

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8072

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Bill

STATE v. UNIVERSITY OF ALASKA

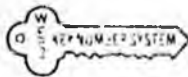
Alaska 807

CIVIL ACTION NO. 421 P.24 807

or the question, it is inappropriate to address the excessiveness issue at this point. We do not think that further briefing on the excessiveness issue would be of any significant value, although the parties may choose to address the issue further.

As to appellant Smith, the judgment of the superior court is Affirmed. As to appellant Mossberg, the judgment of conviction is Affirmed. Decision of the sentence appeal is postponed pending further briefing and oral argument before this court.

BURKE and BOOCHEVER, JJ., not participating



STATE of Alaska, Appellant,

v.

UNIVERSITY OF ALASKA, Appellee.

No. 4579.

Supreme Court of Alaska.

Feb. 27, 1981.

State brought action for injunctive relief, damages and declaratory judgment that developers were trespassing on land which was within state park and which had been granted to State by federal government for support of University of Alaska. University intervened and sought declaratory judgment whether such land could be used for purposes other than support of University. The Superior Court, Third Judicial District, Anchorage, James K. Singleton, J., determined that inclusion of university lands in state park constituted a breach of federal trust, invalidated portion of statute including such land within park, and awarded attorney fees to University, and State appealed. The Supreme Court, Conroy, J., held that the land, which had been granted for support of University,

could not be used for other public purposes; (2) inclusion of the land within state park violated provision of federal grant under which land was to be held in trust for University; (3) state constitutional provision did not preclude legislature from disposing of university land without obtaining University's approval; (4) proper remedy would not be invalidation of statute, but, rather, the remedy of inverse condemnation and either awarding monetary damages or exchanging lands having an equal fair market value; (5) attorney fees were not covered by rule providing that failure of party to serve cost bill and notice as required by such rule would be construed as a waiver of his right to recover costs; (6) permitting University to file request for attorney fees 13 days after judgment was not abuse of discretion; (7) award of \$15,000 in attorney fees was excessive; and (8) trial court was not precluded from awarding attorney fees, though both parties were state entities.

Affirmed in part, reversed in part, and remanded.

1. Public Lands  $\approx$  51

Lands, which federal government granted to territory of Alaska for support of University of Alaska, could not be used for other public purposes, though Congress repealed statutory provision to effect that lands granted to the territory were to be held by the territory in trust. AS 14.40.390, 14.40.400, 38.05.005, 38.05.065, 38.05.066, 41.20.210; 48 U.S.C. (1964 Ed.) § 354a(a, b-f); Const. Art. 12, § 13.

2. Public Lands  $\approx$  51

Inclusion of land within state park, without compensation to University of Alaska, violated provision of federal grant under which land was to be held in trust for University. AS 41.20.210; 48 U.S.C. (1964 Ed.) § 354a(b-f).

3. Public Lands  $\approx$  51

Principle that trustee has a duty to administer private trust solely in interest of beneficiaries is applicable to federal land granted to state for other purposes.

## 4. Colleges and Universities ⇌615)

Statute, which provided that no disposal of university lands could be made without approval of Board of Regents of University of Alaska, would be applicable only to disposals of land by Commissioner of Natural Resources, and did not apply to disposal of university lands by the legislature. AS 38.05.030(a).

## 5. Colleges and Universities ⇌615)

State constitutional provision, which stated that University of Alaska had title to all real and personal property set aside for or conveyed to it and that its property was to be administered and disposed of according to law, did not preclude legislature from disposing of university land without obtaining University's approval. Const. Art. 7, § 2; Art. 8, §§ 2, 7; Art. 12, § 11; Laws 1978, c. 182, § 3(c); AS 14.40.170(4), 38.05.030(a), 41.20.210.

## 6. Colleges and Universities ⇌2

Statute creating state park, in which University of Alaska's land was included, did not impliedly repeal statute providing that no disposal of university lands could be made without approval of University's Board of Regents. AS 14.40.170(4), 38.05.030(a), 41.20.210.

## 7. Declaratory Judgment ⇌204

Issue whether, if board of regents wishes to dispose of university land granted to state under certain act, the Commissioner of Natural Resources had to carry out the disposal was not ripe for review where the requested disposal was not made by Department of Natural Resources because the land had been included in state park and there was no reason to assume that there was a general problem or that there was a likelihood of a recurring controversy concerning such issue if the University of Alaska was not compensated. 48 U.S.C. (1964 Ed.) § 354a.

## 8. Eminent Domain ⇌266

Proper remedy, in regard to breach of trust arising when statute creating state park included University of Alaska's land within the park without compensation, would not be the invalidation of the statute,

but, rather, the remedy of inverse condemnation and either awarding monetary damages or exchanging lands having an equal fair market value. 48 U.S.C. (1964 Ed.) § 354a; AS 41.20.210, 41.20.210(11).

## 9. Costs ⇌203

Though attorney fees were costs, such fees were not covered by rule providing that party entitled to costs was to serve on each of the other parties to the action or proceeding a cost bill, together with notice when application was to be made to the clerk to tax costs, that cost bill was to distinctly set forth each item claimed and that failure of a party to serve a cost bill on notice as required by the rule was to be construed as a waiver of his right to recover costs. Rules of Civil Procedure, Rule 79(a).

## 10. Costs ⇌199

It is within discretion of trial court to impose a time limit for filing for attorney fees.

## 11. Costs ⇌199

In action involving issue whether lands granted by federal government for support of University of Alaska could be used for other public purposes, permitting University to file its request for attorney fees 13 days after the judgment was not abuse of discretion. Rules of Civil Procedure, Rule 82.

## 12. Costs ⇌172

In action which related to issue whether lands originally granted to state by federal government for support of University of Alaska could be used for other public purposes and in which University requested an award of attorney fees in the amount of \$16,196, award of \$15,000 in attorney fees to University was excessive, in light of fact that there was no evidence that State's claim was frivolous, vexatious or devoid of good faith. Rules of Civil Procedure, Rule 82.

## 13. Colleges and Universities ⇌1

University of Alaska enjoys, in some limited respects, a status which is equal rather than subordinate to that of the state.

utive or legislative arm of government. AS 14.40.040; Const. Art. 7, §§ 2, 3.

#### 14. States ⇌ 215

In action involving issue whether lands originally granted to State by federal government for support of University of Alaska could be used for other public purposes, trial court was not precluded from awarding University attorney fees against State, though both parties were state entities and it was asserted that the fees would ultimately come from the same fund. AS 14.40.040; Const. Art. 7, §§ 2, 3.

Barbara J. Miracle and Thomas E. Meacham, Asst. Attys. Gen., and Avrum M. Gross, Atty. Gen., Juneau, for appellant.

Brian J. Farney and Mary Louise Molenda, Abbott, Lynch & Farney, Anchorage, for appellee.

#### OPINION

Before RABINOWITZ, C. J., CONNOR, BURKE and MATTHEWS, JJ., and DIMOND, Senior Justice.

CONNOR, Justice.

The principal issue in this case is whether lands that were originally granted to the state by the federal government for the support of the University of Alaska may now be used for other public purposes. The state contends that university lands can be included in Chugach State Park without paying compensation. The superior court held that the inclusion of the university lands in the state park constituted a breach of trust and invalidated the portion of AS 41.20.210 which included the university land in the park. It awarded substantially full attorney's fees to the university.

We conclude that the trial court was correct in holding that it was a breach of a federal trust to include university land in the park without compensation, but we conclude that invalidating the statute was er-

ror. The proper remedy in this case is to award compensation to the university. We also hold that it was improper to award substantially full attorney's fees to the university.

#### I. Facts

The facts in this case are not in dispute. A group of real estate developers (Village Developers, *et al.*) wished to build a housing development known as Innsbruck Village. All the proposed land for the development, consisting of about 710 acres, is a privately owned inholding within the boundaries of Chugach State Park. Between this enclave of private land and the park boundary are two sections of land designated as Sections 11 and 14 of Township 15 North Range 1 West, Seward Meridian. In 1961, the state received the patent to the bulk of the land in these two sections<sup>1</sup> from the United States under the authority of the Act of January 21, 1929, ch. 92, 45 Stat. 1091 (1929), which allows the state to select 100,000 acres of vacant unreserved land from the federal domain for the "use and benefit" of what is now the University of Alaska. This is not land to be used as the site of a university campus; rather, it is an asset of the university to be used for its support through its retention and use or its eventual sale.

The real estate developers wished to widen and reroute a portion of a then existing road that provided the only access into the private land. This road cuts across the two sections of university land. In July, 1977, the developers applied to both the university and the state Department of Natural Resources for permission to do the road work. The university granted its permission in December, but on April 5, 1978, the Department of Natural Resources denied its permission.

At the time the state denied its permission, a survey crew employed by the developers had already been on the road for several days and had cut some trees and brush. On April 12, the state filed a com-

1. The remaining land in the sections is private and acquired under homestead entry prior to the state patent.

plaint seeking an injunction halting any further work, a declaratory judgment that the developers were trespassing, and damages.

The developers, in their answer and a motion for partial summary judgment, stated among other defenses and counterclaims that the court should not permit the state to treat the university land as park land. The state, in opposing this contention, maintained that the land belonged to the state, the legislature had included the land in Chugach State Park, and therefore it had to be managed in a manner compatible with park land. The state further took the position that the Board of Regents of the university had no power to force the state to grant a right of way over this land and that the university's permission to the developers had no effect.

At a hearing on the summary judgment motion, the court decided to permit the University of Alaska to intervene as a party. The court was concerned that any decision regarding the relatively minor dispute between the developers and the state over a piece of road construction could have a far-reaching effect on the future management of university lands. When the university intervened as a defendant, it sought a declaratory judgment not only as to the land specifically involved in the road dispute, but also as to the total 5,040 acres of university land included in Chugach State Park.<sup>2</sup>

In a memorandum decision, the trial court concluded, first, that the land granted to the university continued to be retained in trust for the university under the federal grant; second, that by placing the university land in Chugach State Park the state violated the purpose of the trust; third, that under Alaska law, the Board of Regents must be consulted whenever there is a disposition of land, and there was no approval by the Board to place this land in a state park; and fourth, that when the Board of Regents seeks a disposal of its land, as was done in this case by approval of

the road building plan, the state Department of Natural Resources must acquiesce, and carry out the disposal as a ministerial duty. The trial court's ultimate conclusion was that the university lands were not part of the Chugach State Park because the legislature's enactment including the lands in the park was invalid. A final order to this effect was entered.

The state has appealed from the court's judgment. After the court entered its final order, the state and the developers settled. The only remaining dispute is between the university and the state.

## II. Violation of Federal Trust

[1] The state's principal argument in this appeal is that the grant of 100,000 acres of federal land for the support of higher education in the Territory of Alaska under the 1929 Act is no longer restricted to the narrow purpose envisioned by that Act. While the state recognizes that the 1929 Act originally required university lands to be managed solely for the benefit of the university, the state apparently now believes that these lands may be managed with multiple objectives in mind, some of which may be compatible with the support of the university and some which may not be compatible. It does not believe that the university must be compensated for placing the land in the state park. The state's reasoning is based on the action of Congress, which has repealed certain sections of the original 1929 land grant.

A review of the subsequent history of the 1929 land grant shows that the state's argument is without support. We agree with the trial court that putting university lands into a state park without compensation to the university was a breach of the trust.

### A. The 1929 Act.

The 1929 Act originally consisted of seven sections. The first, which is still in effect, is a habendum clause describing the size of the grant and its purpose. In particular, it

2. The university apparently did not sue when Chugach State Park was first created because of uncertainty as to whether university lands

in the state park boundaries were to be treated as private inholdings or managed like other park lands.

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states that the land is granted "for the exclusive use and benefit of the Agricultural College and School of Mines" (now the University of Alaska) (emphasis added). Section 2 of the Act, which is also in effect, states that the land grant cannot be used for the support of any religious institution. The remaining five sections, which are now repealed, contained detailed provisions relating to the sale or disposal of land. For example, they required that land be sold to the highest bidder at a public auction, that timber and other products from the land be sold at their appraised value, and that funds derived from the sale of lands be held in trust. Transactions in violation of the Act were "null and void," and the Attorney General of the United States was empowered to enforce the Act.

Language which is nearly identical to that contained in sections 3 through 7 of the 1929 Act appears in sections 10 and 28 of the New Mexico-Arizona Enabling Act, ch. 310, 36 Stat. 557 (1910), which makes grants of extensive amounts of federal land for school purposes to those states. The reason for these provisions in the New Mexico-Arizona Enabling Act was explained by the United States Supreme Court in *Lassen v. Arizona*, 385 U.S. 458, 463-64, 87 S.Ct. 584, 587, 17 L.Ed.2d 515, 520 (1967):

"All the restrictions on the use and disposition of the trust lands, including those on the powers of sale and lease, were first inserted by the Senate Committee on the Territories. Senator Beveridge, the committee's chairman, made clear on the floor of the Senate that the committee's determination to require the restrictions sprang from its fear that the trust would be exploited for private advantage. He emphasized that the committee was influenced chiefly by the repeated violations of a similar grant made to New Mexico in 1898. The violations had there allegedly consisted of private sales at unreasonably

low prices, and the committee evidently hoped to prevent such depredations here by requiring public notice and sale. The restrictions were thus intended to guarantee, by preventing particular abuses through the prohibition of specific practices, that the trust received appropriate compensation for trust lands." (footnotes omitted).

The nearly identical language used in the grant of land to the Territory of Alaska was undoubtedly placed in the Act to prevent the same kind of abuses by the territorial government.

The State of Alaska acquired the rights to the land granted by the 1929 Act by section 6(k) of the Alaska Statehood Act, Pub.L.No.85-508, 72 Stat. 339 (1958), which provides in relevant part:

"Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission."

Article XII, section 13, of the state constitution provides that any land taken by the state under a federal grant will be accepted under the "terms or conditions of the grants."<sup>3</sup> In *Wessells v. State Department of Highways*, 562 P.2d 1042, 1051 n.34 (Alaska 1977), we recognized that acceptance of grants of school lands under this section created a trust with the state acting as trustee.

#### B. The 1966 repeal.

In 1966, the United States Congress repealed sections 3 through 7 of the 1929 Act. Pub.L.No.89-588, 80 Stat. 811 (1966). The state asserts that this repeal means that there are no longer any federal restrictions on the use of the land granted under the 1929 Act. Its principal contention is that the repealing of section 3 of the Act removed any federal trust obligations. Section 3 had provided, in part:

"The terms or conditions of the grants of lands or other property, are consented to fully by the State and its people."

AS 14.40.090 implements the above section, and AS 14.41.400 establishes a trust fund for royalties derived from university lands.

3. The full text of article XII, section 13, provides:

"Consent to Act of Admission. All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing

"[I]t is hereby declared that all lands granted to said Territory are hereby expressly transferred and confirmed to the said Territory and shall be by the said Territory held in trust . . . ."

The state concludes that, once this language was repealed, the state could establish its own guidelines for how the land should be used.

The legislative history of the repeal, the history of the school land grants in general and the plain wording of the habendum clause of section 1 make this theory of the state unsupportable.

First, it is abundantly clear from the legislative history that Congress was willing to repeal sections 3 through 7 of the 1929 Act because it was satisfied that Alaska had adequate procedures in its own statutory law to prevent the type of abuses that the repealed sections were designed to prevent. In particular, it should be noted that in its first session in 1959, Alaska's new state legislature enacted a bill that provided for the disposal of public lands and resources along principles nearly identical to those contained in sections 3 through 7 of the 1929 Act. Like the 1929 Act, the state law required that lands and resources be sold to the highest bidder. See Ch. 169, art. IV, § 2, and art. VI, § 3, SLA 1959. In floor debates on the bill, Representative Rivers from Alaska was asked by one of his colleagues to clarify that Alaska had adequate procedural safeguards to manage university lands. Because of Alaska statutory law, Representative Rivers could assure him

4. The following conversation took place:

"Mr. HALL: I see no objection to the land of a land grant college or university, or otherwise, being sold to the highest bidder. Does the gentleman mean to inform me directly that the laws of the State of Alaska now care for this, in lieu of the Federal restrictions?"

Mr. RIVERS of Alaska: Yes, and it is so stated in the report, which says that the change by the Congress would not be immediately effective because conforming legislation is still in effect or being considered by the State.

Mr. HALL: Mr. Speaker, I believe the gentleman knows I am a "State" member in respect to this, and I believe in the 10th Amendment to our Constitution. It has nothing to do

with that such protections existed. It hardly seems possible that Representative Rivers intended to convey the message the state now asserts, that in fact the state would be free to use university lands for any purpose which it saw fit under some broad concept of the "public interest."<sup>4</sup>

Second, the state's argument fails to appreciate that, if Congress had intended to allow land to be used for other than university purposes, this would have signaled a major shift in federal land policy. The statehood enabling acts of at least nine other western states contain allocations of acreage for school trust lands totaling approximately 40 million acres. See Note, *Compensation for Highway Easements Over School Trust Lands*, 42 Wash.L.Rev. 912, 912 n.5 (1967). In 1962, Arizona's legislature petitioned Congress to modify its enabling act so that municipalities could use school trust lands for parks, schools and other public purposes and compensate the trust at less than fair market value. Bills introduced by the Arizona congressional delegation failed to pass both houses. See Udall, *Arizona's Public Lands—Mixed Blessing, Mixed Burden*, 8 Ariz.L.Rev. 11, 13 (1966). It does not seem reasonable to conclude that Alaska, alone among western states, was to be treated so differently.

Finally, it is clear that the language of the 1929 Act that was not affected by the 1966 repeal continues to impose a trust obligation upon the state. As noted above, the habendum clause, which remains in effect, continues to require that the land be used

that the State of Alaska now has inherent in its own code and laws the fact that it will make sales at public auction, and that they will maintain necessary restrictions for the protection of the State university and the State of Alaska—that is all I need.

