

ALASKA LEGISLATIVE COUNCIL FILED DOCS

1683 SJ SB 132. - SB 165

OFFICE OF THE COMMISSIONER

FEB 2. 1981

ALASKA DEPARTMENT OF REVENUE

February 2, 1981

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

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which would centralize collection of state claims in the Department of Revenue. This bill, based on Oregon law, provides for the Department of Revenue to withhold refunds and any other payments from the state and credit those payments to a debtor's account with a state agency.

State agencies, under this bill, will submit a list of debtors having liquidated debts with the agency to the Department of Revenue which will determine whether those debtors are entitled to a tax refund or other payment. If it is determined that enough money is available for setoff, the claimant agency will notify the debtor of its intent to set off the debt and provide the debtor with an opportunity to request a hearing. After a hearing, or after the expiration of time for a hearing, the Department of Revenue will divert part or all of the payment to the agency, which in turn will credit the debtor's account in the amount of the setoff. This bill will provide an efficient method of collecting debts owed to the state.

Sincerely,

Jay S. Hammond
Governor

MEMORANDUM

State of Alaska

Formalize
Admin Procedures

TO: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

DATE: January 19, 1981

FILE NO:

TELEPHONE NO:

FROM: Fred P. Boetsch
Director
Enforcement Division

2366

SUBJECT: Fiscal Note for
Statewide Collection
Act

GENERAL ACCOUNTS
PAYABLE
+ PRAC
REFUND
+ PRAC
+ PRAC

The Statewide Collection Act which the Governor is introducing is similar to House Bill 869 from last year's session. Some changes have been made to that bill in order to strengthen its operation. In the first place, the Act requires that liquidated debts be turned over to the Department of Revenue for collection procedures unless certain exceptions delineated in section 2 exist. Secondly, the set-off procedure would be against any amount owed by the state to the debtor instead of just taxes and/or Permanent Fund dividends. And third, the Department of Revenue would also have the authority to follow concurrent collection procedures under AS 09.

WHAT OTHER DEBTS
WOULD STATE HAVE
TO INDIVIDUALS?

162.1 TO
COLLECT? →

It appears from our research that accounts receivable of 3 1/2 to 4 million dollars might be subject to collection by the Department of Revenue under this bill. The bulk of these delinquent accounts is in the student loan program, although a certain amount of delinquency also exists in most of the other state loan programs. We will initiate the program with a modest core unit designed to implement all the responsibilities and functions assigned to us under this bill. The first year of experience will give us an opportunity to ascertain the precise workload that will be assigned to the Department of Revenue. It is possible that this group could be expanded horizontally in subsequent years if there is sufficient workload justification.

HOW ARE THESE
DEBTS COLLECTED NOW?
HOW DOES THIS AFFECT
DEBTORS FILING
BANKRUPTCY?

NO NOC
NO PRAC

The Department of Revenue, through its experience with tax collection efforts, has developed expertise in the areas of skip-tracing, progressive collection efforts, and levy and seizure. With the elimination of individual income tax and the collection workload related to that, we are in a good position to pick up other collection efforts. Although this fiscal note identifies additional resources necessary to do this job, it should be pointed out that our FY '82 budget contemplates the deletion of some sixteen positions during FY '82. The operation of that budget and this fiscal note concurrently would result in our retaining some of those positions scheduled for deletion under the FY '82 budget proposal. Accordingly, the cost indicated below would merely be retractions of the deletion proposed for FY '82 rather than actual additions to the FY '81 continuation level (that is we would drop 16 positions and add back 4 with a net deletion of 12).

IS THIS A PRIMARY
CONCERN OF
REVENUE- MAINTAINING
PERSONNEL?

The cost associated with implementation of this bill would amount to \$152,200 for FY '82. This includes the salary and benefits for a Revenue Enforcement Officer III, 2 Tax Collection Specialists II's, (or Paralegal Assist nts) and an Accounts Receivable Clerk. In addition, we would require \$5,000 in travel money for the Revenue Enforcement Officer to meet face to face with debtors in the extremely difficult collection cases. We would also need an enhancement of the existing accounts receivable system in order to accommodate the liquidated debts assigned to us. The basic design for that

MORTGAGE (CONT)
SBA (CONT)
FISHING LOANS

STUDENT



January 19, 1981

system already exists and would need some minor modification to include these additional accounts. Detailed design and programming effort in order to get an up and running system which would accommodate the debts under this bill would cost an additional \$20,000, which is included in contractual services. I have also included \$5,000 for additional telephone costs and \$2,000 for postage. Additional commodities and equipment costs are also included in the fiscal note.

It is difficult to estimate at this time the potential results which could be achieved from this bill. Based on our past performance with the collection of taxes, a very difficult item to collect these days, I feel that the Enforcement Division is well situated to significantly improve the collection of delinquent accounts on a statewide basis. We will find that the amount collected will far exceed the cost involved. The first year of experience will give us a better handle on the cost/benefits as well as the potential workload for this unit.

→ WHAT PROPORTION OF DEBTORS RESIDES IN STATE AND ARE THEREFORE LIKELY TO BE AVAILABLE TO DUN?

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____
 Title Statewide Collection Act
 Requested by Governor Date January 19, 1981

II. FISCAL DETAIL

Agency Affected Revenue
 Program Category Affected Revenue Collection and Management
 BRU, Program, or Subprogram(s) Affected Enforcement
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		114.6				
200 TRAVEL		5.0				
300 CONTRACTUAL		27.0				
400 COMMODITIES		1.6				
500 EQUIPMENT		4.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		152.2				

FUNDING (Thousands of Dollars)

GENERAL FUND		152.2				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		4				
PART TIME						
TEMPORARY						

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

See memo from Fred Boetsch, Director, Enforcement Division to Joseph K. Donohue, Deputy Commissioner of Taxation, dated January 19, 1981, attached.

IV. DATE January 19, 1981 PREPARED BY Fred P. Boetsch
 AGENCY Revenue
 PHONE 465-2366
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

I. REQUEST

Bill/Resolution No. _____
Title Relating to Claims of the State
Requested by the Governor Date 1/26/81

II. FISCAL DETAIL

Agency Affected _____ Revenue _____
Program Category Affected _____ General Government _____
BRU, Program, or Subprogram(s) Affected Administration & Support, Management Services
(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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		9.9	30.2			
200 TRAVEL						
300 CONTRACTUAL			50.5			
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		9.9	80.7			

FUNDING (Thousands of Dollars)


GENERAL FUND		9.9	80.7			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME		1/3mm	2/12mm			
TEMPORARY						

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

See Page 2.

IV. DATE 1-28-81 PREPARED BY  Philip A. Wall
AGENCY Revenue
PHONE 465-2313
Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Assumptions

Claims submitted by State agencies will off-set against tax refund and Permanent Fund Dividend payments being processed by the Department of Revenue and against payments being made by the Department of Administration. The computer programs to data capture claims information, attach payments being made and process the off-set must be written. Resources will be needed to process the claims and apply controls will also be required. The expenditures defined below will enable system design and initial process and will define on-going costs for future budget requests.

Positions

One Systems Analyst to design the processing system and write the computer programs:

6mm @ R 18, \$2,640 per mo, plus 25% 19.8

One Accounting Clerk to batch claims, apply controls, make corrections, prepare offset adjustments and release payment of money excess to debts:

6mm @ R 8, \$1,393 per mo., plus 25% 10.4

Other Expenditures:

Data Processing Costs: Storage, 50mgb @ \$4 - 24.0;
Program Development and Processing @ 2.0 per mo - 24.0

Communications: Postage and Toll Calls - 1.5

Miscellaneous Contractual - 1.0 50.5

80.7



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

A G E N D A

Wednesday, March 4, 1981

CALL TO ORDER

Confirmation of Jean F. O'Sullivan to the Commission on Judicial Qualifications.

CSSB 99 "An Act prohibiting sex discrimination in education in the State and implementing Article I, Section 3 of the Alaska Constitution.

SB 132 "An Act relating to claims of the state and providing for an effective date."

ADJOURN

February 2, 1981

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

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which would centralize collection of state claims in the Department of Revenue. This bill, based on Oregon law, provides for the Department of Revenue to withhold refunds and any other payments from the state and credit those payments to a debtor's account with a state agency.

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Sincerely,

S/JSH

Jay S. Hammond
Governor

CSEA 10/4/79

NAMES AND ADDRESSES

AREA
CODE

TELEPHONE

Fed funding - attached to bill Sen Long didn't like, he tacked
it on to one Ullman didn't like = HB 3434 passed

After new system in. Fed funding in, estimates 60-65%
case load work will be AFDC. Barbara Henderson
(~~of~~ Fed of Seattle) will give 95% of AFDC funding)

Going to admin court order for child support, worked
out with father, he can always fight in court

Problem w/ garnishee pay - need separate order for
each pay check. - would like consent of father
for with. holding until arrearage paid \$547.23. 2.50

82% delinquent

65% AFDC parent outside state - 1000 month, 20650

130-140 out of state to us per month (65% AFDC of the
state)

Will Fed regs inhibit looking at labor files (FICA)
40-45% success rate in other states
15%-20% move before act on - URISA both ways

1/3 AFDC cases need establish paternity

20% - max return against AFDC payments

Fantail Graphics -22407 1st place west Bothell
Lynne (Printers) 6105 NE 194th place 486-2689
church of Redeemer
Joey Jack
Von Waengel 14630 SE 267th st, Kent 98031
631-1506
Bill + Ellen Case - 842-7271

NOTES ON CHILD SUPPORT ENFORCEMENT

Judy Brakel Feb. 28, 1980
phone 586-6561 or 586-3456

Alaska law says that the Child Support Enforcement Agency (CSEA) will serve both families on welfare (AFDC) and families not on welfare. When federal funding was cut out in 1979 for non-AFDC cases, the Alaska agency ceased enforcement activities on those cases, in violation of Alaska law.

At present the Alaska CSEA is not benefiting any family in Alaska except through the operation of a bluff. When CSEA collects child support for families on welfare, the state & federal govts. keep the money to reimburse welfare costs. Some of the agency's clients who are not on AFDC are still benefiting from the "bluff" that exists because enforcement for those cases was a reality for a while and there has been no publicity about the fact that enforcement is no longer available.

Needed immediately:

- (1) a supplemental appropriation for FY 1980
- (2) a regular appropriation for FY 1981, which could be written to come into effect only if federal funding, now contained in HR3434 (sitting in free conference committee since November) is not passed. Last year a federal funding bill was expected to pass and did not. The same may happen this year.

The Alaska Dept. of Revenue has suggested \$260,000 for FY 1981 to take care of the federal shortfall, but the administration did not put it in their budget. This is extremely shortsighted (aside from being inhumane). Three years of effort by CSEA to make "believers" out of the people who owe support money will be lost soon and the agency will have to start from scratch again if the program is ever refunded. The lack of child support is also a pivotal factor which drives families onto welfare and other types of aid.

Question: should the agency get additional funding, over and above making up the Federal shortfall, so that this program can be made truly effective? During the early part of 1979, while federal funding was still in effect, only 44 % of the families on CSEA's caseload were receiving any child support at all, and only 18% of the families showed full support payments with no arrears. The total arrears on CSEA's caseload of 5,966 families was \$17,000,000.

A new orientation is needed: non-payment of child support needs to be regarded as seriously as non-payment of income taxes. Let's get our priorities straight!

Some possibilities for improving enforcement:

- (1) Simplifying wage garnishment procedures for CSEA only
- (2) Charging interest on arrears
- (3) Intercepting state income tax refunds. Oregon presently does this by matching Soc. Sec. numbers. Get this into effect before proposed new income tax rebates go into effect.
- (4) When numerous attempts at collection are required, the penalties should become more serious.

(5) Penalties for deliberate avoidance of work to escape payment.

Some of these options have been tried by other states. Other measures are also being tried.

Problems caused by inflation:

To begin with the support settlement is usually less than 1/2 of what it costs to raise a child. Current inflation can then reduce the value of the settlement amount by 50% in 4 years. Going through the courts to get the settlement raised is an expensive (\$1,000 to \$3,000) process whose cost is usually born by the mother. She has to wait several years between filing each adjustment and many months for the court to act on it. The payor is usually antagonized in the process, which may have repercussions on child visitation and custody problems.

If every single parent in Alaska who should be going to court to get their settlement modified due to inflation were actually to do so the courts would be flooded. Court calendars are already over-full.

Needed: legislation which would enable CSEA to make an administrative modification of the support level on the basis of inflation even when there is a court order on the books. Appeal to the courts from the administrative decision would be possible.

This could be done annually for all the cases administered by CSEA. The agency presently has legal authority to do this for those cases that originated with CSEA's own administrative determination of a support obligation. But for the majority of cases, since a court order originally determined the support settlement, CSEA needs new legal authority to allow it to do an administrative modification on the basis of cost of living increases without going back to court. The laws of 10 states now provide such authority -- Washington, Utah and Virginia are examples.

Recognizing that all parties are probably losing real spendable income as a result of inflation, the child support increases could be set to lag behind the CPI or be based upon some other Bureau of Labor Statistics index, such as the index that relates to wages.

Adjustment
only 12 1/2 %
inflation!

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

HOUSE BILL NO. 869

"An Act relating to claims of the state; and providing for an effective date."

The passage of House Bill No. 869 would be of significant benefit to the Department of Health and Social Services.

Present debts owed Department of Health and Social Services are chiefly the result of assistance programs for which comprehensive, federally mandated remedies exist.

This bill would relieve the DHSS of collection responsibility and place it in an organized collection system. This should be more efficient and cost effective statewide. We recommend support of House Bill No. 869.

Recommended By: V. L. Iverson
V. L. Iverson, Director
Division of Administrative Services

Date: 3/11/80

Approved By: [Signature]
Commissioner
Department of Health and
Social Services

Date: 3/24/80

Zero Fiscal Note

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 11, 1981

SUBJECT: State student loans in bankruptcy proceedings
(Work Order Number 12-1064)

TO: Senator Patrick M. Rodey, Chairman
Senate Judiciary Committee

FROM: Linn H. Asper
Legislative Counsel

You have asked whether the state can exempt state student loans from federal bankruptcy laws so that these debts will not be discharged. It appears that no state legislation is necessary, because the Bankruptcy Reform Act of 1978 provides that a debt cannot be discharged in bankruptcy proceedings if the debt is:

"(8) for an educational loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or a non-profit institution of higher education, unless

"(A) such loan first became due before five years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or

"(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;"

11 U.S.C. 523(a)(8).

"Governmental unit" is defined in the bankruptcy act as

United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, instrumentality of the United States, a State, a Commonwealth,

Senator Patrick M. Rodey
Page 2
March 11, 1981

a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government;

11 U.S.C 101(21).

In summary, a debt for a state student loan is not dischargeable in bankruptcy proceedings except under the two circumstances set out in 11 U.S.C. 523 (a)(8)(A) and (B). The federal bankruptcy law controls this question and it is not possible for the state to go further than the bankruptcy act to limit the exceptions to the non-discharge rule stated above. (See also, 3 Colliers on Bankruptcy, Sec. 523-18 and 9A Am Jur2d, Bankruptcy, Sec. 807.)

