.

- (1) The savings in principal due to investments allowed in escrow set aside.
- (2) This is the annual debt service related to the outstanding (6/1/81) in bonds that would be due in the years indicated. The cash flow of the escrow set aside makes these payments as they become due.

THE APPROPRIATION AMOUNT IS BASED ON INTEREST RATES IN EFFECT DURING THE SECOND WEEK OF MARCH 1981. THE ACTUAL AMOUNT FOR DEFEASANCE IS BASED UPON RATES IN EFFECT AT THE TIME THE TRANSACTION CLOSES. ACCORDINGLY, FOR EACH 10% DROP IN INTEREST RATES THE AMOUNT NECESSARY FOR FULL DEFEASANCE GOES UP APPROX. 6.7%.

Anselm C. Staack

IV. DATE April 6, 1981 **PREPARED BY** Anselm C. Staack, Treasury Comptroller
AGENCY Dept. of Revenue/Treasury Division
Original: Legislative Finance **PHONE** 465-2351
 cc: Budget and Management
Prime Sponsor (First Legislator Named)

S

B

3

8

|

COMMITTEE REPORT
SENATE

FURTHER: Finance

4/2/81

Date: 5/21/81

Mr. President:

The Committee on COMMUNITY AND REGIONAL AFFAIRS has had SB 381

making a special appropriation to the City of Bethel for a petroleum storage and docking facility

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- ~~do pass~~ with attached amendments(s) same title
- replace with CS for _____ new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without ^{individual} recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Colletta]

1/1/81
CHAIRMAN

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
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ORIGINAL.

The cost of a temporary relocation is estimated at \$3 million, exclusive of land acquisition costs. The estimated 1981-1982 cost of the riverbank stabilization program designed to provide the Port of Bethel with a petroleum dock and to secure the safety of the bulk fuel storage facility, is estimated at \$3,230,000. The 1981-1982 facilities are envisaged as a permanent circular cell type dock, wing walls, bulkhead, and articulated concrete mat.

To assist in maintenance, repair, and monetary contribution to following Phases of port development and bank stabilization, the City of Bethel is considering the imposition of a wharfage fee of between 1¢ to 3¢ per gallon handled over the petroleum dock. Such a fee, added to the cargo dock lease and wharfage fees, will spread the maintenance cost to all of the people in the Bethel service area, and provide a dedicated fund for matching funds to State participation in subsequent phases.

Relocation of the bulk fuel tank farm to a locality other than at Bethel will add approximately 25¢ per gallon lighterage fee to all fuel brought to Bethel and the river communities. At the 1980 volume brought in and stored at Bethel, the added cost to the consumer would be \$4 million each year.

Report from Galliett & Silides

B. RIVERBANK EROSION

1. Absent the necessary sustained expansion of the general cargo handling dock and staging area as proposed in the 1971 Bethel Port Study Report, a permanent petroleum dock, warehousing and industrial area, and appurtenant bank stabilization installation, the riverbank available for these improvements is suffering serious loss from erosion. That erosion has reached a crisis stage, threatening property improvements having a replacement value of between 35-50 million dollars. Relocation costs are estimated at about \$25 million.

2. The area of immediate, crucial concern is the bulk fuel storage tank farm. A sudden, massive bank loss just upstream of the tank farm, plus lesser but substantial losses downstream makes it evident that if steps are not taken during 1981-82 to avoid a total \$9 million loss, the tank farm must;

- a) Relocate, temporarily, further from the riverbank (the plant has moved twice before), or
- b) Relocate at some locale other than Bethel.

2 Medium Draft Port Facility At Bethel, Alaska, Galliett & Silides.

November 1971

AVCP

Association of Village Council Presidents
P. O. Box 219 • Bethel, Alaska 99559 • Phone 543-3521

A RESOLUTION OF THE ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS DIRECTING THE ALASKA STATE LEGISLATURE TO ALLOCATE FUNDS FOR A BETHEL SEAWALL.

WHEREAS, the City of Bethel serves as a regional commercial and trade center for the Lower Yukon-Kuskokwim region; and,

WHEREAS, Chevron U.S.A., maintains a bulk storage facility within Bethel, which serves as the primary distribution point for thirty (30) communities on the Kuskokwim River and adjacent Bering Sea Coast; and,


WHEREAS, this tank farm is currently in a critical situation due to the accelerated bank erosion; and,

WHEREAS, if the tanks were relocated outside the community due to the accelerated erosion and thus constitute an economic impossibility for Bethel and would in turn place a financial hardship upon residents of the City and the region.

NOW THEREFORE BE IT RESOLVED THAT the State Legislature be directed to allocate the funds for the planning, design and construction of a Bethel Seawall to protect this very valuable regional and community asset.

