

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

2066 SSA SB 175 - SB 1983 2066

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183

Sections 16 & 18 add to AS 47.23.150 (Required Notice in Administrative Enforcement of Support Orders) and 47.23.160 (Admin. Establishment of Support Obligations; Notice & Finding of Financial Responsibility): "Refusal by the obligor to accept notice . . . is considered service as of the time of refusal."

Sec. 21 adds new section to AS 47.23 relating to the ratification by the court of administrative orders. States that an administrative support order issued under chapter may be forwarded to the Superior Court. Unless a notice of appeal is filed within 30 days, the court may enter an order confirming the support order.

Secs. 22 & 23 make technical amendments to 47.23.190 by deleting from "obligee or his custodian" the words "or his custodian" since obligee was redefined as being the custodian rather than the child.

Sec. 24 repeals and re-enacts AS 47.23.250 (Order to Withhold and Deliver). Section allows agency to issue to "any person, political subdivision, or department of the state an order to withhold and deliver property" if after 30 days from the date of service of notice under 47.23.150, or from the date of service of a notice and finding of financial responsibility, an obligor has failed to make child support payments. The section as repealed and re-enacted is identical to the existing section with the addition of two new subsections (subsecs. (f) & (g) in the bill) which state: "(f) A person, political subdivision, or department of the state which regularly incurs additional indebtedness to the obligor shall continue to withhold and deliver money as it comes due and owing until the liability of the obligor under AS 47.23.150 is satisfied. (g) An order to withhold and deliver issued to the Department of Revenue is effective upon receipt by the Department and remains effective for that calendar year. The order shall be sufficient to subject any tax refund or other disbursements due to be issued to the obligor in that year to the provisions of this section even though the tax refund or disbursement may be issued more than 30 days after the order."

Does not provide for effective date.

Introduced February 16 and referred to Health, Education and Social Services and Judiciary.

Motor Fuel
Tax
(watercraft)
(repeal of)

SENATE BILL NO. 182, by Senators Mulcahy, Eliason, Ziegler, Ray, Hohman and Ferguson. Identical to HB 101, page 179.

Introduced February 16 and referred to Transportation & Finance.

Financial
Disclosure
(exempting
physicians)

SENATE BILL NO. 183, by Senator Mulcahy by request. Exempts physicians from the financial disclosure requirements of AS 39.50 (Conflict of Interest for public officers & candidates for elective office). Adds new subsection to AS 39.50.030 (contents of financial disclosure statement) to read: "A public official, a candidate for state elective office, or a candidate for elective municipal office who is a physician licensed under AS 08.64 is not required to report the name of a person who is his patient or a patient of an entity which is a source of income to him." Pro-

INTRODUCTION OF BILLS (Senate)(cont'd)

SB 183 (cont'd)

vides Act effective April 14, 1981.

Introduced February 16 and referred to State Affairs and Judiciary.

Appropriations SENATE BILL NO. 184, by Senator Ferguson. Appropriates \$100,000
(special) from the general fund to the Dept. of Health & Social Services
(medical for payment as a grants to the Kotzebue Public Health Service
evacuations) Hospital (\$50,000) and to the Norton Sound Hospital (\$50,000)
for medical evacuations. Appropriations shall be disbursed in
accordance with AS 37.05.315 (State Grants). Provides Act effec-
tive immediately.

Introduced February 16 and referred to Health, Education & Social
Services and Finance.

Appropriation SENATE BILL NO. 185, by Senator Bennett. Appropriates \$150 million
(supplemental) from the general fund to the Alaska Housing Finance Corporation,
(AHFC Mortgage Dept. of Revenue, for the Special Mortgage Loan Purchase Program
Loans) (AS 18.56.098) for the fiscal year ending June 30, 1981. Provides
Act effective immediately.

Introduced February 16 and referred to Finance.

Note: this bill was reported out of committee this week. See
page 274.

Interstate SENATE BILL NC. 186, by the Rules Committee by request of the
Corrections Governor. Adopts the Interstate Corrections Compact. Art. 1,
Compact "Purpose and Policy" of the Act states: "The party states, de-
(adopting) siring by common action to fully utilize and improve their insti-
tutional facilities and provide adequate programs for the con-
finement, treatment and rehabilitation of various types of of-
fenders, declare that it is the policy of each of the party states
to provide those facilities and programs on a basis of cooperation
with one another, thereby serving the best interest of the offend-
ers and of society and effecting economies in capital expenditures
and operational costs. The purpose of this compact is to provide
for the mutual development and execution of programs of coopera-
tion for the confinement, treatment and rehabilitation of offend-
ers with the most economical use of human and material resources."
Provisions of compact are added to AS 33 under new Chapter 27,
"Interstate Corrections Compact." Effective immediately.

In his message transmitting the bill to the Senate for considera-
tion, Governor Hammond stated:

Under the authority of art. III, sec. 18 of the Alaska
Constitution, I am transmitting a bill which would make
Alaska a party to the Interstate Corrections Compact.

Under current law, Alaska is a party to the Western
Interstate Corrections Compact, along with eleven other
states. This measure is similar to that compact;
however, it allows the state a broader choice of
correctional facilities nationwide in which prisoners may
be incarcerated than is presently available. By joining
the Interstate Corrections Compact, Alaska will be able
to place offenders in an additional eleven states. It is
not necessary to withdraw from the Western Interstate
Corrections Compact in order to become a party to this
compact.

Introduced: 2/16/81
Referred: State Affairs
and Judiciary

1 IN THE SENATE

BY MULCAHY BY REQUEST

2 SENATE BILL NO. 183

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act exempting physicians from financial disclosure
7 requirements of AS 39.50; and providing for an effective
8 date."

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

10 * Section 1. AS 39.50.030 is amended by adding a new subsection to read:

11 (d) A public official, a candidate for state elective office, or
12 a candidate for elective municipal office who is a physician licensed
13 under AS 08.64 is not required to report the name of a person who is
14 his patient or a patient of an entity which is a source of income to
15 him.

16 * Sec. 2. This Act takes effect April 14, 1981.

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*dentist
of al
Leading sciences*

J. John Franich, Jr.

February 2, 1982

Arthur S. Hansen, D.D.S.
3487 Airport Way
Fairbanks, Alaska 99701

Re: APOC disclosure requirements
Our File No. 62-3154

Dear Art:

You have asked for a memorandum on the legal questions posed for you by the provisions of AS39.50.010 et seq. and the regulations issued pursuant thereto.

Statement of Facts

Arthur S. Hansen, D.D.S., is a duly licensed dentist practicing dentistry as an employee of Arthur S. Hansen, D.D.S., a Professional Corporation. In 1981 he declared himself a candidate for membership on the Fairbanks North Star Borough School Board and in conjunction with the filing of his declaration of candidacy, filed a conflict of interest disclosure form and request for exemption with the Alaska Public Officers Commission pursuant to AS 39.50.020-030 and 2 AAC 50.100. Arthur S. Hansen was not elected to the School Board in the election held in October, 1981. After the election the APOC ruled against Hansen's claim of privilege and demanded submission of the names of all patients of Arthur S. Hansen, DDS, a Professional Corporation, receiving services for which they paid in excess of \$100.00. Hansen has refused to submit the information and the APOC has declared its intention of submitting the matter to the Attorney General for further action.

Applicable Law

1. AS 39.50.010 et seq. This Chapter requires financial disclosure of public officials and candidates, including disclosure of the financial interests of members of this family.

2. 2 AAC 50.090-320. These regulations set forth in modest detail the information required and the methods by which the APOC will enforce the statutory requirements.

3. AS 10.45.090-250. This Chapter is the Alaska Professional Corporations Act which permits a person or persons licensed to perform professional services to incorporate their business. This statute permits the provision of professional services through a corporate business entity subject to restrictions on the shareholders, the disposition of shares, and qualifications of directors. Additionally the statute preserves the traditional relationship between the person providing the service and the recipient insofar as the rights, duties and liabilities between them are concerned. The statute also made the corporation jointly and severally liable with the professional employee to the service recipient. In all other respects, a professional corporation must operate pursuant to the Alaska Business Corporation Act, AS 10.05.010.594.

4. Article I, Sec. 22, Alaska Constitution. This section guarantees a right of the people to privacy and is applicable under the present circumstances to Arthur S. Hansen, D.D.S., the professional corporation and to the recipients of services of the corporation.

Memorandum

In Falcon v. APOC, 570 P.2d 469 (Alaska 1977) the Court was confronted with the question of whether or not a physician should be required to disclose the names of his patients paying more than \$100.00 for services in order to comply with AS 39.50.200. Dr. Falcon was an employee of a professional corporation known as Kodiak Island Medical Center. AS 39.50.200(a)(8) defines source of income as a client or patient of a professional corporation.