LHA:ljb

S

B

1

4

2

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 12, 1981

The Honorable Bettye Fahrenkamp
Senate Resources Committee
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99811

Re: SB 142, "An Act authorizing the possession
of antique slot machines."

Dear Senator Fahrenkamp:

I am writing in response to your recent inquiry pertaining to SB 142, "An Act authorizing possession of antique slot machines." Specifically you requested that I analyze whether the bill is necessary in view of the existing provisions in the crime of Possession of a Gambling Device, AS 11.66.260.

For your information I have enclosed a copy of AS 11.66.260 and the commentary adopted by the legislature that accompanied that statute. In order to commit the crime the person must know that the device is used or is to be used in unlawful gambling. The commentary to that section stresses that in order to obtain a conviction "the prosecution must establish that the defendant knew that the device was to be used in the promotion of unlawful gambling." Consequently, a person who possesses an antique slot machine without the intent to use it in unlawful gambling does not commit a crime under this section and the device may not be forfeited under AS 11.66.270. It also should be noted that subsection (b) of AS 11.66.260 specifically recognizes that a person is not guilty of the crime of Possession of a Gambling Device even if he occasionally uses the device for social gambling, as that term is defined in AS 11.66.280(9).

Consequently, it is the position of this Department that passage of SB 142 is unnecessary as the conduct described in that bill is already exempt from coverage if the machine is not intended for use in unlawful gambling.

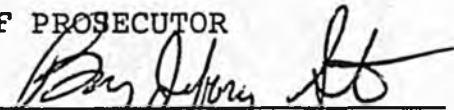
If I can be of any further assistance to you on this matter, do not hesitate to contact me at your convenience.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

BY:


Barry Jeffrey Stern
Assistant Attorney General

Enc:

cc: Arthur H. Peterson
Assistant Attorney General

MAR 16 1981

POSSESSION OF A GAMBLING DEVICENEW CRIMINAL CODE

Sec. 11.66.260. POSSESSION OF A GAMBLING DEVICE. (a)

A person commits the offense of possession of a gambling device if, with knowledge of the character of the device, he manufactures, sells, transports, places, or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody, or use of, a gambling device knowing that the device is used or is to be used in unlawful gambling.

(b) It is an affirmative defense in a prosecution under this section that the gambling device possessed by the defendant was used or intended to be used only in a social game.

(c) Possession of a gambling device is a class A misdemeanor.

PRIOR CRIMINAL CODE

None.

COMMENTARY

From Senate Journal, 119: .

This section prohibits the unlawful possession of all gambling devices. Possession of a gambling device is a class A misdemeanor. The term "gambling device", is defined in Sec. 11.66.280(3) as "any device, machine, paraphernalia or equipment that is used or usable in the playing phases of unlawful gambling", other than lottery tickets or policy slips (possession of which is punishable as possession of gambling records, Sec. 11.66.230; 240). The definition of

gambling device also specifically excludes pinball machines that only "pay-off" in free games.

The conduct prohibited by the statute includes the manufacture, sale, transportation, and possession of any gambling device or the conducting or negotiating of any transaction affecting or designed to affect ownership, custody or use of such items. The prosecution must establish that the defendant knew that the device was to be used in the promotion of unlawful gambling. This culpable mental state requirement insures that a prima facie case of possession of a gambling device cannot rest on proof that the defendant possessed such otherwise innocuous items as chips or a deck of playing cards, which would otherwise be covered because of the broad definition of a gambling device.

See also TD IV, 120-121.

CROSS REFERENCES

Definition of "gambling", "gambling device", "social game", "unlawful" - AS 11.66.280.

Definition of "knowingly" - AS 11.81.900(a)

Definition of "possess", "affirmative defense" - AS 11.81.900(b)

Gambling - AS 11.66.200

Promoting gambling in the first and second degree - AS 11.66.210; 220

Possession of gambling records in the first and second degree - AS 11.66.230;240



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Public Safety	Sponsor (Principal) Fahrenkamp	Bill Number SB 142
Department Position Support with amendment.		
Division Director T.R. Anderson	Date 2/17/81	Commissioner <i>WILL FOR</i> William R. Nix
		Date 2-20-81

GOVERNOR'S OFFICE USE

Comments:

<input type="checkbox"/> Position Noted	By	Date
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SUMMARY

1. a) Related Bills (Similar or Conflicting)	1. b) Other Agencies Affected by Bill
2. a) Organizational Support for Bill	2. b) Organizational Opposition to Bill
3. Program Effects of Bill	

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:
That it be required that the machines be made and kept inoperable.

6. Comments:

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 142
 Title "An Act authorizing possession of antique slot machines; and providing for an effect
 Requested by Senator Fahrenkamp Date 2/20/81 d.

II. FISCAL DETAIL

Agency Affected Public Safety
 Program Category Affected Administration of Justice
 BRU, Program, or Subprogram(s) Affected Detachments & CIB

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

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This is no fiscal impact.

IV. DATE 2/20/81 PREPARED BY Michael J. Clemens

AGENCY Public Safety

PHONE 465-4322

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

(Effective January 1, 1980)

Sec. 11.66.260. Possession of a gambling device. (a) A person commits the offense of possession of a gambling device if, with knowledge of the character of the device, he manufactures, sells, transports, places, or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody, or use of, a gambling device knowing that the device is used or is to be used in unlawful gambling.

(b) It is an affirmative defense in a prosecution under this section that the gambling device possessed by the defendant was used or intended to be used only in a social game.

(c) Possession of a gambling device is a class A misdemeanor. (§ 8 ch 166 SLA 1978)

As to what constitutes a gambling device, see note to AS 11.66.280.

Am. Jur. and ALR references. — 24 Am. Jur., Gaming and Prize Contests, § 12 et seq.

Possession of gambling device as offense, 162 ALR 1188.

Sec. 11.66.270. Forfeiture. If used in violation of §§ 200--280 of this chapter, the following property shall be forfeited:

- (1) a gambling device or gambling record;
- (2) money, not found on the person, used as a bet or stake;
- (3) money used as a bet or stake which is found on the person of one who conducts, finances, manages, supervises, directs, or owns all or part of an unlawful gambling enterprise. (§ 8 ch 166 SLA 1978)

Editor's note. — The cases and opinions cited in the note below were decided under former AS 11.66.270.

Constitutionality of former statute relating to seizure and destruction of gambling devices. — See Pin-Ball Machine, Serial No. 2334 v. State, Sup. Ct. Op. No. 86 (File No. 162), 371 P.2d 805 (1962).

Strict construction of former statute. — See One Cocktail Glass v. State, Sup. Ct. Op. No. 1437 (File No. 2729), 565 P.2d 1265 (1977).

Former section distinguished from narcotics and fish and game forfeiture statutes, AS 17.12.130 and 16.05.195. — See One Cocktail Glass v. State, Sup. Ct. Op. No. 1437 (File No. 2729), 565 P.2d 1265 (1977).

As to what constitutes gambling device, see note to AS 11.66.280.

As to forfeiture of money under former law, see United States v. Three Thousand Two Hundred Thirty-Six Dollars, 167 F. Supp. 495 (D. Alas. 1958); One Cocktail Glass v. State, Sup. Ct. Op. No. 1437 (File No. 2729), 565 P.2d 1265 (1977).

Wager slips subject to seizure under former law. — Wager slips or pool tickets used in carrying on a scheme involving wagering bookmaking or pool selling may be seized and forfeited as gambling implements under former AS 11.66.260. 1962 Op. Att'y Gen., No. 22.

Forfeiture of glassware, beverages, etc., held error. — Forfeiture of glassware, beverages, cigarettes and furniture used to make the gambling establishment a more pleasant and comfortable place for the customers but not used in the gambling game per se, was error. One Cocktail Glass v. State, Sup. Ct. Op. No. 1437 (File No. 2729), 565 P.2d 1265 (1977).

Procedure under former law. — See United States v. Three Thousand Two Hundred Thirty-Six Dollars, 167 F. Supp. 495 (D. Alas. 1958); State v. Pin-Ball Machine, Serial No. A-2885. 2 Alas. L.J. No. 2, p. 24 (Feb., 1964).

Am. Jur. reference. — 24 Am. Jur. Gaming and Prize Contests, §§ 1, 15, 57, 58.

(Eff)

Sec. 11.66.280. Definition unless the context requires:

(1) "contest of chance" means a gaming device in which the element of chance, notwithstanding it may also be a factor;

(2) "gambling" means the value upon the outcome of event not under his control, understanding that he or so in the event of a certain out

(A) bona fide business transaction for the purchase or sale at and agreements to compensate chance, including contracts or accident insurance; or

(B) playing an amusement (i) confers only an immediate something of value other than

(ii) does not contain a mechanism immediate replay may be called

(3) "gambling device" means equipment that is used or gambling, whether it consists by a person involving the player not include

(A) lottery tickets, policy phases of lottery or policy sale

(B) an amusement device

(4) "gambling enterprise"

(A) includes five or more supervise, direct, or own all

(B) has been or remains in period in excess of 30 days on any single day; and

(C) is not a qualified organ for purposes of this paragraph 11.66.210(15) is required to be

(5) "gambling record" means used in the operation or promotion lottery tickets, pool slips, playing phases of lottery or

(6) "player" means a person contestant or bettor, believing of winning are the same for of skill and luck, without re-

(Effective January 1, 1980)

- 11.66.280. Definitions. As used in §§ 200 — 280 of this chapter, the context requires otherwise,
- “contest of chance” means a contest, game, gaming scheme, or device in which the outcome depends in a material degree upon element of chance, notwithstanding that the skill of the contestants may also be a factor;
 - “gambling” means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome; “gambling” does not include
 - (A) bona fide business transactions valid under the law of contracts or the purchase or sale at a future date of securities or commodities or agreements to compensate for loss caused by the happening of an event, including contracts of indemnity or guaranty and life, health, or accident insurance; or
 - (B) playing an amusement device that
 - (i) confers only an immediate right of replay not exchangeable for something of value other than the privilege of immediate replay; and
 - (ii) does not contain a method or device by which the privilege of immediate replay may be cancelled or revoked;
 - (C) “gambling device” means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of unlawful gambling, whether it consists of gambling between persons or gambling by a person involving the playing of a machine; “gambling device” does not include
 - (1) lottery tickets, policy slips, or other items used in the playing phases of lottery or policy schemes; or
 - (2) an amusement device as described in (2)(B) of this section;
 - “gambling enterprise” means a gambling business which
 - (A) includes five or more persons who conduct, finance, manage, supervise, direct, or own all or part of the business;
 - (B) has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross income of \$2,000 or more in any single day; and
 - (C) is not a qualified organization under AS 05.15.210(15), except that, for purposes of this paragraph, no application for a license under AS 05.15.210(15) is required to be considered a qualified organization;
 - “gambling record” means any writing or paper of a kind commonly used in the operation or promotion of unlawful gambling and includes lottery tickets, policy slips, or other writings or papers used in the playing phases of lottery or policy schemes;
 - “player” means a person who engages in gambling solely as a contestant or bettor, believing that the risk of losing and the chances of winning are the same for all participants except for the advantages of skill and luck, without receiving or becoming entitled to receive any

Introduced: 2/3/81
Referred: Judiciary

1 IN THE SENATE

BY FAHRENKAMP

2 SENATE BILL NO. 142

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing possession of antique slot machines;
7 and providing for an effective date."

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

9 * Section 1. AS 11.66.260 is amended by adding a new subsection to read:

10 (d) In this section and in AS 11.66.270, "gambling device" does
11 not include a slot machine which is more than 25 years old, and which
12 has not been used for unlawful gambling in the state after it was
13 acquired by its present owner.

14 * Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-
15 070(c).

16
17
18 AMEND 11.66.260(b) TO READ:

19
20 (c.) A SLOT MACHINE WHICH IS MORE THAN 25
21 YEARS OLD, AND WHICH HAS NOT BEEN USED FOR
22 UNLAWFUL GAMBLING IN THE STATE AFTER IT
23 WAS ACQUIRED BY ITS PRESENT OWNER.
24
25
26
27
28
29

Paul Oscar Biers

RE: SLOT MACHINES

(12)

Oscar Bourg Bourge

SR 10662

FBX, AK
99701

907-479-5996

Notin - We
conceded act in
O.K., since no
answer from
"Oscar"

na
12/22/80

S

B

1

4

9

COMMITTEE REPORT

SENATE

FURTHER: None

2/4/81

Date: 2-24-81

Mr. President:

The Committee on JUDICIARY has had SB 149

regulation of bingo, raffles, and ice pools

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 SB 149 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

[Handwritten Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Handwritten Signature]

CHAIRMAN

MEMORANDUM

State of Alaska

TO: Denna L. Cline
Special Assistant

DATE: April 3, 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: Games of Chance and
Skill limitations

This is in response to your inquiry of today regarding the number of organizations who have Games of Chance and Skill permits that are near to or exceeding the prize value limitations established in the current regulations.

With regard to those organizations who had a permit to conduct raffles and lotteries during 1979 and 1980, we have received the annual financial reports from 178 for 1979 and 131 for 1980. Of the 178 in 1979, there were only three organizations which gave out the maximum allowable value in prizes. There were also three in 1980 which reached the maximum. The vast majority (i.e. 95%) of the organizations did not award prizes with a total value greater than \$15,000. In 1979, two of the three organizations exceeded the \$30,000 limitation, while in 1980 one of the three organizations exceeded the limitation.

With regard to the organizations conducting Bingo games throughout the state, to my knowledge we have had no problems with the limits currently provided in the regulations. Further, there have not been any requests made to my staff to increase those limits because they were inadequate.