PASSED AND APPROVED THIS 23rd DAY OF April, 1981.

PASSED AND APPROVED:


Edward Hoffmann Jr.
AVCP Board Chairman

Smith G. Young
AVCP Board Secretary

LA32 0002 10-30 LA32 0006 10-30 05/22/81

TO JUNEAU INFO
FB CHERYL/BETHEL

IMPORTANT

THE SENATE CERA COMMITTEE
SEE THAT EACH COMMITTEE MEMBER

TO: SENATE CERA COMMITTEE MEMBERS:

SENATORS GIL, ZIEGLER, COLETTA, FERGUSON, STURGOLEWICK

EROSION OF THE RIVERSHORE IN FRONT OF THE PETROLEUM TANK FARM IS THREATENING
IT'S STABILITY. THE WHOLE BETHEL REGION DEPENDS ON THE 16 MILLION GALLONS
OF OIL AND GAS THAT PASS THROUGH THAT FACILITY.

DESIGN WORK ON THE FUEL BARGE DOCK AND BARK STABILIZATION HAS BEEN
COMPLETED. THESE DESIGNS HAVE PROVED THE PROJECT TO BE AN ENTIRELY FEASIBLE
AND SOUND PLAN FOR DEVELOPMENT. THIS DESIGN AND STUDY HAS ALSO SHOWN THE
PROJECT TO BE ENTIRELY COST EFFECTIVE.

WE THEREFORE REQUEST YOUR FULL SUPPORT OF SB 381 AS THAT IS THE ONLY WAY
TO INSURE THAT THE TANK FARM DOES NOT HAVE TO BE RELOCATED.

MAYOR JOHN GUINN
CITY OF BETHEL
BOX 388, BETHEL AK 99559
343-2097

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

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.



CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559

543-2297—Area Code 907

May 21, 1981

Senator Gilman
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Gilman:

Enclosed find the draft Master Plan and Report on Port Development in Bethel, Alaska. This report addresses three specific areas of concern for the residents of Bethel and the region; a) the General Cargo Dock, b) Petroleum Products Dock, and c) Riverbank Stabilization.

At issue are three bills that have been submitted for your consideration by Senator Hohman, those being SB 381, SB 383, and SB 443. The plan as outlined in the Master Plan is indeed feasible. The technology used by our engineer, Mr. George Silidas, is proven to be effective from a practical as well as financial point of view. We request that you review the enclosed material and look favorably on the above referenced bills. The stabilization of the riverbank and the provision of adequate dock space, for both general cargo and fuel, are extremely important to the economic well being of Bethel and the surrounding area.

If we may provide you with any additional information or may meet with you at your convenience please advise.

Sincerely,

Dan Boyette
Capital Projects Coordinator

DB:skw

Enclosure

DRAFT

MASTER PLAN AND REPORT

FOR

PORT DEVELOPMENT

AT

BETHEL, ALASKA

GENERAL CARGO DOCK
PETROLEUM PRODUCTS DOCK
RIVERBANK STABILIZATION

Prepared For

THE CITY OF BETHEL



Prepared By

Harold H. Galliett, Jr.
Consulting Engineer
Anchorage, Alaska

George C. Silides
Consulting Engineer
Fairbanks, Alaska

April 1981

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PORT OF BETHEL IMPROVEMENTS

1. CONCLUSIONS AND EXECUTIVE SUMMARY

1. The economic and cultural development of the City of Bethel and of the Bethel Service Area depends largely on the successful retention and development of the Bethel waterfront.
2. Without the immediate undertaking of a sustained program of riverbank stabilization, the Bethel waterfront, including the present location of the bulk fuel tank farm and the future location of the general cargo dock and industrial area, will be lost.
3. The evidence gathered from our studies since 1970, and from 1974 general cargo dock construction, show that port improvements and their protective appurtenances result in permanent, or very long-term riverbank stabilization.
4. Construction should commence in 1981 if possible, or in 1982 at the latest, to prevent the loss of the bulk fuel storage tank farm, and to relieve the expensive congestion at the general cargo handling facility.
5. Once begun, the entire program of port development/riverbank stabilization should be wholly completed with all reasonable dispatch to lessen the penalties of inflation, and to lessen the

chance of losing the partially completed improvements from any eccentricities of the Kuskokwim River.

6. The benefits to Southwest Alaska from Bethel port improvements and bank stabilization exceed the cost of facility construction.
7. Funding of the Bethel port development/riverbank stabilization program is in keeping with legislative fiscal policy of development.
8. That an adequate sum to fund at least the 1981-1982 construction phase should be appropriated from the general fund to the Department of Transportation and Public Facilities for use by the City of Bethel, as per the master plan for port development, upon submission by the City of Bethel of the necessary design and construction plans and specifications.
9. In all phases, time is of the essence.