Mr. RIVERS of Alaska: Mr. Speaker, I will say that the State will impose its own appropriate restrictions. But I must also say that the present law allows the sale of university lands by sealed bids as well as by public auction. With that one modification I warrant all that the gentleman requires.

Mr. HALL: Mr. Speaker, I will follow my own opinion.

<sup>4</sup>12 Cong. Rec. H. 21,749 (1956).

for the "exclusive use and benefit" of the university.

### C. The trust violation.

[2] Because the land was to be held in trust for the university, we must determine whether inclusion of the land in Chugach State park caused a breach of the trust. The trial court concluded that the inclusion of university land in the park violated the trust provision of the federal grant. We agree. The use that can be made of park lands as compared to state lands in general is severely restricted. Trees may not be cut, minerals may not be removed, nor can the land be used for raising farm animals. The general principle is that park lands are to be managed in a way that will increase "the value of a recreational experience."<sup>5</sup> It is apparent that this objective is incompatible with the objective of using university land for the "exclusive use and benefit" of the university. The implied intent of the grant was to maximize the economic return from the land for the benefit of the university. This intent cannot be accomplished if the use of the land is restricted to any significant degree.

### 5. 11 AAC 18.010 provides:

"On public lands located within the boundaries of a state park, surface or subsurface mineral (including gravel and rock) exploration or extraction, removal or cutting of timber or other plant growth, grazing or pasturing of domestic animals, or other activities which do not increase park values or which do not add to the value of a recreational experience are incompatible uses and are prohibited without a permit from the director. The director shall issue a permit if he determines that the

(1) ecology of state park lands will not be irreparably damaged or imperiled;

(2) state park lands are protected from pollution;

(3) public use values of the state park are maintained and protected; and

(4) public safety, health and welfare will not be damaged or imperiled."

5. At least two courts have specifically concluded that the law of private trusts is applicable to land held by the state in trust for schools. See *Wynn v. Carter*, 114 So.2d 302, 304 (Miss. 1959); *W. H. v. Rosenberger*, 187 Nev. 726 (1933); *W. H. v. Rosenberger*, 177 (1972). As held in the case, the intent of the Alaska Act of University

[3] It is well established in private trusts that "[i]t is the duty of a trustee to administer the trust solely in the interest of the beneficiaries." H. A. Scott, *The Law of Trusts* § 170, at 1298 (3d ed. 1967). See G. Bogert, *The Law of Trusts and Trustees* § 541, at 157 (rev. 2d ed. 1978). *Lassen v. Arizona*, 385 U.S. 458, 87 S.Ct. 567, 17 L.Ed.2d 515 (1967), makes clear that the same private trust law principles are to apply to federal land granted to the states for school purposes.<sup>6</sup> *Lassen* involved the question of whether and how much compensation must be paid by a state when it uses school lands for a highway right of way.

The Court noted that the enabling act granting the school land "unequivocally demands . . . that the trust receive the full value of any lands transferred from it. . . ." 385 U.S. at 466, 87 S.Ct. at 588, 17 L.Ed.2d at 521. Further, the intent of Congress was that "the grants provide the most substantial support possible to the beneficiaries and that *only* those beneficiaries profit from the trust." 385 U.S. at 467, 87 S.Ct. at 589, 17 L.Ed.2d at 522 (emphasis added).<sup>7</sup> As noted in a more recent Supreme Court case, *Alamo Land & Cattle Co. v. Arizona*, 424 U.S. 295, 302, 96 S.Ct. 910, 915, 47 L.Ed.2d 1, 8

lands created a trust. *Wesselis v. State Dept. of Highways*, 562 P.2d 1042, 1051 n.34 (Alaska 1977). The state has apparently recognized that at least as to funds derived from university lands, private trust law applies. See 1963 Op. Att'y Gen. No. 13 (Alaska May 31, 1963), which liberally cites private trust law authorities in determining the proper management of the fund created by AS 14.40.400. The state offers no explanation why the lands granted to the university should be treated differently from funds derived from them, and we cannot find any logical reason why they should be.

7. It is clear in both these quoted passages that the Court reached this conclusion by examining those provisions of the New Mexico-Arizona Enabling Act which, like former sections 3 through 7 of the 1929 Act, provided for detailed procedures for maximizing the profit from the disposal of land. However, as discussed in detail above, repeal of those sections in the Alaska Act was not meant to change this policy. It was only meant to allow the state to use its own similar procedures. Therefore, the language in *Lassen* is equally applicable to this case.

(1976), the ultimate conclusion of *Lassen* is that "even where the State itself is the acquirer, the Act's designated beneficiaries were to derive the full benefit of the grant."<sup>8</sup>

The state conjectures that there may still be an economic return from these lands because at some point in the future the Department of Natural Resources may allow ski tows or concession stands to be placed on them. The Supreme Court in *Lassen* rejected this type of speculation about the possible future value of land. The Arizona Supreme Court had concluded that it was safe to presume that a highway always increases the value of adjacent lands in an amount equal to the value of the right of way that has been taken. The United States, as amicus curiae, had suggested that, instead of using a presumption, any compensation paid into a trust be reduced by any proved enhancement. The Supreme Court rejected both arguments and concluded that the school trust had to be compensated for the actual appraised value of the land taken.

From the foregoing discussion, we conclude that the state has breached the trust by not compensating it for the value of the university land included in the park. The appropriate remedy is discussed in detail below.

### III. Legislature's Power to Dispose of University Lands

[4] As discussed above, the trial court concluded that the disposal of university land without compensation violated a trust created by the 1929 Act. The court further concluded, however, that the state legisla-

8. Of all the states that received federal land grants for schools in their enabling acts prior to *Lassen* only Arizona, *Arizona Highway Dept. v. Lassen*, 99 Ariz. 161, 407 P.2d 747 (1965), and to a limited extent Wyoming, *Ross v. Trustees of Univ. of Wyo.*, 222 P. 3 (Wyo. 1924), *aff'd on rehearing*, 31 Wyo. 464, 228 P. 652 (1924), had concluded that a public purpose use of school lands did not require compensation to a school trust fund. See *State ex rel. Galen v. Dist. Court*, 42 Mont. 105, 112 P. 706 (1910), *State ex rel. Johnson v. Central Neb. Pub. Power & Irrigation Dist.*, 143 Neb. 152, 8 N.W.2d 841 (1943); *State Highway Comm'n v. Walker*, 61 N.M. 374, 501 P.2d 317 (1973); *State Highway*

ture had no power to dispose of university land without the express permission of the Board of Regents. The court reasoned that AS 38.05.030(a) prevents any disposal of university lands by the Commissioner of Natural Resources without the approval of the Board of Regents, and, because this was a disposal of land without the Board's approval, it was invalid.

While we agree with the trial judge's conclusion that this was a "disposal" of land, we conclude that AS 38.05.030(a) only covers disposals of land by the Commissioner of Natural Resources.<sup>9</sup> The creation of Chugach State Park was a disposal by the legislature, not by administrative action, and therefore AS 38.05.030(a) is inapplicable.

[5] The university argues, on the basis of article VII, section 2, of the Alaska Constitution, that the legislature cannot control university land. That section provides:

"The University of Alaska is hereby established as the state university and constitutes a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law."

The trial court concluded:

"The apparent intention of the framers of the Constitution was to insure that the University had legal title to all land and property actually utilized by it in its educational capacity."

This is a reasonable interpretation of the section, and in fact the legislature has given

*Comm'n v. State*, 70 N.D. 673, 297 N.W. 194 (1941); Note, *Compensation for Highway Easements over School Trust Lands*, 42 Wash.L. Rev. 912, 913 n.6 (1967).

9. AS 38.05.005-.040 covers the administration of public lands by the Commissioner of Natural Resources. AS 38.05.030(b) provides in part:

"The sale, lease or other disposal of university lands shall be made by the commissioner. No sale, lease, exchange or other disposal of university lands may be made without the approval of the Board of Regents of the University of Alaska."

title to lands in the area of the Fairbanks campus to the university. Ch. 182, § 3(c), SLA 1978. Moreover, the university takes any land it may have title to "according to law." As the state points out, only the legislature can make laws effecting the disposal of land, not the Board of Regents,<sup>10</sup> so even if the university did have title to the land, the legislature would still be empowered to dispose of it.<sup>11</sup> The only veto power the Board of Regents has over disposals of land is defined by statute. Consequently, we believe that the legislature was free to dispose of this land without obtaining the approval of the university. In any event, as the federal patent makes clear, the state, not the university, was the grantee.

The natural resources article of the Alaska Constitution grants extensive powers to the legislature to control state lands. Article VIII, section 2, provides that

"The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people."

It is clear that these lands "belong" to the state. Additionally, article VIII, section 7,

10. See Alaska Const., art. XII, § 11. Terms such as "according to law" refer to the legislature's power to make laws.

11. Nebraska has apparently concluded that its legislature does not have the power to make direct disposals of land. See *State ex rel. Johnson v. Central Neb. Pub. Power & Irrigation Dist.*, 143 Neb. 153, 8 N.W.2d 841, 848 (1942). However, the Nebraska Constitution specifically provides for a method of management and disposal of school lands. The Alaska constitution has left these determinations to the legislature.

12. The university suggests that, by enacting AS 41.20.210, creating Chugach State Park, there was an implied repeal of AS 38.05.030(a). This is not a logical or necessary construction. AS 41.20.210 withdrew the particular university and involved from the operation of the management mechanism created by AS 38.05.030(a) and AS 14.40.170(4), which grants certain management powers to the Board of Regents. The university also has sought a declaration that when the Board of Regents wishes to dispose of university land granted to the state under the 1929 Act the Commissioner of Natural Resources must carry out the disposal.

provides for reserving from the public lands areas which have recreational value.

[6.7] The university objects to this interpretation of the natural resources article which allows the legislature wide latitude of control over its lands. It contends that it allows politics to intrude into the management of university affairs. However, if the trust fund for university lands is fully compensated at the appraised value of the property, as *Lassen* requires, it is difficult to imagine how the legislature can have any impact on university policy or academic freedom.<sup>12</sup>

Thus we hold that the legislature had the power to dispose of the land in question.

#### IV. Remedy

[8] The trial court held that the portions of AS 41.20.210(11) which included university land in the park were invalid, and rejected the remedy of inverse condemnation and either monetary damages for the taking of the university land or an exchange of lands having an equal fair market value. In the trial court's view, the remedy of inverse condemnation would result in the judiciary "injecting itself unnecessarily into the political sphere" and could force an unanticipated allocation of resources by the state.<sup>13</sup>

In this case, it is clear that the requested disposal was not made by the Department of Natural Resources because the land had been included in the state park. There is no reason to assume that this is a general problem or that there is a likelihood of a recurring controversy concerning the issue if the university is compensated. Therefore, we do not believe the issue is ripe for review. See *Jefferson v. Asplund*, 458 P.2d 995, 999 (Alaska 1969) (regarding declaratory judgments).

13. One commentary argues that inverse condemnation should not be an available remedy when the state's taking is a purely nonphysical, regulatory one. The only remedy that should be available, according to this view, is declaratory or injunctive relief invalidating the statute; otherwise, legislatures would become reluctant to try new approaches to land use problems because the state or municipality might suddenly find itself liable for numerous damage claims. This would not occur if the law were merely declared invalid. Furthermore, invalidating the law leaves it to the legislature to determine whether it wishes to reenact a similar law with the certain knowledge that it will now have to pay something for it. Permitting

While there is some merit to the argument in the context of a private damage action, we believe that it is inapplicable in this case. If damages are awarded here, it will, at the most, involve a transfer of either lands or funds from one governmental entity to another. Moreover, the legislature has nearly total control over appropriations to the university. Thus, there is no issue of the allocation of resources between the private and public sectors.

It is also logical to assume that the legislature intended to compensate the university for the loss of its land. This view gives the statute creating Chugach State Park a reading that is in accord with the well recognized canon of statutory construction that, when possible, legislation should be construed in a way that upholds its validity. See 1 C. Sands, *Sutherland Statutory Construction* § 2.01 (4th ed. 1972).

The New Jersey Supreme Court based a decision on this rationale in *Lomarch Corp. v. Mayor of Englewood*, 51 N.J. 108, 237 A.2d 881 (1968). Rather than declare a statute that provided for reserving private land for parks invalid, the court concluded that the statute should be construed in such a way that it required compensation, even though the statute and a municipal ordinance enacted under it did not mention the subject. Cf. *Maryland-National Capital Park & Planning Commission v. Chadwick*, 286 Md. 1, 405 A.2d 241, 250 (1979) (striking down a plan similar to New Jersey's on the ground that the regulation constituted a taking and was therefore unconstitutional in that it failed to award any compensation). We do not decide whether we will follow *Lomarch* in an action by a private property owner<sup>14</sup> but we do find its reasoning appropriate in this case where no private damage actions are involved.

Thus, it is necessary to remand this case to determine the value of the lands taken. We conclude that the university should receive the full appraised value of the land

that was placed in the park. The applicable date on which the fair market value of the land should be determined is the date the Chugach State Park act was enacted. This is in accordance with our holding that the statute which created Chugach State Park required compensation, and with our decision in *City of Anchorage v. Nesbett*, 530 P.2d 1324, 1334-36 (Alaska 1975). Finally, we believe the parties should be given an election to pay monetary damages or arrange a mutually agreeable land exchange.

#### V. Attorney's Fees

Following judgment, the university moved in the superior court for an award of \$16,196.00 in attorney's fees incurred in defending the underlying action. The court granted a partial award of \$15,000.00. The state raises numerous objections to the court's award of attorney's fees: that the university waived its right to recover attorney's fees by failing to comply with the requirements of Civil Rule 79(a) that a cost bill be filed within ten days of judgment, and by failing to set forth the charges incurred with sufficient particularity; that the court's award of substantially full attorney's fees was unreasonable and an abuse of discretion; and that one state agency should not be ordered to pay attorney's fees to another state agency.

[9] Initially, the state argues that the trial court erred in refusing to apply the requirements of Civil Rule 79(a) to the university's request for attorney's fees. Civil Rule 79(a) provides in part:

"Within 10 days after the entry of judgment, a party entitled to costs shall serve on each of the other parties to the action or proceeding a cost bill, together with a notice when application will be made to the clerk to tax costs. The cost bill shall distinctly set forth each item claimed in order that the nature of the

an inverse condemnation action places the allocation of public resources into the hands of the private litigants. Note, *Inverse Condemnation: Its Availability in Challenging the Validity of a Zoning Ordinance*, 26 Stan. L. Rev. 1439 (1974).

14. As noted, *Lomarch* involved compensation to private property owners.

charge can be readily understood. . . . Failure of a party to serve a cost bill and notice as required by this subdivision shall be construed as a waiver of his right to recover costs."

The state contends that the university waived its right to recover attorney's fees by its failure to comply with the requirement that a cost bill be served within ten days of judgment. The university filed its request for attorney's fees in the superior court thirteen days after judgment. The trial court ruled that it would be unfair to treat any delay in filing the motion for attorney's fees as a waiver (citing Civil Rule 94), given the established position of the superior court in the Third Judicial District that the procedures in Rule 79 do not govern Rule 82 motions for attorney's fees.

We have never directly addressed the question of whether a request for attorney's fees is governed by the procedural requirements of Rule 79. However, on two occasions we have intimated that Rule 79 does not govern attorney's fees, by considering the issue of attorney's fees after holding that the right to recover costs was waived for failure to establish compliance with Rule 79(a). See *Curran v. Hastreiter*, 579 P.2d 524 (Alaska 1978);<sup>15</sup> *M-B Contracting Co. v. Davis*, 399 P.2d 433 (Alaska 1965).

15. *Curran* states:

"Although appellees specify as error the superior court's failure to award both costs and attorney's fees, they request that the case be remanded only for a determination of attorney's fees. There is no indication in the record that appellees complied with Civil Rule 79(a) which requires a party seeking costs to serve on each of the other parties within 10 days after entry of judgment 'a cost bill, together with a notice when application will be made to the clerk to tax costs.' The rule also provides that '[f]ailure of a party to serve a cost bill and notice as required by this subdivision shall be construed as a waiver of his right to recover costs.' Thus, appellees have apparently waived their right to costs. See *M-B Contracting Co., Inc. v. Davis*, 399 P.2d 433, 436-37 (Alaska 1965). In *M-B Contracting*, after invoking Rule 79(a) to bar consideration of an appeal as to costs, this court considered the separate issue of attorney's fees."

579 P.2d at 526 n.20

16. AS 09.60.010 provides:

AS 09.60.010

We conclude that, while attorney's fees are costs,<sup>16</sup> they are not covered by the literal requirements of Civil Rule 79(b).<sup>17</sup>

[10, 11] It is within the discretion of the trial court to impose a time limit for the filing for attorney's fees. The trial court did not abuse its discretion in this case by permitting the request thirteen days after the judgment.

[12] When granting attorney's fees, the trial court indicated that the amount requested by the university, \$16,196.00, was reasonable due to the high quality and extensive nature of the work required, but it felt constrained by this court's decisions to grant only a partial award. The state contends that the amount awarded, \$15,000.00, provides "substantially full attorneys fees" and is per se unreasonable. In *Moses v. McGarvey*, 614 P.2d 1363, 1370 (Alaska 1980), we stated that "complexity may be considered in determining the amount to be awarded, but that factor alone does not justify the award of full fees."

We have consistently held that an award of full attorney's fees is "manifestly unreasonable" in the absence of a bad faith defense or vexatious conduct by the losing party. E. g., *Davis v. Hallett*, 587 P.2d

"Except as otherwise provided by statute, the supreme court shall determine by rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case." (emphasis added).

17. Alaska R.Civ.P. 79(b) reads:

"Items Allowed as Costs. A party entitled to costs may be allowed premiums paid on and expenses of posting, undertakings, bonds or security stipulations, where the same have been furnished by reason of express requirement of law or on order of the court; the necessary expense of taking deposition for use at trial and producing exhibits; the expense of service and publication of summons or notices, and postage when the same are served by mail; filing fees and other charges made by the clerk of the court and fees for transcripts required in the trial of a case in the superior court. In addition to the items allowed as costs by law and in these rules, a party shall be allowed any other expenses necessarily incurred in order to enable a party to secure some right accorded him in the action or proceeding."