If I can provide you any additional information, please feel free to contact me.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

Sen. Bennett

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801
907-465-3800

MEMORANDUM

March 30, 1981

SUBJECT: Amendments to SB 149

TO: Senator Patrick M. Rodey, Chairman
Senate Judiciary Committee
Attn: Kevin Bruce

FROM: Thomas A. Sofo *TAS*
Legislative Counsel

The first paragraph of your memo of March 24, 1981, requests this office to draft amendments establishing uniform language for the definitions of the various organizations contained in AS 05.15.210. The instruction contained in this work order involves matters of taste and nuance. In each case there is a choice between several noun-verb phrases that could be employed. I have broken out the various operative noun-verb phrases which are contained in AS 05.15.210 below by paragraph number:

- (2) charitable organization -- "operated for the relief of poverty . . ."
- (3) civic or service organization -- "authorized to engage in a fraternal purpose . . ."
- (5) dog mushers' association -- "formed exclusively to promote interest in the breeding . . ."
- (7) educational organization -- "whose primary purpose is education . . ."
- (8) fishing derby association -- "whose primary purpose is to promote interest in fishing . . ."
- (10) fraternal organization -- "exists for the common business . . ."

(14) police and fire department -- "established by the state . . ."

(15) qualified organization -- "operates without profits . . ."

(17) religious organization -- "gathered in common membership . . ." and "united for religion purpose. . ."

(18) veterans organization -- "the membership of which consists . . ."

The above illustrates that you are correct in stating that there is little consistency in the terminology used in the section. However, I think after experimenting with revising this list to one particular consistent formulation you will find that uniformity does not necessarily result in an improvement to the text. A possible suggestion is to use some form of the verb "engage" in these definitions. For instance, a charitable organization could be "engaged in" the relief of poverty as opposed to "operated for" the relief of poverty. A dog mushers' association could be "engaged in promoting interests. . ." and so on. I am not sure that these definitions would read as smoothly if we tried to make a wholesale change to parallel structure. I am also fearful that we may be creating a mechanism for someone to argue that the scope of the definition has purposely been changed by any amendment we may make at this time. As an example, one might argue that a charitable organization which is engaged in the relief of poverty is not necessarily the same thing as a charitable organization which is operated for the relief of poverty. The first phrase implies a more active participation in the relief effort than the latter. These arguments may be specious but they can be avoided completely if we find no pressing need to revise language contained in AS 05.15.210. If you do not agree and would like nevertheless to pursue some level of uniformity, please indicate which phrase should be used in the above definitions.

The second request was for an amendment to this bill which would increase the prize amounts limited by 15 AAC 05.400. Based on your attachment to the memo, I realize that you are aware that the prize limit in bingo contests is set by regulation rather than by statute. In fact, there is no

Senator Patrick M. Rodey
Page 3
March 30, 1981

statutory language in AS 05.15 which even addresses the appropriate prize or awards which may be received by contestants in contests or games of chance. This is an area which is typically handled by regulation and would require a new statute to be inserted in AS 05.15 in order to accomplish the intended result. Before drafting such a statute, I am interested in ascertaining whether it is the committee's intent to revise prize limits generally or just in the case of bingo contests. The organization of AS 05.15 is one of general categories. It would be unusual to draft a statute which only addressed the prize limits in bingo while failing to otherwise set limits for the other games and contests which may be conducted under AS 05.15.

As soon as I receive your response the matters raised above, I will be happy to incorporate necessary language into SB 149.

TAS:ljb



Alaska State Legislature

Senate

Judiciary Committee

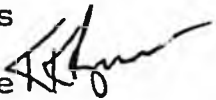
Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

M E M O R A N D U M

DATE: March 24, 1981

TO: Bill Berrier
Legal Services

FROM: Kevin K. Bruce 

RE: Amendments to SB 149

The committee has expressed an interest in establishing some uniform language for organizations defined under 05.15.210 specifically, some organizations (2) (15) operate; some engage in (3); some are formed (5) etc...

Additionally, Senator Bennett wishes to amend the bill to increase the prize amounts limited by 15 AAC 05.400 bingo. (Please see attached.)

Thank you for your assistance in this matter.

Introduced: 2/4/81
Referred: Judiciary

1 IN THE SENATE

BY BENNETT

2 SENATE BILL NO. 149

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of bingo, raffles,
7 and ice pools; and providing for an effective date."

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

9 * Section 1. AS 05.15.210(2) is amended to read:

10 (2) "charitable organization" means an organization, not for
11 pecuniary profit, which is ^{EXISTS} operated for the relief of poverty, distress,
12 or other condition of public concern in the state, and which has been
13 so engaged for one year [FIVE YEARS] before applying for a permit under
14 this chapter;

15 * Sec. 2. AS 05.15.210(3) is amended to read:

16 (3) "civic or service organization" means any branch or
17 lodge or chapter of a national or state organization which is a civic
18 or service organization, not for pecuniary profit, and authorized by
19 its written constitution, charter, or articles of incorporation, or
20 bylaws to ^{OPERATE AS A} engage in a fraternal, civic or service purpose in the state
21 and which has been so engaged for one year [FIVE YEARS] before applying
22 for a license under this chapter;

23 * Sec. 3. AS 05.15.210(5) is amended to read:

24 (5) "dog mushers' association" means a civic, service or
25 charitable organization in the state, not for pecuniary profit, ^{OPERATE} formed
26 exclusively to promote interest in the breeding and training of dog
27 teams for work or recreational and racing purposes and which has been
28 in existence for one year [FIVE YEARS] before applying for a permit
29 under this chapter, but does not include an organization formed or

1 operated for gaming or gambling purposes;

2 * Sec. 4. AS 05.15.210(7) is amended to read:

3 (7) "educational organization" means a civic, service or
4 charitable organization in the state, not for pecuniary profit, whose
5 primary purpose is educational in nature and designed to develop the
6 capabilities of individuals by instruction and which has been in exist-
7 ence for one year [FIVE YEARS] before applying for a license under this
8 chapter;

9 * Sec. 5. AS 05.15.210(8) is amended to read:

10 (8) "fishing-darby association" means a civic, service or
11 charitable organization in the state, not for pecuniary profit, whose
12 primary purpose is to promote interest in fishing for recreational
13 purposes and which has been in existence for one year [FIVE YEARS]
14 before applying for a permit under this chapter, but does not include
15 an organization formed or operated for gaming or gambling purposes;

16 * Sec. 6. AS 05.15.210(10) is amended to read:

17 (10) "fraternal organization" means a civic, service or
18 charitable organization in the state, except a college and high school
19 fraternity, not for pecuniary profit, which is a branch or lodge or
20 chapter, of a national or state organization and exists for the common
21 business, brotherhood, or other interest of its members and which has
22 so existed for one year [FIVE YEARS] before applying for a license;

23 * Sec. 7. AS 05.15.210(14) is amended to read:

24 (14) "police or fire department and company" means a civic,
25 service or charitable organization in the state, not for pecuniary
26 profit, established by the state or a political subdivision of the
27 state which has been in existence for one year [FIVE YEARS] before
28 applying for a license under this chapter;

29 * Sec. 8. AS 05.15.210(15) is amended to read:

1 (15) "qualified organization" means a bona fide civic or
2 service organization or a bona fide religious, charitable, fraternal,
3 labor, political, or educational organization, police or fire department
4 company, dog mushers' association, or fishing-derby association in the
5 state, which operates without profits to its members and which has been
6 in existence continually for a period of one year [FIVE YEARS] immedi-
7 ately before applying for a license, and the organization may be a
8 firm, corporation, company, association or partnership;

9 *Sec. 9. AS 05.15.210(17) is amended to read:

10 (17) "religious organization" means an organization, church,
11 body of communicants, or group, not for pecuniary profit, gathered in
12 common membership for mutual support and edification in piety, worship
13 and religious observances, or a society, not for pecuniary profit, of
14 individuals united for religious purposes at a definite place and which
15 has been so gathered or united for one year [FIVE YEARS] before applying
16 for a license and is recognized as a religious organization under the
17 federal income tax laws and the selective service law;

18 * Sec. 10. AS 05.15.210(18) is amended to read:

19 (18) "veterans organization" means a civic, service or charit-
20 able organization in the state, or a branch or lodge or chapter of a
21 national or state organization in the state, not for pecuniary profit,
22 the membership of which consists of individuals who were members of the
23 armed services or forces of the United States, and which has been in
24 existence for one year [FIVE YEARS] before applying for a license under
25 this chapter.

26 * Sec. 11. This Act takes effect July 1, 1981.
27
28
29

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811

February 27, 1981

RECEIVED

FEB 27 1981

The Honorable Patrick M. Rodey
Chairman
Senate Judiciary Committee
Room 125 - Capitol Building
Juneau, Alaska

Dear Senator Rodey:

Re: Senate Bill No. 149

Senate Bill No. 149, an Act relating to the regulation of bingo, raffles, and ice pools, was introduced in the Senate on February 4, 1981 and was referred to the Senate Judiciary Committee.

For the consideration of the Senate Judiciary Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Gary Jenkins, Director, Audit Division and Mr. Bill Yankee, Research Section of the Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assitant

KCS/rdh

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Gary Jenkins, Director
Audit Division
Department of Revenue

Bill Yankee
Research Section
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 149

Title Regulation of bingo, raffles, and ice pools.

Requested by Senate Judiciary Committee

Date February 4, 1981

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collection and Management

BRU, Program, or Subprogram(s) Affected Audit Division

(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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		79.9	79.9	79.9	79.9	79.9
200 TRAVEL		5.0	5.0	5.0	5.0	5.0
300 CONTRACTUAL		9.5	9.5	9.5	9.5	9.5
400 COMMODITIES		1.2	1.2	1.2	1.2	1.2
500 EQUIPMENT		2.7	2.7	2.7	2.7	2.7
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		98.3	98.3	98.3	98.3	98.3

FUNDING (Thousands of Dollars)

GENERAL FUND		98.3	98.3	98.3	98.3	98.3
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		3	3	3	3	3
PART TIME						
TEMPORARY						

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

See attached memo to R.D. Stevenson, dated February 26, 1981.

IV. DATE February 26, 1981

PREPARED BY Gary L. Jenkins

AGENCY Audit Division

PHONE 465-2320

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

MEMORANDUM

State of Alaska

TO: R. D. Stevenson
Legislative Assistant

DATE: February 26, 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: SB 149

This bill proposes to change the requirement of how long a qualified organization must be in existence before it is eligible to apply for a Games of Chance and Skill permit. The current law which has been in effect since 1960 requires an organization to have been in existence for 5 years before they can apply for a permit. The proposed bill would reduce that to one year.

There would appear to be a very good reason for the action the Legislature originally took in 1960 when they set the requirement at 5 years before an organization could apply for a permit. I believe that they were concerned that questionable groups could be set up just to take advantage of the fund raising permitted under the law. The 5 year requirement would mean that an organization would need to have sufficient public support to maintain its existence for a five year period prior to it being able to take advantage of the fund raising afforded by a Games of Chance and Skill permit. This would result in those organizations established for the benefit of the organizers usually disbanding before five years had passed.

This bill would also necessitate the addition of two tax examiners to handle the several hundred additional applications and financial reports which we would receive each year. Further, an auditor would be needed to routinely conduct audits of these organizations to insure that the games were conducted in accordance with the law and the proceeds were distributed to qualified recipients.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill 149
 Title Act relating to the regulation of bingo, raffles, and ice pools
 Requested by Senate Judiciary Committee Date February 5, 1981

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

FUNDING (Thousands of Dollars)

	-0-	20	30	45	60
GENERAL FUND					
FEDERAL FUNDS					
OTHER (Specify Fund Source)					

POSITIONS

FULL TIME					
PART TIME					
TEMPORARY					

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

The bill proposes to reduce from five years to one year the time necessary for certain not-for-profit organizations to qualify for a permit enabling them to operate certain games of chance and skill. The fees amount to \$20 for an annual permit and 1% of net proceeds.

It is assumed that both the number of organizations applying and the amount of net proceeds, after inflation, will increase by 25% each year.

IV. DATE February 5, 1981 PREPARED BY Bill Yankee
 AGENCY Research Section
 PHONE 465-2173
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

S

B

1

6

5

COMMITTEE REPORT

SENATE

FURTHER: Finance

3/12/81

Date: May 4, 1981

Mr. President:

The Committee on JUDICIARY has had SB 165

constitutional conventions

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 amendment(s) same title
- replace with CS for _____ new title
- and recommends ADDITIONAL OF STATE HEARING FUND NOTE
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

[Signature]

do pass

SENATE AMENDMENT

By ~~SENATE~~ JUDICIARY COMMITTEE

To: COMMITTEE SUBSTITUTE ^{for} SENATE BILL No. 165 (S.A.)

To: _____ HOUSE BILL No. _____

PAGE: ~~2~~ LINE:

PAGE 2, LINE 25:

DELETE: "FOR THE THREE YEARS PRECEDING" ~~AND INSET~~

PAGE 2, LINE 29:

DELETE: "THE THREE YEARS" AND INSET "ONE YEAR"

A M E N D M E N T

OFFERED IN THE SENATE:

By: Senate Judiciary

To: ~~Senate Secretary~~ SENATE BILL No. CSSB 165 (S.A.)

HOUSE BILL No. _____

PAGE: _____

LINE: _____

Page 2, line 25:

Delete: "for the three years preceding"

Page 2, line 29:

Delete: "the three years" and insert "one year"



Alaska State Legislature

Senate Committee on State Affairs

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

Official Business

M E M O R A N D U M

RECEIVED

TO: Senator Pat Rodey, Chair
Judiciary Committee

APR 16 1981

Representative Brian Rogers, Chair
Constitutional Convention Committee

FROM: Senator Vic Fischer

VF

DATE: April 14, 1981

RE: SB 165 - Preparatory Commission

Attached is an April 10 Attorney General letter once more throwing cold water on a joint executive-legislative appointment procedure for a preparatory convention.

Pat - I hope you move this bill along as rapidly as possible. I think it's urgent that SB 165 be enacted this session.

/sq

attachment

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 10, 1981

RECEIVED

APR 16 1981

Hon. Vic Fischer
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Constitutional convention
preparatory commission
Our file: J-66-557-81

Dear Senator Fischer:

You have asked whether we can find any kind of joint executive-legislative appointment of a commission to prepare for a constitutional convention to be legally acceptable. We regret to advise that we cannot.

There are at least two cases, each of which includes a compelling dissent, which hold that a legislator's serving as a delegate to a constitutional convention is not holding a dual office. Harvey v. Ridgeway, 450 S.W.2d 281 (Ark. 1970); Bd. of Supervisors of Elections v. Attorney General, 229 A.2d 388 (Md. 1967). Both cases ignore the case authority in their own and other states in arriving at their decisions. Accordingly, neither is persuasive. Our own court takes a broad view on what is an office. Larson v. State, 564 P.2d 356 (Alaska 1977). And the cases uniformly hold that an office is "a public charge or employment, the duties of which are prescribed by law, and he who performs the duties is an officer." State v. Dunn, 496 S.W.2d 480, 490 (Tenn. 1973), quoting from State v. Bratton, 253 S.W. 705 (Tenn. 1923). See also Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976); Begich v. Jefferson, 441 P.2d 27 (Alaska 1968) (prohibition against dual-office holding literally applied). The Alaska Constitution expressly makes employment by or election to a constitutional convention an exception from the prohibition against legislators' holding dual office. Alaska Const., art. II, § 5. In Begich, the court stated that these (and other) express exceptions in the constitution necessarily result in the prohibition's extending to all other offices. 441 P.2d at 30-33.