II. PORT OF BETHEL SERVICE AREA

The City of Bethel occupies a central location in Southwest Alaska. As the upper limit for oceangoing vessels, the Port of Bethel is the deep water entry port of Southwest Alaska.

The Port of Bethel presently serves a huge region of over 100,000 square miles. The City of Bethel has developed into the center of trade, transportation, distribution, communications, administration, education, health care and cultural activity for over sixty communities located on Kuskokwim Bay and the Kuskokwim River.

The region's complexity and isolation makes water transportation the most cost effective means of moving general cargo and bulk petroleum products in and out of Bethel. These are unloaded at the Port of Bethel and transhipped to other communities by tugs and barges better suited to ply river and shallow coastal waters.

When the Yukon River and the Kuskokwim River are joined together by the Yukon-Kuskokwim Crossing¹, now being investigated for the Senate Transportation Committee, the Port of Bethel will be the deep water

¹ Preliminary Engineering Report Yukon-Kuskokwim Crossing, Galliett & Silides, December 31, 1980.

terminus of a major river transportation system, on a par with those of the Mississippi and the Amazon systems in terms of length and relative importance to the area served. At that time it will become feasible to ship goods to and from the Yukon River system through Bethel, to the advantage of communities along both rivers.

In addition to general cargo and bulk fuel, it is anticipated that the Port of Bethel will then also handle diverse shipments such as timber harvested along the Yukon and Kuskokwim Rivers, the grain and red meat output of the Nenana Agricultural Project, and NGL's and refined crude oil products from the Fairbanks area. At that time, the Port of Bethel will increase its fuel service area toward Bristol Bay, the Alaska Peninsula, and to Horton Sound. Ties to the Asian Pacific Rim will be established for the shipment of grain, red meat and timber.

Without a plan of development, and a concerted effort to accomplish that plan, the Port of Bethel will never fulfill its future potential. Indeed, unless steps are taken to protect and expand the existing facilities, the port will fail to meet even its present obligations to its service area.

III. THE PROBLEM

The problems facing the port of Bethel can best be described as;

A. INADEQUATE SIZE

1. The general cargo dock and staging area are too small.

The first, and last, permanent improvement to the Port of Bethel was made in 1974 to accommodate receipt and efficient handling of incoming cargo. Volume of general cargo had increased from 9000 tons in 1967 to 12,000 tons in 1972. About 25% of this cargo was transshipped.

An important additional consideration for port construction in 1974 was the abatement of riverbank loss.

General cargo volumes in 1980 were in the vicinity of 20,000 tons, plus approximately 40,000 tons of gravel. Bulk fuel handlings were 15.5 million gallons (1075 barrels/day), up from 6 million gallons in 1967 and 11 million gallons in 1977. Over half of the incoming bulk fuel is presently redistributed, resulting in the handling of approximately 24 million gallons annually through the Port.

General cargo is now off-loaded at several locations because of the inability of the dock staging area to receive all of this cargo. The extra cost of re-handling the cargo is presently about \$20/ton. This extra handling penalty will increase as the dock becomes more congested.

Further, because of the size and frequency of incoming oceangoing barges, the transshipping barges must be anchored offshore when the ocean barges are unloading. This displacement effectively halts loading for transshipping. In 1980, thirty-six days of river navigation period were lost. It is necessary to provide separate mooring facilities for the transshipping vessels.

2. The construction of the present general cargo dock and staging area is composed of four circular sheet steel pile cells and wing walls, giving a working frontage of approximately 240 feet. By the end of the 1980's decade, the Port of Bethel will require a general cargo dock and staging area having a frontal working area of 1000 feet for oceangoing vessels, plus several hundred feet of mooring facility in Brown's Slough for the activities related to the tugs and barges engaged in transshipping.

3. It is proposed that, during the 1981 and 1982 construction seasons, the river frontage of the dock be extended westward by the addition of two circular cells. Working frontage would thus be increased from the present 240 feet to approximately 360 feet, and offer greater security to the dock from loss by erosion.

To enable the simultaneous mooring and working of the transshipping vessels and the oceangoing barges, it is proposed, during 1981 and 1982, to widen Brown's Slough and construct 400 feet of

wall type bulkhead. The proposed improvements in Brown's Slough will also provide adequate, safe moorage for the numerous small boats that are so important to the lives of the residents of Bethel, and of the visitors to Bethel from nearby villages.

It is proposed that the additional 675 feet of general cargo dock along the river front be constructed as rapidly as funding permits to, a) provide adequate space, b) to combat inflation, and c) to provide positive protection from erosion.