In Falcon the court held that the provisions of AS 39.50.200 were not an impermissible infringement of the patient's constitutional right of privacy. In his argument Falcon apparently pointed out that the Alaska State Medical Association Council had declared that publication of the names of patients of Alaska Medical Board members to be a violation of professional ethics, but the Court held that such a declaration could not be construed as amending or modifying the provisions of AS 39.50.200 and further buttressed that by citing cases that had held that disclosure only of the name of a patient was not an invasion of the evidentiary doctor-patient privilege.

However, the Court did find that in certain instances, some of which it described, mere disclosure of a patient's name would constitute an impermissible invasion of a patient's right of privacy. The APOC merely lifted from Falcon the instances in which the Court thought an impermissible invasion might occur insofar as a physician's patient's right

of privacy is concerned and did not address similar questions which might arise in the delivery of other professional services.

One aspect of the statute which has received only cursory consideration is whether or not the requirement of disclosure constitutes such a burden on the office holder or candidate as to have a chilling effect upon all professions delivering services to individuals so as to prevent their members from seeking and holding public office.

2 AAC 5.050 excludes retail charge accounts, revolving charge accounts and credit card sales. Likewise, all cash customers are excluded. These exclusions would seem not to fall within any zone of privacy of a customer or a retail business, but to be the result of a practical determination that compliance would be unduly burdensome. It probably also stems from a belief that retail business transactions do not give rise to a relationship from which influence would flow. Nothing in the statute forms a basis for such a belief and it can only be assumed that the excluded retail transactions would constitute too great a burden.

The Falcon case did not address the benefit-burden problem, only the scope of the physician - client privilege. Thus, we have neither a statutory nor a judicial determination of the extent of influence a retail customer might be able to exert.

Another practical aspect of the regulations and the statute which has escaped legislators and the APOC is that the area of greatest conflict in which a professional might be found is in professional considerations or matters of particular concern to the profession, i.e., medical malpractice.

To return to the chilling effect, a professional desiring to offer himself for public office would have to plan approximately 18 months ahead of the last filing date so as to be prepared with the names of his patients or clients.

Neither the statute nor the regulations imposes a duty upon the APOC to act in a timely fashion upon the application for exemption filed by a declared candidate. Thus, as in this case, the Commission may fail or refuse to act on an application for an exemption until either the election has been held or it is too late to withdraw a candidacy. In such event, the purpose of the statute are defeated and candidates who believe themselves entitled to claim a privilege in behalf of others are subjected to the possible imposition of penalties they are entitled by law to avoid.

In summary and to return to the state of the law applicable, all professions whether sole proprietors, partners or employees of professional corporations must disclose the names of all persons receiving services for which those persons paid \$100.00 or more in the preceding year, unless those recipients fall within the classes of persons who are protected by 2 AAC 50.100.

Penalties

AS 39.50.060(a) provides that a person who refuses or knowingly fails to disclose information is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100.00 and not more than \$1,000.00 or by imprisonment for not more than 6 months or both.

Additionally, one who is elected or appointed shall forfeit his office. See APOC v. Marshall, Op. No. 2406 (1981).

AS 39.50.135 permits the imposition of a civil penalty of not more than \$10.00 per day. 2 AAC 50.110 sets the schedule of civil penalties but the regulation is applicable only to public officials. The definition of public official contained in AS 39.50.200 does not include candidates. 2 AAC 50.135 sets a similar schedule for municipal officers.

Sincerely yours,

LAW OFFICES OF MARY A. NORDALE

Mary A. Nordale

MAN/jm

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99801
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 18, 1982

SUBJECT: Exemptions from financial disclosure
(CSSB 183 (SA))

TO: Senator Vic Fischer
Chairman, Senate State
Affairs Committee

FROM: Richard A. Bradley *B*
Legislative Counsel

The bill is provided as requested. It exempts from the requirement that a public official or candidate report "the name of a person who is a patient or a patient of an entity which is the source of income to him" in the following groups of individuals: those licensed under

- AS 08.20 chiropractors;
- AS 08.32 dental hygienists;
- AS 08.36 dentists;
- AS 08.64 physicians;
- AS 08.68 nurses;
- AS 08.80 pharmacists;
- AS 08.84 physical therapists; and
- AS 08.86 psychologists and psychological associates.

The bill does not exempt nursing home administrators (AS 08.-70) or dispensing opticians or optometrists (AS 08.71; 08.-72).

Senator Vic Fischer

Page 2

March 18, 1982

You also asked whether a classification exempting the particular professional from disclosure would withstand equal protection scrutiny.

I believe that it would. Note, however, that it is possible that the classification implicit in the bill (members of the healing arts professions) is both overbroad (in its inclusion of "medical" professionals for whom the privilege is unnecessary) and underinclusive (in its omission of members of other professions whose clients might have such claims to privacy: for example lawyers whose practice is limited to divorce or similarly private matters). In that connection, it may be useful to review the language of the case analyzing these questions that reached the Alaska Supreme Court: Falcon v. Alaska Public Offices Com'n, 570 P.2d 469, 479 (Alaska 1977):

"In particular situations, however, as the state admits, disclosure of the mere fact that an individual has visited a certain physician may have the effect of making public certain confidential or sensitive information.

"According to one commentator:

"'[s]ensitive information is that which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety or embarrassment to a reasonable person.'

"As an example, the commentator suggests:

"'the decision to have an abortion [is one] which many people would be reluctant to discuss even with their closest friends. . . . (footnotes omitted)'

"Where an individual visits a physician who specializes in contraceptive matters or whose primary practice is known to be giving abortions and the fact of a visit or rendering of services becomes public information, private and sensitive information has, in our view, been revealed. Even visits to a general practitioner may cause particular embarrassment or opprobrium where the patient is a married person who seeks treatment without the spouses's knowledge or a minor who does so without parental intelligence. Similar situations would be presented where, because of specialized practice, the disclosure of the patient's

identity also reveals the nature of the treatment, and the particular type of treatment is one which patients would normally seek to keep private. Some examples would include the patients of a psychiatrist, psychologist or of a physician who specialized in treating sexual problems or venereal disease.

"In these situations, at least, we find that the extent to which the governmental interest in promoting fair and honest government would be impeded, does not outweigh the individual's privacy interest in protecting sensitive personal information from public disclosure. In emphasizing these examples, we reiterate that situations involving specialized practice of psychiatry or venereal disease present the exception rather than the general rule and that, ordinarily, identification as a patient of a general practitioner who also engages in some of these functions does not infringe a significant privacy interest."

The last sentence of the Court's opinion should also be noted:

In addition, the [Alaska Public Offices] Commission may well wish to promulgate regulations which apply to relationships other than that of physician-patient.

The committee should finally note that the need for the bill is somewhat undercut by the regulations of the commission responsive to the Falcon case. See 2 AAC 50.100, copy enclosed. It provides exemptions in a different framework than that of the bill:

The names of the following persons should not be disclosed:

- (1) a patient of a physician whose primary practice is generally known to be in contraception or abortion;
- (2) a patient of a psychiatrist;
- (3) a patient of a psychologist;

Senator Vic Fischer
Page 4
March 18, 1982

(4) a patient of a physician whose primary practice is generally known to be in treating sexual problems or venereal disease;

(5) a married client who seeks medical or legal assistance without the spouse's knowledge, if disclosure would likely cause substantial embarrassment or opprobrium;

(6) a minor who seeks medical treatment without parental knowledge, if disclosure would likely cause substantial embarrassment or opprobrium. [2 AAC 50.100(a)]

The different approaches of the regulations and the bill are therefore clear. The regulations seek to protect the patient from disclosure, only in some cases exempting all of the practice of the physician; the bill does not distinguish between the practice of the psychiatrist or physician who performs abortions frequently from the practice of a foot doctor.

The legislature possesses very broad powers of classification. In my view, the classifications presented in the bill are for the reasons suggested arguably both overbroad and underinclusive. Considering the commission's regulations, the existing requirements for disclosure by physicians are undoubtedly constitutional. SB 183 does not, therefore, respond to the mandate of the Supreme Court in the Falcon case. That is not to say that physicians covered by the commission's regulations (who are still required to disclose) are happy with the result.

I do suggest that the classification used may present some theoretical equal protection problems. They may remain theoretical to the extent that those not excluded by the bill may be excluded by the commission's regulation.

If I may assist further, please advise.