1170, 1171-72 (Alaska 1978): *Maivo v. J. C. Fenney Co.*, 512 P.2d 575, 587 (Alaska 1973). In *Stepanov v. Gavriilovich*, 594 P.2d 30, 37 (Alaska 1979), an award of substantially full attorney's fees was held to be "contrary to the philosophy expressed in *Maivo* . . ."

The attorney's fees awarded the university are over ninety per cent of what it requested, and there is no evidence that the state's claim was frivolous, vexatious or devoid of good faith. The award is excessive and must be reduced on remand.<sup>15</sup>

[13, 14] Finally, the state suggests that the court is precluded from awarding attorney's fees when both parties are state entities, claiming that the fees will ultimately come from the same fund. This argument was not presented to the superior court, and therefore it need not be considered. In any event, the argument is without merit. The university is a corporation of independent authority established by the Alaska Constitution, article VII, sections 2 and 3. It has the statutory power to "sue and be sued" in its own name, AS 14.40.040; and it is "an instrumentality of the sovereign which enjoys in some limited respects a status which is co-equal rather than subordinate to that of the executive or the legislative arms of government." *University of Alaska v. National Aircraft Leasing, Ltd.*, 536 P.2d 121, 128 (Alaska 1975) (footnote omitted). Attorney's fees would be paid out of segregated appropriations given to each entity. Each entity has an interest in preserving its own funds, and the university, as the prevailing party, is entitled to an award of fees.

In conclusion, we affirm the trial court's decision that the inclusion of university lands in Chugach State Park by statute, without compensation to the university, was a breach of the federal trust. We hold, however, that the court erred in invalidating the statute. The proper remedy is to permit an award in inverse condemnation.

15. The state also argues that the university failed to comply with the requirements of Rule 59(a) that a cost bill "distinctly set forth each charge claimed in order that the nature of the charge may be readily understood." On re-

We also hold that the court erred in awarding substantially full attorney's fees against the state.

AFFIRMED in part, REVERSED in part, and REMANDED.

BOOCHEVER, J., not participating.



Andrew KAGAK, Appellant,

v.

STATE of Alaska, Appellee.

No. 5228.

Supreme Court of Alaska.

March 13, 1981.

Defendant was convicted in Superior Court, State of Alaska, Fourth Judicial District, Barrow, Jay Hodges, J., of assault with a dangerous weapon and of shooting with intent to wound. Defendant appealed from sentence of 15-year term of imprisonment on the shooting with intent to wound count. The Supreme Court held that in view of fact that defendant during latter stages of commission of a previous armed robbery offense had aimed loaded pistol at police officer and pulled trigger, the pistol misfiring, and in view of fact that defendant had been out of jail only five months when he brandished loaded 12 gauge shotgun at young girl, threatened to kill her, and then shot another person in shoulder at point blank range, 15-year sentence was not inappropriate on his conviction for shooting with intent to wound.

Affirmed.

mand, the university should provide the state and the court with more complete records, including brief descriptions of the seizures included.

# Mental health group threatens lawsuit

by Carol Murkowski  
Times Writer

The Alaska Mental Health Association said Friday it will sue the state for possession of one million acres of formerly classified mental health trust land and income from the land unless the state Legislature moves to accommodate Alaska's mental health needs.

The announcement of the possible suit — which could amount to

\$1 billion — came just hours after the arrest of an Alaska Psychiatric Institute patient for the murder of four teen-agers at Russian Jack Springs Park.

"The facts of this morning's headlines point up the problems we're facing," said Dr. Jim Parsons, a psychologist and former president of the Mental Health Association. He and other association members stopped short of saying the deaths could have been prevented by more adequate facilities.

However, association director Natalie Gottstein said Anchorage's mental health facilities are filled to capacity.

"The fact there aren't more terrible things happening in this community is almost a miracle," she said.

Association attorney Jim Gottstein said he hopes the threat of a suit will force the Legislature to allocate funds to a now-empty mental health trust.

The association bases its case on a recently completed survey of mental health needs in Alaska, and the alleged failure of the state to comply with a 1956 grant from the federal government.

In 1956, the territory of Alaska was given one million acres of land, with the specification that its income be used to fund mental health programs. However, for the

next 22 years, mental health programs were funded separately, while income from mental health lands were mixed with other state lands.

In 1978 the Legislature made a swap, removing the mental health designation from the land and establishing a mental health trust fund in its place. The fund was to be fed with 1.5 percent of state revenues.

But the money never came through. Now, Jim Gottstein says, the Mental Health Association will sue unless the Legislature agrees to appropriate the missing 1.5 percent in revenues.

House bills 151 and 152 and Senate bills 710 and 711 were introduced last year, and would bank \$84 million in the mental health trust fund. That would cover the amount that should have flowed into the endowment fund since it began.

The Alaska Mental Health Association will sue for "recreation of the trust and administration of the proceeds in accordance with the Mental Health Lands Enabling Act," said Jim Gottstein, a member of the association's board.

"If it came to suit, we would say the state violated the trust," he said. "The state admits that they're currently violating federal law, and we'd sue for compliance."

The group will be armed with

several attorney generals' opinions in support of an established mental health trust fund, and a recent court settlement concerning University of Alaska trust lands. If some compliance is not made, assistant attorney general Rod Peques warned legislators last year, the federal government might legally be able to reclaim the land, now the site of parks, church camps, a fish hatchery, the Eagle River Correctional Center and other facilities.

The association also is armed with a mental health needs assessment survey it completed this month.

The report said all public and private psychiatric inpatient beds are being used, and that "a significant proportion of admissions for inpatient care result from the inadequacy of aftercare services and the almost total lack of programs which provide alternatives to hospital care."

The study recommended strengthening Alaska Psychiatric Institute programs, establishing an annual assessment of mental health programs, studying problems of the Alaska native and Bush communities and developing a community-based system of alternatives to institutional care, including half-way houses, sheltered workshops, social activity centers and intermediate care for chronic mental patients.

## Anchorage History

From the notebook  
of Evangeline Atwood

May 8

1954

The "Flying Carpet" delegation takes off for Washington, D.C., to lobby for statehood.

1970

Anchorage attorney George Boney is named Chief Justice of the state Supreme Court by Gov. Keith Miller.

SB 710 - 711 - Testimony

Jim Godstein - Ok Mental Health Assoc  
Anselm Staaul - Dept of Revenue -  
(If Needed)

Dr Marshall - Division Mental Health  
(If Needed)

S

B

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COMMITTEE REPORT  
SENATE

2/3/82

FURTHER: Resources and Finance

Date: 3/3/82

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SR 711

making a special appropriation to the Dept. of Revenue for deposit to the mental health fund

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

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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CHAIRMAN

02/17/82

SUBJECT: Mental health trust land liabilities

(Work Order Request #12 - 2465)

TO: Sen. Charles H. Parr

FROM: Richard A. Bradley

Legislative Counsel

B

You have asked that I comment on the general question of the Mental Health Trust Lands granted to the Territory and the State of Alaska as well as the bill presently pending before the legislature relating to the trust lands, SB 710.

In preparing these comments, I have reviewed the memorandum of February 8, 1982 to Representative Malone from the Department of Law which I believe that you also received a copy of. While I did not draft SB 710, I have been advised that SB 710 is the same as HB 151, the bill reviewed in the Department of Law memorandum. Accordingly, it seems that the comments in that memorandum are usefully generally also to your question.

Because of the brief time allowed for the proeparation of this memorandum, it was necessary to cast my views in general conclusory statements:

- (1) I agree that it is unlikely that a court would conclude that the mental health trust responsibility imposed on the state to use the lands received for mental

health purposes was terminated at statehood by the Statehood Act or by the Omnibus Act.

(2) I agree that it is likely that a court would conclude that the Alaska Mental Health Enabling Act imposed an affirmative trust on the State.

(3) It may be that the prohibition against the dedication of funds under the Alaska Constitution will, at some time in the future, have practical implications for the provisions of AS 37.14. I do not believe that it does at this point.

Several aspects of this problem may be noted. This office disagrees with the Department of Law views on the nature of the constitutional requirement; in our view, the income from the disposal of lands does not constitute the income from a "tax or license." We believe those words have meaning, whether or not our constitutional fathers correctly anticipated the actual sources of state income in the 1980's.

Until litigation resolves the question, it will be open to the legislature to interpret the constitution and dedicate the income from the disposal of lands if it wishes.

But I suspect that we also disagree with the suggestion that if the legislature dedicates the proceeds of a tax

or license but the funds remain subject to legislative appropriation, that an unconstitutional dedication occurred.

Put in other words, if the dedication of the proceeds of a tax or license are subject to affirmative legislative appropriation, there also no violation of the constitution occurs; in effect, the dedication constitutes nothing more than an allocation to an account within the treasury for accounting purposes.

I think it is premature, therefore, to pay too much attention to those concerns, particularly as long as there remains an obligation on the legislature to appropriate all the funds granted under the one and one-half percent formula. A dedication that remains subject to the discretion of the legislature to appropriate is not in fact a dedicated fund.

(4) I agree that so long as AS 37.14 remains the method by which the legislature seeks to execute its trust land responsibilities, the legislature should honor its own commitment to fund AS 37.14. I suggest that a legislative determination that the state is meeting or has met its mental health responsibilities, if based on reasonably well founded facts, will go some distance towards blunting the possibility of litigation on a theory that the state has failed in that liability. Whether that

conclusion can be justified (and be well founded), is a more difficult question on which I have no answers.

(5) If the legislature remains with a reasonable commitment to AS 37.14 and supports funding under that concept, the needs for an appraisal of the mental health lands may be avoided.

(6) I agree that the allocation of money to the mental health funds may be achieved without appropriation and that it is reasonable to do so.

As suggested, the money should be used for mental health purposes but if the legislature makes an implicit determination that mental health needs are adequately funded, the mental health funds may be appropriated by the legislature to a different purpose.

The provisions of SB 710 seem consistent with these conclusions and I offer no proposals for amendments to deal with the assumed liability or otherwise.

# STATE OF ALASKA

## DEPARTMENT OF LAW

FEB - 8 1982

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

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

February 8, 1982

Hon. Hugh Malone  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Re: Mental health trust fund  
Our file: J66-534-81A

Dear Representative Malone:

You have asked us to review HB 151 and HB 152 to determine whether they, if enacted, would satisfy the state's obligation to the mental health trust fund. In our opinion, the bills as drafted would not entirely satisfy the state's obligation to the mental health trust fund. In addition, the existing legislation which HB 151 would amend presents a problem under our constitutional prohibition against dedicated funds. We have also reviewed SB 710 and SB 711 which affect the mental health trust fund. We will discuss the development of the mental health trust fund, and make specific suggestions for legislative action.

The Alaska Mental Health Enabling Act, P.L. 84-830, § 202, 70 Stat. 709 (July 28, 1956) (copy attached), authorized the Territory of Alaska to select one million acres from the public lands of the United States in Alaska which were vacant, unappropriated, unreserved at that time. The statute required that these lands be administered by the Territory "as a public trust" and that proceeds and income of these lands "first be applied to meet the necessary expenses of the mental health program of Alaska." The statute authorized the territory to sell, lease, mortgage, exchange or otherwise dispose of the land in order to obtain funds or other property to be invested, expended, or used by the territory. The committee report which accompanied that legislation stated that "amounts not needed for the mental health program can be used for other public purposes as the legislature may determine." Senate Report No. 2053, 84th Cong., 2nd Sess., reprinted in (1956) U.S. Code Congressional and Administrative News at 3639.

In 1958, Congress passed the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (July 7, 1958). Section 6k of the

Statehood Act provided that "grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission." That section also specifically repealed two earlier federal acts under which land had been reserved, and granted the reserved lands to the state "for the purposes for which they were reserved." This proviso applied to lands reserved for the benefit of the public schools and university under the Act of March 4, 1915, P.L. 63-330, 38 Stat. 1214; it also applied to lands within the naval petroleum reserves under the Act of February 15, 1920, P.L. 66-146, 41 Stat. 450. However, this provision did not apply to the lands reserved under the Mental Health Enabling Act.

A section of the Mental Health Enabling Act which authorized federal grants for mental health treatment in Alaska was repealed in 1959 by the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 148 (June 25, 1959), § 31(b)(1). That Act did not effect the land grant or trust provisions of the Mental Health Enabling Act. The attorney general opined in 1964 that lands received pursuant to the Alaska Mental Health Enabling Act were reserved and thus could not be selected by municipalities under state land disposal laws. 1964 Opin. Alaska Atty. Gen. #7. Subsequently, the attorney general advised that mental health lands could be exchanged for land of equivalent fair market value. Inf. Opin. Alaska Atty. Gen., Feb. 10, 1967.

In 1978, the Alaska Legislature redesignated mental health lands as general grant lands and established a mental health trust fund which was to receive one and one-half percent of the total receipts derived from the management of state land. 1978 Alaska Sess. L., ch. 181, §§ 3 and 4; AS 37.14.070. We understand that this percentage of state revenues was intended to approximate the value of the trust lands. However, since no appraisal was made of the fair market value of these lands, it is impossible to determine whether the substituted revenue source meets or exceeds the fair market value of the trust lands. Since the dedication of a percentage of state revenues has no termination date, it will presumably exceed the value of the trust lands at some time.

In addition, the 1978 legislation conditioned the placement of this percentage of state revenues in the mental health trust fund upon appropriation by the legislature. We understand that to date no appropriation has been made to the mental health trust fund. We also understand that the legislature has made regular appropriations for the purpose of mental health treatment in Alaska and that the Department of Health and Social Services contains a division which is responsible

for mental health treatment in the state.

Our review of the statutes and relevant cases leads us to conclude that the Alaska Mental Health Enabling Act did impose affirmative responsibilities on the Territory of Alaska to review the needs for mental health treatment in the territory and to meet those needs with revenues from the mental health trust lands before using any proceeds from those lands for other purposes. The Alaska Supreme Court has ruled that the public trust established by the federal government for the benefit of the university in territorial days still requires that the state compensate the university for the fair market value of any land reserved for the university under that trust. State v. University of Alaska, 624 P.2d 807 (Alaska 1981). The mental health trust differs greatly from the federal trusts for the public schools and university in that the use of the latter was restricted absolutely for the benefit of the public schools and university respectively. Income and proceeds of the mental health trust lands could be spent for purposes other than mental health at the discretion of the legislature, if the mental health needs in the state had been met. Nevertheless, we think it unlikely that a court would find that the Alaska Mental Health Enabling Act did not impose some affirmative trust obligation on the territory.

We also think it unlikely that a court would find that the mental health trust obligation was terminated by the Statehood Act. Section 6k of that act specifically repealed certain portions of the public school and university trust legislation and transferred to the state lands reserved under those acts "for purposes for which they were reserved." Since the Alaska Mental Health Enabling Act was not repealed, we presume that it remains effective.

The general language in section 6k of the Statehood Act confirming previous grants made to the territory could be construed to impliedly repeal any restrictions on those grants, such as were contained in the Alaska Mental Health Enabling Act. However, the act could as easily be read to reaffirm and transfer the existing trust obligations to the new state. Since the latter view reconciles the Acts, it would probably be preferred by the courts. Sands, SUTHERLAND STATUTORY CONSTRUCTION (1973) §§ 51.01, 51.02.

If the Statehood Act did not terminate the mental health trust, then the trust obligation as to those lands selected under the Alaska Mental Health Enabling Act remains in effect. If the substitution of revenue for the trust imposed

by the 1978 state legislation was not equal to the fair market value of the trust lands, then the trust has been breached. Lassen v. Arizona, 385 U.S. 458 (1967). Even if the substituted revenue source were equal to the fair market value of the trust lands, the state's failure to appropriate that money to the trust may be a breach of the trust.

In addition, the dedication of one and one-half percent of total receipts from state lands will probably at some time exceed the fair market value of the trust lands. To that extent, the dedication is prohibited by article IX, § 7, of the Alaska Constitution. \*/ The dedication of revenues to the mental health trust fund is permitted under the Alaska Constitution only to the extent that it is required by federal law.

Thus, our review of the history of the mental health trust fund indicates that (1) a trust obligation probably exists under federal law, and (2) the state has probably breached that trust obligation by redesignating the mental health trust lands as general grant lands, and failing to compensate the trust for the fair market value of those lands. We have identified three alternative courses of legislative action and will discuss them briefly.

First, the legislature may follow its past course and do nothing to fund the mental health trust fund. There is a risk of litigation over the state's obligations in a suit brought by either the federal government or some beneficiary of mental health programs in the state. We note that the Alaska Mental Health Enabling Act does not provide any mechanism for enforcement of the trust. Therefore, the state may be immune from any action to enforce the terms of the trust under the

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\*/ Alaska Constitution, article IX, section 7 provides:

DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

Eleventh Amendment of the United States Constitution. Scott, Law of Trusts § 95 (1967). \*/ This is an issue which should be explored more thoroughly if litigation appears likely. In addition, there is the possibility that the legislative appropriations for mental health programs over the years have been adequate to meet the need for mental health treatment in the state. If past appropriations have been rationally based on reasonable assessments of mental health needs in Alaska, then the state may have fulfilled its basic trust responsibilities despite the failure to establish a separate fund with the trust lands. In that case, there may be no effective remedy for any possible breach of trust.

Second, the state may attempt to comply with the terms of the Alaska Mental Health Enabling Act. We believe that this would require:

(1) an assessment of the fair market value of the lands which were selected by the state under the Alaska Mental Health Enabling Act, as of the date of their redesignation by statute as general grant lands;

(2) some regular review (perhaps by the senate and house HESS committees) of the need for mental health treatment in the state; a report to the legislature with recommendations for appropriations for mental health treatment and facilities in the state; a legislative finding that these needs are met before money in the mental health trust fund is appropriated for any other purpose; \*\*/

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\*/ The state has partially waived its immunity from suit in state courts for contract, quasi-contract and certain tort claims. AS 09.50.250. It is doubtful that a suit to enforce a federal trust obligation could be brought under this statute.