It might be argued that legislative appointees to the preparatory commission are employees of the convention.

April 10, 1981

However, while the legislature is empowered to make provision for the convention, "by law," Alaska Const., art. XIII, § 3, the constitution does not make an exception for the legislature to appoint either its members or its agents to be the officers or employees of the convention or for either to serve on a commission appointed by the legislature in whole or in part. Absent constitutional provision to the contrary, the chief executive is the appointing authority for those charged with carrying out a law. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

Either on an informal basis or on a basis formalized by law, resolution, or interbranch agreement, the agencies of the two branches -- including duly established permanent or ad hoc interim committees -- can certainly cooperate in studies and gathering information to prepare for a convention. So too, the legislature, through existing or duly established interim committees can study the needs for constitutional reformation. But the legislature cannot write a public law and then appoint a commission of its own members or agents to carry it out. Book v. State Office Bldg. Comm'n, 149 N.E.2d 273 (Ind. 1958).

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERALBy: Rodger W. Pegues
Assistant Attorney General

RWP/pjg

William Sidney GILBERT, Appellant,
v.
STATE of Alaska and H. A. Boucher,
Lieutenant Governor, Appellees.
No 2290.

Supreme Court of Alaska.
Sept. 30, 1974.

Action for declaratory judgment by potential candidate for state senator, seeking declaration that requirement of three-year residency in state and one-year residency in election district for election to legislative office violated the candidate's equal protection rights. The Superior Court, Third Judicial District, Anchorage District, P. J. Kalamarides, J., denied the petition, awarded attorney's fees to the state, and candidate appealed. The Supreme Court, Erwin, J., held that the residency requirement served a compelling state interest and thus did not deny candidate equal protection; but that it was an abuse of discretion to award attorneys' fees against the candidate who had in good faith raised a question of genuine public interest before the courts.

Affirmed in part and reversed in part.

1. Constitutional Law ⇨83(1), 211
Elections ⇨21

Residency requirements for state legislative candidacy of three years in state and one year in election district serve compelling state interests, and thus neither violated potential candidate's rights to equal protection or to freedom of interstate travel, nor did they violate voters' rights to participate in elections. Const. art. 1, § 1; art. 2, § 2; AS 15.25.030; U.S.C.A.Const. Amend. 14.

2. Constitutional Law ⇨209

Where statute challenged as violative of equal protection burdens fundamental or basic right, it can be sustained only upon showing that it promotes compelling governmental interest. U.S.C.A.Const. Amend. 14.

3. Elections ⇨7

Constitutional residency requirements for legislative candidates should be viewed with strict judicial scrutiny, i. e., whether they serve compelling state interest. Const. art. 2, § 2.

4. Costs ⇨172

Award of attorney's fees to state against potential candidate for legislature who in good faith raised issue of constitutionality of residency requirements was abuse of discretion. Rules of Civil Procedure, rule 82.

5. Costs ⇨172

It is not purpose of award of attorney's fees to penalize party for litigating good-faith claim but rather partially to compensate prevailing party where such compensation is justified. Rules of Civil Procedure, rule 82.

6. Costs ⇨172

It is abuse of discretion to award attorney fees against losing party who has in good faith raised question of genuine public interest before courts. Rules of Civil Procedure, rule 82.

John W. Wood, Anchorage, for appellant.

Norman C. Gorsuch, Atty. Gen., Juneau, Timothy G. Middleton, Asst. Atty. Gen., Anchorage, for appellees.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER, and FITZGERALD, JJ.

OPINION

ERWIN, Justice.

This appeal involves a challenge to the constitutionality of article 11, section 2 of the Alaska Constitution and AS 15.25.030, which collectively conditions eligibility for seeking legislative office upon three years residency in the state and one year in the election district.

Appellant is a citizen of the United States and has been a resident of Alaska

and of his legislative district since September 17, 1973. On June 28, 1974, he filed as a Republican candidate for the state senate in the August 27, 1974, primary election. On July 5, 1974, respondent Lieutenant Governor H. A. "Red" Boucher informed appellant by telegram that his declaration of candidacy was rejected because he did not meet the residency requirements of article II, section 2 of the Alaska Constitution¹ or the requirements of AS 15.25.030.² Respondent later confirmed this rejection by letter. It was stipulated below that appellant met all other requirements for the office of state senator.

Appellant petitioned pursuant to AS 22-10.020(b) for a declaratory judgment that article II, section 2 of the Alaska Constitution abridged his rights of equal protection and effective petition of the government³ and moved for a preliminary injunction to place his name on the August 27 ballot. The superior court held that the three-year residency requirement served a compelling state interest in assuring that legislators reside in the state a sufficient time to gain an understanding of the history and geography of the state and the needs and problems of its residents. The court further determined that the constitutional convention wisely decided that the one-year required residence in the election district was necessary to permit constituents to recognize, understand and talk with those who

seek public office. As a result, both appellant's petition for a declaratory judgment and his motion for a preliminary injunction were denied. The court awarded attorneys' fees to the state.

Appellant argues that (1) the durational residency requirements of article II, section 2 of the Alaska Constitution should be subjected to strict judicial scrutiny under the equal protection clauses of the state and federal constitutions;⁴ (2) that the state has failed to show that a compelling interest is promoted by the requirements; (3) that, even if a compelling interest exists in some specific residency requirement, requiring a period of three years' residency within the state and one year within the election district is excessive; and, (4) the award of attorneys' fees below was an abuse of discretion. More specifically, appellant contends that both residency requirements deprive him of equal protection by (1) limiting his right to seek and hold public office; (2) limiting his ability and the ability of voters who would support him to participate in the electoral process; and, (3) restrict his right to freely travel between the states.

[1,2] No specific right of candidacy for public office has been recognized under the Federal Constitution.⁵ However, since barriers against candidacy have been treated as limitations upon a fundamental right where they burden such important

1. Art. II, sec. 2, Alaska Constitution, provides, in pertinent part:

A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office.

2. AS 15.25.030 provides in pertinent part:

A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and shall state in substance . . . (8) that the candidate meets the specific residency requirements of the office for which he is a candidate

3. Appellant has not briefed the alleged infringement of his right to petition the government before this court and we have not considered it on appeal.

4. We find without merit appellant's novel contention that article II, section 2 of the Alaska Constitution setting residency requirements is invalid under the equal protection clause of article I, section 1 of the same constitution.

5. The Supreme Court has previously held that "[t]he right to become a candidate for state office, like the right to vote for the election of state officers, is a right or privilege of state citizenship, not of national citizenship." *Snowden v. Hughes*, 321 U.S. 1, 7, 64 S.Ct. 307, 400, 88 L.Ed. 497, 502 (1944) (citations omitted).

rights as free association,⁶ franchise,⁷ and interstate travel,⁸ they are vulnerable to attack under the equal protection clause of the Federal Constitution. Where a challenged statute burdens a fundamental or basic right, it can be sustained only upon a showing that it promotes a compelling governmental interest.⁹

In *Bullock v. Carter*,¹⁰ the United States Supreme Court reviewed the validity of a Texas statute which required the payment of large filing fees by candidates to defray the expenses of holding primary elections. The court noted that

the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.¹¹

Because the fee requirement tended to discriminate against both less wealthy candidates and voters who were without large financial resources with which to support a candidate, the Court subjected the requirement to strict scrutiny and found that the state had failed to show it was necessary to promote a legitimate state objective.¹²

In *Shapiro v. Thompson*¹³ and *Dunn v. Blumstein*,¹⁴ the Supreme Court recognized that durational residency requirements burden the basic constitutional right of inter-

state migration. *Shapiro* struck down a durational residency requirement which was a prerequisite to the receipt of welfare benefits. *Dunn* subjected a one-year residency requirement which conditioned the right to vote to strict scrutiny because it burdened both the fundamental right of franchise and the right to interstate travel.

We have previously considered questions involving durational residency requirements in *State v. Van Dort*,¹⁵ *State v. Wylie*,¹⁶ and *State v. Adams*.¹⁷ In each of these cases we applied the compelling state interest test. In *Wylie* we were unable to find a compelling interest for giving a hiring preference to applicants for state employment who had resided in Alaska for at least one year. In *Adams*, we considered the validity of a residency requirement for obtaining a divorce and stated that all durational residency requirements are to be measured by the compelling state interest test.¹⁸ We invalidated a 75-day residency requirement for voting in *Van Dort*. However, we noted

[w]e do not hereby decide that all durational residency requirements are *ipso facto* unconstitutional.¹⁹

A number of other courts have considered the burden upon voters imposed by durational residency requirements for political candidates. Federal district courts

6. See, e. g., *Mancuso v. Taft*, 476 F.2d 187 (1st Cir. 1973).

7. See, e. g., *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 840, 856, 31 L.Ed.2d 92 (1972). Political hopefuls have standing to attack candidacy restrictions which burden the rights of voters, where the candidates fall within the class of persons allegedly suffering an unequal discrimination. *Mancuso v. Taft*, 476 F.2d 187 (1st Cir. 1973); see also, *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 840, 31 L.Ed.2d 92 (1972); *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1970).

8. See, e. g., *Chimento v. Stark*, 353 F.Supp. 1211 (D.N.H.), *aff'd mem.* 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 39 (1973); *Wellford v. Battaglia*, 485 F.2d 1151 (3rd Cir. 1973).

9. *Dunn v. Blumstein*, 405 U.S. 330, 340-341, 92 S.Ct. 995, 1002, 31 L.Ed.2d 274, 283 (1972); *Chimento v. Stark*, 353 F.Supp.

1211, 1213 (D.N.H.) *aff'd mem.* 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 39 (1973).

10. 405 U.S. 134, 92 S.Ct. 840, 31 L.Ed.2d 92 (1972).

11. *Id.* at 143, 92 S.Ct. at 856, 31 L.Ed.2d at 90.

12. *Id.* at 140, 92 S.Ct. at 858, 31 L.Ed.2d at 103.

13. 304 U.S. 618, 80 S.Ct. 1322, 22 L.Ed.2d 600 (1960).

14. 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

15. 502 P.2d 453 (Alaska 1972).

16. 510 P.2d 142 (Alaska 1973).

17. 522 P.2d 1125 (Alaska 1974).

18. *Id.* at 1126.

19. 516 P.2d at 148.

have favored the strict compelling interest test in Alabama,²⁰ Delaware,²¹ Michigan,²² New Hampshire,²³ and Oklahoma.²⁴ The highest state courts in California²⁵ and New Jersey²⁶ have also considered the question and found the strict standard to be the appropriate one.²⁷

[3] These cases, and our own cases relating to durational residency requirements, lead us to the conclusion that the residency requirements of article II, section 2 of the Alaska Constitution should be viewed with strict judicial scrutiny. We must thus determine whether the requirements of three years' residency in the state and one year in the election district serve a compelling state interest.

The State of Alaska asserts three justifications for upholding the challenged requirements. First, the requirements are necessary to permit exposure of the candidate to his prospective constituents so they may judge his character, knowledge and reputation. Second, they are needed to ensure that legislators are familiar with the diverse character of the state where they will participate in the lawmaking process. Third, specific periods of residency are alleged to protect the state from frivolous candidacies. For the reasons stated below,

we find the first two of these interests to be compelling.

These interests advanced by the state are essentially those which were found sufficient to uphold New Hampshire's seven year residency requirement for the office of Governor in *Chimento v. Stark*.²⁸ *Chimento* was affirmed without opinion by the United States Supreme Court after the Court's decision in *Dunn*. If the Court had intended to extend *Dunn* to candidacy requirements, the opportunity was squarely presented in *Chimento*.²⁹ However, the Court declined to take advantage of this opportunity.

In determining whether the asserted state interests are compelling, we must look not only to those interests but also to the competing individual interests.³⁰ Chief Justice Burger observed in *Bullock v. Carter*:

In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.³¹

We believe that the three-judge federal panel in *Chimento v. Stark* correctly analyzed the extent to which these competing interests are affected by a durational residency requirement.

20. *McKinney v. Kaminsky*, 340 F.Supp. 289 (M.D.Ala.1972); *Hadnott v. Amos*, 320 F. Supp. 107 (M.D.Ala.1970), *aff'd mem.*, 401 U.S. 908, 91 S.Ct. 1189, 28 L.Ed.2d 318 (1971), 405 U.S. 1035, 92 S.Ct. 1304, 31 L.Ed.2d 576 (1972).
21. *Wellford v. Battaglia*, 343 F.Supp. 143 (D.Del.1972), *aff'd*, 485 F.2d 1151 (3rd Cir. 1973); *but see Walker v. Yucht*, 352 F.Supp. 85 (D.Del.1972).
22. *Alexander v. Kummer*, 303 F.Supp. 324 (E.D.Mich.1973); *Mogk v. City of Detroit*, 335 F.Supp. 608 (E.D.Mich.1971); *Green v. McKeon*, 335 F.Supp. 630 (E.D.Mich. 1971), *aff'd*, 408 F.2d 883 (6th Cir. 1972); *Bohanowski v. Raich*, 330 F.Supp. 724 (E.D.Mich. 1971); *Stapleton v. Clerk for the City of Inkster*, 311 F.Supp. 1187 (E.D.Mich.1970).
23. *Chimento v. Stark*, 353 F.Supp. 1211 (D.N.H.), *aff'd mem.*, 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 30 (1973).
24. *Draper v. Phelps*, 351 F.Supp. 677 (W.D. Okl.1972).
25. *Thompson v. Mellon*, 9 Cal.3d 96, 107 Cal.Rptr. 20, 507 P.2d 628 (1973).
26. *See Gangemi v. Rosengard*, 44 N.J. 106, 207 A.2d 605 (1965).
27. *Compare State ex rel. Grulike v. Walsh*, 483 S.W.2d 70 (Mo.1972).
28. 353 F.Supp. 1211 (D.N.H.), *aff'd mem.*, 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 30 (1973).
29. *See Hadnott v. Amos*, 320 F.Supp. 107 (M.D.Ala.), *aff'd mem.*, 401 U.S. 908, 91 S.Ct. 1189, 28 L.Ed.2d 318 (1971), 405 U.S. 1035, 92 S.Ct. 1304, 31 L.Ed.2d 576 (1972).
30. *Dunn v. Blumstein*, 405 U.S. 330, 335, 92 S.Ct. 995, 999, 31 L.Ed.2d 274, 280 (1972); *see State v. Adams*, 522 P.2d 1125, 1131 (Alaska 1974).
31. 405 U.S. 134, 143, 92 S.Ct. 840, 856, 31 L.Ed.2d 92, 100 (1972).