RAB:ljb

Enclosures

information and also requires reporting of all required information actually known. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.030(a)

2 AAC 50.040. LOANS AND INDEBTEDNESS. AS 39.50.030(b)(6) includes all loans or indebtedness of \$500 or more made or still outstanding during the preceding calendar year. (Eff. 5/16/76, Reg. 58; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.030(b)(6)

2 AAC 50.050. RETAIL CHARGE ACCOUNTS. For purposes of reporting liabilities under AS 39.50.030(a) and 39.50.030(b)(6), the reporting official is not required to report retail charge accounts, revolving charge accounts or credit card obligations. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.030(a)
AS 39.50.030(b)(6)

2 AAC 50.060. WRITE-IN CANDIDATES. A public statement by an individual not appearing on the ballot that he will seek elective office constitutes a declaration of candidacy under AS 39.50.020. (Eff. 5/16/76, Reg. 58; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.020

2 AAC 50.070. INCOME. In this chapter and in AS 39.50, "income" includes gross income under Section 61 of the Internal Revenue Code (26 USC § 61) in effect on May 16, 1976. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.030(b)(1)

2 AAC 50.080. CONTROLLING INTEREST IN A CORPORATION. In AS 39.50.200(8), "controlling interest" in a corporation means ownership of more than 50 percent of the outstanding shares of a corporation at any time during the year for which a report is being filed. In this section, the rules of constructive ownership in Section 318 of the Internal Revenue Code (26 USC § 318) in effect on May 16, 1976, will be used to determine

ownership of a corporation's shares. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.200

2 AAC 50.090. MUNICIPALITIES AS INSTRUMENTALITIES OF THE STATE. In AS 39.50.200(5), "instrumentality of the state" includes municipalities. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.200(5)

2 AAC 50.100. CLAIMING CONSTITUTIONAL OR STATUTORY EXEMPTION FROM THE REPORTING REQUIREMENTS OF AS 39.50.030(b)(1). (a) Disclosure of another person's name in a report is not required and should not be made where that disclosure alone would likely result in disclosing sensitive information which the person would want to keep private and which, if made public, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person. The names of the following persons should not be disclosed:

(1) a patient of a physician whose primary practice is generally known to be in contraception or abortion;

(2) a patient of a psychiatrist;

(3) a patient of a psychologist;

(4) a patient of a physician whose primary practice is generally known to be in treating sexual problems or venereal disease;

(5) a married client who seeks legal or medical assistance without the spouse's knowledge, if disclosure would likely cause substantial embarrassment or opprobrium;

(6) a minor who seeks medical treatment without parental knowledge, if disclosure would likely cause substantial embarrassment or opprobrium.

(b) A physician, pursuant to (g) of this section, may request an exemption on behalf of any other patient similarly situated where the disclosure of that patient's name would likely result in disclosing information which he would want to keep private and which, if made public,

would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person, to be determined on a case-by-case basis as set forth in (g) of this section.

(c) A patient not exempted in (a) of this section may request, pursuant to (g) of this section, that his physician apply for an exemption on his behalf when disclosure of his name would likely result in disclosing information which he would want to keep private and which, if made public, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person, to be determined on a case-by-case basis as set forth in (g) of this section.

(d) It is recommended that an individual who is self-employed as described in AS 39.50.200(8), and who acts in such a way as to become subject to the requirements of AS 39.50, and whose business or profession is such that disclosure of the names of his clients or customers may significantly infringe on their constitutional guarantees to right of privacy, apprise those clients or customers not exempted by (a) of this section of his reporting requirements under law and the options available to the parties involved, as set forth in (b), (c), and (g) of this section.

(e) An individual who must submit a report pursuant to AS 39.50, and who is required to list the names of his clients or customers, but who claims an exemption for some or all of his clients or customers under (a) of this section, must request APOC Form 39-0, entitled "Claimed Exemption Report," from the commission. The form, which must be filed with and attached to the individual's conflict-of-interest statement, and signed under oath and on penalty of perjury, requires that the following information be disclosed:

(1) if the individual is claiming total exemption from the requirement, as in (a)(1), (2), (3), or (4) of this section, then he must

(A) state that the primary focus of his practice is the treatment of patients seeking psychiatric or psychological therapy, or seeking treatment related to sexual problems, venereal disease, contraception, or abortion, and that he is generally known in the area in

which he practices as specializing in that practice;

(B) state that all income resulting from patients that was not derived as described in (1)(A) of this subsection was received in the practice of his profession and that all nonprofession related income is reported separately in Part 3 of the report, and followed by the letters "NE" (not exempt) to so identify;

(2) if the individual is claiming an exemption for some, but not all, of his clients or customers, as in (a)(5) or (6) of this section, then he must state the number of exemptions he is claiming in each of the applicable exempted categories listed on the form.

(f) An individual who must submit a report pursuant to AS 39.50, and who is required to list the names of his clients or customers, but who has been granted an exemption pursuant to (b), (c), or (g) of this section, will be furnished a completed copy of APOC Form 39-0, entitled "Claimed Exemption Report," from the commission within 10 days of the favorable decision granting the exemption. The original of the form will be placed in the individual's file.

(g) Any person not exempted by (a) of this section may claim an exemption either under the Alaska Constitution, art. 1, sec. 22 (right of privacy) or under AS 39.50.035 (legally privileged professional relationship may preclude complete compliance) by proceeding as follows:

(1) As soon as practicable, but in any event no later than the time for filing the initial disclosure report, or, in the case of the annual filing, by April 15 of each following year, advise the commission of the claimed exemption and the reason for it, and request a staff ruling on the matter; if, in doing so, the person claiming the exemption finds that it may be necessary to reveal to the staff information which he believes is confidential, he shall so indicate, and that information must be kept confidential until an unappealed staff or commission ruling is made or the release is authorized by a court of competent jurisdiction.

(2) The staff will rule on a request within 30 days after its receipt. If the ruling of the staff is

favorable to the person claiming the exemption, he need not disclose, and that ruling is final and closed with respect to the report for that year. If a request for an exemption is made in a future year on the same grounds, it is granted unless a relevant change of facts or law (or the general understanding of either or both) has intervened.

(3) If the ruling of the commission's staff is adverse to the person making the request, he may appeal to the commission by filing a written notice of appeal and stating his reasons for it with the commission's staff no later than 30 days after receiving notice of the staff's ruling. Unless the staff's ruling is appealed within the time required, it is final. The commission will not hear an appeal if the notice and statement of reasons for it are not filed within the time required.

(4) An appeal timely made to the commission will be heard at the next regular meeting of the commission held more than 30 days after the filing, unless the appellant and the commission agree upon another time for the hearing.

(5) The hearing will be recorded. At the hearing, appellant may be represented by counsel and may request that the hearing be held in private in order to protect a person's character or otherwise avoid disclosing the information claimed as protected. Appellant presents his case first. The commission staff then presents its case. Strict rules of evidence do not apply, but the commission gives slight weight to the kind of information that would not be relied upon by prudent persons in the conduct of important affairs. Witnesses are sworn and testify upon oath. Legal arguments may be supported by a written memorandum. Either the appellant or the commission staff may, upon request to the commission — and shall upon the request of the commission — made no later than at the close of the hearing, file a post-hearing memorandum in support of its position within 15 days of the close of the hearing.

(6) Within 30 days after the close of the hearing the commission will make its decision and immediately thereafter notify the appellant of the result.

(7) If the decision of the commission is

favorable to the appellant, he need not disclose, and that decision is final and closed with respect to the report for that year. If a request for an exemption based on the same grounds is made in a future year, it will be granted unless a relevant change of facts or law (or general understanding or either or both) has intervened.

(8) If the decision is adverse, the appellant has 30 days in which to appeal on the record to the superior court under Rule 45 of the Appellate Rules of the Alaska Court System. If a timely appeal is not made and the appellant continues not to disclose, the matter will be referred to the attorney general for appropriate action.

(9) Tapes of the hearing must be made available upon request to the appellant or his attorney or agent for listening within the offices of the commission. Transcripts of the hearing must be prepared by the commission staff upon request, with costs to be borne by the appellant.

(h) In considering the request for a ruling on the claimed exemption, the commission staff may seek an opinion from the attorney general as to whether it may reasonably be said that the state courts have determined that the constitutional right of privacy or legally privileged professional relationships preclude complete compliance with respect to the exemption claimed. If the attorney general finds that state courts have so determined, the staff ruling must be in favor of the person claiming the exemption, unless the facts he adduces fail to show that he falls within the scope of the exemption. If, in the attorney general's opinion, the courts have not determined that there is a bar to complete compliance with respect to the exemption claimed, the staff shall rule adversely.