4. Essential Warehousing immediately adjacent to dock side is non-existent. When warehouse financing becomes available, the obviously best location would be at the general cargo dock, or in the immediately adjacent industrial area. No such warehousing and industrial area can be safely developed until the cargo handling facility is enlarged, and further steps taken toward stabilizing the adjacent eroding riverbank.

5. Construction Cost Estimates for the expansion and more efficient utilization of the Port of Bethel General Cargo Handling Facility, expressed in 1982 dollars, are as follows:

| | |
|---------------------------------|--------------|
| Extend Dock from 240' to 360' | \$ 3,640,000 |
| Extend Dock from 240' to 1,000' | 13,720,000 |
| Construct Warehouse | 1,000,000 |

These figures do not include the total cost of land acquisition which is subsequently discussed.

B. RIVERBANK EROSION

1. Absent the necessary sustained expansion of the general cargo handling dock and staging area as proposed in the 1971 Bethel Port Study Report², a permanent petroleum dock, warehousing and industrial area, and appurtenant bank stabilization installation, the riverbank available for these improvements is suffering serious loss from erosion. That erosion has reached a crisis stage, threatening property improvements having a replacement value of between 35-50 million dollars. Relocation costs are estimated at about \$25 million.

2. The area of immediate, crucial concern is the bulk fuel storage tank farm. A sudden, massive bank loss just upstream of the tank farm, plus lesser but substantial losses downstream makes it evident that if steps are not taken during 1981-82 to avoid a total \$9 million loss, the tank farm must;

- a) Relocate, temporarily, further from the riverbank (the plant has moved twice before), or
- b) Relocate at some locale other than Bethel.

2 Medium Draft Port Facility At Bethel, Alaska, Galliett & Silides,

November 1971

The cost of a temporary relocation is estimated at \$3 million, exclusive of land acquisition costs. The estimated 1981-1982 cost of the riverbank stabilization program designed to provide the Port of Bethel with a petroleum dock and to secure the safety of the bulk fuel storage facility, is estimated at \$3,230,000. The 1981-1982 facilities are envisaged as a permanent circular cell type dock, wing walls, bulkhead, and articulated concrete mat.

To assist in maintenance, repair, and monetary contribution to following Phases of port development and bank stabilization, the City of Bethel is considering the imposition of a wharfage fee of between 1¢ to 3¢ per gallon handled over the petroleum dock. Such a fee, added to the cargo dock lease and wharfage fees, will spread the maintenance cost to all of the people in the Bethel service area, and provide a dedicated fund for matching funds to State participation in subsequent phases.

Relocation of the bulk fuel tank farm to a locality other than at Bethel will add approximately 25¢ per gallon lighterage fee to all fuel brought to Bethel and the upriver communities. At the 1980 volume

brought in and stored at Bethel, the added cost to the consumer would be \$4 million each year.

3. Industrial Expansion of marine oriented industry is severely inhibited by continuous danger posed by the unstabilized riverbank. The prime example of this is the fishing and fish processing industry.

Currently the value of fish sold at Bethel has an average wholesale value of between \$6-\$10 million. The majority of the fish are exported either semidressed (gutted) or in the round. Most were exported by air. Although barge companies have indicated a willingness to stage freezer vans for backhaul in Bethel, there is no place on the waterfront for such staging.

The value of the locally caught fish product would be substantially increased if finished pack processing could occur at Bethel. However, fish processing facilities require direct access to the river system. Before such fish processing facilities can become a reality, riverbank stabilization and dock space must occur. Lacking such stabilization and space it is impossible to attract long-term capital investment to waterfront industry. Nevertheless, development of such industry is essential to Bethel and its service area.

4. Causes of Erosion. Basically, riverbank erosion is caused by permafrost degradation, rain, wind, water run-off, and wave action generated by wind and passing boats. The erosion is not caused

directly by breakup and attendant high water. What happens is that the permafrost melts, the thawed soil sluffs to the toe and is only then removed by the river which acts as a carrier during high water periods, or when the sluffed soil is carried into the river by wave action. When that soil is removed a new layer is exposed and the process repeats itself.

5. Remedial Measures. It appears that the best method of halting the erosion process is to interpose a covering structure between the soil and the action of the wind, sun, rain, and wave. The structure(s) should have as high a utilitarian value as practical. Once begun, the entire program of port development/riverbank stabilization should be wholly completed with all reasonable speed to lessen the chance of losing the partially completed portion from eccentricities of the river.

Expansion of the general cargo dock and staging area, development of a warehousing and industrial area, and the construction of a petroleum dock and appurtenances are de facto permanent, or very long-term, methods of riverbank stabilization and utilitarian use of the waterfront.

Our experience to date has shown that the safest, longest life construction is that of circular cells, such as those which comprise the existing general cargo dock. This type of

construction is also the most expensive. It is most cost effective when used for dock purposes to accommodate large oceangoing cargo vessels and fuel barges, and to absorb the impact of mooring or of very heavy cargo handling equipment.