When examined in a realistic light, we conclude that the seven year residency requirement acts only as a minimal infringement upon the ability of the plaintiff to participate in the election process and that its limiting effect upon the voters' choice of candidates is more hypothetical than real. Any residency requirement limits to some extent the choice of candidates available to the voters. But this is the least of the restrictions limiting candidate availability. The method of nominating candidates, minimum age requirements, and the 'high cost, even in New Hampshire, of a gubernatorial campaign, are also factors that restrict the number of candidates available to the voters. Moreover, the seven year period does not act as an outright ban on anyone's candidacy for Governor; rather, it delays the eligibility of a candidate to the office of Governor until a time when he has been a resident of the State for seven years. While we recognize that seven years may be a long wait for one aspiring to the office of Governor, it is not a complete barrier to that office. There are lesser but nonetheless important offices that a putative Governor might well fill during the waiting period with benefit both to his own political career and the people of the State.³²

This reasoning is clearly applicable to Alaska's much shorter three-year legislative residency requirement. Even during that brief period delaying the candidate's right to seek office, the voters remain free to vote for anyone who may lawfully assume office. The impact upon the voters' right to have a meaningful choice of candidates is slight.

We also reject the argument that Alaska's legislative residence requirements are a serious infringement of appellant's right to interstate travel. Unlike the requirements considered in Dunn v. Blumstein and in State v. Van Dort, these requirements do not disenfranchise all new resi-

dents of the state. Nor do they tend to deprive a large class of newcomers of the necessities of life as did the restriction considered in Shapiro v. Thompson. Because they potentially limit only that minute class of persons who would move to a new location intending to run for political office, it cannot seriously be asserted that limiting the privilege of candidacy to residents who have lived in the state for three years and in their legislative districts for a year would discourage citizens from exercising their rights to travel.

The asserted interest of the state in assuring that those who govern are acquainted with the conditions, problems, and needs of those who are governed cannot be questioned. Because Alaska is unique in its geography, the ethnic diversity of its peoples and the character of its economy, this interest may well assume even greater importance here than in many other states. A legislator is required to consider and vote upon matters which affect many parts of the state and involve many segments of its economy and its peoples. It is therefore not unreasonable for the state to provide for a three-year period in which a new resident may become familiar with his state before he may legislate solutions to its problems.

Likewise, it is most important that electors have a period in which they may become familiar with the character, habits and reputation of candidates for political office. Modern media campaigns and "packaged" candidates permit political hopefuls to campaign for office with little or no direct contact with the public they seek to serve. It is essential that voters have at least the opportunity to have some direct knowledge of their candidates in order to judge their sincerity and the truth of the claims which these aspirants for public office press forward through the media. It is a minimal requirement at best to ask a candidate to spend one year as a part of the community he hopes to represent in order to satisfy this need.

32. 353 F.Supp. at 1215-1216.

We see no viable alternative means of advancing these important interests alleged by the state. Appellant suggests that these interests may be met by imposing some sort of subjective test upon potential legislators. We disagree. To create a subjective test of candidates' knowledge, understanding or character would necessarily place undue power in the hands of those who would implement such a standard. We think it better that a relative few be delayed from realizing their political aspirations for a relatively brief period than that some group of persons pass upon the fitness of all candidates before they are permitted to present themselves to the voters.

Nor can these interests be protected by relying solely upon the electoral process itself. Voters are, in a sense, "consumers" of the product portrayed by the persons they elect to office. In these days of "packaged" media candidates, they often cannot know what is in the package until they have made their selection and observed the utility of the product. In adopting their constitution, the voters of Alaska chose to protect themselves from unknown deficiencies in their candidates by imposing objective standards upon those who would hold legislative office.

We conclude that while objective tests for candidacy unavoidably place a burden upon the privilege of running for political office, the burden is both temporary and slight and is necessary to promote governmental interests which are compelling.

[4] We turn to the question of whether the award of attorneys' fees to the state by the trial court was a proper exercise of discretion by the trial court pursuant to Civil Rule 82. Appellant alleges that the issues litigated here relate to a matter of public interest and contends that awarding fees in this type of controversy will deter citizens from litigating questions of gener-

al public concern for fear of incurring the expense of the other party's attorneys' fees.

[5,6] It is not the purpose of Rule 82 to penalize a party for litigating a good faith claim but rather partially to compensate the prevailing party where such compensation is justified.³³ We have previously intimated that denial of attorneys' fees might be appropriate in a proper case where the public interest is involved.³⁴ As a matter of sound policy, we hold that it is an abuse of discretion to award attorneys' fees against a losing party who has in good faith raised a question of genuine public interest before the courts. Accordingly, we reverse the award of attorneys' fees to the state in this matter.

Affirmed in part and reversed in part.



ALASKA RENT-A-CAR, INC., d/b/a Avls
Rent-A-Car, Appellant,

v.

The FORD MOTOR COMPANY, a corporation, Appellee.

No. 1823.

Supreme Court of Alaska.

Oct. 4, 1974.

Third-party action to recover against manufacturer of leased vehicle involved in rear-end collision. The Superior Court, First Judicial District, Juneau, Hubert A. Gilbert, J., entered summary judgment in favor of manufacturer, and lessor appealed. The Supreme Court, Connor, J., held that issue as to whether it might be inferred from evidence that defect existed in leased vehicle when it left hands of manu-

33. *Malvo v. J. C. Penney Co., Inc.*, 512 P.2d 575, 587 (Alaska 1973).

34. *Mobil Oil Corp. v. Local Boundary Comm'n.*, 518 P.2d 92, 101 (Alaska 1974); *Jefferson*

v. City of Anchorage, 513 P.2d 1090, 1102 (Alaska 1973).

For committing the crime of lewd and lascivious acts upon a child,¹ Ernest Morgan was sentenced to five years imprisonment.²

[1] Morgan's first point on appeal is that the trial court in selecting the sentence improperly took into account certain conduct of Morgan which took place after his conviction. This conduct consisted of the rape and torture of a young woman, committed in Morgan's home during a night of heavy drinking. This incident occurred the day after the jury found him guilty of the lewd and lascivious acts offense. The victim of the rape was subjected to brutal and humiliating treatment, with substantial physical injuries, and was also subjected to two acts of sexual intercourse. At the time of sentencing, Morgan was under indictment for these acts. The court also considered information about Morgan's attempted escape from jail, which was placed in evidence by stipulation of the parties.

When the sentencing hearing began, Morgan's attorney argued that the incidents of post-conviction conduct should not have been included in the presentence report, and that he should be able to confront and cross-examine the witnesses to that conduct. However, that demand was later withdrawn. The court then proceeded to use the information about Morgan's conduct which was contained in the presentence report.

Morgan now argues that the use of this information violated his privilege against self-incrimination because it put Morgan in the position of remaining silent or of explaining these allegations and thereby possibly incriminating himself. Under our holdings in *Nukapigak v. State*, 576 P.2d 982 (Alaska 1978), and *Layland v. State*, 549

P.2d 1182, 1183-4 (Alaska 1976), what occurred here was permissible. Morgan was not compelled to be a witness against himself.

[2] As to the sentence itself, our review of the record reveals that in imposing this sentence the court was not clearly mistaken. *McClain v. State*, 519 P.2d 811 (Alaska 1974). Our conclusion is based on the following factors: the details of the offense; Morgan's prior juvenile record (his involvement in two burglaries led to an adjudication of delinquency); his post-conviction conduct; his serious alcohol problem; the conclusions of the presentence and the psychiatric report that Morgan is not likely to respond to treatment and is not motivated to control his use of alcohol.

Affirmed.



Ken CASTNER, Appellant,

v.

CITY OF HOMER and Delores Morrison,
Clerk of City of Homer, Appellees.

No. 3798.

Supreme Court of Alaska.

Aug. 24, 1979.

Suit was brought to challenge the constitutionality of a city code provision which imposed a one-year durational residency re-

"Lewd or lascivious acts toward children.

(a) A person who commits a lewd or lascivious act, including an act constituting another crime, upon or with the body of a child under 16 years of age, intending to arouse, appeal to, or gratify his lust, passions, or sexual desires, or the lust, passions, or sexual desires of the child is punishable by imprisonment for not more than 10 years nor less than one year."

1. The defendant pushed his way into an apartment where five children, including a babysitter, were. He threatened the babysitter sexually and she left. Morgan then went into the bedroom, lifted the nightclothes of a sleeping six-year-old girl and crawled on top of her. When one of the other children threatened to phone the police, Morgan got up and pulled the phone out of the wall. When the child threatened to go to the police, Morgan left.

2. AS 11.15.134 states:

quirement for candidacy for city office. The Superior Court, Third Judicial District, James A. Hanson, J., upheld the constitutionality of the ordinance, and appeal was taken. The Supreme Court, Connor, J., held that even under the strict scrutiny standard, the durational residency requirement for city office candidacy was constitutional.

Affirmed.

1. Municipal Corporations ⇐138

Even under the strict scrutiny standard, provision of city code imposing a one-year durational residency requirement for candidacy for city office was constitutional.

2. Elections ⇐21

While objective tests for candidacy, such as durational residence requirements, unavoidably place a burden on the privilege of running for political office, the burden is both temporary and slight and is necessary to promote compelling governmental interests.

Martin Friedman, Homer, for appellant.

A. Robert Hahn, Jr., Hahn, Jewell & Stanfill, Anchorage, for appellees.

Before RABINOWITZ, C. J., and CONNOR, BOOCHEVER, BURKE and MATTHEWS, JJ.

OPINION

CONNOR, Justice.

This case concerns a challenge to the constitutionality of Homer City Code Section

1. The version of Homer City Code § 3-200.2 in effect at the time of Castner's attempted candidacy provided:

ELIGIBILITY FOR OFFICE. A person is eligible for the office of Councilman or the office of Mayor for the City of Homer if he is a voter of the City of Homer as prescribed by Section 4-100.7 of the City Code and has been a resident of the Homer Recording District for a period of three years including a residency within the City of Homer for a period of one year immediately preceding the election day on which he is a candidate. The question of durational residency requirements for municipal office was submitted to

3-200.2, which imposes a one year¹ durational residency requirement for candidacy for city office.

Appellant Kenneth Castner is a citizen of the United States, a resident of Alaska, and was a resident of the Homer Recording District for four years prior to becoming a resident of the City of Homer. Castner became a resident of Homer on July 25, 1977, and approximately one month thereafter attempted to file a declaration of candidacy for the office of city councilman, for the election to be held October 4, 1977.

Castner had deleted from his declaration of candidacy that portion which would have stated that he met the residency requirements imposed by the Homer City Code. Deputy Clerk Delores Morrison refused to accept his declaration of candidacy because of this deletion. On August 30, Castner again attempted to file a declaration of candidacy but was refused by Deputy Clerk Morrison because of Castner's inability to comply with that portion of Homer City Code Section 3-200.2 requiring a one-year period of residency within the city.

On August 31, 1977, Castner filed suit in superior court seeking that Homer City Code § 3-200.2 be declared unconstitutional, and that his name be placed on the official ballot. The superior court upheld the constitutionality of the ordinance and denied Castner's claim for relief. Castner appeals from the decision of the superior court.

There are but two issues before us on appeal:

the voters in the October 4, 1977 city election. In accordance with the result of that vote, § 3-200.2 has been amended to read as follows:
Section 3-200.2 **ELIGIBILITY FOR OFFICE.** A person is eligible for the office of Councilman or the office of Mayor for the City of Homer if he is a voter of the City of Homer as prescribed by § 4-100.7 of the City Code and has been a resident within the City of Homer for a period of one year immediately preceding the election day on which he is a candidate.

Therefore, we need to consider only the constitutionality of one year durational residency as applied to the new ordinance.

1. Whether the compelling interest test is the appropriate standard of review for qualifications of candidates for local public office; and,

2. Whether there is a compelling interest to support the City of Homer's one year residency requirement for city offices, and whether this requirement is the least restrictive means available to achieve that compelling interest.

[1] Appellee, the City of Homer, questions the continuing validity of the rationale for application of the compelling state interest advanced by us in *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974), in light of the single standard test announced in *State v. Erickson*, 574 P.2d 1 (Alaska 1978). We need not deal with that question here because we are convinced that even under the strict scrutiny required by *Gilbert*, the ordinance can be sustained. In *Gilbert*, we held that durational residency requirements for state elective office should be examined with strict scrutiny *Id.* at 1134, because such durational residency requirements infringed upon fundamental rights:

"[S]ince barriers against candidacy have been treated as limitations upon a fundamental right where they burden such important rights as free association, franchise, and interstate travel, they are vulnerable to attack under the equal protection clause of the Federal Constitution. Where a challenged statute burdens a fundamental or basic right, it can be sustained only upon a showing that it pro-

motes a compelling governmental interest." [footnotes omitted.] 526 P.2d at 1132-33.

For the purposes of this appeal we may assume, without deciding, that the right to seek elective public office should be treated as fundamental and subject to strict scrutiny.

In *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974), we upheld a durational residency requirement of one year in the district, and three years in the state of Alaska, for the office of state senator. We reasoned that the state had a compelling interest in legislators "who . . . are acquainted with the conditions, problems, and needs of those who are governed," and in electors who are "familiar with the character, habits and reputation of candidates for political office." *Id.* at 1135. These interests are perhaps more compelling in elections for local office, where word of mouth and personal contact are often the only means of communication of community concerns.

There is sufficient authority from other jurisdictions either to uphold or to strike down the one year durational residency requirement in the case at bar. In general, the weight of authority is against longer durational residency requirements for local offices,² but the authorities are fairly evenly divided on the constitutionality of a one year residency requirement.³ The courts validating a one year durational residency requirement have found compelling the in-

2. Durational residency requirements of five years for local offices were held invalid in: *Alexander v. Kammer*, 363 F.Supp. 324 (E.D. Mich.1973) (five year city residency and two year district residency for city commissioner); *Wellford v. Battaglia*, 343 F.Supp. 143 (D.Del. 1972) (mayor); *McKinney v. Kaminsky*, 340 F.Supp. 269 (M.D.Ala.1972) (county commissioner); *Zeilenga v. Nelson*, 4 Cal.3d 716, 94 Cal.Rptr. 602, 484 P.2d 578 (1971) (county supervisor); *Bird v. Colorado Springs*, 507 P.2d 1099 (Colo.1973) (city councilman and mayor).