(i) Until the matter has been finally decided administratively or judicially against him, a person claiming an exemption from disclosure requirements is not considered to be in wilful violation of the law for failure to disclose or file a report with respect to the subject of his claimed exemption, unless he thereafter continues to refuse or fails to disclose or it is judicially determined that his claim of exemption was not made in good faith but rather was made without any reasonable prospect for succeeding.

(j) Nothing in this section precludes the commission or its staff from determining on its own initiative that information disclosed to it is either protected by the constitutional right of privacy or legally privileged, even if neither is claimed. Upon that determination, the information must be placed in a secure, confidential place, and, if it is also determined that there cannot reasonably be a good reason for retaining the information, it must be destroyed. (Eff. 9/9/78, Reg. 67; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.035
AS 39.50.050(b)

2 AAC 50.105. FILING BY A STATE PUBLIC OFFICIAL OR A CANDIDATE FOR STATE ELECTIVE OFFICE. (2) All reports required to be filed under the provisions of AS 39.50 and this chapter must be received by the commission on or before the due date. "Received" means either

(1) hand-carried to the commission's central office or its branch office in the state capital; or

(2) postmarked. The date shown by the postmark is presumed to be the date it was deposited in the United States mail.

(b) A person hired or appointed as an ombudsman, or hired or appointed within the executive branch as a department head, deputy department head, or division head, or as an assistant to the governor, must file a conflict-of-interest statement

(1) within 30 days of the first day of work for which compensation is received by the official; and

(2) no later than April 15 in each following year.

(c) A person hired or appointed as a commission chairman, or member of a state commission or board specified in AS 39.50.200(9) must file a conflict-of-interest statement

(1) within 30 days of the date the board member signs his oath of office; and

(2) no later than April 15 in each following year.

(d) A judicial officer must file a conflict-of-interest statement

(1) within 30 days of the date the judicial officer is sworn into office; and

(2) no later than April 15 in each following year.

(e) A legislator, the governor, and the lieutenant governor must file a conflict-of-interest statement no later than April 15 of each year.

(f) An incumbent state public official who campaigns for state public office need not file a conflict-of-interest statement at the time of filing a declaration of candidacy, or within 30 days of filing a petition or within 30 days of becoming a candidate by any other means, so long as a statement covering the year preceding the year in which he declares for office with the lieutenant governor is currently on file with the commission. Incumbent state public officials filing for elective municipal office must file a separate statement with the clerk of the municipality in which they seek public office. (Eff. 9/9/78, Reg. 67; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.020
AS 39.50.050(b)
AS 39.50.200(1),(2), and (10)

2 AAC 50.110. CIVIL PENALTY ASSESSMENTS FOR LATE FILING OF A REPORT BY A STATE PUBLIC OFFICIAL. (a) The conflict-of-interest statement of a state public official is delinquent if not received by the commission on or before the due date.

(b) The statement continues to be delinquent and subject to a civil penalty until received by the commission, or until the state public official resigns or is removed from office for refusal or failure to file. Resignation or removal from office, however, does not relieve the official from the requirement that he file the conflict-of-interest statement.

(c) Commission staff will send notice to the state public official that he is delinquent, and

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

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B

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86



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 17, 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 make Alaska a party to the Interstate Corrections Compact.

Under current law, Alaska is a party to the Western Interstate Corrections Compact, along with eleven other states. This measure is similar to that compact; however, it allows the state a broader choice of correctional facilities nationwide in which prisoners may be incarcerated than is presently available. By joining the Interstate Corrections Compact, Alaska will be able to place offenders in an additional eleven states. It is not necessary to withdraw from the Western Interstate Corrections Compact in order to become a party to this compact.

Enactment would enable the Division of Corrections to enter into contracts with party states for incarceration of our prisoners. Thus a wider range of rehabilitative programs would be available without the increased costs attendant in establishing such programs within our own correctional facilities.

Jurisdiction over persons confined out-of-state is retained by Alaska although such persons would still be subject to the rules of the institution where confined. The state also retains the power to inspect the facilities utilized and to visit the inmates.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jay S. Hammond".

Jay S. Hammond
Governor

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____
 Title Interstate Corrections Compact
 Requested by Governor Date _____

II. FISCAL DETAIL

Agency Affected Department of Health and Social Sevices - Division of Adult Corrections
 Program Category Affected Offender Confinement, Reformation & Supervision
 BRU, Program, or Subprogram(s) Affected Adult Confinement
 (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 80 | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | | | -0- | -0- | -0- | -0- |

FUNDING (Thousands of Dollars)

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

POSITIONS

| | | | | | | |
|-----------|--|--|-----|-----|-----|-----|
| FULL TIME | | | -0- | -0- | -0- | -0- |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

It is estimated that enactment of this legislation would not result in any increase of expenditures. It will provide for an increased number of out-of-state facilities for placement of convicted offenders. Since the census of Alaskan State Correctional Centers are at maximum levels now, the Federal Bureau of Prison System must be relied upon to provide bed space. Entering into the compact would also open several other state resources, when appropriate, to Alaska.

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

Prepared by: Roger C. Lange Date: December 30, 1980
 Division/Office: Adult Corrections PH: 465-3376
 Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 186

"An Act adopting the Interstate Corrections Compact; and providing for an effective date."

Basically, this law would enable the State of Alaska to engage in contracts with the 16 other party states for the placement and/or exchange of prisoners for the purpose of treatment, long-range release planning and, in some cases, for protection purposes.

Alaska is presently signatory to the Western Corrections Compact (AS 33.25.010) along with 11 other states. The two compacts are very similar; in fact, the Interstate Corrections Compact was developed in order to encompass eastern states that were interested in expanding their placement resources. By adding the Interstate Corrections Compact, Alaska would increase placement resources by 100% or 11 additional states.

Although it is true that we are expanding our correctional facilities in order to return prisoners to the state, we must realize that for two to three years more, we will have no choice but to house many of our prisoners out of state. Recent developments indicate that the Federal Bureau of Prisons is having problems in accommodating so many state prisoners and may not be able to help us indefinitely to the extent they have in the past. We think it essential for us to develop other options.

Membership in the Interstate Corrections Compact would enable us to return some prisoners to home states, rather than placing them in the Federal Bureau of Prisons and, in some cases, accept Alaska residents who have been convicted and sentenced in other states. Alaska would not be under obligation to accept prisoners from other party states as mandatory reciprocity is not required in the Compact, nor would other party states be obligated to accept Alaska inmates. In each case of interstate placement, a contract must be negotiated between the party states.

Even though we are expanding our correctional facilities, there will always be a few prisoners with special needs who would benefit from being placed in specialized facilities outside of Alaska. By being party to the Interstate Corrections Compact, we would be in a better position to place those few offenders in appropriate settings. It should be noted some prisoners request to be returned to their home states and the Compact would provide an expedient means for us to do so.

POSITION PAPER/Department of Health & Social Services

Recommended by:

C. F. Campbell

Charles F. Campbell, Director
Division of Adult Corrections

Date:

2/27/81

Approved by:

Alexander J. Berman

Commissioner
Department of Health and
Social Services

Date:

2-28-81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 186
 Title Interstate Corrections Compact
 Requested by Rules Committee Date 02/17/81

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services - Division of Adult Corrections
 Program Category Affected Offender Confinement, Reformation & Supervision
 BRU, Program, or Subprogram(s) Affected Adult Confinement
 (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- | |

FUNDING (Thousands of Dollars)

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

POSITIONS

| | | | | | | |
|-----------|--|-----|-----|-----|-----|--|
| FULL TIME | | -0- | -0- | -0- | -0- | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

It is estimated that enactment of this legislation would not result in any increase of expenditures. It will provide for an increased number of out-of-state facilities for placement of convicted offenders. Since the census of Alaska state correctional centers are at maximum levels now, the Federal Bureau of Prisons system must be relied upon to provide bed space. Entering into the compact would also open several other state resources, when appropriate, to Alaska.

IV. DATE 02/25/81 PREPARED BY William W. [Signature]
Roger C. Lange
 AGENCY Division of Adult Corrections
 PHONE 465-3376

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) M&B Approval [Signature] Date 2/25/81

S B

193



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

M E M O R A N D U M

March 31, 1981

TO: Members of the Senate State Affairs Committee

FROM: Teresa B. Cramer *TBC*
Administrative Assistant

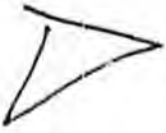
SUBJECT: SB 193 - Amending the State Personnel Act

Senate Bill 193 makes a comprehensive revision of the State Personnel Act, to change personnel practices, to expand the protections granted employees in the exempt and partially exempt services, and to make the Act consistent with the Public Employment Relations Act. The major changes made in the bill are noted below:

Section 6. Amending AS 39.25.080. PUBLIC RECORDS.