For the mooring of the smaller transshipping vessels, and for the stabilization of the warehousing/industrial area, it is proposed to design and install an adequate wall type bulkhead. Given the soil structure at Bethel, and the uncertainties of river bottom migration, wall type construction does not provide the assurance of cellular construction. However, the cost per linear frontage foot is only 40% of the cost of cellular construction. Expressed in 1982 dollars our estimate for a 1200 foot long wall type bulkhead, extending from Lot 11, Block 20 to the West side of Main Street, is \$6,420,000. *-25.00/201*

Less certain, but, we believe, highly useful and of adequate life expectancy, is an articulated, concrete mat. We propose that such a protective concrete mat be installed between the bulk fuel storage tank farm and Main Street. In 1982 dollars, the estimated installed cost is \$4,759,000. The cost per linear frontage foot of articulated mat construction is approximately one-tenth the cost of circular cells and one fourth that of wall type bulkhead. However, it has little utilitarian use beyond the abatement of riverbank loss and small riverboat tie-up.

6. Alternative To Riverbank Stabilization. Failure to undertake an adequate riverbank stabilization program such as outlined above will result in loss past First Street by the year 2000, including likely isolation of the cargo docking facility. Loss of the tank farm is an early certainty. By the year 2030 erosion will have reached Second Avenue in some places, and will include loss of the dock. Economic and cultural losses from non-development are not calculable.

C. LAND OWNERSHIP, DESIGNATION, AND ACQUISITION

1. Ownership and Present Use

Present ownership and land use within the port development/bank stabilization area is a mixture of sometimes unrelated activity. The economic future of Bethel and the Bethel Service Area would benefit greatly from the logical resorting of these activities and land uses.

2. Needed Area Designation and Allocation

The port development/bank stabilization area described below, and shown on the plats accompanying this report, should be rezoned to port development use. It should be re-subdivided, if necessary, and space for specific uses, i.e., docking, staging, warehousing, industrial, should be allocated. A dedicated street should be provided immediately adjacent to pierside for universal public access, and for dock/bulkhead/articulated mat construction, maintenance, and use. All

property within the designated area needed for construction, or which is not in conforming port development use, should be acquired by the City.

3. General Description of Port Development Area

The area that should be designated for port development/bank stabilization purposes is described as follows;

- a) Vacated Second Avenue East of Bridge Avenue, and
- b) Between Brown's Slough and Main Street, all property south of Second Avenue and Bridge Avenue, and
- c) West of Main Street, all of Tract E, Tract B lying south and east of Mission Lake Road except Lots 33 through 41 of Block 3, all property south of First Avenue to U. S. Survey No. 4000 (PHS property), and
- d) All of U. S. Survey No. 4000 south of the State Highway, and
- e) Tracts 42, 43, and 44 west of U. S. Survey No. 4000.

4. Land Acquisition

- a) 1981-1982 Construction. For the 1981-1982 general cargo dock and staging area expansion, the City must acquire the following:

- o Lots 3, 4, 5, 6, 7, and 8, Block 20
- o Lots 1, 2, and 3, Block 19, and
- o Vacation of Second Avenue east of Bridge Avenue.

For the petroleum port and construction to protect the bulk fuel storage tank farm an entry permit will be needed from the Public Health Service.

b) Future Construction and Development

It is proposed that the City purchase or otherwise acquire such property within the port development/riverbank stabilization area (project) that is necessary for construction and/or is not being used in conformity with this Master Plan.

The City should immediately seek the acquisition of all vacated Public Health Service property within the designated project area for use in connection with the petroleum products port and probable secondary general cargo port facilities. Such public lands should be transferred free of cost. The acquisition of any private property necessary to future construction and development can be aided through the use of part of the petroleum dock gallonage fee and general cargo wharfage fees.

5. Land Costs

The cost of land acquisition for proposed 1981-1982 general cargo dock expansion and Brown's Slough widening and moorage is included in the construction estimates shown herein. Total cost of land

acquisition for port development depends greatly on the cooperation of all present inholders and potential beneficiaries. Therefore, this total land acquisition cost must await the 1982-1983 annual updating of the Port Development Master Plan and the City of Bethel Comprehensive Plan.

IV. MAXIMUM TERM CONSTRUCTION SCHEDULE

The following schedule of improvements is the maximum reasonably allowable term of construction to first protect vital existing facilities, and then to develop the economic potential of the Port of Bethel. An accelerated construction program would lessen the chance of the entire problem becoming moot through loss of existing and partially completed improvements from eccentricities of the Kuskokwim River.