Durational residency requirements of three years for municipal offices were held invalid in *Bolanowski v. Raich*, 330 F.Supp. 724 (E.D. Mich.1971) (mayor); *Camara v. Mellon*, 4 Cal.3d 714, 94 Cal.Rptr. 601, 484 P.2d 577 (1971) (city councilman); *Cowan v. City of*

Aspen, 509 P.2d 1269 (Colo.1973) (municipal offices).

Durational residency requirements of two years for municipal offices were held invalid in *Green v. McKeon*, 468 F.2d 883 (6th Cir. 1972) (city elective offices) and *Thompson v. Mellon*, 9 Cal.3d 96, 107 Cal.Rptr. 20, 507 P.2d 628 (1973) (city councilman).

3. Durational residency requirements of one year were held constitutional in *Triano v. Mission, II*, 109 Ariz. 506, 513 P.2d 935 (Ariz.1973) (city councilman); *Cowan v. City of Aspen*, 509 P.2d 1269 (Colo.1973) (municipal offices); *Cahnmann v. Eckerty*, 40 Ill.App.3d 180, 351 N.E.2d 580 (1976), appeal denied, 431 U.S. 934, 97 S.Ct. 2644, 53 L.Ed.2d 252 (1977) (city alderman); *Lawrence v. Issaquah*, 84 Wash.2d 146, 524 P.2d 1347 (1974) (city councilman).

terests of affording greater voter knowledge of candidates and greater candidate knowledge of the needs of the constituency, as we did in *Gilbert v. State*, *supra*.

The two cases striking down a one year residency requirement are distinguishable. In *Headlee v. Franklin Co. Board of Elections*, 368 F.Supp. 999 (D.C.Ohio 1973), the court found that, because of a territorial annexation, over one-half of the village population would be unable to run until the next election if the one year residency requirement for village office was upheld, and that this was an unnecessary restriction on voter choice. There is no such factual situation in the case at bar.⁴ The California Supreme Court has rejected our rationale in *Gilbert*. In *Johnson v. Hamilton*, 15 Cal.3d 461, 125 Cal.Rptr. 129, 541 P.2d 881 (1975), the court held that no compelling state interest was served by residency requirements of one year within the city and six months within the district for candidates for municipal office. The court in *Johnson* found that mass media played the major role in the education of voters. Personal contact and knowledge of the candidate by the electorate was a minor aspect. *Id.* at 886. We rejected this argument in *Gilbert*, 526 P.2d at 1135, in the context of a district of Anchorage where media access is at least as great, and perhaps greater, than in Homer. We think the California standard is inapplicable in Alaska, where there are many sparsely populated communities.

Numerous Alaskan municipalities have one year durational residency requirements

4. There was testimony during trial that Homer's growth rate is about nineteen percent per year, with 15.2% of the population in 1975 having resided in Homer less than one year and 13.5% having lived there between one and two years. Castner argues that new residents are more capable candidates "in light of their broader experience with generally more complex issues existing in other parts of the country." We are not persuaded that breadth of experience elsewhere contributes to candidate knowledge of local issues and problems.

5. Juneau Charter 33 Sec. 3.3.

6. Anchorage Municipal Code 28.10.130.

7. Sitka General Code 2.40.070.

for local office. For example, Juneau,⁵ Anchorage,⁶ Sitka,⁷ Valdez,⁸ and Fairbanks North Star Borough⁹ all have one year residency requirements for city council. Palmer¹⁰ has a two year residency requirement for city council, and Ketchikan¹¹ and Bristol Bay Borough¹² have three year residency requirements. North Slope Borough¹³ has a six month residency requirement, and Unalaska¹⁴ has a thirty day residency period. There does not appear to be any sort of a local trend toward reducing durational residency requirements for local offices.

[2] As to whether the one year residency requirement is the least restrictive means available to achieve the interests of voter and candidate education, we adhere to *Gilbert*:

We see no viable alternative means of advancing these important interests alleged by the state. [*Gilbert*] suggests that these interests may be met by imposing some sort of subjective test upon potential legislators. We disagree. To create a subjective test of candidates' knowledge, understanding or character would necessarily place undue power in the hands of those who would implement such a standard. We think it better that a relative few be delayed from realizing their political aspirations for a relatively brief period than that some group of persons pass upon the fitness of all candidates before they are permitted to present themselves to the voters.

8. Valdez Charter II, Sec. 2.2.

9. Fairbanks North Star Borough Municipal Code 2.08.030.

10. Palmer Municipal Code 2.04.040.

11. Ketchikan Charter II, Sec. 2-1.

12. Bristol Bay Borough Code of Ordinances 2.08.020.

13. North Slope Borough Charter 3.030.

14. Unalaska Code of Ordinances 10.020.

CITY AND BOROUGH OF JUNEAU v. COM'L U. INS. CO. Alaska 957

Cite as, Alaska, 598 P.2d 937

Nor can these interests be protected by relying solely upon the electoral process itself. Voters are, in a sense, "consumers" of the product portrayed by the persons they elect to office. In these days of "packaged" media candidates, they often cannot know what is in the package until they have made their selection and observed the utility of the product. In adopting their constitution, the voters of Alaska chose to protect themselves from unknown deficiencies in their candidates by imposing objective standards upon those who would hold legislative office.

We conclude that while objective tests for candidacy unavoidably place a burden upon the privilege of running for political office, the burden is both temporary and slight and is necessary to promote governmental interests which are compelling.

Gilbert, 526 P.2d at 1136.

We affirm the decision of the superior court upholding the constitutionality of the one year durational residency requirement for candidacy for city office in Homer.

Affirmed.



CITY AND BOROUGH OF JUNEAU, a
Municipal Corporation,
Appellant/Cross-Appellee,

v.

COMMERCIAL UNION INSURANCE
COMPANY, a Massachusetts Corpora-
tion, Appellee/Cross-Appellant.

Nos. 4040, 4041.

Supreme Court of Alaska.

Aug. 24, 1979.

City/borough brought action against insurance carrier for damages resulting from fire in school. The Superior Court,

Fourth Judicial District, Warren W. Taylor, J., awarded judgment for city/borough and prejudgment interest at the rate of six percent from date of fire to date of statutory amendment of prejudgment interest rate, and eight percent from date of amendment to date of entry of judgment. City/borough appealed. The Supreme Court held that: (1) higher, amended prejudgment interest rate was not to be applied retroactively; (2) trial court did not err in awarding attorney fees to city/borough based on verdict plus prejudgment interest, rather than on verdict alone; and (3) trial court did not abuse its discretion in allowing costs to city/borough even though its notice of taxation was not timely filed.

Affirmed.

1. Interest \Leftrightarrow 30(3)

1976 Amendment to statute governing rate of prejudgment interest raising rate from six to eight percent was not applicable retroactively to award of damages to city/borough resulting from school fire. AS 01.10.090, 45.45.010(a).

2. Interest \Leftrightarrow 30(3)

Prejudgment interest is not a "remedial" or "procedural" device such as would authorize retroactive application of amended, increased rate. AS 45.45.010(a).

3. Interest \Leftrightarrow 39(2)

Prejudgment interest is substantive right of an injured party to allow that party to recover for economic loss occasioned by his inability to use award of damages between injury and judgment. AS 45.45.010(a).

4. Interest \Leftrightarrow 38(1), 39(2)

Purpose of prejudgment interest is to place an injured plaintiff in same position as if he had been compensated immediately for his loss; this result is achieved if interest is calculated at prevailing rate for period between incident causing the loss and judgment. AS 45.45.010(a).

dictum that eligibility for reduced tuition at a state university could be premised on a durational residency requirement. In support of this conclusion, the Supreme Court cited in a footnote (*id.* at 452 n. 9, 93 S.Ct. at 2236 n. 9, 37 L.Ed.2d at 72 n. 9) its affirmance of *Starns v. Malkerson*, 326 F.Supp. 234 (D.C. Minn.1970), *aff'd*, 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971). In *Starns*, a three-judge district court had concluded that the University of Minnesota could condition payment of in-state tuition on a one-year durational requirement, and specifically rejected the use of the "strict scrutiny" equal protection analysis. 326 F.Supp. at 238.

The following year the Court considered the question of whether free medical care for indigents could be conditioned on a one-year residency requirement. *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). The majority opinion, again authored by Justice Marshall, seems to retreat from the Court's earlier unequivocal position in *Dunn* that any durational residency requirement must be justified by a compelling state interest. The opinion suggests that durational residency requirements only impinge on the right to travel when such a requirement is used by a state to condition the right to receive "basic necessities of life" or a "fundamental political right." 415 U.S. at 259, 94 S.Ct. at 1082, 39 L.Ed.2d at 315. Only because the majority found that medical care was a basic necessity of life did it conclude that a compelling state interest had to be shown to justify the requirement.

Finally, in 1975, the Court sustained an Iowa statute that conditioned divorce on one year of residency in the state. *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). Justices Marshall and Brennan noted in a dissenting opinion:

6. *Castner v. City of Homer*, 598 P.2d 953 (Alaska 1979) (sustaining one-year durational residency requirement for right to run for city office); *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 57 L.Ed.2d 397 (1978) (no compelling interest in one-year waiting requirement to work on state oil and gas lease projects); *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974) (compelling interest in three-year residency requirement for running

[t]he Court . . . has not only declined to apply the "compelling interest" test to this case, it has conjured up possible justifications for the State's restriction in a manner much more akin to the lenient standard we have in the past applied in analyzing equal protection challenges to business regulations.

419 U.S. at 420, 95 S.Ct. at 568, 42 L.Ed.2d at 553 (citations omitted).

To summarize, in the federal courts it now appears that laws which deny or restrict certain benefits to new residents will only be subjected to strict scrutiny when they deny "basic necessities of life" or some "fundamental political right." In retrospect, one may question whether *Shapiro* and its progeny are "right to travel" cases at all, because denial of welfare benefits or political rights to any class of people, whether newly arrived migrants or some other class, would always seem to justify strict scrutiny.

A review of our durational residency cases can be easily summarized. We have never used anything but "strict scrutiny" equal protection analysis.⁶ In *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2182, 57 L.Ed.2d 397 (1978), which was decided some two years after *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975), we noted that "[w]e have never used this 'basic necessities' reasoning." 565 P.2d at 163. As recently as *Castner v. Homer*, 598 P.2d 953 (Alaska 1979), we used strict scrutiny to analyze a city ordinance imposing a one-year durational residency requirement on the right to run for an elective city office.

Although we found a compelling state interest, and sustained the ordinance in

for state legislature); *State v. Adams*, 522 P.2d 1125 (Alaska 1974) (no compelling interest for imposing one year of residence to bring a divorce action); *State v. Wylie*, 516 P.2d 142 (Alaska 1973) (no compelling state interest to impose one-year requirement for civil service preference); *State v. Van Dort*, 502 P.2d 453 (Alaska 1972) (no compelling state interest in seventy-five-day voting requirement).

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(no compelling state interest in
day voting requirement).

Castner (598 P.2d at 957), it is obvious that
few durational residency requirements
could withstand such an analysis. In light
of our holding in *State v. Erickson*, 574 P.2d
1 (Alaska 1978), we believe that it is now
appropriate to reexamine our conclusion, as
expressed in our prior decisions, that all
durational residency requirements must
necessarily trigger the highest level of
equal protection scrutiny.

In *Erickson*, we noted our prior dissatis-
faction with the two-tiered model of equal
protection used in federal constitutional
analysis. We concluded that a single test
would be more appropriate, and described
the functioning of that test in the following
terms:

Initially, we must look to the purpose of
the statute, viewing the legislation as a
whole, and the circumstances surrounding
it. It must be determined that this pur-
pose is legitimate, that it falls within the
police power of the state. Examining the
means used to accomplish the legislative
objectives and the reasons advanced
therefore, the court must then determine
whether the means chosen substantially
further the goals of the enactment. Fi-
nally, the state interest in the chosen
means must be balanced against the na-
ture of the constitutional right involved.
574 P.2d at 12 (footnotes omitted).

We noted that where federal constitu-
tional questions were present which in-
volved a suspect class or fundamental right,
we would still be bound to use a test at
least the equivalent in severity as the com-
pelling governmental interest or strict scru-
tiny test used by the United States Su-
preme Court. When federal strict scrutiny
was not required, however, we would be
free to adopt our own test in gauging the
importance of the right to equal treatment
under the Alaska constitution. *Id.* at 11-
12.

[2] We conclude now that durational
residency requirements should be measured
against the test discussed in *Erickson*.

7. *Carmichael v. Southern Coal & Coke Co.*, 301
U.S. 495, 509, 57 S.Ct. 868, 672, 81 L.Ed. 1245,
1253 (1937) ("Neither due process nor equal

When a law conditions the receipt of some
right or benefit upon a period of residency,
we will balance the importance of the deni-
al of the right or benefit against those
legitimate government objectives which
make it justifiable to classify people on the
basis of their length of residency. As we
stated in *Erickson*, a burden will be placed
on the state to show that a classification
"has a fair and substantial relation to a
legitimate governmental objective," and
that a greater or lesser burden to make
such a showing will be based on the nature
of the right or benefit involved. *State v.*
Erickson, 574 P.2d 1, 11-12 (Alaska 1978).

[3] Freedom from disparate taxation is
not a federally protected fundamental right
for the purpose of equal protection analysis
under the fourteenth amendment.⁷ There-
fore, we shall analyze the tax law under our
general standard of equal protection dis-
cussed above.

III. The Tax Exemption System under
the Alaska Equal Protection Clause.

[4] Under *Erickson*, the beginning of
our analysis is an examination of the legiti-
macy of the purposes of the enactment.
The statute does not contain a statement of
purposes, but in its brief the state has sum-
marized what it believes to be the purpose
of a selective, rather than a total, repeal of
the income tax law. We have rearranged
and reworded the statement of purposes
slightly from the text of the state's brief:

- (1) the plan should keep the state's in-
come tax audit and collection staff intact;
- (2) the plan should not saddle individuals
with an empty and burdensome annual fil-
ing requirement;
- (3) the revenue collection bureaucracy
should be in proportion in size and cost to
the amount of revenue collected;
- (4) the plan should not redistribute the
income tax burden so that it falls only on
the very highest income earners, but it

protection imposes upon a state any rigid rule
of equality of taxation").