This section amends the current law to provide that only those personnel records listed are available for public inspection. In fact, the materials listed are those which are presently made available under existing law for public inspection. The law now states that except for those materials made confidential by the Personnel Rules, state personnel records are public.

Section 8. Amending AS 39.25.110. EXEMPT SERVICE.

 The bill deletes the material in the existing paragraph (8) which states that "certificated teachers employed by the state to teach in schools operated by the state" are in the exempt service. After being advised by the Personnel Office of the Department of Education that there were no employees of schools operated by the state, the commission deleted the paragraph. In fact, there are employees considered to fall within this group. They are employed as correspondence study teachers in Juneau and in the Alaska Skills Center in Seward. The commission has not had an opportunity to consider whether it wishes to change its initial action of deleting paragraph (8).

Section 9. Amending AS 39.25.120. PARTIALLY EXEMPT SERVICE.

Paragraph (19) of this section of the bill adds a group of employees to the partially exempt service who are presently members of the ~~classified service but do not participate in collective bargaining.~~ These are the employees of the Division of Labor Relations within the Department of Administration who are responsible for representing the state in collective bargaining. The majority of the commission recommends that these employees be placed in the partially exempt service in order to insure that they are directly responsive to the policies of the administration. 9

Section 12. Amending AS 39.25.140. AMENDMENT OF PERSONNEL RULES.

The bill proposes that those Personnel Rules which fall within areas of concern to the public be required to be adopted in accordance with the Administrative Procedures Act to insure an opportunity for public comment. All of the Personnel Rules are presently exempt from the requirements of the APA. 17

Section 13. Amending AS 39.25.150. SCOPE OF THE RULES.

Paragraph (16) of the bill no longer sets a limit of 30 days for disciplinary suspension. ✓

Paragraph (17) of the bill provides that the Personnel Rules shall include procedures for resolving disputes from the general public. ✓

Paragraph (23) of the bill is added to permit the adoption of Rules relating to special employment programs for the disadvantaged. ✓

Section 14. Amending AS 39.25.153. PERSONNEL OFFICERS.

Subsection (a) provides that all personnel officers shall be employees of the department in which they serve.

Subsection (b) amends the powers granted to the personnel officers listed in the statute.

Section 15. Amending AS 39.25.160. GENERALLY.

Subsection (c) extends protection from being required to make contributions to a political party to all employees. The existing

subsection applies only to those employed in the classified service.

Subsection (e) adds a requirement that members of the partially exempt service resign from state employment when seeking political office.

Subsection (f) extends protection from unlawful discrimination to all state employees, not merely to members of the classified service.

Section 17. Amending AS 39.25.170. HEARINGS AND APPEALS UPON DISMISSAL, DEMOTION, OR SUSPENSION.

Subsections (c) and (i) repeat the expanded coverage from unlawful discrimination which was granted in AS 39.25.160(f).

TBC:lmk



Ombudsman

Frank Flavin

June 2, 1981

Neil Thomas
Executive Director
Human Rights Commission
431 W. 7th Ave.
Suite 150
Anchorage, Alaska 99501

Dear Mr. Thomas:

On April 3, 1981, this complaint was filed in our Fairbanks office. The complainant alleged that he was denied proper consideration for employment with the Human Rights Commission under AS 39.25.150 which states:

The Personnel Rules shall provide for:

- (25) The granting of employment preference to severely handicapped persons; this includes the right to provisional appointment without competitive examination... (emphasis added.)

Personnel Rule 5 03.19 states:

If no agency layoff lists exist, or if such eligibles decline appointment or are not available, a person certified as severely handicapped by the director of Vocational Rehabilitation may also be certified to a vacant position by the Director of Vocational Rehabilitation. Such eligibles may be appointed on provisional status for a period not to exceed four months within a twelve-month period.

Finding:

We have found this complaint to be unsupported. The complainant has not been certified as severely handicapped by the Division of Vocational Rehabilitation. In addition, Personnel Rule 5 03.19 does not establish mandatory procedures for hiring handicapped persons and AS 39.25.120 exempts the Human Rights Commission position at issue from AS 39.25.150 (3) and (10). Although paragraph (25) is not specifically exempted, it is rendered so by the exemption of the earlier paragraphs.

Additional Consideration:

NANCY (when returns)

State of Alaska

Reply to:

- 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011
- Pouch W0
Juneau, Alaska 99811
(907) 465-4970
- P. O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

Re: Ombudsman Complaint F81-0406


Neil Thomas
June 2, 1981
Page 2

The complaint raises a serious issue regarding AS 39.25.150(25). The language used in this statute requires steps to be taken in the Personnel Rules that are not reflected in the language of Personnel Rule 5 03.19.

Robert Walton of our Fairbanks office talked with the Director of the Division of Vocational Rehabilitation, the Executive Director of the Human Rights Commission, the Chief of Recruitment and Examining in the Division of Personnel, Department of Administration and a staff member of the Division of Programs for Handicapped Individuals in the Federal Equal Employment Opportunity Commission. He learned that the common practice in Alaska and nationwide is consistent with the Personnel Rule, not the statute. Because of this inconsistency, and the possibility that AS 39.25.150(25) does not accurately reflect the prevailing Vocational Rehabilitation philosophy, we are sending copies of this letter to the appropriate committees and agencies for their information.

Thank you for your patience and cooperation during the course of this investigation.

Sincerely yours,


Frank Flavin
Ombudsman

FF/RW:jhb

cc: Senator Patrick Rodey, Chair
Senate Judiciary Committee

Senator Vic Fischer, Chair
Senate State Affairs Committee

Representative Mike Miller, Chair
House State Affairs Committee

Senator Bill Ray, Chair
Blue Ribbon Commission

Michael C. Morgan, Director
Division of Vocational Rehabilitation

Bruce Cummings, Director
Division of Personnel

AMERICAN ASSOCIATION
ALASKA



OF UNIVERSITY WOMEN
DIVISION

April 1981

To: Members of the Senate State Affairs
From: Susan R. Clark, Legislative Chair, Alaska Division of the
American Association of University Women
1109 C Street, Juneau, Alaska 99801 (586-6952)

Re: Veterans' Preference for State Employment (SB 193, SB 104)

I would like to begin first with an acknowledgement to Sen. Bradley, because I know that his hard work in this area has been done in good faith and out of a sincere concern for the welfare of those men and women who made personal sacrifices for the sake of our country's safety.

I also want to point out that I personally grew up in the military. My father, godfather, and father-in-law were all career officers in the armed services, and my husband and brother were both active in the military during the Vietnam war. I had planned at one time to make the Navy a career. I also want to point out that the new Alaska division president of A.A.U.W. is herself a veteran.

A.A.U.W. feels that we must bring to the attention of the legislature that while the goals of preference are legitimate, and while the current state statute may not have been enacted for the purpose of discriminating against women, the exclusionary impact upon women is so severe as to require the state to further its goals through a more limited form of preference.

Looking at the current law as too broad, please consider who is covered: a person with a minimum of 90 (181 is a change currently being proposed) days active service serving during World War I, World War II, and Vietnam or Korea who has been honorably discharged. According to the Veterans' Preference Act of 1944, such preference was designed to reward veterans for the sacrifice of military service, to ease the transition from military to civilian life, to encourage patriotic service, and to attract loyal and well disciplined people to civil service occupations. In terms of the last reason, it should be pointed out that preference itself has little if any relevance to actual job performance. The first two reasons for preference seem the most pertinent to Alaska - reward for sacrifice and ease of transition into civilian life. Both reasons are valid, but as lifetime preferences, they are subject to the objection that they give the veteran more than a square deal. Certainly, upon returning to civilian status, a veteran should have access to his or her job, and perhaps for 5 years or so after returning, preference could be given as reward and help for veterans, but there should be some sort of limit on the length of time one can reap rewards for what can be a brief and un Hazardous term of service.

Because the extent to which the status of veteran is one that few women have been permitted to achieve, every hiring preference for veterans, however modest or extreme, must admit inherent gender-bias, and therefore legislated preference must be considered with due caution and careful consideration. The 5 points for veterans and 10 points for disabled veterans comes directly from the 1944 Federal Veterans' Preference Act. These points are added to a veteran's score after other written tests are administered. In Alaska where mere hundredths of a single point can separate job applicants, the system is overly weighted, especially when compared with other handicapped, disadvantaged or suspect classes of people.