A. 1981 - 1982

1. Petroleum Dock And Tank Farm Protection
 - a) One 60 foot diameter circular cell
 - b) 200 feet of wall type bulkhead
 - c) Approximately 700 feet of concrete mat
2. Transshipping vessel moorage
 - a) Widen Brown's Slough
 - b) 400 feet of wall type bulkhead
 - c) Dredging and backfill
3. Enlargement General Cargo Dock
 - a) Two 60 foot diameter circular cells
 - b) Acquire land

4. Industrial Area Protection

- a) Acquire land
- b) Construct warehouse

B. 1982 - 1983

1. Tank Farm Protection

- a) 1000 feet of articulated concrete mat

2. Industrial Area Protection

- a) 400 feet of wall type bulkhead commencing at Main Street and proceeding upstream toward general cargo dock.

C. 1983 - 1984

1. Industrial Area

- a) 800 feet of wall type bulkhead, proceeding upstream to Lot 11, Block 20, to complete industrial area protection.

D. 1985 and 1986

1. General Area Bank Stabilization

- a) Approximately 3,200 linear feet of articulated concrete mat, to complete bank stabilization other than industrial and cargo dock areas.

E. 1987 - 1990

1. Protection and Completion of General Cargo Dock and Staging Area
 - a) Incrementally extend general cargo dock and staging area to the SW Corner of Lot 11, Block 20 through the construction of eight additional 60 foot diameter circular cells.

F. 1991 - 1993

1. Designate Port of Bethel development area limits, to include all of the lands described in Section III C 3, General Description of Port Development Area.
2. Acquire all vacated Public Health Land for use and lease in connection with the petroleum products docking and storage facility and secondary general cargo dock.
3. Acquire all other available vacated federal lands within the Port of Bethel development area.
4. Resubdivide and allocate lands within port development area for specific uses.
5. Acquire such property that is presently in non-conforming, port development, use.

V. CONSTRUCTION COST ESTIMATES

A. NOTES

1. Inflation. The following construction cost estimates for alternatives A - D include a 15% annual increase attributable to inflation in material and labor costs.
2. Design. Estimates are based on existing state-of-the-art. Technical advances and innovative design may reduce the costs shown. For example, in 1972 we were told that, "nothing can be done at Bethel." The existing medium draft cargo handling facility refuted that contention.
3. Effect of Accelerated Schedule. Accelerated construction schedules can reduce costs by taking advantage of economies of scale, and by offsetting the penalty of annual inflation. Moreover, quick completion reduces potential loss of existing and partially completed facilities, from riverbank erosion, prior to completion of the total port facility/bank stabilization program described herein.

B. ESTIMATES (In Thousands)

| 1. <u>Alternative A</u> | | \$ 1982 | \$ Future |
|-------------------------|---------------------------------|-----------------|-----------------|
| 1981-1982 | General Cargo Dock | 3,640 | 3,640 |
| | Petroleum Dock and Protection | 3,230 | 3,230 |
| | Warehouse | 1,000 | 1,000 |
| | 1981-1982 Project | <u>7,870</u> | <u>7,870</u> |
| 1982-1983 | 1000 linear feet mat protection | 1,286 | 1,479 |
| | 400 linear feet wall bulkhead | 2,140 | 2,460 |
| | 1982-1983 Project | <u>3,426</u> | <u>3,939</u> |
| 1983-1984 | 800 linear feet wall bulkhead | <u>4,280</u> | <u>5,564</u> |
| 1985 | 1600 linear feet mat protection | <u>2,058</u> | <u>2,984</u> |
| 1986 | 1600 linear feet mat protection | <u>2,058</u> | <u>3,293</u> |
| 1987 | 2 circular cells | <u>2,520</u> | <u>4,410</u> |
| 1988 | 2 circular cells | <u>2,520</u> | <u>4,788</u> |
| 1989 | 2 circular cells | <u>2,520</u> | <u>5,166</u> |
| 1990 | 2 circular cells | <u>2,520</u> | <u>5,544</u> |
| TOTAL PROGRAM | | <u>\$29,772</u> | <u>\$43,558</u> |
| 1981-1990 | | | |

Recapitulation of Alternative A, By Allocation

| (In Thousands) | \$ 1982 | \$ Future |
|---|-----------------|-----------------|
| 1. General Cargo Dock | \$13,720 | \$23,548 |
| 2. Petroleum Dock & Tank Farm Protection | \$ 3,873 | \$ 3,969 |
| 3. Waterfront Industrial Area Protection | \$ 6,420 | \$ 8,024 |
| 4. General Area Riverbank Protection | \$ 4,759 | \$ 7,017 |
| 5. Warehouse 1982 | <u>\$ 1,000</u> | <u>\$ 1,000</u> |
| | \$29,772 | \$43,558 |

Alternative A gives maximum benefit per dollar invested. It allows cargo handling facilities and industrial area to reach fullest potential while simultaneously providing for bank stabilization.