Alaska State Legislature

Senate

State Affairs Committee

Official Business

Vic Fischer, Chairman
Mike Colletta, Vice-Chairman
Brad Bradley
Dick Eason
Terry Stimson

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4954
(907) 465-4955

M E M O R A N D U M

RECEIVED

MAR 05 1981

TO: SENATOR PAT RODEY
FROM: SENATOR VIC FISCHER *VF*
DATE: MARCH 4, 1981
RE: SB 165, Constitutional Convention

The Judiciary Committee will shortly receive CSSB 165, providing for a Constitutional Convention in case voters approve a call at the 1982 or a subsequent referendum. I would like to bring several items to your attention.

Similar legislation was enacted last year but vetoed by the Governor due to composition of the proposed preparatory commission. Brian Rogers suggested we get the basic enabling legislation enacted and deal with the preparatory commission separately.

My preference is to include the commission as part of the basic convention legislation, though not at the expense of jeopardizing the measure. I have therefore requested the advice of the Attorney General on commission composition that might be acceptable to the Administration; see attached memo of February 26.

I would suggest that you proceed with CSSB 165 without the preparatory commission. If we get something back from Will Condon in time for inclusion by your committee, fine. Otherwise we can deal with the matter in the House, if we all conclude that we can attach the appropriate provisions to the bill. In lieu of that we will proceed with separate legislation after hearing from Condon.

The second issue I would like to bring to your attention pertains to a fiscal note. The Division of Elections provided us with a fiscal note that showed no expenditures in FY '81 and '82, with \$1.1 million in FY '83, \$1.2 million in FY '84. These amounts would cover costs of special elections for delegate selection and ratification of any amendments or revisions proposed by a

convention, if one were held. The fiscal note is predicated on a positive vote on issuing a convention call.

Both Brian and I feel very strongly that the Constitutional Convention bill now under consideration has no costs that would result from its enactment. Any costs would be ascribable to the convention referendum itself, but not CSSB 165. If the people approve a convention call total costs will be far in excess of \$2.6 million. If the people reject a convention, there is no cost whatsoever. In either case, it's the action of the people on the referendum and not legislative action on the current bill to which costs should be ascribed. Accordingly, CSSB 165 carries a zero fiscal note from the State Affairs Committee.

In view of the zero fiscal note, both Brian and I feel that referral to Finance Committee is unnecessary. We will deal with that when the bill comes out of your committee.

Third is an issue that just occurred to me. It might be good to add a provision to the bill that the lieutenant governor include a fiscal note for the convention in the election pamphlet for the election at which the constitutional convention question is put to the voters. The fiscal note should cover costs of delegate election, the convention itself, ratification election, and other expenses ascribable to a convention if one were held. Unless an authoritative figure is given, we are liable to have a big argument over potential expenses of a convention...If you concur, Judiciary might add such a provision.

Thanks for your consideration of these issues.

cc: Rep. Brian Fogers



Official Business

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Wilson Condon, Attorney General
FROM: Sen. Vic Fischer *VF*
DATE: Feb. 26, 1981
SUBJ: Constitutional Convention

Your assistance is requested in clarifying how legal and policy issues on this subject can be resolved.

PREPARATORY COMMISSION

The Senate State Affairs Committee has considered SB 165, providing standby legislation in case Alaska voters approve a constitutional convention in the 1982 referendum or at a subsequent time. The bill is essentially the same as HB 723 approved by the Legislature last year but vetoed by the Governor.

The Governor's veto was based on the composition of the preparatory commission, which was to have included appointees of the Governor, Speaker of the House, President of the Senate, and Chief Justice of the Supreme Court. The appointive structure was seen as a violation of the separation of powers concept.

SB 165 does not include provision for a preparatory commission so as to avoid raising the appointment method issue. We now have the option of amending SB 165 to include provision for a preparatory commission, dealing with the matter in separate legislation to make SB 165 "veto proof", or making no provision for convention preparation. The latter course is to me extremely undesirable, as experience has shown that lack of adequate preparation can lead to disastrous constitutional conventions.

Based on the scheduling of a convention established by SB 165 in case of a positive convention vote by the people, a preparatory commission would have to be activated as soon as possible after the referendum to assure that preparatory work is carried out in timely fashion. Therefore, necessary legislation has

to be enacted by this Legislature, preferably during this session.

State Affairs Committee discussion brought out the opinion that a constitutional convention is the highest legislative process of the people of the state. Neither the executive, legislature, or judiciary can limit the scope of this law making process.

At the same time, someone has to provide for the constitutional convention preparatory process. Our question now is who should be involved in doing that.

It appears clear that the Legislature could establish a preparatory commission, with appointments made by the House Speaker, Senate President, or others within the Legislature.

The Legislature could also provide for a commission, the members of which would be appointed by the Governor.

My main question is whether you would find any kind of joint executive-legislative appointment legally acceptable, particularly in view of the constitutional convention being essentially a legislative function. I pose the question because of my belief that a convention preparatory commission performs a crucial function and that its composition is most important to an effective preparatory process.

I would very much appreciate your comments and suggestions on this issue at the very earliest time.

Sen. Vic Fischer

/lf

cc: Sen. Rodey, Chair, Judiciary Committee

Rep. Rogers, Chair, Constitutional Convention Committee



Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

Feb. 24, 1981

Behrends Bldg.

1:30 p.m.

First Floor

MEMBERS PRESENT: SENATOR FISCHER, CHAIR
SENATOR ELIASON
SENATOR STIMSON
SENATOR COLLETTA

AGENDA: SENATE BILL 174 "An Act making a supplemental appropriation to the Alaska Power Authority for the power production cost assistance program; and providing for an effective date."

SENATE BILL 165 "An Act relating to constitutional conventions; and providing for an effective date."

The meeting was called to order by Senator Fischer at 1:30 p.m.; the first order of business was Senate Bill 174 sponsored by Senator Frank Ferguson, introduced at the request of the Nome utilities.

Senator Ferguson provided a brief overview of the legislation and suggested that the bill be amended to reflect an appropriation in the amount of \$2.54 million for continuation of the study of the Susitna Dam.

Eric P. Yould, Executive Director of the Alaska Power Authority, testified in support of the bill, and stated that the additional funding is needed to insure that the power production cost assistance program is fully funded through the present fiscal year. He stated that the approximately \$1.4 million with which the program commenced operations was one half of the original appropriation due to an executive veto. The committee asked Eric Yould about the need and present effectiveness of the program, and requested further information.

It was suggested in the discussion that \$50,000 was needed for a feasibility study for the Takatz Lake project.

The committee agreed to a committee substitute for SB 174 with the addition of \$2.54 million for the Susitna Dam study and \$50,000 for the Takatz Lake study.

The committee members then took up the next item on the agenda: Senate Bill 165, introduced by the Rules Committee at the request of the Legislative Council.

Representative Brian Rogers, chair of the Constitutional Convention Committee, testified on SB 165, presenting a section by section analysis of the bill. He maintains that the bill is necessary because it provides a framework for setting up the process of a constitutional convention. He further stated that it was necessary to get such legislation on the books this year before it becomes politicized in an election year. Rep. Rogers said that the studies of the Constitutional Convention committee have shown that if a lot of groundwork, or preparatory work, for a constitutional convention is not done in the beginning, the convention can become a total disaster. He then reviewed the proposed amendments submitted by the Director of the Division of Elections.

Chairman Fischer proposed that SB 165 be revised to reflect lack of explicitly sexual pronouns (be made sex-neutral with respect to pronouns).

Discussion arose on that section of the bill which specifies College, Alaska, as the site where the constitutional convention is to take place. An amendment was proposed to delete this provision, and insert language to provide for the site being specified in the call issued by the Lt. Governor; the amendment was adopted by the members of the committee.

Patty Ann Polley, Director of the Division of Elections, testified in favor of SB 165. She provided an overview of the amendments proposed by her office. She also gave an explanation for her fiscal note.

The committee was not in agreement with the contents of Patty Ann Polley's fiscal note and agreed to submit a fiscal note prepared by the committee members.

Committee members decided to take up the committee substitute for SB 165 at the next meeting; they also agreed to cancel the Thursday meeting due to schedule conflicts of members.

The meeting was adjourned by Chairman Fischer at 3:03 p.m..

WITNESSES FOR
SENATE STATE AFFAIRS MEETING

SB 174

2/24/81

SB 165

Name

Address/Phone

Representing

Eric P. Yould

333 W 4th Ave Suite 31 Alaska Power Authority

Brian Reyes

Pouch ✓

District 20

Patty An Polley

Pouch H F Juman
586-4121

Division of Electric



Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 3, 1981

Behrends Bldg.

1:30 p.m.

First Floor

MEMBERS PRESENT: SENATOR FISCHER, CHAIR
 SENATOR COLLETTA
 SENATOR ELIASON
 SENATOR BRADLEY
 SENATOR STIMSON

AGENDA: SENATE BILL 82 "An Act repealing the campaign contribution tax credit for individuals; and providing for an effective date."

SENATE BILL 165 "An Act relating to constitutional conventions; and providing for an effective date."

SENATE BILL 90 "An Act relating to privacy and public information and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

SENATE BILL 72 "An Act relating to veterans and public records."

HOUSE JOINT RESOLUTION 6 "Requesting the U. S. government to honor military personnel still listed as missing in action from the Vietnam war at the Tomb of the Unknown Soldier in the national cemetery at Arlington, Virginia."

Chairman Fischer called the meeting to order at 1:40 with all members present except Senator Stimson, who had been detained at a meeting. Testimony was invited on House Joint Resolution 6, sponsored by Rep. Pappy Moss.

Representative "Pappy" Moss presented a brief overview of the resolution, and stated that its purpose was to recognize the Vietnam MIAs (missing in action). In that conflict more than 50,000 American lives were lost, and 2,500 were presumed dead, including three Alaskans. The purpose of the resolution is to honor those Vietnam veterans.

There was some committee discussion. Senator Colletta inquired if there was not already a monument: the Tomb of the Unknown Soldier. Senator Bradley responded that the Tomb was erected after WWI, and does not specify any particular war or conflict.

Senator Colletta inquired, "Why not suggest an MIA monument for all U. S. soldiers?" in response to which Rep. Moss pointed out that there has been very little recognition for Vietnam vets.

There being no further questions or comment, committee members approved Senator Bradley's motion that the resolution be passed out with individual recommendations.

Senate Bill 82, sponsored by Senator Colletta, was the next item to be addressed by the committee members.

Senator Colletta opened testimony on the bill by delivering an overview of SB 82. He described it as "an item that occurred last year during Free Conference" as it pertained to repeal of personal income taxes and the prospect of constitutional challenges to aspects of repeal. Thus "credits" were addressed and supplemental state credits developed.

Under the provisions of SB 82 a Federal deduction is still available; since there is no state income tax, however, Senator Colletta sees the present credit as a "back door entry to publicly financed campaigns", an area he feels requires extensive public hearings, and a policy he generally does not support.

In response to the question, "Was it your intent to repeal the tax credit refund for day care?" Senator Colletta responded that SB 82 did not, but that Section 2 of the Governor's bill does. Upon further investigation it became clear that SB 82, as introduced, does repeal the day care tax credit. Senator Bradley suggested that perhaps the title of the bill should be amended to reflect this repeal.

Senator Eliason expressed the opinion that some aspects of public financing of campaigns are good, and suggested that rather than total repeal, the focus of the legislation could be narrowed a bit. He stated that there was a need for some kind of public participation and suggested that the question of organized groups might be addressed differently than contributions to individual campaigns. Senator Colletta reiterated his personal opposition to public financing of campaigns.

Denna Cline, of the Department of Revenue, provided further testimony on SB 82, stating that the administration supports SB 82. She presented data relating to campaign contributions (see attached sheet). In response to the question, "Why does the Governor want child care credit repeal?" Denna stated that she would rather not speak for the Governor, and suggested that the Governor felt that there are alternative ways of approaching that issue in light of the fact we no longer have income tax for individuals. Senator Colletta agreed that there must be a better way to provide a child care subsidy, as the present system insures that those with greatest need get the

lowest amount of credit.

With respect to Administration's position on the cost of credits, Denna Cline stated that it costs about the same to provide both or either of the credits under discussion.

Senator Bradley pointed out that the section under discussion includes not only child care, but other forms of care as well, such as household and dependent care assistance. Senator Eliason questioned the January 1st effective date of the bill, and pointed out a potential problem of those persons who have made contributions in good faith not getting refunds. Further committee discussion centered around the various groups of candidates affected, such as candidates in a municipal election.

Chairman Fischer expressed a preference for dealing with alternate methods of providing assistance in conjunction with consideration of the repeal. Senator Bradley favored changing the title of SB 82 and moving it out of committee. Senator Colletta expressed a desire to clarify the repealer section and leave the political campaign contribution portion in the repealer, and stated that exploring alternative language to clean up the section on political campaign contributions (as suggested by the Chair) would be a major undertaking which involved finding the shortcomings of the Federal act.

The bill was held over for further consideration by the committee.

Senate bill 165, concerning constitutional conventions, was next addressed by the committee. Chairman Fischer announced that he was waiting for an answer from the Attorney General on the question of a preparatory commission. The Judiciary Committee, he said, could deal with the response. He presented committee members with a re-draft of the legislation.

Senator Colletta suggested changing the language of the bill to reflect a clear choice on the part of the delegates of a site for the convention.

Senator Eliason suggested that following the election of delegates that they assemble in the Capital to have orientation and select a site, and to perform some basic organization functions.

Senator Fischer asked if committee members would like to hold the measure over until the next meeting. Senator Stimson moved that the above-mentioned changes be made and the bill be moved out. As there was no objection, it was so ordered.

The committee took up the committee substitute for SB 90, and the committee report/analysis was presented to members for approval. Committee members carried a motion to pass the bill out with individual recommendations, and send it on to Judiciary.

Senate State Affairs
Minutes 3/3/81
Page Four

The final item on the agenda, SSSB 72, received final consideration by the committee. Senator Bradley pointed out that the section which had created the problem, Section 2, had been re-written. The Bureau of Vital Statistics was to keep a record of separation reports for veterans. The last line of the bill had been changed because it was "superfluous" and the sponsor substitute makes it clear that the program is a voluntary one, thus alleviating any problem of invasion of privacy. No additional personnel were required to implement the legislation; documents would merely be kept on file at an additional place.

Chairman Fischer moved that the bill be passed out as amended. There being no objection, it was so ordered.

The meeting adjourned at 3:00.