Conceding that the goal here is to benefit the veteran, there is no reason to absolve the legislature from awareness that the means chosen to achieve this goal reserves a major sector of public employment to an already established class, which, as a matter of historical fact, is already 80% male in categories other than the clerical and para-professional jobs. The current point system and lifetime preference, only compounds and contributes to sex bias in all levels of state employment.

Women have been overtly excluded from the military, and not just by tradition and culture. During WW I for example "a variety of proposals were made to enlist women for work in the Army as doctors, telephone operators, and clerks, but all were rejected by the War Dept." Navy women did achieve military rank and status during this time, and were the first women to do so. While the Army Nurse Corps was the first official military unit for women, they were not granted full military rank until 1944 - forty-three years later. During the Second World War several temporary women's units were formed including WAAC (Women's Army Auxiliary Corps), WAVES (Women Accepted for Voluntary Emergency Service), and WASP (Women Airforce Pilots). These women, however, were in fact civilians and had no regular military status, and thus no veteran status. In fact, although the WASP personnel were filling some of the most hazardous of flying jobs, that of towing targets for air gunnery practice, and testing planes fresh out of repair depots, they were denied commissions based on the fact that "the authority of the act of September 1941, to make temporary appointments as officers in the U.S. Army 'from among qualified persons' refers to and contemplates men exclusively, and may not be regarded as authority for commissioning women as officers...." These women finally won their hard earned veterans' status in September 1976, but other women who had been active in the war have not.

Women's services were finally established on a permanent basis in 1948, however quotas were placed on the numbers that could enlist. Women were not to exceed 2% of the total enlisted strength, their eligibility requirements were more stringent than were those for men, and career opportunities were also limited. In addition women were involuntarily removed from service for pregnancy, parenthood, and even marriage. These strictures have carried on into the '60's and '70's. Not until 1967 was the 2% quota lifted, and the many restrictive policies concerning women's participation in the military were not modified or eliminated until the 1970's. Amazingly, or perhaps not so, once the barriers were down women joined in large numbers.

In just three years from 1973-1975 the percentage of enlisted women in the military had doubled.

There are two ways to ameliorate the effects of the veterans' preference on women and minorities. One is to modify the point system and to place a time limit on preferential access to jobs. The other solution is to look to expanding what is considered by the word veteran, and thereby include in this law others who have served their country every bit as well and as patriotically as have those on "military active duty". Other states include language that recognizes nurses and other women who were discharged and so served in any "corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States..." Language should also recognize those who underwent severe hardship because of the war. In WW II both the Aleut Americans and the Japanese Americans were uprooted and forced into relocation camps. We have never rewarded their sacrifices with jobs or appeasements of any sort. In expanding the concept of who is a veteran, we need also to look at the men and women who served in civil defense jobs, with the American Red Cross, the Civil air patrol, as war correspondants, and in the merchant marine (who incidentally were in the same waters as navy destroyers and also under attack, but receive no reward in terms of their patriotism, personal sacrifice and danger).

Looking again at the contributions of women to the war effort, we are but slightly aware of the sacrifices and contributions of over 2 million World War II women who took the places of the absent men working in the American war industries: in shipyards, aircraft plants, ammunition plants. The call to "inlist" in the factories was every bit as organized and strong as for men in the armed forces. Concern about dangerous working conditions and long hours took a back seat to America's call to keep up the production to supply the war with weapons, and ammunition. For the short-handed women in the farm communities, the call was to get out the crops to feed the troops. If personal sacrifice, patriotism and danger is a standard for preference, then these women deserve veterans' status every bit as much as the service veterans. One amazing statistic of which you may be unaware is that during the war period "more deaths occurred from industrial accidents than from combat." Where was and is their reward? For their commitment and patriotism, they received not preferred lifetime access to civil service jobs, but firings. No one helped them with their transition back into "civilian" jobs. For many minority women who were even then the major financial support for their families, this transition meant leaving highly skilled, well paying jobs to go back to the dead end drudgery and poverty wages of domestic work.

It is interesting to note that the Federal Veterans' Preference Act of 1944 included in its preference the wives of disabled service personnel and the unmarried widows of deceased ex-service personnel. We tend to look at patriotic service and personal sacrifice as being a military male prerogative, but I feel we need to look hard at the patriotism and sacrifice of the service personnel spouses who held the country and family together as essentially single parents, frequently having to hold down another job to

support their families because the salary range for enlisted personnel in the military is so low that those families qualify for government assistance. Vietnam vets, in addition, currently have the highest divorce rate of any class of Americans. a rate that is generally high among all military personnel. This means, for example, that those women who held families together during the father's service, and who now must have full time employment to support themselves and their children (of whom women still usually have custody), who traditionally are not educated for well-paying jobs, and who have traditionally been denied many levels of employment advancement, now in addition find that the men to whom they gave support are receiving preferential treatment in the jobs the women need to support their families.

As you can see, equitable expansion of the term veteran would be a formidable legislative task, but should be attempted so that families of veterans and those who served alongside veterans can be recognized. As it now stands, the Alaska statute exacts a substantial price from a group of individuals who have long been subject to employment discrimination, and who, because of circumstances totally beyond their control, have had little if any chance of becoming members of the preferred class. Admitting that any hiring preference for veterans does at this time have a severe impact on the public employment opportunities of women, we nevertheless recognize the sacrifice and hardship of military veterans must not be ignored. Through workable modifications in the law, we can strive together to discover solutions that recognize the needs, sacrifices, and contributions of both the military veteran groups and the groups of minorities and women which are so impacted by historical discrimination.

April 6, 1981

- Senator Jalmar Kertulla
Pouch V
Juneau, Ak 99811

Dear Senator:

We recently found that Senate Bill 193 includes a section 8 that repeals and re-enacts A.S. 39.25.110, but deleted "teachers employed by the state to teach in schools operated by the state." This may have been due to an oversight that the teachers of the Alaska Skill Center and the Correspondence Study Teachers are still included in this category. Several individuals (Terry Cameran, Bruce Cummings, Bob Manners and Jerry Hiley) have testified that the exemption from the classified service remain in effect, and we agree. Would you please keep an eye on this and inform us of any action or further hearings on this bill?

Thank you.

Sincerely yours,

Al Lamberson, Sec-Treas.

for

Ben Ikerd, President
Alaska Skill Center Teachers Association

c.c. Booher
Hiley
Bill Ray, Chairman
Blue Ribbon Commission on the State
Personnel Act
Ikerd
Sen. Vic Fisher, Chairman
Senate State Affairs Committee



Ombudsman

Frank Flavin

State of Alaska

Reply to:

- 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011
- Pouch W0
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

MEMO

DATE: May 14, 1981
TO: Senate State Affairs Committee
FROM: Frank Flavin, Ombudsman
RE: Proposed CS for Senate Bill 193

Proposed Amendment:

In section 39.25.140 at page 8, line 3 of the proposed CS insert subsection (d) of Sec. 39.25.140 of the original SB 193 found at page 8 lines 6 through 8. This subsection to become subsection (c) in the proposed CS to read:

(c) If the proposed amendments concern matters of public policy, the personnel board shall adopt them in accordance with the Administrative Procedure Act (AS 44.62).

The present subsection (c) at page 8 line 3 of proposed CS should become subsection (d) and read:

(d) If the proposed amendments relate only to internal management of the state agencies [when the proposed amendments are submitted to the personnel board,] the commissioner of administration shall post notice in public buildings throughout the state that the personnel board has the proposed amendments under consideration. The notice required by this subsection shall be posted at least 30 days before any decision is made to amend the personnel rules and shall include an address for the receipt of written comments.

Subsections (d), (e), (f) and (g) should be respectively relettered as subsections (e), (f), (g) and (h).

BASIS

As drafted, Sec. 34.25.140 of the proposed CS presumes that amendment of personnel rules is a matter of concern only to state employees and management. In fact, many procedures, such as recruitment, examination, selection methods and eligible lists directly impact members of the general public. It is safe to say there are as many people who would like to be state employees as those who are. We receive many complaints concerning state hiring practices. The Administrative Procedures Act is the established vehicle for insuring participation by members of the general public.