Construction cost savings can be realized by shortening completion period. Accelerated construction will take advantage of economies of scale and offset inflation.

2. Alternative B

| | |
|---------------------------------------|-----------------|
| 1981-1982 Cargo Dock | \$ 3,640 |
| 1981-1982 Petroleum Dock & Protection | 3,230 |
| 1982-1983 1200 feet bulkhead | 7,382 |
| 1983-1984 8000 feet mat protection | <u>13,376</u> |
| | <u>\$27,628</u> |

Alternative B continues to provide the needed industrial area and bank protection. It does not allow the general cargo handling facilities to reach their needed size and, therefore, will add to cargo handling costs.

3. Alternative C

| | |
|---------------------------------------|-----------------|
| 1981-1982 Cargo Dock | \$ 3,640 |
| 1981-1982 Petroleum Dock & Protection | 3,230 |
| 1982-1983 9000 feet mat protection | <u>13,311</u> |
| | <u>\$20,181</u> |

Alternative C provides the minimum reasonable alternative. Though it provides bank stabilization for an indeterminate period, possibly 25 years, it provides only temporary relief to the increasing problem of efficient cargo handling. Under this alternative, expansion of the general cargo dock will require removal of earlier construction.

4. Alternative D

1982-1983 10,000 linear feet of mat protection \$13,825

Alternative D is an emergency measure to safeguard existing facilities only. It provides the minimum acceptable alternative.

· PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

S

B

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COMMITTEE REPORT

SENATE

FURTHER: None

4/20/81

Date: May 14 1981

Mr. President:

The Committee on COMMUNITY & REGIONAL AFFAIRS has had SB 473
urban renewal and development projects of municipalities

under consideration and (a majority of the committee) (the committee)
reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(=)
- replace with CS for SB 473 same title
 new title

and recommends _____

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation

referred to the Territory Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Stan L. ...
 CHAIRMAN

CS.513 473

SECTION 1 - 29.73.020 currently provides municipalities with the powers of eminent domain and declaration of taking in the performance of authorized powers or functions in accordance 09.55.250-460. 29.73.020 however, is not referenced in 09.55.240 which lists the uses of eminent domain.

Section 1 would add a new paragraph to 09.55.240(a) referencing 29.73.020 and eliminating possible confusion.

SECTION 2 The C+RA Committee Sub added a new section two which clarifies the language of 09.55.420 (Declaration of Taking by State or Municipality). This new language does not appear to make any change in the effect of 09.55.420.

SECTION 3 Section 3 provides that ^{the} Slum Clearance and Redevelopment Act may not be construed to limit the authority of a municipality to participate in other

Municipality of Anchorage



POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

May 7, 1981

Senator Donald Gilman, Chairman
Senate Community & Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 473

Dear Senator Gilman:

Thank you for taking the time to meet with me during my recent visit to Juneau. As I mentioned during our meeting, the Municipality of Anchorage strongly supports efforts, such as SB 473, to eliminate ambiguities concerning the ability of municipalities to utilize eminent domain proceedings in the exercise of duly authorized municipal powers and duties.

As you know, AS 29.73.020 presently provides that a home rule or general law municipality may exercise the powers of eminent domain and declaration of taking "...in the performance of an authorized power or function of the municipality in accordance with AS 09.55.250-.460." However, AS 09.55.240 dealing with eminent domain and entitled "uses for which authorized" does not expressly cross-reference AS 29.73.020; although the section does refer to cities, boroughs and "municipal divisions".

My legal staff has researched this and other conflicting language in AS 09.55, and we believe that a serious potential for dispute exists due to a failure to clearly cross-reference AS 29.73.020 and AS 09.55.240 and 09.55.420. Although this may appear to be a very minor technical concern, I know you can appreciate the problems that can be caused by needless litigation and delay due to the presently confusing statutory language. This concern is, in my opinion, made much more serious by the fact that local capital improvement construction has grown enormously in recent years, thanks to increased state funding. Often, major local improvement projects such as roads, sewers, public buildings and other projects may involve the use of eminent domain, and it is

Senator Donald Gilman

May 7, 1981

Page 2

important that these projects not run the risk of delay due to litigation over inconsistent statutory language.


The Municipality additionally supports language clarifying our present ability to utilize eminent domain to encourage economic development and redevelopment efforts. Presently, AS 09.55.420 refers to the use of that statute for "...slum clearance purposes or use granted to cities of the first class...." The term "slum clearance" is rather vague as is the reference to first class cities since AS 29.73.020 grants the power of eminent domain for all authorized municipal powers and functions. The Municipality would therefore support referencing "economic development or redevelopment in AS 09.55.420(a) and replacing the present reference to first class cities with a cross-reference to AS 29.73.020.