\*\*/ The attorney general opined in 1961 that money received from the mental health trust lands in excess of the needs of the mental health program could be transferred to the general fund without specific legislative authorization. 1961 Opin. Alaska Atty. Gen. No. 11. We agree that the transfer of money into the general fund does not require an appropriation. However, we believe that the mental health trust obligation requires a rationally based legislative determination that the current needs of the state mental health program are met before trust money is expended for another purpose. We do not know whether past appropriations for the mental health program would be found to have satisfied this requirement.

Hon. Hugh Malone  
Alaska House of Representatives

February 8, 1982  
Page #6

(3) transfer of money to the mental health trust fund until the fund has received money equaling the fair market value of the trust lands.

We believe that these measures would satisfy the state's obligation under the Alaska Mental Health Enabling Act, while retaining flexibility as to the use of money in the mental health trust fund. At present, AS 37.14.040 provides that the principal of the fund shall be reinvested, and the income of the fund may be appropriated only for the support of a state mental health program. This section is much more restrictive than the federal trust obligation would require. Any restriction on the use of money beyond that required by federal law may violate the Alaska constitutional prohibition on dedicated funds.

We also note that the current statute requires that money be appropriated into the mental health trust fund. AS 37.14.050. Once in the fund, it must again be appropriated before it can be spent. The dual appropriation requirement is unnecessary to satisfy the federal trust obligation. In fact, it makes compliance with the federal trust obligation more difficult, by interposing the appropriation requirement before money can be placed in the fund. Money may be placed in the fund without an appropriation to the extent required by federal law, without violating our dedicated fund provision. We recommend direct transfer of money to the mental health trust fund until the fund reaches an amount indicated by an appraisal of the mental health trust lands. Under the terms of the federal law, the legislature may use money in the fund for any public purpose, once it has determined that the needs of the mental health program in the state have been met. This determination must be made by the legislature and must have a rational basis.

HB 151 and SB 710 each contain provisions consistent with some of our recommendations. HB 152 and SB 711 each contain appropriations to the mental health fund. We hope that our comments are helpful in the legislative consideration of these bills. Please let us know if we may be of further assistance in this matter.

The third alternative which may be pursued along with either one of the first two is to seek repeal of the Alaska Mental Health Enabling Act by Congress. If the restrictions of the trust unreasonably interfere with the prudent management of state resources and are unnecessary to ensure adequate funding of mental health treatment programs in the state, then Congressional repeal of the Alaska Mental Health Enabling Act may be

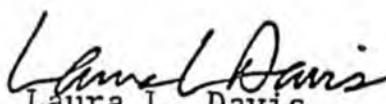
Hon. Hugh Malone  
Alaska House of Representatives

February 8, 1982  
Page #7

appropriate. We cannot advise you on the likelihood of obtaining such a repeal. However, we expect that Congress would be more favorably disposed toward the state if our actions demonstrated a commitment to carrying out our obligations under the Alaska Mental Health Enabling Act.

Very truly yours,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
Laura L. Davis  
Assistant Attorney General

LLD/pjg

cc: Hon. Charles Parr  
Alaska State Senate

Carole Burger  
Office of the Governor

ALASKA MENTAL HEALTH ENABLING ACT

PL. 84-830, § 202

70 STAT.]

PUBLIC LAW 830-JULY 26, 1956

711

70 STAT. 711-712

That the Surgeon General may cause the project to be inspected at any time, and if such inspection indicates that the project is not being constructed in accordance with approved plans and specifications, he may, after notice and affording opportunity for hearing, withhold further payment until he finds that adequate corrective measures have been taken.

"(d) The term 'cost of construction' means the amount found necessary by the Surgeon General for the construction of a project and includes the construction and initial equipment of buildings (including medical transportation facilities), architects' and engineering fees, the cost of land acquired specifically for the purpose of the project, and on-site improvements.

"(e) If, within twenty years from the date of completion of construction, any hospital or other medical facility constructed with the aid of grants under this section shall cease to be a publicly owned facility operated for the care or treatment of patients under the Territory's mental health program, the United States shall be entitled to recover from the Territory the then value of the hospital or other medical facility, reduced, however, proportionately to the extent to which the Territory may have contributed to the cost of construction thereof."

Recovery of value of facility.

LAND GRANT

SEC. 202. (a) The Territory of Alaska is hereby granted and shall be entitled to select, within ten years from the effective date of this Act, not to exceed one million acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing rights. All lands duly selected by the Territory of Alaska pursuant to this section shall be patented to the Territory by the Secretary of the Interior.

(b) The lands authorized to be selected by the Territory of Alaska by subsection (a) of this section shall be selected in such manner as the laws of the Territory may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective during which period the Territory of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U. S. C., sec. 292), as now or hereafter amended, but not over other preference rights now conferred by law. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

(c) All grants made or confirmed under this section shall include mineral deposits: *Provided, however*, That mineral deposits in lands which on January 1, 1956, were subject to public land order numbered 82 of January 22, 1943, shall not be included in said grants, but shall continue to be reserved to the United States.

Mineral deposits.

Lands: select

(d) Following the selection of lands by the Territory pursuant to subsection (b), but prior to the issuance of final patent, the Territory shall be authorized to lease and to make conditional sales of such selected lands.

(e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act.

## EFFECTIVE DATE

SEC. 203. This title shall become effective on the date of enactment of this Act.

## TITLE III—TRANSITIONAL AND GENERAL PROVISIONS

## AMENDMENTS AND REPEALS

SEC. 301. (a) Such of the following Acts or parts thereof as the Governor by proclamation shall declare to be superseded by a law or laws hereafter enacted by the Territorial legislature are repealed as of the effective date (specified in such proclamation) of such superseding law or laws, or as of the two hundred and tenth day after the date of enactment of this Act, whichever is later:

(1) Section 8 of the Act of January 27, 1905 (33 Stat. 616, 619; 48 U. S. C. 47);

(2) The first sentence of section 7 of the Act of February 6, 1909 (35 Stat. 600, 601), as amended by section 2 of the Act of October 14, 1942 (56 Stat. 782; 48 U. S. C. 46);

(3) The Act of June 25, 1910 (36 Stat. 852; see 48 U. S. C. 46b);

(4) The Act of April 24, 1926 (44 Stat. 322), as amended by sections 4 and 5 of the Act of October 14, 1942 (56 Stat. 782, 783; 48 U. S. C. 50, 50a); and

(5) Sections 1, 3, 6, 7, 8, and 9 of the Act of October 14, 1942 (56 Stat. 782, 783-785; 48 U. S. C. 46c, 47a, 47b, 47c, 48, 48a).

(b) (1) The Acts and parts of Acts listed in subsection (a), except the Act of June 25, 1910, are pending their repeal as provided in subsection (a), amended (A) by striking out the words "Secretary", "United States", "Congress", and "Department of the Interior" wherever these words appear, and inserting in lieu thereof the words "Governor of Alaska or his designee", "Territory of Alaska", "the Legislature of Alaska", and "Territory of Alaska", respectively; (B) by inserting immediately before the word "Treasury", wherever it appears, the word "Territorial"; (C) by striking out the word "Federal"; and (D) by amending section 1 (a) of the Act of October 14, 1942, to read as follows: "'Governor' means the Governor of Alaska or his designee:": *Provided*, That the words "United States" where

48 USC 46c, 47a,  
47b, 47c, 48, 48a.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2300

February 17, 1982

The Honorable Charles H. Parr  
Chairman  
Senate Health, Education and  
Social Services Committee  
Room 209 - Behrends Building  
Juneau, Alaska

Dear Senator Parr:

Re: Senate Bill No. 710  
Senate Bill No. 711

Senate Bill No. 710, an Act relating to state trust funds and their administration, was introduced in the Senate on February 3, 1982 and was referred to the Senate Health, Education & Social Services; Resources and Finance Committees.

Senate Bill No. 711, an Act making a special appropriation to the Department of Revenue for deposit to the mental health fund, was introduced in the Senate on February 3, 1982 and was referred to the Senate Health, Education & Social Services; Resources and Finance Committees.

For the consideration of the Senate Health, Education & Social Services Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Peter A. Bushre, Deputy Commissioner, Treasury and Mr. Vincent Wright, Chief, Research Section concerning the two Senate Bills.

Sincerely,



R. D. Stevenson  
Special Assistant

Enclosure

cc: The Honorable Bettye Fahrenkamp  
Chairwoman  
Senate Resources Committee

The Honorable Don Bennett  
The Honorable M. E. Dankworth  
Co-Chairmen  
Senate Finance Committee

The Honorable Michael F. Beirne  
Chairman  
House Health, Education &  
Social Services Committee

Joseph K. Donohue  
Deputy Commissioner, Taxation  
Department of Revenue

Peter A. Bushre  
Deputy Commissioner, Treasury  
Department of Revenue

Vincent Wright, Chief  
Research Section  
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill Number 710 and 711  
 Title An Act Relating to State trust funds and their administration  
 Requested by Health, Education and Social Services Date 2/16/82  
 Committee

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 component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		33.1	36.4	40.0	44.0	48.4
200 TRAVEL						
300 CONTRACTUAL		37.0	40.6	44.8	49.2	54.0
400 COMMODITIES						
500 EQUIPMENT		3.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		73.6	77.0	84.8	93.2	102.4

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		73.6	77.0	84.8	93.2	102.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

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

SB 710 would allow the Commissioner of Revenue to invest the Mental Health Fund, University Fund and Public School Fund in the same manner as specified for the surplus pension funds.

The costs herein represent personal services of an Accounting Technician II for accounting recording, review and reporting. Contractual services are for additional related safekeeping fees, computer accounting costs, etc. Equipment is for new position including working file storage.

IV. DATE February 17, 1982 PREPARED BY Peter A. Bushne  
 AGENCY Revenue  
 Original: Legislative Finance PHONE 465-2350  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

1	POSITION TITLE Accounting Technician II			RANGE/STEP 14A	CLASS. UNIT. G	LOCATION Juneau	FOY	APPROV	DISAPP
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. SB 710	PCN No.	PRIORITY	FORM 12	PAGE/LINE		
3	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
4	PERSONAL SERVICES:								
	SALARY	2,145 X 12	25,740						
5	BENEFITS	25,740 X .1550	3,989						
6	SBS	X .0613	1,577						
7	FIXED BENEFITS		1,836						
8	TOTAL PERSONAL SERVICES		01	33,142					
9	TRAVEL		02						
10	CONTRACTUAL		03						
11	COMMODITIES		04						
12	EQUIPMENT		05	3,500					
13	OTHER								
14	TOTAL COST			36,642					
15	RECEIPT CODE	FUNDING SOURCE							
16		FED RCPTS. 1002							
17		GF MATCH. 1003							
18		GEN. FUND 1004		36,642					
19		I-A RCPTS. 1005							
20		PGM RCPTS 1028							
21		OTHER							
21	CONTINUATION		FOR B&M USE ONLY						
22	ADDITION	XX							
4A - KEY NUMBER									

**JUSTIFICATION:**

To implement additions to Mental Health Fund per SB 710.

To do accounting, recording and reporting work. Assure transactions are posted to the proper account, track income receipts, review and proof safekeeping reports and asset listings, aid in general ledger posting and preparation of monthly, quarterly and annual reports.

AGENCY Department of Revenue PROGRAM Revenue Collection and Management

ORU Treasury Management

**13** REQUEST FOR NEW POSITION.

COMPONENT \_\_\_\_\_

Page 1 of 1 REVISED DATE SB 710 2/16/82

**FY 83**

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 710/711  
 Title Act relating to State Trust Funds  
 Requested by Senate Health, Education & Social Services Committee Date 2/8/82

II. FISCAL DETAIL

Agency Affected \_\_\_\_\_  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
Mental Health Fund		26,736	32,408			
University Fund		8,912	10,803			
Public School Fund		8,912	10,803			
POSITIONS						

FULL TIME						
PART TIME						
TEMPORARY						

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

The figures reflect the projected revenues (based on the Department of Revenue's January 1982 estimates) transferred from the General Fund to the Mental Health Fund (AS 37.14.010), the University Fund (AS 37.14.060), and the Public School Fund (AS 37.14.110). Royalty sale proceeds are not included in the projections since bids are impossible to anticipate prior to sales.

IV. DATE 2/8/82 PREPARED BY Robert W. Elliott  
 AGENCY Department of Revenue  
 Original: Legislative Finance PHONE 465-2173  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

POSITION PAPER

SENATE BILL NO. 711

"An Act making a special appropriation to the Department of Revenue for deposit to the mental health fund; and providing for an effective date."

This act will appropriate \$84,295,000. to the mental health fund. This is provided for in Alaska Statute 37.14.050.

Mental health trust lands were abolished by chapter 181 of the 1978 legislature. This chapter created in the place of the trust lands a new mental health fund which, subject to an appropriation by the legislature, was to receive 1.5 percent of the revenues paid to the State each year as proceeds from the management of State lands. This would include proceeds from surface rights, mineral leases, rental royalties, royalty sales, mineral revenues, etc. The principal of the mental health fund is to be retained in the fund for investment. The income of the fund is to be appropriated for the State mental health program.

The utilization of the annual mental health fund earning could be used to offset current general fund support for mental health programs in whole or part. Potentially in the future, revenues could expand to address needs of long range benefit to Alaskans such as applied behavioral science research, biomedical research, and transitional facilities supporting the chronic mentally ill.

The Department of Health and Social Services acknowledges that this mental health trust fund is the statutory mandated replacement for the mental health land.

Recommended by: Robert W. Marshall  
Robert W. Marshall, M.D.  
Director, Division of  
Mental Health and Developmental Disabilities

Date: 16 Feb 82

Approved by: Helen D. Beirne  
Helen D. Beirne  
Commissioner, Department  
of Health and Social  
Services

Date: 2-17-82

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. Senate Bill No. 711  
 Title Special appropriation to Dept. of Revenue for mental health fund.  
 Requested by Commissioner's Office Date 2/11/82

II. FISCAL DETAIL  
 Agency Affected Department of Health & Social Services  
 Program Category Affected Mental Health & Developmental Disabilities  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

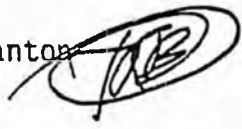
FULL TIME						
PART TIME						
TEMPORARY						

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

No cost impact is foreseen to the Department of Health and Social Services as a result of this legislation.

IV. DATE \_\_\_\_\_ PREPARED BY Robert W. Marshall, Director  
 AGENCY Health & Social Services, Mental Health & DD  
 PHONE 465-3370  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

TO: Senator Mike Colletta

FROM: Thomas R. Branton 

Proposed amendment to AS 37.14.050:

Shall be amended by the deletion from the first sentence of the words [subject to legislative appropriation of sufficient funds]

Purpose of proposed amendment:

This change will remove the legislative determination language from the existing law. No funds have been appropriated to this trust and, consequently, there has been no restitution to the State mental health program for the transfer of State mental health lands per chapter 181 and 182 of the Session Laws of Alaska, 1978.

This proposed amendment will also make AS 37.14.050 consistent with AS 37.14.100 which is a response to the loss of university land per chapter 181 and 182 of the Session Laws of Alaska, 1978.

*Charlie —*

*this is the end I spoke to you about*

*Mike Colletta*

02/17/82

SUBJECT: Mental health trust land liabilities

(Work Order Request #12 - 2465)

TO: Sen. Charles H. Parr

FROM: Richard A. Bradley

Legislative Counsel

B

You have asked that I comment on the general question of the Mental Health Trust Lands granted to the Territory and the State of Alaska as well as the bill presently pending before the legislature relating to the trust lands, SB 710.

In preparing these comments, I have reviewed the memorandum of February 8, 1982 to Representative Malone from the Department of Law which I believe that you also received a copy of. While I did not draft SB 710, I have been advised that SB 710 is the same as HB 151, the bill reviewed in the Department of Law memorandum. Accordingly, it seems that the comments in that memorandum are usefully generally also to your question.

Because of the brief time allowed for the proparation of this memorandum, it was necessary to cast my views in general conclusory statements:

(1) I agree that it is unlikely that a court would conclude that the mental health trust responsibility imposed on the state to use the lands received for mental

health purposes was terminated at statehood by the Statehood Act or by the Omnibus Act.

(2) I agree that it is likely that a court would conclude that the Alaska Mental Health Enabling Act imposed an affirmative trust on the State.

(3) It may be that the prohibition against the dedication of funds under the Alaska Constitution will, at some time in the future, have practical implications for the provisions of AS 37.14. I do not believe that it does at this point.

Several aspects of this problem may be noted. This office disagrees with the Department of Law views on the nature of the constitutional requirement; in our view, the income from the disposal of lands does not constitute the income from a "tax or license." We believe those words have meaning, whether or not our constitutional fathers correctly anticipated the actual sources of state income in the 1980's.

Until litigation resolves the question, it will be open to the legislature to interpret the constitution and dedicate the income from the disposal of lands if it wishes.

But I suspect that we also disagree with the suggestion that if the legislature dedicates the proceeds of a tax

or license but the funds remain subject to legislative appropriation, that an unconstitutional dedication occurred.

Put in other words, if the dedication of the proceeds of a tax or license are subject to affirmative legislative appropriation, there also no violation of the constitution occurs; in effect, the dedication constitutes nothing more than an allocation to an account within the treasury for accounting purposes.

I think it is premature, therefore, to pay too much attention to those concerns, particularly as long as there remains an obligation on the legislature to appropriate all the funds granted under the one and one-half percent formula. A dedication that remains subject to the discretion of the legislature to appropriate is not in fact a dedicated fund.