LABOR RELATIONS AGENCY

P O BOX 6701 • ANCHORAGE ALASKA 99502
TELEPHONE 1907 243.6955

JAN 1 1980

C. W. STEVEN HAFLING
CHAIRMAN
RONALD H. HENRY
MORGAN REED

JAMES R. LUCAS
CONSULTANT

DIV. OF PERSONNEL

ORDER AND DECISION NO. 56 LABOR RELATIONS
PERTAINING TO CORRESPONDENCE
TEACHERS

On November 23, 1979, the Correspondence Teachers organized as an association known as the Centralized Correspondence Study Education Association submitted a petition seeking recognition as a bargaining unit. The Agency finds that it has jurisdiction to determine the appropriate bargaining unit determination under the provisions of A.S.23.40.090. Further the Agency concludes that pursuant to Alaska Regulations 2AAC 10.060 where it does not appear that there has been a prima facie showing of the appropriateness of a bargaining unit the petition may be dismissed. A.S.23.40.090 provides:

"The Labor Relations Agency shall decide in each case in order to insure to employees the fullest freedom in exercising the rights guaranteed by §70 - 260 of this Chapter, the unit appropriate for the purposes of collective bargaining based upon such factors as community of interests, wages, hours and other working conditions of the employees involved, the history of collective bargaining and the desires of the employees. The bargaining unit shall be as large as is reasonable and unnecessary fragmenting shall be avoided."

In the present situation, it appears that the correspondence teachers have heretofore not been members of any organized bargaining unit. They are a small group consisting of

thirteen (13) individuals employed by the Department of Education in Juneau, Alaska. These individuals are certified teachers but they are not employees of any school board nor are they under direct supervision of any local school board. Instead they appear to be under the supervision of administrative employees of the Department of Education. These individuals participate in the teacher's retirement system, but in all other respects would appear to have the same working conditions and interest of the other employees of the Department of Education. The Agency finds as a matter of fact, that allowing the correspondence teachers to establish a separate bargaining unit would lead to unnecessary fragmentation in contravention of the policy established in A.S.23.40.090. The Agency further finds that there is substantial community interest between these employees and the employees presently in the General Government Employees Bargaining Unit represented by the Alaska Public Employees Association. The Agency concludes as a matter of law that the employees should be accreted to the General Government Employees Bargaining Unit presently represented by the Alaska Public Employees Association.

ORDER AND DECISION NO. 56

It is the Order of the Alaska Labor Relations Agency:

1. The petition for representation submitted by the Centralized Correspondence Study Education Association is denied because the proposed bargaining unit is not appropriate.

*Whit
Dennis*

2. The employees in question are ordered to be included in the General Government Employees Bargaining Unit presently represented by the Alaska Public Employees Association.

DATED this 21 day of December, 1979.

SIGNED: C. R. "Steve" Hafling
C. R. "Steve" Hafling, Chairman

SIGNED: Ronald M. Henry
Ronald M. Henry, Member

SIGNED: Morgan Reed
Morgan Reed, Member



State of Alaska

Handwritten initials

LABOR RELATIONS AGENCY

P. O. BOX 6701 • ANCHORAGE ALASKA 99502
TELEPHONE (907) 243-0955

STATE OF ALASKA
LABOR RELATIONS AGENCY
ANCHORAGE

DIRECTOR'S OFFICE

ORDER AND DECISION NO. 56A FEB 13 1990

DIV. OF PERLO NEL

The Agency has received a request for reconsideration of Order and Decision No. 56. The Agency has reviewed the records, and is of the opinion that the parties may not have been allowed sufficient time to state their positions with regard to the petition. It is therefore the Order of the Agency that:

1. The effect of Order and Decision No. 56 be stayed pending the Agency's action upon the request for reconsideration.
2. The Agency will hear and consider evidence with regard to the matter to the petition from all of the interested parties at its next scheduled hearing. The parties will be notified of the specific hearing date.

DATED this 13 day of February, 1990.

C. R. "Steve" Harling
C. R. "Steve" Harling, Chairman

Ronald M. Henry
Ronald M. Henry, Member

Morgan Reed, Member

CARPENETI & COUNCIL

ATTORNEYS AT LAW
319 SEWARD STREET, SUITE 203
JUNEAU, ALASKA 99801

WILLIAM T. COUNCIL
WALTER L. CARPENETI

JULIENNE E. DRYANT

(907) 586-1786

November 18, 1980

RECEIVED

NOV 18 1980

N.E.A. ALASKA

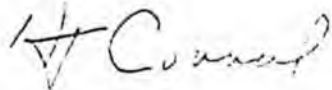
Mr. C. R. Hafling, Chairman
State Labor Relations Agency
P. O. Box 6701
Anchorage, AK 99502

Re: Correspondence Study Teachers

Dear Mr. Hafling:

Enclosed please find an original and three copies of the Correspondence Teachers' Reply Memorandum in Support of Petition for Certification and Determination of Unit Appropriate for Purposes of Collective Bargaining. Copies have been provided to the other appropriate parties.

Sincerely,



William T. Council

WTC/bl

Encl.

cc: William P. Pauzauskie
Patrick E. Murphy
Bruce Ludwig
Robert C. Manners ✓

STATE OF ALASKA
LABOR RELATIONS AGENCY

RECEIVED

NOV 18 1980

N.E.A. ALASKA

In the matter of)
)
The Petition of Centralized)
Correspondence Study Education)
Association for Certification)
and Determination of Appropriate)
Bargaining Unit.)
)
) No. UA 79-2

REPLY MEMORANDUM IN SUPPORT OF PETITION
FOR CERTIFICATION AND DETERMINATION OF UNIT
APPROPRIATE FOR PURPOSES OF COLLECTIVE BARGAINING

1. Appropriate Bargaining Unit Alternatives

Before the hearing in this proceeding held on October 3, 1980, and before the submission of briefs by DLR and APEA, four alternatives had been presented to the Agency in connection with granting the teachers free exercise of their collective bargaining rights, as follows:

No representation

Accretion to Alaska Skill Center
Teachers Association

Inclusion in the General Government
Employees Bargaining Unit, represented
by the Alaska Public Employees Association

Recognition as a separate bargaining
unit represented by the Centralized
Correspondence Study Education Association

At this stage of the proceeding, the issues have been greatly simplified. It is manifest that the parties to this proceeding recognize that only the last two of those

alternatives are legally and factually supportable. No party has argued for the alternative of no representation, since such a result would clearly violate the rights secured by PERA. The Agency recognized the general unacceptability of such a result in Order and Decision No. 36, dated June 19, 1978:

To hold that the unit is too small or too fragmented but at the same time cannot logically be included with any other unit would be to frustrate the intent of the Public Employment Relations Act, which is to guarantee to all state employees . . . the right to join together for the purpose of collective bargaining. (p. 6)

Counsel for the APEA argued strenuously against such a result during the hearing held on October 3, 1980. The DLR disavowed any notion that it favored such a result in its brief:

Past correspondence from this division may have indicated a strong desire for the Correspondence Study teachers to be specifically excluded from the provisions of AS 23.40 or, alternatively, to be accreted to the Alaska Skill Center teachers' bargaining unit. That has not been our intent. (DLR Brief, p. 1)

Similarly, all parties have strenuously opposed accretion to the ASCTA. Mr. Ben Ikerd, president of the ASCTA, testified against such a result during the October 3 hearing. Counsel for the APEA both in his argument during the hearing and in his brief stated very clearly why such a result would not be legally or factually supportable.

Finally, as set out in the above quote from the DLR brief, the state has disavowed any intention of favoring such a result.

The two alternatives remaining are either inclusion in GGU or recognition as a separate bargaining unit. While DLR in its brief strenuously argues against inclusion in GGU, it apparently does not oppose recognition as a separate bargaining unit. In its brief it is stated:

We are, and continue to be, interested only in maintaining the long-standing segregation, for purposes of collective bargaining, of classified employees, exempt employees and partially exempt employees. (Id., p. 1)

Similarly, it is also stated in the DLR brief:

Once again, our sole interest in this case is to preserve the historical distinction between classified, partially exempt and exempt employees. (Id., p. 3)

Since DLR proposes no alternatives other than recognition as a separate bargaining unit, apparently that is the only alternative which in its judgment is legally and factually supportable.

APEA, on the other hand, opposes recognition as a separate bargaining unit and argues strenuously for inclusion in GGU, for which it is the representative for collective bargaining purposes. The basis for its opposition is that a separate bargaining unit would result in unnecessary fragmentation and would be contrary to precedent established by the Agency.

The teachers have maintained throughout these proceedings that either inclusion in GGU or recognition as a separate bargaining unit would be factually and legally supportable, and has requested that the Agency order that an election be held to decide between those two alternatives.

In short, there are only two alternatives which are legally and factually supportable. Either of those two alternatives is acceptable to the teachers, while DLR opposes inclusion in GGU and APEA opposes establishment of a separate bargaining unit. This reply memorandum will accordingly address only DLR's objections to inclusion in GGU and APEA's objections to creation of a separate bargaining unit. No party has raised any serious question concerning the record in this proceeding. It would thus appear that, short of the Agency's requesting further factual presentation or briefing, this matter is ready for decision.