1980 Income Tax History File statistics

As of 3/3/81

Ave

Total Refunds	43782	\$365.31
Total Refund Amount	\$15,993,919.33	
Total 79 CCC	640	\$46.43
Total 79 CCC Amount	\$29,713.82	
Total 80 CCC	836	\$49.24
Total 80 CCC Amount	\$41,162.39	
Total 79 PCC	1,631	\$44.55
Total 79 PCC Amount	\$72,659.11	
Total 80 PCC	3619	\$43.84
Total 80 PCC Amount	\$158,660.53	

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR
TERRY MILLER, LT. GOV.

OFFICE OF THE LT. GOVERNOR

DIVISION OF ELECTIONS

POUCH AF—JUNEAU 99811

February 13, 1981

The Honorable Vic Fischer
Chairman
State Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

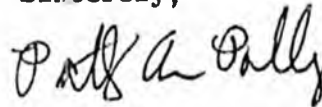
Dear Senator Fischer:

The Division of Elections has reviewed Senate Bill 165 and has prepared and attached a fiscal note and suggested amendments to the bill.

The election code has been reviewed and revised extensively over the past two years. As the review process has occurred, election procedures have changed. Based on these revisions, I have attached suggested amendments that cover two general areas:

1. Assuming that voters at the 1982 General Election have approved the holding of a convention, candidates must file a declaration of candidacy. I am suggesting that those procedures be consistent with those for legislative and statewide offices.
2. The specific duties for the conduct of an election are assigned to the Director of Elections, with the Lieutenant Governor retaining final authority.

Sincerely,



Patty Ann Polley
Director
Division of Elections

PAP:ko

Enclosures

SUGGESTED AMENDMENTS TO SENATE BILL 165

1. Page 1, line 13, following "amendment" insert "is"
2. Page 3, line 5, change "lieutenant governor" to "director of elections"
line 27, change "lieutenant governor" to "director of elections"
3. Page 4, line 5, remove "to the lieutenant governor"
line 8, remove "to the lieutenant governor"
line 14, remove "to the lieutenant governor"
line 20, remove "by the lieutenant governor"
line 26, insert a new section (c) to read as follows:

"A candidate for delegate to the constitutional convention shall file either with the director or an election supervisor. If the candidate files his declaration with an election supervisor, the election supervisor shall immediately forward the declaration to the director."

line 26, change "(c)" to "(d)"

lines 26-29 remove first sentence and insert the following:

"If the declaration filed under (a)(3) of this section is not received within seven calendar days, the candidate shall be notified of non-receipt."

4. Page 5, line 7, remove "lieutenant governor" and insert "director of elections"
5. Set December 15 as the first day that a declaration of candidacy may be filed.
6. Question: Do you want legislators to serve as delegates to the convention?
7. Question: Shall we add requirement for an Election Pamphlet for delegate selection election and also one for ratification election? (Fiscal note includes this.)
8. Question: Is the required APOC statement (Sec. 7, AS 39.50.020(b)) necessary at the time of filing a declaration for delegate candidates?
9. Question: Should we remove Sec. 15.50.900 delegation by lieutenant governor in lieu of these amendments?

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 165
Title "An Act relating to constitutional conventions; and providing for an effective date"
Requested by Senate State Affairs Date February 11, 1981

II. FISCAL DETAIL

Agency Affected Office of the Governor
Program Category Affected Legislative and Elective Operations
BRU, Program, or Subprogram(s) Affected Division of Elections
(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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	-0-	-0-	199.6	223.6	-0-	-0-
200 TRAVEL	-0-	-0-	27.2	30.5	-0-	-0-
300 CONTRACTUAL	-0-	-0-	863.2	966.8	-0-	-0-
400 COMMODITIES	-0-	-0-	34.4	38.5	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	1124.4	1259.4	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	1124.4	1259.4	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY			5.5	5.5		

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

Assume:

- 1) FY 81 - no additional cost
- 2) FY 82 - no additional cost
- 3) FY 83
 - a) Full cost of special election for Constitutional Convention delegate selection;
 - b) Full cost of Official Election Pamphlet pertaining to special election in four regional issues (at request of Senate State Affairs);
 - c) Preparation costs for ratification election to be held early in FY 84
- 4) FY 84
 - a) Full cost of ratification election;
 - b) Full cost of Official Election Pamphlet in four regional issues pertaining to constitutional amendment ratification (at request of Senate State Affairs);
 - c) 12% inflation over FY 83

IV. DATE February 13, 1981 PREPARED BY Danith D. Anderson
AGENCY Division of Elections
PHONE 586-6181

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

SB 165 — Fiscal Note Supplementary Information

(100) Personal Services

Includes overtime (average of \$20,000/month for 1980 elections plus 12% inflation) for 3-month period; cost of 22 total temporary employees (19 at Range 8 and 3 at Range 10) for Anchorage, Fairbanks, Juneau and Nome offices for 3-month period (\$1,393/month x 19 x 3) + (\$1,564/month x 3 x 3); cost of Election Pamphlet and public information staff (based on 1980 costs and 12% inflation).

(200) Travel

Includes in-state airfare for public information officer and election supervisor coordination; travel for election pamphlet staff (based on 1980 costs and 12% inflation); travel for absentee voting officials for pipeline assistance, data processing systems personnel (\$350/airfare + \$500/trip x 32 trips).

(300) Contractual Services (Total of \$863,200)

(310) Includes Zenith line, long-distance and telegram service, postage (82.2 with 40.0 allocated for Election Pamphlet).

(320) Printing and Advertising Including cost of printing ballots (80.0) (25 sets of data vote ballots, 15 sets of paper ballots, assuming 40 election districts), declarations of candidacy forms, tally books, registers, notices of election, certificates and return booklets; plus Election Pamphlet printing costs (based on 1980 costs with 12% inflation — 165.0) and general advertising.

(330) Rents and Leases Additional office space in Juneau and Anchorage for election related activities.

(360) Equipment Rental Includes 10 Mag Card II typewriters at \$300. each x 3 months = \$9,000; data processing equipment rental (card reader, 6 display stations, 4 printers); copier expense.

(380) Professional Services Including data processing consulting (20.0)

(390) Other fees and expenses (460.0)
Election Night Expense (100.0)
Miscellaneous (20.0)
Election Board Payments (340.0)

(400) Commodities Includes all election-related materials (31.9) for 500 precincts, election night activities, temporary employees, absentee voting officials (50 total) and election pamphlet staff (2.5).

(500) Equipment No additional equipment expenses required.

SECTIONAL ANALYSIS OF SB 165

RELATING TO CONSTITUTIONAL CONVENTION

Section 1: Directs the Lt. Governor to place either constitutional amendments by the Legislature or by a Constitutional Convention on the ballot for the next statewide general election.

Removes the 120 day requirement for placing amendments proposed by a constitutional convention.

Section 2: Spells out how to place question of whether or not to have a constitutional convention every 10 years, on the ballot.

Section 3: Provides that if a majority of the votes are in the affirmative for holding a convention, that the Lt. Governor shall provide for a convention under the provisions of this bill.

Section 4(a): 15.50.091: Sets the date for calling for a special election for selecting delegates. Third Tuesday of May following the vote on the question.

Section 4 (b): Provides if a convention is called by the Legislature the date for selection of delegates will be set out in the call.

15.50.101: Provides for the number of delegates; 60 from same election districts as provided for Legislators and 5 at large.

15.50.111: Provides that the 60 shall be elected from the same districts as each house of the legislature, according to the apportionment schedule in effect at the time the election is held.

15.50.120: Sets out the qualifications of the delegates:

(a) Registered voter, three year resident of the state and one year resident in the district from which the delegate is to be selected.

(b) At large delegate shall be a registered voter of the state who has been a resident of the state for the three years preceding the first day of the convention.

15.50.130: Declaration and withdrawal of candidacy:

(a) Basically the same manner as a candidate for the Legislature except there are no provisions for a partisan election.

(b) Candidates must withdraw 40 days before election in order to have name removed from the ballot.

15.50.140: 1. Manner and date of filing declaration:

(a) Must file at or before 5:00 p.m. local time on February 15 of the year in which the special election is held for the office.

(b) Provides for filing by telegram.

(c) Provides for filing by registered mail, postmarked at or before 5:00 p.m. local time February 15.

2. Provides for extension if February 15 falls on a Saturday or Sunday.

3. Sets forth what a person must do, as follow-up if the filing is by telegram.

15.50.150: Provides for a nonpartisan election.

15.50.160: Requires the Lt. Governor to place the names of qualified candidates on the special election ballot.

15.50.170: Ballots: Provides that a separate ballot shall be prepared for each election district. The ballot shall contain the names of the candidates from the house district, senate district and the candidates at large.

15.50.180: Certification of election: Provides that the Lt. Governor shall certify the person receiving the largest number of votes for the office for which he was a candidate, as elected.

Section 5: Adds a new section to A.S. 15.50, Article 9:

15.50.900: Allows the Lt. Governor to delegate the duties imposed by this Chapter to the director.

Section 6: Adds a new chapter to A.S. 44:

Chapter 90 Constitutional Convention:

44.90.010: Call:

Provides that within 60 days after an affirmative vote to call a constitutional convention or within 60 days of the calling of a convention by the Legislature if specific appropriations have not been made for the special election for delegates, the Lt. Governor shall include in his call an appropriation which he determines adequate. He shall deliver a copy of the call to the Commissioner of Revenue.

The Commissioner shall establish special accounts within the general fund for which money for the special election can be drawn. The monies shall be dispersed for the special election, the work of the convention, and the ratification election following the convention.

44.90.020: Establishes the location of the convention and the convening time:

University of Alaska at College, Alaska at 10:00 a.m. the second Monday in September following the special election or at a time specified in the call.

Provides that the convention shall meet for not more than 90 days, but may at its discretion recess for 15 days or less for public hearings.

44.90.030: Provides that the Governor shall open and preside until temporary officers are selected.

44.90.040: Provides that all meetings are open to the public unless an executive session is called under provisions set forth in Alaska Statutes.

44.90.050: Provides that the convention is the judge of the qualification and election of its members, may elect officers, prescribe their functions, powers and duties and may make the rules to conduct its business; may request and shall receive assistance and information from any state agency; may employ various staff and consultants and enter into contracts; have plenary power to revise the constitution subject only to ratification by the people.

44.90.060: Provides if a convention submits amendments or revisions to the constitution the Lt. Governor shall call a special election for the purpose of ratifying the amendments or revisions not less than 40 nor more than 120 days after the adjournment of the constitutional convention.

44.90.070: Immunities: Provides immunities similar to legislative immunities.

44.90.080: Provides for expenses, travel and per diem allowances as a Legislator, although no salaries.

44.90.090: Provides that the Governor shall appoint a qualified person to fill any vacancies.

Sections 7 -14: Provides for disclosure, conflict of interest, and lobbying activities similar to the requirements for Boards and Commissions, the Legislature and the Administration.

Section 15: Repeals the sections dealing with how a constitutional convention shall be called.

Section 16: Effective date.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE BILL 165

Title "An Act relating to constitutional conventions; providing for eff. date.

Requested by _____ Date _____

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

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
	0	0	0	0	0	0

POSITIONS

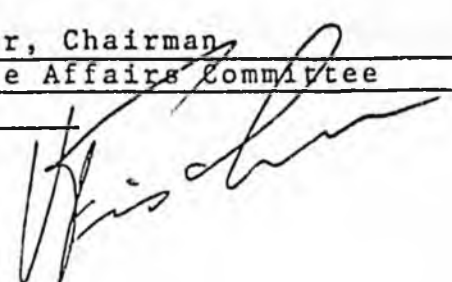
	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III) SB 165 is for an enabling act. It provides a standby process in case voters or the Legislature approve a constitutional convention call by referendum. The next referendum is in November 1982. If the voters approve a convention call, major expenses will ensue. If the voters oppose a convention, there will be no costs. In either case, the convention enabling legislation would, unless changed by law, apply to future referenda and convention calls.

Possible costs of a convention -- delegate election, constitution revision process, ratification election, and other expenses -- are ascribable to the referenda or a legislative call and not to this bill. Essentially the same expenditures will occur in case of a convention call even if this bill is not enacted.

Accordingly, the fiscal note for this bill is zero.

IV. DATE March 1, 1981 PREPARED BY Sen. Fischer, Chairman
 AGENCY Senate State Affairs Committee
 PHONE 465-4954
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)



DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 10, 1981

Hon. Vic Fischer
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Constitutional convention
preparatory commission
Our file: J-66-557-81

Dear Senator Fischer:

You have asked whether we can find any kind of joint executive-legislative appointment of a commission to prepare for a constitutional convention to be legally acceptable. We regret to advise that we cannot.

There are at least two cases, each of which includes a compelling dissent, which hold that a legislator's serving as a delegate to a constitutional convention is not holding a dual office. Harvey v. Ridgeway, 450 S.W.2d 281 (Ark. 1970); Bd. of Supervisors of Elections v. Attorney General, 229 A.2d 388 (Md. 1967). Both cases ignore the case authority in their own and other states in arriving at their decisions. Accordingly, neither is persuasive. Our own court takes a broad view on what is an office. Larson v. State, 564 P.2d 356 (Alaska 1977). And the cases uniformly hold that an office is "a public charge or employment, the duties of which are prescribed by law, and he who performs the duties is an officer." State v. Dunn, 496 S.W.2d 480, 490 (Tenn. 1973), quoting from State v. Bratton, 253 S.W. 705 (Tenn. 1923). See also Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976); Begich v. Jefferson, 441 P.2d 27 (Alaska 1968) (prohibition against dual-office holding literally applied). The Alaska Constitution expressly makes employment by or election to a constitutional convention an exception from the prohibition against legislators' holding dual office. Alaska Const., art. II, § 5. In Begich, the court stated that these (and other) express exceptions in the constitution necessarily result in the prohibition's extending to all other offices. 441 P.2d at 30-33.

It might be argued that legislative appointees to the preparatory commission are employees of the convention.

April 10, 1981

However, while the legislature is empowered to make provision for the convention, "by law," Alaska Const., art. XIII, § 3, the constitution does not make an exception for the legislature to appoint either its members or its agents to be the officers or employees of the convention or for either to serve on a commission appointed by the legislature in whole or in part. Absent constitutional provision to the contrary, the chief executive is the appointing authority for those charged with carrying out a law. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

Either on an informal basis or on a basis formalized by law, resolution, or interbranch agreement, the agencies of the two branches -- including duly established permanent or ad hoc interim committees -- can certainly cooperate in studies and gathering information to prepare for a convention. So too, the legislature, through existing or duly established interim committees can study the needs for constitutional reformation. But the legislature cannot write a public law and then appoint a commission of its own members or agents to carry it out. Book v. State Office Bldg. Comm'n, 149 N.E.2d 273 (Ind. 1958).

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: 

Rodger W. Pegues
Assistant Attorney General

RWP/pjg