(4) I agree that so long as AS 37.14 remains the method by which the legislature seeks to execute its trust land responsibilities, the legislature should honor its own commitment to fund AS 37.14. I suggest that a legislative determination that the state is meeting or has met its mental health responsibilities, if based on reasonably well founded facts, will go some distance towards blunting the possibility of litigation on a theory that the state has failed in that liability. Whether that

conclusion can be justified (and be well founded), is a more difficult question on which I have no answers.

(5) If the legislature remains with a reasonable commitment to AS 37.14 and supports funding under that concept, the needs for an appraisal of the mental health lands may be avoided.

(6) I agree that the allocation of money to the mental health funds may be achieved without appropriation and that it is reasonable to do so.

As suggested, the money should be used for mental health purposes but if the legislature makes an implicit determination that mental health needs are adequately funded, the mental health funds may be appropriated by the legislature to a different purpose.

The provisions of SB 710 seem consistent with these conclusions and I offer no proposals for amendments to deal with the assumed liability or otherwise.

INDEX

710, 711

SB 710

HSS Position Paper/Fiscal Note, 710

Proposed Amendment - Thomas Branton

SB 711

HSS Position Paper/Fiscal Notes, 710 - 711

Dept. of Revenue Fiscal Notes, 710 - 711

Dept. of Law Discussion Paper on Mental Health Trust  
Fund

Legislative Counsel Discussion on SB 710 - 711

POSITION PAPER  
SENATE BILL NO. 737

"An Act making a special appropriation to the Department of Health and Social Services to combat the causes and effects of birth defects."

This bill appropriates \$100,000 to this Department that may be utilized over the next 5 years, for which will continue to enhance a birth defects counseling service. In the past, this program was initiated and continued for several years by the National Foundation for Prevention of Birth Defects. It is anticipated that we will have to find another source to fund this service as that voluntary organization has indicated that other priorities have emerged for their support.

The Birth Defects program provides services ranging from diagnoses or confirmation of diagnoses, management and counseling. The categories covered include genetic disorders, chromosomal disorders (e.g. Down Syndrome), environmental (e.g. fetal alcohol syndrome) and those syndromes and malformations of unknown origin. They also receive many requests for information regarding amniocentesis, sickle-cell screening, drug exposure during pregnancy, etc.

The needs for services are rapidly increasing. The March of Dimes Birth Defects Foundation estimates that 1 out of 12 babies born has a significant birth defect. In Alaska during 1981, the Department of Vital Statistics recorded approximately 9550 live births, which statistically could represent almost 800 babies with significant birth defects. This is twice the number they can see in one year. A viable contracting mechanism has been established with the University of Washington using available Federal funds in addition to Foundation money. Federal funds are not available for FY 83 or beyond. This mechanism serves four cities in Alaska every two to four months. A continuation level would require close to \$50,000 per year. An expansion of the frequency and geographic availability of this service would require the expenditure of some additional funds.

POSITION

This service is considered by the Department to be a much needed preventive and cost effective program.

Recommended by: E.S. Rabeau  
E.S. Rabeau, M.D., Director  
Division of Public Health

Date: March 3, 1982

Approved by: Helen D. Beirne  
Helen D. Beirne, Commissioner  
Department of Health and  
Social Services

Date: 3-3-82

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 737  
Title "An Act making a special appropriation to the Department of Health and Social Services to combat the causes and effects of birth defects."  
Requested by Senate HESS Date 2/10/82

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services  
Program Category Affected Health/Public Health  
BRU, Program, Or Subprogram(s) Affected Child & Family Health  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

The \$100,000 appropriation in this bill may be expended over a 5 year period.

IV. DATE March 3, 1982 PREPARED BY E.S. Rabeau, M.D.  
AGENCY Dept. of Health & Social Services  
Original: Legislative Finance PHONE 465-3090  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)  
33-001 (Rev. 12/81)

S

B

7

/

7

SB 717 file

Phil Gapinski phone - work - 269-2286 home 248-5412  
3515 Lake shore Dr. #6  
Anch. AK 99503

I would like to write in support of Sb 717 relating to Health Education. Presently I am employed as a Health Curriculum Specialist for the Anchorage school Dist. I have been in this position for 3 yrs. I previously held a position as regional Health Ed. Coordinator for 21 school Districts in Rural Communities of New York State.

Having provided technical asst. to Mr. Bill Barrier in drafting this bill, I would like to speak in support of 2 major changes that have been made .  
Line 19-23 - Section 2

The intent of this section was to describe the stand the Dept. of Education has presently taken regarding specialists positions. A person has been designated as liaison for Health Ed. programs presently this is Sondra Berry. The new section 2 was intended to describe this present position not to create a new position .

Line 29 page 1 to line 2 page 2 sec. 3

The intent of this section was to allow the Dept. of Ed. to enter into contract with any regional resource center, consulting firm, or district school that would be qualified and had applied to provide services to all school districts in each of the three regions. It is expected that regional centers would be the most likely providers of this service. The option of which group would be awarded the contract would be at the discretion of the Dept. of Ed.

The overall purpose of this proposed legislation as I see it is to provide smaller school districts in AK with consultation services and resources to initiate Health Education resource programs. Anchorage and FBX already have staff and services specializing in Health Education. By providing schools with such services, over a limited period of time, school health Ed. programs can be developed and implemented in these local schools.

At the present time, I have been asked to respond to numerous inquiries from smaller schools developing school Health Ed. programs. It should not be the responsibility of a specialist in Anchorage to provide these services.

This legislation provides the Dept. of Ed., the legislature and State an opportunity to develop preventive approaches to health related problems. By passing SB 717 the Senate Hess committee will be taking the first step in affecting

future Health problems by educating students and preventing them from developing many negative health behaviors.

Thank you for reading this testimony, If I can be of further assistance, please contact me .

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Phil Gapinski phone - work - 269-2286 home 248-5412  
3515 Lake shore Dr. #6  
Anch. AK 99503

I would like to write in support of Sb 717 relating to Health Education. Presently I am employed as a Health Curriculum Specialist for the Anchorage school Dist. I have been in this position for 3 yrs. I previously held a position as regional Health Ed. Coordinator for 21 school Districts in Rural Communities of New York State.

Having provided technical asst. to Mr. Bill Barrier in drafting this bill, I would like to speak in support of 2 major changes that have been made .  
Line 19-23 - Section 2

The intent of this section was to describe the stand the Dept. of Education has presently taken regarding specialists positions. A person has been designated as liaison for Health Ed. programs presently this is Sondra Berry. The new section 2 was intended to describe this present position not to create a new position .

Line 29 page 1 to line 2 page 2 sec. 3

The intent of this section was to allow the Dept. of Ed. to enter into contract with any regional resource center, consulting firm, or district school that would be qualified and had applied to provide services to all school districts in each of the three regions. It is expected that regional centers would be the most likely providers of this service. The option of which group would be awarded the contract would be at the discretion of the Dept. of Ed.

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Thank you for reading this testimony, If I can be of further assistance, please contact me .

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COMMITTEE REPORT  
SENATE

FURTHER: Finance

2/5/82

Date: 2-31-82

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SB 719

providing that the Dept. of Education conduct a computer network study

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  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_

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CHAIRMAN

Alaska Department of Education  
Sponsored Minnesota Educational  
Computing Consortium Use Status 2/1/82

School District	No. of Sites	No. of Teachers	No. of Students	Sites
1. Alaska Gateway	5	15	50	Dot Lake Metasta Lake Northway Tanacross Tok
2. Anchorage	70	250	16000	All Elementary Schools
3. Bering Straits	9	13	122	Breving Mission Elium Gambell Golovin Hoyuk Shaktoolik Shismoref St. Michael Teeler Unalakleet White Mountain
4. Bristol Bay	2	8	20	Naknek Naknek H.S.
5. Chatham	5	5	180	Angoon Eight Fathom Bight Freshwater Bay Gustavus Tenakee
6. Cordova	1	7	30	Cordova
7. Craig	1	1	30	Craig H.S.
8. Dillingham	1	2	20	Dillingham
9. Fairbanks	6	6	800	Elementary Schools
10. Galena	2	8	100	Galena
11. Haines	1	4	40	Haines Elementary
12. Hoonah	2	3	30	Hoonah
13. Iditarod	3	3	50	McGrath Nikolai Holy Cross
14. Juneau	2	3	290	Capitol Elementary J.D. High

School District	No. of Sites	No. of Teachers	No. of Students	Sites	(2)
15.Kake	1	1	108	Kake	
16.Kenai	12	12	275	Soldotna Elementary Seldovia Nikiski Kenai Jr High Kenai Elementary Soldotna Jr High Soldotna Elementary Redoubt Elementary Paul Banks Elementary Homer Middle	
16A. Ketchikan	3	3	100		
17.Klawock	1	1	18	Klawock	
18.Kodiak	4	4	70	Kodiak Port Lions Old Harbor Larson Bay	
19.Lake & Peninsula	14	40	319	All District Sites	
20.Lower Kuskokwim					
21.Lower Yukon	1	1	20	Pilot Station	
22.Mat-Su	1	6	120	Palmer	
23.Nenana	1	1	12	Nenana	
24.North Slope	9	80	1199	All District Sites	
25.Northwest Arctic					
26.Pribilof	1	10	100	St. Paul	
27.Railbelt	4	9	85	Anderson Cantwell Tri Valley Correspondence	
28.Sand Point	1	5	20	Sand Point	
29.Sitka	1	2	70	Buranof Elementary	
30.S.E. Island	6	6	60	El Capitan Gildersleeve Naukati Thorne Bay White Pass	

School District	No. of Sites	No. of Teachers	No. of Students	Sites (3)
31.Southwest REAA	14	14	75	All Sites except Portage Creek
32.Wrangell	2	10	120	Wrangell Elementary & High School
33.Yakutat	1	4	31	.Yakutat Elementary
34.Yukon Koyukuk	1	1	10	Bettles

Alaska Department of Education  
 Individualized Study By Technology  
 Use Status 2/1/82

School District	IST				No. of Teachers	No. of Students	No. of Schools	Sites
	H	R	E	M				
1. Adak				x	3	135	2	Adak Jr High
2. Alaska Gateway	x	x	x	x	3	16		
3. Bering Straits	x	x	x	x	13	122	11	Brevig Mission Elim Gambell Golovim Koyuk Shaktoolik Shismaref St. Michael Teller Unalakleet White Mountain
4. Chatham	x	x	x	x	5	72	5	Angoon Eight Fathom Bight Freshwater Bay Gustavus Tenakee
5. Chugach	x			x	1	10	1	Whittier
6. Craig	x	x	x	x	4	40	1	Craig
7. Delta Greely	x				1	40	1	Delta Junction
8. Haines				x	1	8	1	Haines Jr High
9. Hoonah	x	x	x		1	21	1	Hoonah
10. Iditarod	x	x	x	x	4	60	4	McGrath Nikolai Lime Village Holy Cross
11. Kake	x				2	48	1	Kake
12. Kenai	x				1	15	1	Soldotna
13. Klawock	x			x	1	3	1	Klawock
14. Kodiak	x			x	3	30	3	Kodiak Old Harbor Port Lions

School District	IST				No. of Teachers	No. of Students	No. of Schools	Sites
	H	R	E	M				
15. Lake and Peninsula	x	x	x	x	8	140	8	Chignik Bay Chignik Lake Igiugig Kokhauok Illiama Nondalton Perryville Port Heiden
16. Lower Koskokwim	x		x		1 1 1 1 1 1 1 1	10 4 23 15 25 5 15 10	8	Akiak Eek Kosigluk Kipnik Nunapichuk Platinum Quinnagak Toksook Bay
17. Lower Yukon		x	x		1	20	1	Pilot Station
18. Mat-Su	x				1	5	1	Glacierview
19. Nenana		x	x	x	2	25	1	Nenana
20. North Slope	x				9	175	9	Atgasuk Barrow Elementary Barrow High Point Lay Kaktovik Auatuvuk Pass Nuiqsut Point Hope Wainwright
21. Northwest Arctic	x				1	60	1	Kotzebue High
22. Pribilof	x		x		3	20	1	St. Paul
23. Railbelt	x		x		3 2 4	32 5 37		Anderson Cantwell Tri Valley Correspondence
24. Skagway				x	4	40		Skagway
25. S.E. Island	x	x	x		5	25	5	El Capitan Gildersleeve Naukatic Thorne Bay Whale Pass

School District	IST				No. of Teachers	No. of Students	No. of Schools	Sites
	H	R	E	M				
26.S.W. REAA	x	x	x	x	14	75	9	Aleknagik Clarks Point Koliganek Levelock Manokotak New Stuyahok Togiak Twin Hills Ekwok
27.Wrangell	x	x	x	x	3	25	1	Wrangell
28.Yukon Flats	x			x	1	12	1	Fort Yukon
29.Yukon Koyukuk	x			x	2	20	1	Bettles

MAIL 18-Mar-82 14:46  
FROM: SAND POINT  
ATTN: STEVE HOLE  
SUBJ: LEGISLATIVE INQUIRY

FOR: DOE/MLF  
MSG #: 27945  
DATE: 18-Mar-82  
TIME: 12:43

DEAR STEVE,

HERE IN SAND POINT WE ARE NOT INVOLVED WITH THE STATE FINANCED 1ST COURSES. HOWEVER, WE HAVE 2 APPLE COMPUTERS WHICH ARE USED VERY MUCH WITH A GREAT DE BY B  
OTH ELEMENTARY AND HIGH SNTS. IN HIGH SCHOOL, W  
USE THE COMPUTERS MOSTLY IN MATH CLASSES. THE ELEMENTARY SCHOOL HAS BEEN USING THE MILLIKEN MATH CAI SOFTWARE FOR THE PAST 2 YEARS. IT HAS PROVED TO BE HIGHLY MOTIVATING, AND STUDENTS DEFINITELY SHOW IMPROVEMENT AFTER USING THE COMPUTERS. WE HAVE RECENTLY PURCHASED SPELLING AND READING COMPREHENSION SOFTWARE. STUDENTS WILL BE USING THESE PROGRAMS SHORTLY. MECC MATERIALS HAVE BEEN USED IN A LIMITED WAY, BUT WE HOPE TO USE THEM MORE AS TIME GOES ON.

THE STATE OF ALASKA HAS BEEN A LEADER AMONG STATES IN ITS SUPPORT FOR EDUCATION. I WOULD HATE TO SEE THE STATE GO BACKWARDS BY CUTTING FUNDS FOR THE MOST IMPORTANT EDUCATIONAL TOOL OF RECENT TIMES, THE COMPUTER. (FRANCE HAS DECIDED TO INSTALL COMPUTERS IN EVERY HIGH SCHOOL IN THE COUNTRY.)

MOST SCHOOL DISTRICTS PAY DEARLY FOR COMPUTING SERVICES FROM PRIVATE FIRMS TO HANDLE ADMINISTRATIVE WORK. MICROCOMPUTERS COULD PERFORM THESE SAME SERVICES FAR MORE CHEAPLY AND AT THE SAME TIME BE AVAILABLE FOR STUDENT USE. THE STATE COULD ACTUALLY SAVE MONEY BY PROVIDING MICROS FOR SCHOOLS.

SINCERELY,  
JOHN BRUDER, COMPUTER INSTRUCTOR  
CC: SAND POINT

MAIL 18-Mar-82 14:47  
FROM: NORTH SLOPE  
ATTN: STEVE HOLE  
SUBJ: LEGISLATIVE INQUIRY

FOR: DOE/MLF  
MSG #: 27921  
DATE: 18-Mar-82  
TIME: 11:02

THE NORTH SLOPE BOROUGH SCHOOL DISTRICT SUPPORTS SB 720 AND 721. COMPUTER ASSISTED INSTRUCTION IS BECOMING AN INTEGRAL PART OF OUR CURRICULUM. IT IS MAKING IT POSSIBLE TO EXPAND AND ENRICH OFFERINGS TO STUDENTS IN ALL OF OUR VILLAGES. COMPUTER ASSISTED INSTRUCTION IS PROVIDING US WITH THE TECHNOLOGY TO INDIVIDUALIZE PROGRAMS, MOTIVATE LOW ACADEMIC STUDENTS, AND STIMULATE AND CHALLENGE TALENTED AND GIFTED STAFF IN THE USE OF COMPUTERS. WE ARE COMMITTED TO UTILIZING THIS APPROACH AS A PART OF OUR INSTRUCTIONAL PROGRAM ON THE NORTH SLOPE.

SINCERELY,  
DON RENFROE  
SUPERINTENDENT  
CC: NORTH SLOPE

MAIL 18-Mar-82 07:43  
FROM: LOWER KUSKOKWIM  
ATTN: STEVE HOLE  
SUBJ: LEGISLATIVE INQUIRY

FOR: DOE/MLF  
MSG #: 27782  
DATE: 17-Mar-82  
TIME: 12:41

THE LOWER KUSKOKWIM SCHOOL DISTRICT WISHESTO VOICE STRONG  
SUPPORT FOR SB 719, 720, 721, AND 722. WE ARE COMMITTED TO  
THE EFFECTIVE USE OF COMPUTERS IN OUR EDUCATIONAL PROGRAMMING  
AND FOR ADMINISTRATIVE PURPOSES. THE GOVERNOR'S TASK FORCE ON  
EFFECTIVE SCHOOLING LENDS SUPPORT TO OUR VIEW THAT TRADITIONAL  
INSTRUCTION SUPPLEMENTED BY COMPUTER-ASSISTED INSTRUCTION CAN  
LEAD TO HIGHER ACHIEVEMENT. IT LIKewise IS ESPECIALLY IMPORTANT  
FOR SMALL SCHOOLS IN RURAL AREAS SUCH AS OURS FOR WHERE IT IS  
DIFFICULT TO OFFER FULL SCHEDULES OF CLASSES. WE HAVE JUST  
ESTABLISHED A COMPUTER-ASSISTED INSTRUCTION SPOECIALIST POSITION  
TO OVERSEE THE DISTRICT'S EFFORTS.  
MAKY FRANCIS, CURRICULUM DIRECTOR, LKSD  
CC: LOWER KUSKOKWIM

MAIL 18-Mar-82 07:41  
FROM: VALDEZ  
ATTN: STEVE HOLE  
SUBJ: RESPONSE MSG #27654

FOR: DOE/MLF  
MSG #: 27880  
DATE: 17-Mar-82  
TIME: 15:48

VALDEZ CITY SCHOOLS SUPPORTS FUNDING FOR COMPUTER ASSISTED  
INSTRUCTION; HOWEVER, DUE TO THE IMPLEMENTATION IN VALDEZ  
CITY SCHOOLS OF THE IBM SYSTEM 34, WE WOULD NOT BE AFFECTED  
BY THE POSSIBLE FUNDING CUTS.