Finally, the Municipality supports language presently in Section 2 of SB 473 to clarify the fact that the state's urban renewal statutes do not limit municipalities from pursuing their own urban improvement or urban redevelopment programs.

Again, thank you for your time and attention on this matter. If I can answer any questions concerning the above, please contact my office at 264-4236.

Very truly yours,

DEPARTMENT OF LAW



Theodore D. Berns
Municipal Attorney

TDB:gml

cc: Senator Colletta
Senator Sturgulewski

May 14, 1981

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Re: Senate Bill No. 473

Dear Mr. President:

Inasmuch as the captioned bill addresses itself to eminent domain actions, just compensation, declarations of taking, statutory construction and/or interpretation, it is the consensus of this Committee that ~~the Community and Regional Affairs referral should be waived and that the~~ bill should have a further referral to the Senate Judiciary Committee.

Senator Don Gilman, Chairman

Senator Robert Ziegler, Vice Chairman

Senator Mike Colletts

Senator Arliss Sturgulewski

Senator Frank Ferguson

May 14, 1981

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President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

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Inasmuch as the captioned bill addresses itself to eminent domain actions, just compensation, declarations of taking, statutory construction and/or interpretation, it is the consensus of this Committee that the bill should have a further referral to the Senate Judiciary Committee.

Senator Don Gilman, Chairman

Senator Robert Ziegler, Vice Chairman

Senator Mike Colletta

Senator Arliss Sturgulewski

Senator Frank Ferguson

Dear Mr. President:

Inasmuch as the captioned bill addresses itself to eminent domain actions, just compensation, deductions of taking, statutory construction and/or interpretation, it is the consensus of this committee that the CRA referral should be waived, that the bill should have a further referral to the Senate Judiciary Committee.

William, Chairman

Proposed CS for SB 473

Section 1. AS 09.55.240 is amended by adding a new paragraph to read:

(13) uses authorized for municipalities under AS 29.73.020.

Section 2. AS 09.55.420 (a) is amended to read:

(a) When a proceeding is instituted under §§ 240-460 of this chapter by the state, it may file a declaration of taking with the court, but before judgment. When a proceeding is instituted under §§ 240-460 of this chapter by a municipality in the exercise of eminent domain for street or highway, off-street automobile parking facilities, school, sewer, water, telephone, electric and utility, economic development or redevelopment, and skid closure projects [OR USE GRANTED TO CITIES OF THE FIRST CLASS] or for any use authorized under AS 29.73.020, ... (Remains unchanged)

Section 2. AS 18.55.720 is amended by adding a new subsection to read:

(6) AS 18.55.480 - 18.55.960 shall not be construed to limit the authority of a municipality to undertake or participate in other urban renewal or urban development projects.

Section 4 This Act takes effect immediately in accordance with AS 01.10.070(c)

STATE OF ALASKA
THE LEGISLATURE

POUCH STATE CAPITOL
JUNEAU ALASKA 99801
907 465 2810

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 23, 1981

SUBJECT: Urban renewal and redevelopment projects of
municipalities (Work Order Number 1576)

TO: Senator Tim Kelly
Chairman, Senate Rules Committee

FROM: Tamara Brandt Cook
Legislative Counsel *TBC*

You have asked for a section-by-section analysis of SB 473.

Sec. 1 amends AS 09.55.240, listing the uses for which the right of eminent domain may be exercised. A new use is added to allow a municipality which has the power to provide for urban renewal and development to exercise the right of eminent domain in order to carry out urban renewal and development projects. Under AS 29.73.020, a home rule or general law municipality may exercise the powers of eminent domain in the performance of an authorized power or function of the municipality. The power must be exercised in accordance with AS 09.55.250 - 09.55.460, but the list of uses for which the power of eminent domain may be exercised contained in AS 09.55.240 is not included as a limitation on the exercise of eminent domain by a municipality. The amendment contained in Sec. 1 of this bill is probably not necessary since a municipality with the power to provide for urban renewal and development may, under AS 29.73.020, exercise the power of eminent domain in to carry out those projects.

Sec. 2 provides that the Slum Clearance and Redevelopment Act may not be construed to limit the authority of a municipality to undertake or participate in other urban renewal and urban development projects. In view of the specific grant of authority contained in Title 29 which permits municipalities to adopt building codes, engage in planning and zoning, and allows home rule municipalities to exercise any power not prohibited by law, the Slum Clearance and

Senator Tim Kelly
Page 2
April 23, 1981

Redevelopment Act is not likely to be construed to limit the authority of a municipality to undertake or participate in other urban renewal and urban development projects in the absence of this provision.

Sec. 3 of the bill provides for an immediate effective date.

TBC:ljb