GEORGE MAYKOWSKYJ  
SUPERINTENDENT  
VALDEZ CITY SCHOOLS  
CC: VALDEZ

MAIL 18-Mar-82 07:42  
FROM: VALDEZ  
ATTN: STEVE HOLE  
SUBJ: RESPONSE MSG. #27654

FOR: DOE/MLF  
MSG #: 27876  
DATE: 17-Mar-82  
TIME: 15:31

VALDEZ CITY SCHOOLS SUPPORTS FUNDING FOR COMPUTER ASSISTED INSTRUCTION; HOWEVER, DUE TO THE IMPLEMENTATION IN VALDEZ CITY SCHOOLS OF THE IBM SYSTEM 34, WE BE AFFECTED BY THE POSSIBLE FUNDING CUTS.

GEORGE MAYKOWSKYJ  
SUPERINTENDENT  
VALDEZ CITY SCHOOLS  
CC: VALDEZ

MAIL 18-Mar-82 07:42  
FROM: SW REGION  
ATTN: STEVE HOLE  
SUBJ: LEGISLATIVE INQUIRY

FOR: DOE/MLF  
MSG #: 27873  
DATE: 17-Mar-82  
TIME: 15:27

SOUTHWEST REGION SCHOOL DISTRICT HAS IMPLEMENTED THE IST PROGRAM AT ALL OF ITS SMALL HIGH SCHOOLS THIS PAST YEAR. WE HAVE UTILIZED PERSONNEL PROVIDED BY THE DEPARTMENT OF EDUCATION FOR THE PURPOSE OF INSERVICING OUR STAFF IN THIS AREA. WE ARE ALSO PILOTING PROGRAMS IN THE SPECIAL EDUCATION AND BUSINESS AREAS. WE HAVE FOUND THE IST PROGRAM AND THE APPLE COMPUTER TO BE VERY HELPFUL TO OUR TEACHERS, ESPECIALLY IN THE SMALL HIGH SCHOOL SITUATION. THE DISTRICT HAS INCREASED THE NUMBER OF COMPUTERS FROM NINE TO TWENTY-FOUR THIS PAST YEAR, THEREFORE, MAKING A DEFINITE COMMITMENT TO THE USE OF MICRO COMPUTERS IN EDUCATIONAL PROGRAMS.

I STRONGLY SUPPORT SB 719, 720, 721 AND 722. IT IS IMPORTANT THAT THE FINANCIAL ASSISTANCE IS PROVIDED TO SCHOOL DISTRICTS THAT IMPLEMENT PROGRAMS THAT HAVE BEEN DEVELOPED AND ENCOURAGED BY THE DEPARTMENT OF EDUCATION.

SINCERELY,

NELS NICHOLS,  
AREA PRINCIPAL

P.S. PLEASE DISTRIBUTE TO APPROPRIATE INDIVIDUALS.

CC: SW REGION

MAIL 18-Mar-82 07:37  
FROM: KENAI PENINSULA  
ATTN: STEVE HOLE  
SUBJ: LEGISLATIVE INQUIRY - COMPUTERS

FOR: DOE/MLF  
MSG #: 27894  
DATE: 17-Mar-82  
TIME: 17:29

WITHIN OUR PROGRAM ON THE KENAI, COMPUTERS ARE EMERGING AS ONE OF THE KEY DEVELOPING ISSUES FOR THE 80'S. PERHAPS THE FIRST APPLICATION MADE OF THEM IN ALL ORGANIZATIONS IS IN THE ACCOUNTING/PURCHASING/BUDGETING/INVENTORY AREAS. THIS HAS BEEN TRUE FOR US AND WE ARE CURRENTLY DEVELOPING A DEPARTMENT WITHIN DISTRICT ADMINISTRATION THAT DEALS WITH THESE ADMINISTRATIVE APPLICATIONS OF COMPUTER SERVICES.

PREVIOUS TO THIS YEAR, MOST COMPUTER SERVICES HAVE BEEN CONTRACTED OUT OF ANCHORAGE BUT RECENT UPGRADING OF THE BOROUGH'S SYSTEM OFFERED US THE OPPORTUNITY TO SHARE TIME ON THEIR MAIN FRAME COMPUTER. PLANS ARE TO EXTEND CONSOLE COVERAGE WITHIN CENTRAL OFFICE OPERATIONS AND FOUR MAJOR HIGH SCHOOLS AT THE BEGINNING, EXPANDING TO OTHER SCHOOL SITES IN THE NEXT THREE TO FIVE YEARS. IN EFFECT, THE GOAL IS TO PROVIDE BUILDING SITE COMPUTER SERVICES IN THREE MAJOR AREAS - THE BUSINESS FUNCTIONS PREVIOUSLY MENTIONED; STUDENT SERVICES SUCH AS SCHEDULING, ATTENDANCE ACCOUNTING, AND GRADE REPORTING; AND CURRICULUM MANAGEMENT SERVICES THAT WOULD PLACE ON COMPUTER THE FOLLOWING SERVICES:

1. ALL K-12 CURRICULUM DOCUMENTS INCLUDING TEACHING GOALS AND RELATED PERFORMANCE OBJECTIVES.
2. SUGGESTED TEACHING ACTIVITIES, TECHNIQUES, METHODS RELATED TO PERFORMANCE OBJECTIVES. THIS IS VIEWED AS AN INTER-ACTIVE SEGMENT OF THE SERVICE. TEACHERS COULD CALL UP THE SYSTEM FOR IDEAS OR ADD SUCCESSFUL CLASSROOM ACTIVITIES TO A BANK AVAILABLE TO ALL.
3. INSTRUCTIONAL MEDIA RELATED TO TEACHING ACTIVITIES LISTING WHERE THEY ARE LOCATED - IN THE SCHOOL, AT NEARBY SCHOOLS OR IN THE DISTRICT MEDIA CENTER.
4. ASSESSMENT ACTIVITIES - PRE AND POST ASSESSMENT INSTRUMENTS AND TECHNIQUES RELATED TO PERFORMANCE OBJECTIVES.

WITHIN THE REGULAR FIVE YEAR CYCLE OF CURRICULUM REVIEW, COMPUTERIZATION OF CURRICULUM DOCUMENTS WILL PERMIT REVISION TO EXISTING CURRICULUM THROUGH FOUR BASIC INSTRUCTIONS - ADD, DELETE, MODIFY, SHIFT TO ANOTHER GRADE LEVEL OR AREA. COMBINATIONS OF THESE FOUR ARE ALSO POSSIBLE.

AT THE CLASSROOM LEVEL, COMPUTER ASSISTED INSTRUCTION IS EXPANDING AT AN INCREASING RATE. OVER \$160,000 IN HARDWARE REQUESTS WERE REVIEWED FOR THE FY83 BUDGET. AT THIS TIME, WE ARE ENCOURAGING THIS EXPANSION AS IT IS COMPATIBLE WITH TRAINED STAFF AND AVAILABLE COURSEWARE AND SOFTWARE THAT COMPLIMENTS DISTRICT CURRICULUM. THE DISTRICT IS PLANNING A SHORT COURSE FOR PROGRAM MANAGERS TO PROVIDE THEM WITH THE INFORMATION THEY WILL NEED TO MAKE DECISIONS REGARDING EXPANDING COMPUTER APPLICATIONS IN THE CLASSROOM. AT THIS POINT, ALL CLASSROOM APPLICATIONS OF THE CAI ARE BEING ACCOMPLISHED ON MICRO-COMPUTERS, PRIMARILY THE APPLE OR THE BLACK APPLE.

A MAJOR DISCUSSION POINT WITHIN THE DISTRICT DEALS WITH THE NATURE OF AVAILABLE SOFTWARE AND COURSEWARE THAT SEEMS DESIGNED AS REINFORCEMENT OR DRILL FOR IN-CLASS INSTRUCTION. BECAUSE OF THIS, SEVERAL LINES OF INVESTIGATION ARE UNDERWAY:

1. WHAT MATERIALS ARE AVAILABLE THAT GO BEYOND DRILL AND REINFORCEMENT TO TEACHING THROUGH SIMULATION, ETC.
2. WHAT SYSTEMS ARE AVAILABLE THAT CAN BE MODIFIED TO MATCH DISTRICT CURRICULUM THAT WOULD PROVIDE SYSTEMATIC REINFORCEMENT WITH SUITABLE MONITORING OF STUDENT PROGRESS.
3. WHAT SYSTEMS ARE AVAILABLE AT THE INTERMEDIATE SIZED COMPUTER (TURN-KEY) LEVEL THAT WILL COMPLEMENT OR ENHANCE THE PLANNED MAIN FRAME APPLICATIONS AND THE EXISTING OR PLANNED MINI-MICRO APPLICATIONS.

SEVERAL MAJOR TASKS REMAIN AHEAD OF US.

1. DEVISE, DESIGN AND DELIVER APPROPRIATE TEACHER INSERVICES REGARDING CLASSROOM APPLICATIONS OF CAI.
2. DETERMINE, DESIGN AND DELIVER APPROPRIATE CLASSROOM COMPUTER LITERACY COURSES TO STUDENTS.
3. DEVELOP MANAGEMENT LEVEL SKILLS AND UNDERSTANDINGS OF COMPUTER APPLICATIONS TO EDUCATIONAL SETTINGS.
4. DEVELOP AND PLAN FOR LONG RANGE NEEDS AT ALL LEVELS FOR COMPUTER USE.
5. MAINTAIN A MANAGEMENT POSITION THAT LEADS STAFF IN APPLICATION OF COMPUTERS TO ALL ASPECTS OF DISTRICT OPERATIONS WITHOUT JUMPING ON SOME COURSE OF ACTION THAT WILL END UP DOWN SOME BLIND ALLEY IN THIS RAPIDLY DEVELOPING AND CHANGING FIELD.

IF YOU READ IN ALL THIS OBVIOUS ENTHUSIASM REGARDING EDUCATION APPLICATIONS OF COMPUTERS A CERTAIN LEVEL OF CONSERVATIVE CAUTION, THEN YOU HAVE PERCEIVED THE DISTRICT POSITION. WITH THE EXPLOSION OF COMPUTER APPLICATIONS THROUGHOUT THE DAILY LIFE OF ANY COMMUNITY, WE WOULD BE GUILTY OF GROSS MISMANAGEMENT IF WE WERE NOT CAREFULLY CONSIDERING WHEN, WHERE, WHY, AND HOW TO IMPROVE EDUCATIONAL SERVICES THROUGH THE USE OF COMPUTERS. IT IS OUR INTENT TO HAVE THEM SERVE OUR EDUCATIONAL GOALS.

DENNIS DAGGETT  
ASSISTANT SUPERINTENDENT  
OF INSTRUCTIONAL SERVICES  
LAH  
CC: KENAI PENINSULA

MAIL	18-Mar-82	07:40	FOR:	DOE/MLF
FROM:	FAIRBANKS		MSG #:	27890
ATTN:	STEVE HOLE		DATE:	17-Mar-82
SUBJ:	LEGISLATIVE INQUIRY		TIME:	17:02

THE FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT WOULD LIKE TO ENCOURAGE YOU TO SUPPORT SENATE BILLS 719-721. THESE BILLS PROVIDE MATCHING FUNDS TO SUPPORT THE ACQUISITION OF MICROCOMPUTERS BY LOCAL SCHOOL DISTRICTS AND PROVIDE FUNDS FOR A FEASIBILITY STUDY OF A STATE-WIDE COMPUTING NETWORK.

FAIRBANKS IS CONCERNED ABOUT THE IMPROVEMENT OF COMPUTER AWARENESS AND INSTRUCTION IN ITS SCHOOLS. ASSISTANCE IN PURCHASING THE NECESSARY EQUIPMENT WOULD BE VERY HELPFUL DUE TO THE LARGE BUDGET AMOUNT NEEDED TO INTRODUCE COMPUTERS IN THE CLASSROOM CURRICULUM. THIS LEGISLATION SEEMS APPROPRIATE IN THAT IT ENCOURAGES LOCAL COMMITMENT AS WELL AS OFFERING FINANCIAL SUPPORT. FAIRBANKS HAS COMMITTED FUNDS IN THE REGULAR BUDGET FOR THE COMPUTER PROGRAM AND THIS WOULD ENABLE US TO STRENGTHEN THAT EFFORT.

WE WOULD APPRECIATE ANY SUPPORT YOU CAN GIVE TO ENCOURAGE THE PASSAGE OF THESE IMPORTANT BILLS.

SINCERELY,

KENNETH S. BURNLEY, SUPERINTENDENT  
FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT  
CC: FAIRBANKS

MAIL 18-Mar-82 07:47  
FROM: KING COVE  
ATTN: STEVE HOLE  
SUBJ: LEGISLATIVE INQUIRY

FOR: DOE/MLF  
MSG #: 27730  
DATE: 16-Mar-82  
TIME: 17:40

DEAR DR. HOLE:

REFERENCE MESSAGE # 27654

COMPUTER ED IS PART OF OUR VOC. EC. PROGRAM. WE WOULD LIKE TO EXTEND THIS TO THE ELEMENTARY CULUM. KING COVE CONSIDERS COMPUTER ED A NEEDED INNOVATION IN EDUCATION. WE ARE STRONG ADVOCATES OF THIS ENITYTY.

CORDIALLY,

BEN C. KIRKER  
SUPERINTENDENT  
CC: KING COVE

MAIL 18-Mar-82 07:47  
FROM: KODIAK ISLAND  
ATTN: STEVE HOLE  
SUBJ: COMPUTER EDUCATION LEGISLATION

FOR: DOE/MLF  
MSG #: 27717  
DATE: 16-Mar-82  
TIME: 16:53

THE COMPUTER ASSISTED INSTRUCTION (IST) PROGRAMMS HAVE BEEN SUCESSFULLY IMPLEMENTED AT 4 OF OUR 5 SECONDARY VILLAGE SITES. (READING, MATH, ALASKA HISTCRY). THE ALASKA HISTORY COMPONENT IS ALSO BEING PILOTED AT THE SENIOR HIGH IN KODIAK PROPER.

WE WOULD LIKE TO ENCOURAGE LEGISLATION WHICH WOULD ALLOW FOR THE DEVELOPMENT OF SCIENCE, SOCIAL STUDY ANT MATH ELECTIVES AT THE 11TH AND 12TH GRADE LEVEL TO ASJIST US IN OUR SECONDARY VILLAGE PROGRAM EFFORTSS. BASIC SKILLS REQUIRED COURSES ARE NOT AS USEFUL IN IST FORMAT AS UNIQUE ELECTIVES WHICH ARE OFTEN NECESSARY FOR A SMALL HANDFUL OF SECONDARY STUDENTS AND MAY BE DIFFICULT FOR TFEACHERS TO ADDRESS, BECAUSE OF THE WIDE VARIETY OF OFFERINNGS THAT SECONDARY VILLAGE TEACHERS ARE RESPONSIBLE FOR. WE THEREFORE SEE THE IST PROGRAM FORMAT AS CAPABLE OF HANDLING THIS NEED FOR HIGHER LEVEL ELECTIVES TO "ROUND OUT" SECONDARY VILLAGE PROGRAMS.

WE ENCOURAGE THE LEGISLATURE TO SUPPORT THE IST PILOT PROJECT, IN PARTICULAR THE TEACHER TRAINING COMPPONENT AND DEVELOPMENT OF SECONDARY ELECTIVE COURSES.

MARY ANNE KENDALL, DIR OF ININSTRUCTIONAL SUPPORT  
KODIAK ISLAND BOROUGH SCHOOL DISTRICT  
CC: KODIAK ISLAND

MAIL 18-Mar-82 14:48  
FROM: PETERSBURG  
ATTN: STEVE HOLE  
SUBJ: COMPUTER LEGISLATION

FOR: DOE/MLF  
MSG #: 27913  
DATE: 18-Mar-82  
TIME: 09:21

IN ANSWER TO YOUR EMS WE ARE NOW FINDING OURSELVES IN THE COMPUTER BUSINESS AND ARE ENJOYING IT. I THINK ONE OF THE FACTS WE NEED TO RECOGNIZE IS THE ROLE OF THE COMPUTER IN THE FUTURE AND TO MAKE SURE THAT SCHOOL SYSTEMS PREPARE TO MEET THIS NEED. COMPUTER INVOLVEMENT IS EXPENSIVE AND SCHOOL SYSTEMS NEED FINANCIAL SUPPORT IF THE COMPUTER PROGRAM IS TO EVOLVE LIKE IT SHOULD.

WE PRESENTLY HAVE FIVE APPLE COMPUTERS IN OUR SCHOOL. WE HAVE MANAGED TO USE THESE QUITE EXTENSIVELY TO BUILD A BASIC PROGRAM THAT WE PLAN TO CONTINUE IN GROWTH. WE ARE SEEING DAILY THE APPLICATION POSSIBILITIES OF THE COMPUTER TO EDUCATION. WE HAVE FOUND THAT COMPUTERS ARE NOT JUST FOR SOME BUT FOR ALL. OUR PRIMARY EMPHASIS HAS BEEN ON THE ELEMENTARY LEVEL - GRADES K - 7, BUSINESS EDUCATION CLASSES AND PARENT AND ADULT EDUCATION. WE PLAN TO EXPAND THIS PRESENT PROGRAM AND TO GIVE GREATER EMPHASIS TO THE HIGH SCHOOL LEVEL. EXPANSION IS GENERALLY BASED UPON ABILITY TO FINANCE A PROGRAM AND BILLS THAT SUPPORT COMPUTER EDUCATION WOULD ENABLE SUCH EXPANSION.

MEL STOCKTON, PRINCIPAL, PETERSBURG  
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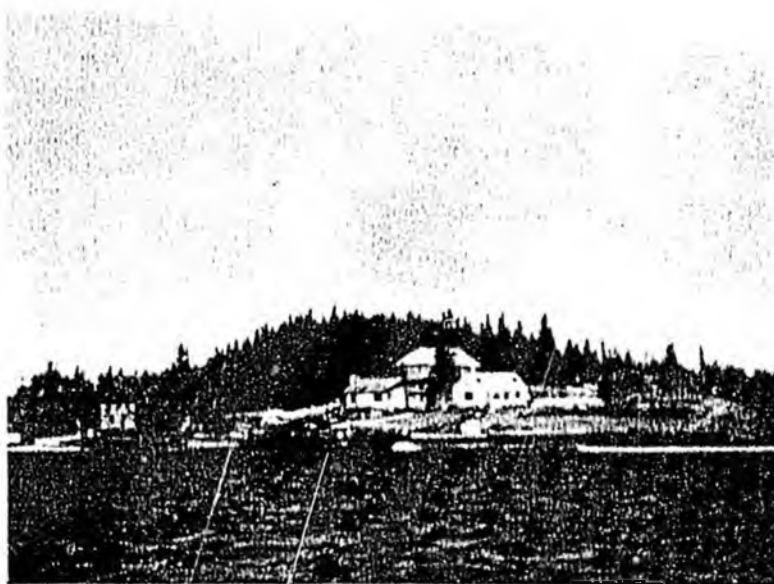
# INDIVIDUALIZED STUDY BY TECHNOLOGY (IST)

by



**FRANK X. GOHS\***  
**Educational Skills Development, Inc.**

179 East Maxwell Street  
Lexington, Kentucky 40508  
(606) 252-0173



## INDIVIDUALIZED STUDY BY TECHNOLOGY (IST)

Alaska is the largest state, more than twice the size of Texas, and is also the most sparsely populated of the 50 states, averaging less than one person per square mile. Thus, Alaska faces unique problems in providing quality secondary education to its children in the many small, isolated rural communities located throughout the state. Prior to 1975 many rural Alaskan children had to attend boarding schools in the larger Alaskan cities or the lower forty-eight states in order to obtain a secondary school education. This situation was unsatisfactory to parents. Furthermore, many of these children were not able to complete their secondary education due to the homesickness and culture-shock they experienced when they left their homes and families.

In 1975 two events occurred which changed the course of Alaskan secondary education. First, the state-operated school system in Alaska was disbanded by state law, and replaced with 21 Regional Education Attendance Areas (REAA's). These REAA's received virtually 100 percent of their funding from state taxes, but each had its own locally elected board with full policy-making powers. The second event in 1975 was the settlement of a lawsuit (Hootch vs. Lind) that established the right of Alaskan children to an education through twelfth grade in their own community. As a result of these two events, rural Alaskan children would no longer have to leave their homes and families to receive a secondary school education.

Presently, about 180 small Alaskan communities have high school programs. However, about 60 of these communities have programs with 10 or fewer students, and another 95 or so have programs with fewer than 50

students. In these small communities it is not feasible to hire a large number of teachers with specialized knowledge to offer a comprehensive array of high school courses. Innovative uses of resources and creative ways to satisfy curriculum needs are essential if these communities are to provide their children with a quality secondary level education. Several approaches now being used to enhance high school instruction in Alaska are student exchanges, itinerant teachers, mobile labs, televised (or videotaped) instruction, correspondence courses, and educational student trips. Individualized Study by Technology (IST) is another such approach utilizing the microcomputer, and is the focus of this paper. Individualized courses developed in the IST program permit the small, isolated, rural schools to provide a more complete high school curriculum, and have the advantages of reducing the workloads of the teachers and allowing students to work at their own pace.



A typical rural community in Alaska

The Individualized Study by Technology (IST) program is one component of Educational Telecommunications for Alaska (ETA), a multi-year project funded by the National Institute of Education (NIE) and the Alaska Department of Education (DOE) for the purpose of developing and demonstrating educational uses of modern electronic technologies. The IST program, in particular, was initiated in response to the need to bring high quality secondary school level educational programs to Alaska's small, isolated, rural schools with limited staff and support materials. The Northwest Regional Educational Laboratory (NWREL) in Portland, Oregon was the design and implementation contractor for the project.

During the 1979-1980 school year two NWREL developed courses, Alaska History and English, were pilot tested in seven rural sites. Two more courses, Developmental Reading and General Math, were then developed by NWREL in 1980. All four of these IST courses were pilot tested in 29 rural sites during the 1980-1981 school year.

#### THE IST PROGRAM

The IST courses have been developed to address the specific needs of rural Alaskan students. They utilize a unique individualized instructional design which includes the teacher, traditional texts and printed materials, microcomputer assisted/managed instruction, and audio cassette tapes. The teacher manages the integrated use of the three media components which provide the primary instruction in each lesson of the IST courses. For example, in an Alaska History lesson introducing students to the geography of Alaska, the students: a) listen to a dramatic episode on an audio cassette tape which primarily

introduces geographic terms; b) perform a computer activity composed of multiple choice questions which review the terminology previously introduced in the audio cassette tape; c) read a passage entitled "Geography of Alaska: Introduction" which presents general information about the geography of Alaska; and d) perform another computer activity composed of multiple choice and fill-in the blank questions which review the general information previously presented in the reading passage.

Although used in an integrated fashion, each media component serves specific purposes. The traditional texts and printed materials include published textbooks, texts adopted from correspondence courses, reading selections, worksheet exercises, and projects. The texts and readings are intended to be the primary sources of information for the students; the worksheets and projects are intended for drill of concepts and their application.

The microcomputer instruction includes activities which introduce vocabulary, develop map skills, and drill essential facts, concepts, and concept applications. Review and test activities are also included in the microcomputer instruction. The test scores are recorded and stored on student computer disks which can be accessed by teachers for grading purposes. The microcomputer also provides immediate feedback to the students indicating the correctness of their responses, and the correct answers if incorrect ones had been given.

The audio cassette tapes include lectures, dramatic episodes, teacher-student dialogues, narrations, and interviews. They are intended to introduce and reinforce skills and concepts, to supplement information presented in the printed materials, to guide students through reading and

written work, and to repeat in aural form information which students might have difficulty reading. In addition, several tapes are accompanied by worksheets called Listening Guides. This format provides students the opportunity to confirm in writing their understanding of the concept being taught and to receive immediate feedback on, and explanation of, correct responses.

The teacher is an essential element of the IST program. The teacher's time is actively spent in managing and facilitating student learning through such activities as a) providing one-on-one and group instruction, b) monitoring student progress, c) maintaining records of student performance, d) providing constructive feedback to students by correcting their IST written work, and e) managing the use of the microcomputer. These tasks are somewhat different from the more traditional teacher tasks of a) planning the course structure, b) developing and organizing the course materials and activities, and c) presenting the subject matter to the students. The teachers, therefore, who supervise IST courses are able to give more personal attention to specific instructional needs of students and devote more time to other important responsibilities at their school.



## THE IST COURSES

The four IST courses used in the pilot test are intended as full-year courses at the ninth and tenth grade level. They were developed around printed materials such as correspondence courses or published texts. The courses include computerized drills and tests, audio cassette tape activities, printed materials, diagnostic placement tests, individual student progress charts, and complete teacher's guides with answer keys.

The Alaska History course was based on an Alaska Centralized Correspondence Study course. It has no one text, but a number of books, brochures, and other references are utilized. This course consists of five units: I. Alaskan Geography, II. Alaska's Native Groups, III. Russian Exploration - History to 1867, IV. American Purchase to Statehood - 1867 to 1959, and V. Alaska's Resources. Its purpose is to prepare Alaska's students for active citizenship by teaching Alaska's geography, history, and issues affecting its future.

The English course was based on a high school English course developed by the Alaska Centralized Correspondence Study unit in DOE. No one text is used in this course, but paperback books of short stories and novels are required reading. This course consists of twelve units. The first six units stress grammar and usage, the second six units stress literature and writing. The course goals are: a) to teach correct sentence structure, punctuation, capitalization, and spelling; b) to improve students' ability to organize thoughts into written sentences and paragraphs; c) to give students an appreciation of short stories, novels, and poetry; and d) to give practice at everyday skills such as filling out forms, writing letters, and requesting library books.

The Developmental Reading course was developed around the Scott, Foresman Basics in Reading, Book 7, text entitled With the Works. This course consists of 36 lessons divided into four sections. The initial two sections emphasize characterization, vocabulary building through structure and context, fact vs. opinion, using a dictionary and an encyclopedia, types of fiction, story elements, charts and tables, non-fiction organization, figures of speech and idiom, and elements of style. The final two sections emphasize evaluating sources of information, bias and connotation, summarizing and classifying, outlines, propaganda, choice of words, analogy, skimming and reviewing, drawing conclusions, graphs, outlining from notes, and types of literature. The purposes of this course are: a) to increase the ability of the students to comprehend the meaning of word phrases, sentences, paragraphs, and entire selections; b) to increase the ability of students to study effectively; and c) to instill in students a greater appreciation of literature by broadening their background experience.

The General Math course was developed around the Silver Burdett text, General Mathematics Skills and Applications. This course consists of nine chapters: I. Whole Numbers, II. Adding and Subtracting with Decimals, III. Multiplying and Dividing with Decimals, IV. Fractions, V. Measurement, VI. Ratio and Proportion, VII. Percent, VIII. Geometry, and IX. Statistics and Probability. The course stresses mastery of computation skills with integers, fractions, decimals, ratios, and percentages, and practical applications of these in present day living and work situations.

## THE EVALUATION DESIGN

Educational Skills Development, Inc. (ESD) of Lexington, Kentucky conducted an evaluation of the 1980-1981 pilot testing of the IST program under contract to DOE. In this evaluation the effectiveness of the IST program was assumed to depend upon a variety of factors. In addition to course quality, training, and implementation, such factors as cultural values, social and environmental contexts, local facilities, community perspectives, students' characteristics, and teachers' attitudes were studied. Thus the goal of the evaluation was more than to simply determine whether IST "worked", but also to provide explanations for the degree of effectiveness achieved by the program, and recommendations for changing or improving it. Based on this goal, the evaluation was designed to determine how the characteristics of the student, teacher, setting, and courseware combine to influence student performance. In addition, concerns about the costs of implementing the IST program in the 1980-1981 pilot testing were addressed. Data for the evaluation included pre-course and post-course tests, monthly student progress reports, site visit reports submitted by regional supervisors and members of the evaluation team, Alaska Statewide Achievement Test (ASAT) scores, student and teacher personality inventories, student and teacher attitude surveys, teacher training evaluation reports, course design analyses, and student microcomputer performance results. Data from this variety of sources permitted a more complete analysis of the IST program.

WHERE WERE THE IST COURSES PILOT  
TESTED?

Twenty-five schools (304 students) provided data for the 1980-1981 IST evaluation. These schools, all of which volunteered to participate in the pilot testing, constituted a cross section of the rural Alaskan schools for which IST is intended. Participating sites typically purchased the needed microcomputer equipment, paid for teacher travel to training sessions, and agreed to provide data required for the evaluation of the courses. The pilot test sites represented a wide

range of rural settings in which the IST courses were implemented. As indicated in Table 1, the pilot test schools were located throughout the State of Alaska. A typical school was located in a rural community with a population of less than 300 people. Most schools in the pilot testing were Regional Education Attendance Area (REAA) schools, and the typical student-to-teacher ratio was 11 to 1. A local power company typically provided the electric power to the schools and most school children had parents who had not completed high school.

TABLE 1  
IST PILOT TEST SITE CHARACTERISTICS  
(NUMBER OF SITES = 25)

		PERCENT	
SITE LOCATION:	Southeastern Region	24	
	Southcentral Region	44	
	Northern Region	32	
TYPE OF SCHOOL:	REAA	64	
	Borough	36	
TYPICAL EDUCATIONAL LEVEL OF PARENTS:	Both parents completed high school	28	
	Only one parent completed high school	20	
	Neither parent completed high school	52	
POWER SOURCE:	Local Power Company	50	
	Gas or Diesel Generator	33	
	Both of these sources	17	
	<u>MEDIAN</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
Community Population:	255	93	950
Number of Students in School:	50	7	189
Number of Teachers at School:	3	1	20
Student-Teacher Ratio:	11:1	4:1	21:1

### HOW RELIABLE WAS THE MICROCOMPUTER EQUIPMENT?

Relatively few serious problems were reported during the 1980-1981 pilot testing. Class time lost due to microcomputer hardware problems averaged about two days per month per site. Considering the environmental conditions and prior experience of personnel at the sites, the microcomputer equipment performed exceptionally well. The breakdown of equipment, therefore, is a relatively minor concern in the future implementation and effectiveness of the IST program.



An IST student working on a microcomputer activity in a rural Alaskan school.

### WHAT WERE THE IST TEACHERS LIKE?

Thirty-nine teachers participated in the IST pilot testing. As shown in Table 2 these teachers usually supervised one or two IST courses, with an enrollment of about 5 to 7 students per course. The teachers averaged five years teaching experience. They typically had a bachelor's degree in Social Studies or Education. Also, most teachers felt their prior experiences had prepared them to perform two important functions of an IST teacher: 1) the maintenance of student performance records, and 2) the management of student learning in a setting where several different activities are occurring simultaneously in the classroom. The majority of the teachers, however, had no prior experience in the classroom use of audio cassette tapes or computers.

An analysis of the relationship between teacher characteristics and student performance was conducted in the evaluation of the pilot testing. Student performance was found to be significantly better in the IST courses supervised by teachers who felt their prior experience had prepared them to manage student learning when several different activities are occurring simultaneously in the classroom and to use audio tapes in the classroom. Other teacher characteristics, such as years teaching experience, academic degree, academic area of specialization, familiarity with instructional computer programming, and prior experience in the classroom use of computers, generally were not significantly related to student performance.

TABLE 2  
IST PILOT TEST TEACHER CHARACTERISTICS

(NUMBER OF TEACHERS = 39)

		PERCENT	
Number of IST Courses Supervised:	One	36	
	Two	31	
	Three	11	
	Four	22	
Highest Degree Received:	High School	6	
	Bachelor's	64	
	Master's or Doctorate	30	
Major Area of Study:	Social Studies	28	
	Education	24	
	Language/English	14	
	Biology	14	
	Mathematics	7	
	Social Science	7	
	Administration	7	
Prior Education Training and Experience in:	Classroom use of:		
	Audio Cassette Tapes	48	
	Computers	30	
	Maintaining Student Records of performance	73	
	Managing student learning when several activities are occurring simultaneously in the classroom	85	
	Writing computer programs for instruction	12	
	<u>MEDIAN</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
Years Teaching Experience:	5	1	18

**WHAT TYPE OF SPECIAL TRAINING AND ASSISTANCE DID THE IST TEACHERS RECEIVE?**

Most IST teachers attended a three-day pre-service training workshop prior to beginning the IST courses in their schools. In this workshop the teachers were introduced to the IST program, its courseware, media components, and procedures. The teacher guides were presented and discussed, and each teacher had "hands-on" experience with the first few lessons in each course. The teachers practiced the setting-up, operation, and management of the microcomputer, as well as procedures for preventing and solving microcomputer problems. In addition, the roles and responsibilities of the teacher in the IST program were covered.

A midyear meeting for IST teachers was held in January, 1981 in Anchorage. This two-day meeting brought the teachers together to share their IST experiences with other teachers and with the representatives of the Alaska Department of Education. Successful strategies and problem areas concerning implementation of the IST courses were identified and discussed, with solutions recommended. Additional "hands-on" IST training and demonstrations were provided.

In addition to the two meetings, each pilot test site was visited twice by IST support staff from DOE. The initial visit (of two to three days) occurred early in the school year and served the purpose of assisting with the implementation of IST in the classroom. The primary purposes of the second site visit were to observe the operation of the IST courses in the schools and to assist teachers with any problems they were having.

The training and assistance received by IST supervising teachers was found to be essential to the successful introduction and implementation of the IST courses. No teacher considered the training received to be so basic that it was not worthwhile, but neither did any teacher consider the amount of training required to operate the IST courses to be too much. Fifty-three percent of the teachers considered the amount of training to be reasonable but demanding; 47 percent considered it to be easily accomplished.

Teacher training and assistance will be more efficient and cost-effective in the future. As a result of the experience gained by DOE during the pilot testing, initial training sessions are now conducted by DOE at several relatively small regional meetings rather than one large statewide meeting and a telecommunications network has been set up through which teachers can contact other teachers or DOE representatives for assistance with IST problems. Additionally, improved teacher guides are now available which include helpful hints from experienced IST teachers.



IST students completing a written course assignment.

## HOW DID THE TEACHERS IMPLEMENT THE IST COURSES AT THEIR SCHOOLS?

Classroom Management - The IST program allows for some flexibility in classroom management procedures. No single classroom management model seemed to be most effective. IST students in smaller schools usually worked on IST courses in the same classroom as other students working in non-IST courses. Such a classroom was often divided into areas serving distinct functions. One area was designed for group instruction, another area for individualized study, and a third area for placement of materials and equipment. The teacher typically stored all IST materials and equipment, and the students typically worked with the microcomputer and listened to the audio cassette tapes in the third area. The individualized reading and written work required of the IST students was completed in the area set aside for individualized study.

IST<sup>m</sup> students in the larger schools were usually set apart from other students working in non-IST courses. In some of these schools a single classroom was designated as the IST room. All IST course activities, including computer work, were conducted in this room, and all IST materials and equipment were located here. Non-IST activities occurred in the IST room at times during the school day, but never simultaneously with IST activities. In other large schools IST courses were conducted in several classrooms during specified periods in the school day. The IST materials were located in each of the classrooms. The IST equipment, particularly the microcomputer and its associated materials, was located and used in a central location such as a library or learning resource center.

Teacher Supervision - The best model for teacher supervision of the

IST courses was to have the teacher in the same classroom as the students. Having a teacher available to provide IST students with assistance when needed was an important factor in the successful implementation of the courses. The students, however, did not need constant supervision. Most teachers attended to other responsibilities, such as assisting non-IST students, correcting written work/tests, and record-keeping, while they were supervising the IST students.

Use of Aides - Implementation of the IST courses did not necessarily increase the need for aides at the 1980-1981 pilot test sites. The use of aides in assisting IST supervising teachers was dependent upon the situation at each school and did not seem to significantly impact on the successful implementation of the IST courses. Typically, aides were used at schools to assist teachers in managing IST and non-IST classroom activities, in maintaining records of student performance, and in supervising microcomputer operations where the computer was located in an area outside the classroom in which other IST activities occurred.

Use of Microcomputer - Most teachers developed some system to specify the order in which students were to use the microcomputer. Although the systems typically resulted in some students not having access to a computer at the very moment they were ready to use it, rarely did students have to waste time while waiting their turn. The flexibility in the structure of the IST courses usually permitted students to work on other IST activities while they waited. The most efficient student-to-computer ratio was found to be about six IST students per computer per class period. This ratio maximized computer use during a typical class period and minimized the waiting time

experienced by students.

The location of the microcomputer in the schools somewhat influenced its effectiveness. The computer was most effective when it was located in an isolated area in the same classroom in which the students performed their other IST activities. In this location the computer was easily accessible to the students, the teacher was readily available to assist the students, and the distractions near the computer were minimal. Locating the computer in this location was not possible at some schools due to local conditions. Most schools in which the computer had to be located outside the classroom had aides available to assist students using it. Some schools that offered several IST courses and scheduled them in several different classrooms attempted to locate their computer in the "most effective" area by moving it from room to room as needed during the school day. Although few computer malfunctions were actually experienced during the 1980-1981 pilot testing, the constant movement of the computer equipment increased the likelihood of malfunctions.

Storage of IST Materials - A comprehensive set of materials comes with each IST course. The complete IST Alaska History course, for example, has five large loose-leaf-like teacher guides, five student manuals for each student, cassette tapes, selected reading materials, and computer diskettes. The manner in which these materials were organized affected their accessibility to the students. Accessibility was greatly enhanced by placing the materials presently being used by the students in an organized manner on easily accessible bookshelves and storing the rest of the materials out of the way, in a secure, dry, and cool place until needed by a student.

#### WHAT WERE THE TEACHERS' ATTITUDES TOWARDS IST?

Table 3 indicates that nearly 75 percent of the teachers considered the IST courses to be well-designed for their classrooms. Also, more than 66 percent viewed the amount of work required to manage and operate the IST courses as generally less than that required when using traditional courses; the other teachers viewed the IST courses as requiring a reasonable amount of work. No teacher considered the courses to be "too much work" or "not worth the bother".

Table 3 also indicates that most teachers reported a preference for using the whole courses, rather than parts of them. All teachers who would prefer to use parts reported that they would like to use the computerized instruction and IST workbooks and exercises. The teachers generally felt that the microcomputer activities and textbooks were the components of the IST courses most compatible with their teaching styles. Audio cassette tapes and projects were considered the least compatible. The computer activities were viewed by the teachers as the most interesting component of the courses for the students, while the supplemental activities were viewed as the least interesting. Overall, the data suggested that the supervising teachers were generally very satisfied with the design and usefulness of the IST courses.

TABLE 3

## PILOT TEST TEACHERS' ATTITUDES TOWARDS IST

(NUMBER OF TEACHERS = 39)

	PERCENT OF TEACHERS IN AGREEMENT
The IST courses are well designed to be used and managed in a classroom like mine.	74
Amount of work required of an IST teacher:	
a) too much	0
b) more than a traditional course	35
c) less than a traditional course	65
d) not worth the bother	0
I would prefer to use the whole IST courses as they now exist.	59
Of those teachers who would prefer to use only parts of the IST courses, the parts they preferred to use were:	
a) computerized instruction	100
b) IST workbook and exercises	100
c) audio cassette tapes	57
d) published materials	43
e) outside readings	7
IST components compatible with teaching styles:	
MOST COMPATIBLE	Computer Exercises
LEAST COMPATIBLE	Audio Cassette Tapes
IST components producing the greatest interest for students as viewed by the teachers:	
MOST INTERESTING	Computer Exercises
LEAST INTERESTING	Supplementary Activities

### WHAT WERE THE IST PILOT TEST STUDENTS LIKE?

A total of 304 students enrolled in one or more of the IST courses during the 1980-1981 pilot test. As indicated in Table 4, these students were mostly Eskimo, with the Aleut, Tlingit, and Athabascan native groups also represented. The typical students enrolled in the English, Developmental Reading, and General Math courses were 15 or 16 year old,

ninth grade males. The typical student enrolled in the Alaska History course was a 17 year old, eleventh grade male. The general academic ability of the IST students who participated in the 1980-1981 pilot testing, prior to their enrollment in the IST courses, was typical of rural Alaskan ninth and tenth grade students (as measured by the Alaska Statewide Achievement Test - ASAT). The ASAT results are summarized in Table 5.

TABLE 4

#### IST PILOT TEST STUDENT CHARACTERISTICS

	ALL COURSES	ALASKA HISTORY	ENGLISH	DEVELOPMENTAL READING	GENERAL MATH
Number of Students	304	75	59	117	116
Age: Median	16	17	15	16	16
Minimum	10	14	13	10	12
Maximum	20	20	20	20	19
Grade Level: Median	9	11	9	9	9
Minimum	5	6	8	5	7
Maximum	12	12	12	12	12

#### PERCENT

Native Group Affiliation:	
Eskimo	58
Aleut	16
Tlingit	11
Athabascan	10
Non-Native	5
Gender: Male	64
Female	36

TABLE 5

## ALASKA STATEWIDE ACHIEVEMENT TEST (ASAT) RESULTS

		ASAT MEAN SCORES (% CORRECT)		
		ASAT 1979 STANDARDIZATION GROUP		
		ALL STUDENTS	RURAL STUDENTS	IST STUDENTS
NUMBER OF STUDENTS	NUMBER OF ITEMS	1440	158	296
MATH COMPUTATION	36	64	42	50
MATH APPLICATION	66	61	44	50
READING COMPREHENSION	45	67	42	53
READING WORD IDENTIFICATION	39	74	62	72



A typical IST classroom setting in a small rural Alaskan school showing the location of each IST component of instruction: the printed materials (on which the students are working at their desks), the microcomputer, the audio cassette tape equipment, and the teacher.

WHAT PORTION OF AN IST COURSE  
WILL A TYPICAL STUDENT COMPLETE  
IN AN ACADEMIC YEAR?

The typical English, Developmental Reading, and General Math students progressed through their courses in the sequence established in the design of the courses. The typical Alaska History student, however, skipped Unit II (Alaska's Native Groups) because most supervising teachers felt its content would be more appropriately presented after Unit IV.

As indicated in Table 6, the typical student could be expected to complete three of the five units in the Alaska History course, 10 of the 12 units in the English course, 30 of

the 36 lessons in the Developmental Reading course, and 43 of the 92 lessons in the General Math course. These data suggest that: a) the faster students could complete the entire English and Developmental Reading courses, and most students could complete approximately 83 percent of these courses in one academic year; b) most students could be expected to complete the Alaska History course in one and one-half academic years; and c) most students would need two academic years to complete the General Math course. These projections are based on the progress reported by students who participated in the 1980-1981 pilot testing, with an effective academic year considered as 170-175 school days.

TABLE 6

## IST COURSE COMPLETION INFORMATION

IST COURSE	TOTAL COURSE	PORTION EXPECTED TO BE COMPLETED IN ONE ACADEMIC YEAR	% OF TOTAL COURSE EXPECTED TO BE COMPLETED IN ONE YEAR
ALASKA HISTORY	5 Units	Units I, III, IV	64
ENGLISH	12 Units	Units I thru X	83
DEVELOPMENTAL READING	36 Lessons	Lessons 1 thru 30	83
GENERAL MATH	92 Lessons	Lessons 1 thru 43	47

### WHAT WERE THE STUDENTS ATTITUDES TOWARDS IST?

Table 7 indicates that nearly all students considered the microcomputer exercises interesting; about 59 percent found the reading and written components of the IST courses interesting; and 49 percent considered the audio cassette tapes interesting. The audio cassette tapes were the only IST media component considered boring by a significant percent of the students. Most students reported the difficulty level of the courses to be "about right" for them. Also, half of the

students indicated they almost always understood what needed to be done and could work by themselves on their courses; no students indicated they rarely or never knew what to do and almost always had to get help from their teacher. These data suggest that: a) most students find learning using the IST media components of instruction an interesting experience and b) the instructions and procedures in the IST courses are sufficient for most students to have confidence in their ability to progress through the courses on their own.

TABLE 7

#### PILOT TEST STUDENT ATTITUDES TOWARDS IST

(NUMBER OF STUDENTS = 49)

	PERCENT
The Computer exercises in the IST courses are:	
(a) interesting	92
(b) of little interest	8
(c) boring	0
The audio cassette tapes in the IST courses are:	
(a) interesting	49
(b) of little interest	24
(c) boring	27
The reading and written work in the IST courses are:	
(a) interesting	59
(b) of little interest	35
(c) boring	6
Clarity of IST course instructions and need for teacher assistance:	
(a) almost always understand what needs to be done and can work by myself	50
(b) sometimes do not understand what needs to be done and need my teacher's help	50
(c) rarely or never know what needs to be done and must get my teacher's help	0
IST course difficulty:	
(a) easy	22
(b) about right	73
(c) difficult	5

HOW MUCH DID THE STUDENTS LEARN?

Student learning in the IST courses was assessed using unit, section, and chapter computer tests and post-course paper-and-pencil tests.

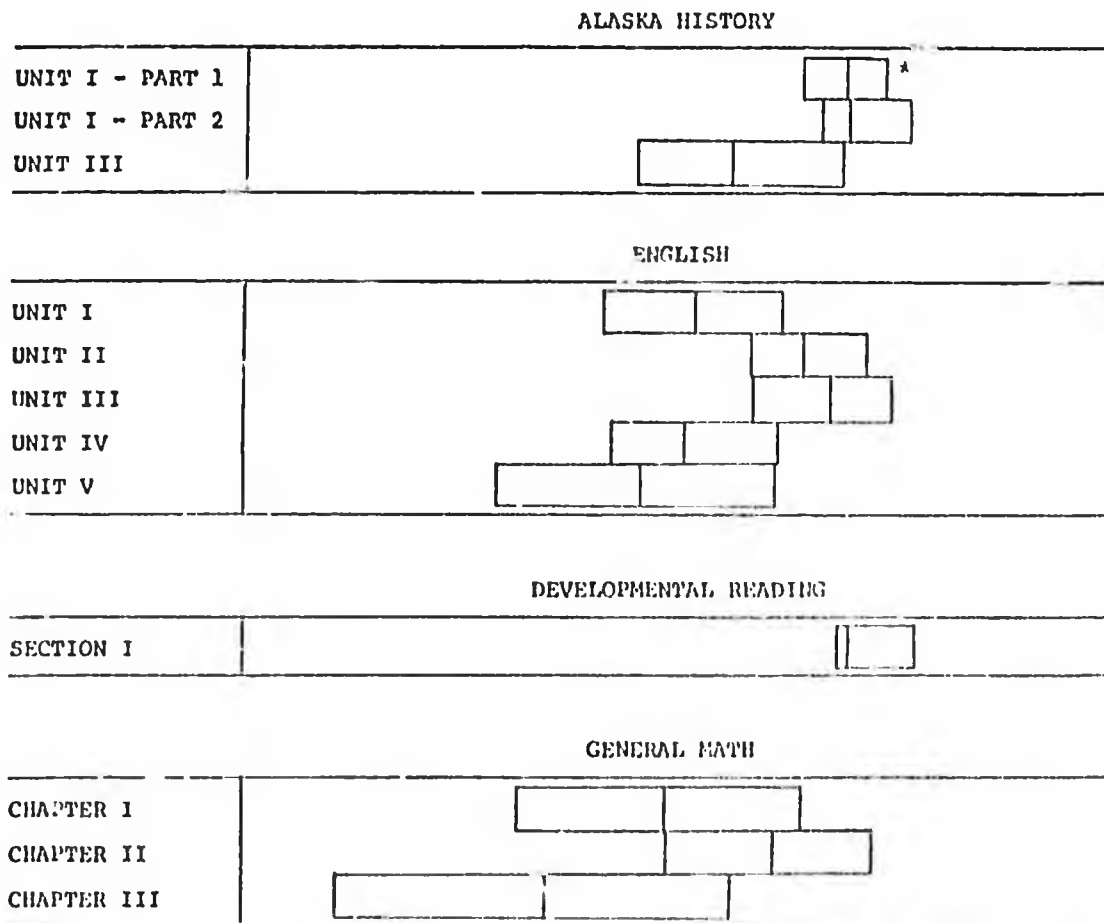
Computer Tests - As indicated in Figure 1, the mean performance of

students was at least 60 percent on all computer tests completed by at least 25 students, except Unit V in the English course and Chapter III in the General Math course. The students performed at an 85 percent mastery level on the Alaska History Unit I - Parts 1 and 2 and Developmental Reading Section I computer tests.

FIGURE 1

COMPUTER TEST PERFORMANCE RESULTS

0 10 20 30 40 50 60 70 80 90 100 Percent



\* The bar represents the range of scores for the middle 50 percent of students. The dark line within the bar represents the mean score for all students.

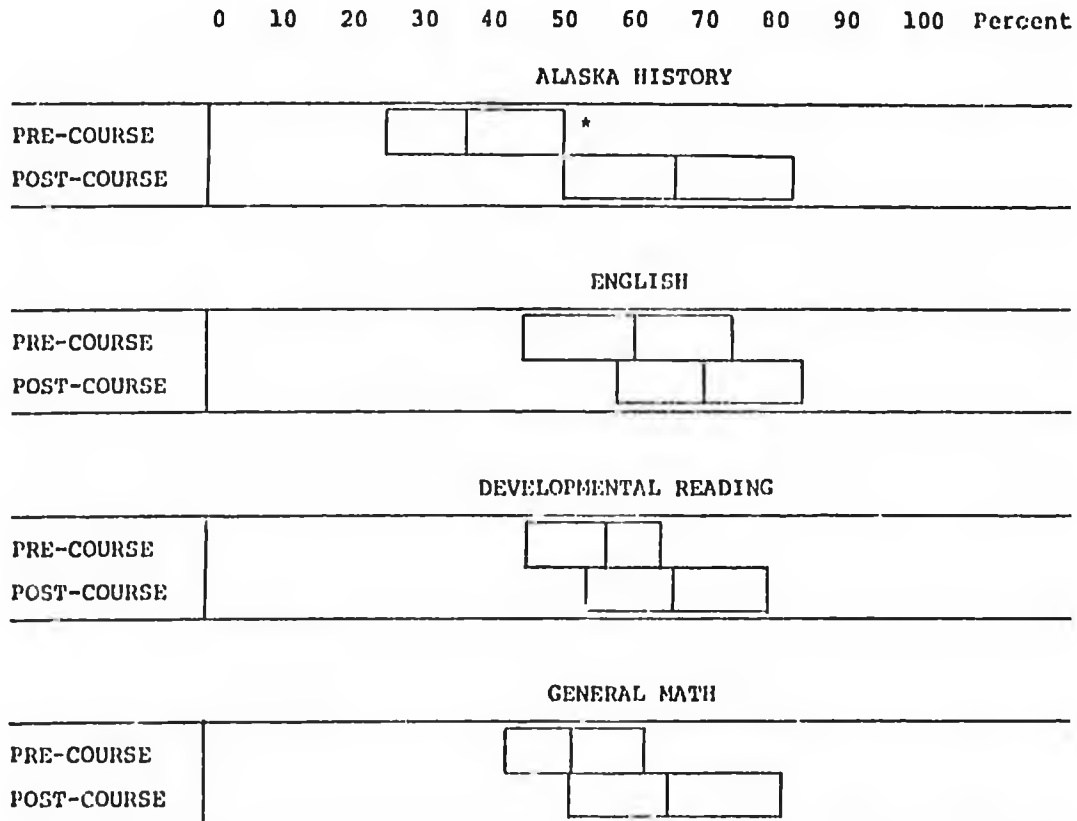
Post-course Tests - The students' pre-course and post-course knowledge of course content was measured by paper-and-pencil tests. The students' test scores were based only on those items related to the portions of the courses they completed. However, items on the Developmental Reading test were not related to any particular portion of the course, thus students' test scores were based on all questions on this test. As indicated in Figure 2, the students, on the average, were generally unfamiliar with the content of the Alaska History course, and somewhat familiar with the content of the English, Developmental Reading, and General Math courses prior to their enrollment in these courses. At the end of the school year, the

mean test scores increased to between 60 percent and 70 percent in all four courses.

The most significant factor in overall student performance in all four IST courses was the students' prior knowledge of the course content. After taking into consideration this pre-course knowledge, students' pre-course math and reading skills (as measured by the subtests of the Alaska Statewide Achievement Test) were also significantly related to student performance in all four courses. Student age and grade level did not significantly relate to student performance in any of the IST courses.

FIGURE 2

PRE-COURSE AND POST-COURSE TEST PERFORMANCE RESULTS



\* The bar represents the range of scores for the middle 50 percent of students. The dark line within the bar represents the mean score for all students.