2. Inclusion in GGU is Factually and Legally Supportable

The propriety of inclusion in GGU has been exhaustively discussed in the teachers' opening brief and in the APEA brief. DLR's opposition to this alternative is based solely on their objection to mixing exempt and classified employees in one bargaining unit. The basis for their objection is, in their words, "relatively simple:"

Classified employees are ruled by the State Personnel Act (AS 39.25) and rules promulgated thereunder, while employees in the exempt service are not. (DLR brief, p. 1)

DLR's objection is simply not well-founded. As succinctly discussed in the APEA brief, there is no reason why the

teachers could not be subject to the same terms and conditions of employment addressed in AS 39.25 and incorporated in the agreement between the State of Alaska and the Alaska Public Employees Association covering General Government Unit employees. As counsel for the teachers discussed during the October 3, 1980, hearing, any doubts about this should be laid to rest by the terms of the statute and a single supreme court decision.

AS 23.40.070(2) requires

public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment (emphasis added)

The phrase "terms and conditions of employment" is defined in AS 23.40.250(7) to mean

the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees.

As set out in the APEA brief, PERA supersedes AS 39.25; that is, all "terms and conditions of employment" addressed in AS 39.25 may be the subject of collective bargaining. If there is any doubt about whether the general language of PERA, set out above, includes the terms and conditions of employment provided for in AS 39.25, it should be laid to rest by the court's decision in Kenai Peninsula Borough School District v. Kenai Peninsula Education Association, 572 P.2d 416 (Alaska 1977). In that case, the court concluded that "salaries, fringe benefits, the number of hours worked, and

the amount of leave time are negotiable." (Id., 423) The significance of that decision for this proceeding is that the court's general statement respecting appropriate subjects for collective bargaining is virtually identical to AS 23.40.260(7); what is more important, the court attached as an appendix to that opinion (Id., 424) a list of some thirty-eight items which are appropriate subjects for collective bargaining. That list is exhaustive of the terms and conditions of employment addressed in AS 39.25. In short, should the teachers vote for inclusion within GGU, there is no reason why the subject matter of AS 39.25 cannot be subjects of negotiation in the collective bargaining process.

3. Recognition as a Separate Bargaining Unit is Legally and Factually Supportable

As discussed, the only objection to the teachers' inclusion in GGU is that they are not subject to AS 39.25. It is submitted that the teachers and APEA in their briefs have established beyond any question that DLR's position is not well-founded. DLR does not oppose recognition of the teachers as a separate bargaining unit. APEA, however, does. In so doing, it attempts to perpetuate an improper reading of the statute and this Agency's prior orders and decisions which have throughout this proceeding been posed as an obstacle to the teachers' securing their collective bargaining rights. Dispelling this improper interpretation of the statute and prior orders and decisions is absolutely essential to a correct ruling in this proceeding. AS 23.40.090 provides that the Agency shall, "in order to assure to

employees the fullest freedom" in exercising their collective bargaining rights, determine the unit appropriate for collective bargaining purposes. According to the statute, that determination is to be based on four generally identified factors:

Community of interest

Wages, hours and other working conditions of the employees involved

The history of collective bargaining

The desires of the employees

It is manifest that these four items must always be addressed in determining the appropriate unit. The statute also provides that, in the course of determining the appropriate bargaining unit based on those four factors, the Agency must also avoid unnecessary fragmentation. Counsel for APEA maintains that

the 'unnecessary fragmentation' legislative mandate supersedes, modifies, clarifies and controls the other four factors. Reference to all Agency Orders and Decisions dealing with the subject bear this out. (APEA brief, p. 8)

This is not a correct reading of the statute, and it emphatically is not the way that the Agency has interpreted the statute in its past orders and decisions. As stated in the teachers' opening brief, unnecessary fragmentation is one of five factors, to be balanced against the other four and to be given no more than equal weight. In actuality, the process of determining the appropriate bargaining unit is totally separate from determining whether giving that unit

recognition would result in unnecessary fragmentation. The Agency has interpreted the "unnecessary fragmentation" directive to mean that a bargaining unit must be "exhaustive of the classification or classifications concerned and must be state-wide." Order and Decision No. 25, dated July 26, 1976, p. 5. The teachers do not concede that this is necessarily a correct interpretation of the "unnecessary fragmentation" directive; situations might very well arise in the future experience of the Agency involving groups of employees petitioning for recognition for collective bargaining purposes which do not comprise all similarly situated employees on a state-wide basis. It might very well be that denial of the employee group's petition on the basis that the group seeking representation was not exhaustive of all similarly situated employees on a state-wide basis would result in a denial of the employees' right to the "fullest freedom" in exercising the collective bargaining rights guaranteed by PERA. If the Agency were called upon in a future proceeding to balance the administrative efficiency resulting from recognizing a bargaining unit only if it were exhaustive of all similarly situated employees on a state-wide basis, against guaranteeing the collective bargaining rights of a group which did not meet that requirement, the Agency must, in most cases, necessarily decide in favor of the guarantee of the fullest freedom in exercising collective bargaining rights. To do otherwise would exalt administrative efficiency over very valuable substantive rights guaranteed by the legislature.

Fortunately, that issue is not raised by this proceeding; the group of teachers seeking recognition in this proceeding is exhaustive of all employees similarly situated, on a state-wide basis. The only attempt at rebuttal of this obvious fact is found at page 6 of the APEA brief where it is stated:

The correspondence teachers have emphatically stated that they do not wish association with similarly situated certificated personnel.

The reference is to the teachers represented by ASCTA. That the correspondence teachers and the teachers represented by ASCTA are not "similarly situated" can admit of no serious refutation; see the discussion in the teachers' opening brief at pages 20 through 27 and in appendices 19 and 22 to that brief. If there is any doubt whatsoever about whether the correspondence teachers and the teachers represented by ASCTA are "similarly situated," Order and Decision No. 36, supra, will resolve that doubt. The facts addressed in that decision are strikingly similar, and the reasoning in that decision is dispositive on the question of accretion to ASCTA. Other than arguing for inclusion in GCU, no party to this proceeding has maintained that there is another group of employees in the state with whom the correspondence teachers should be placed for purposes of collective bargaining. The reason for this is self-evident: The group petitioning the Agency in this proceeding for recognition for collective bargaining purposes is exhaustive, on a state-wide basis, of similarly situated employees.

The only possible refutation of this position would be to argue that the teachers and all exempt employees are "similarly situated," and to argue further that the teachers' collective bargaining rights should go unrecognized until a petition is presented to organize all exempt employees in a single unit. But an examination of AS 39.25.110 lays to rest any notion that all exempt employees are "similarly situated." As discussed at length during the October 3, 1980, hearing, the exempt employees will never be organized as a single unit; to wait for such an attempt will result in the permanent denial of the teachers' collective bargaining rights. See the excerpt from Order and Decision No. 36, supra, set out on page 2 of this brief. In short, there are only two alternatives which are legally or factually supportable, and in order to allow the teachers the fullest freedom in exercising their collective bargaining rights guaranteed by PERA, they should be permitted to choose between those two alternatives.

One final point in the APEA brief requires a reply. Counsel for APEA maintains that the teachers must pursue their collective bargaining rights either under 14.20.550 or under PERA. This being the case, so counsel for APEA maintains, the possibility that the teachers have collective bargaining rights under AS 14.20.550 has no relevancy to this proceeding. That is simply not the case; that statute is crucial to a correct determination in this

proceeding for two reasons. First, as set out on pages 19 and 20 of the teachers' opening brief, AS 14.20.550 is an unequivocal indication of the legislature's recognition of the unique status of teachers for collective bargaining purposes. Legislative intent as expressed in that statute clearly rebuts any notion that this group of teachers, due to their small number, should be denied their collective bargaining rights. More importantly, that legislation is relevant, as discussed on pages 6 through 10 of the teachers' opening brief, because the teachers' collective bargaining rights are secured by that statute. As discussed extensively during the October 3, 1980, hearing, this does not mean that the Agency does not have jurisdiction. That statute and PERA must be construed together. In Hafling v. Inlandboatman's Union of the Pacific, 515 P.2d 870 (Alaska 1978), the court held that a previous statute allowing the commissioner of public works to negotiate with ferry system employees was not impliedly repealed by the subsequent enactment of PERA, despite arguable inconsistencies between the two statutes. Instead, the court construed the two statutes together, upholding the ferry system employees' collective bargaining rights under the prior statute, but providing that any negotiations were nevertheless under the jurisdiction of the Agency. The teachers maintain that this is the same situation that pertains here. Alaska Statute 14.20.550 was enacted prior to PERA. While the teachers' right to bargain collectively was secured by a prior enactment, there

is no reason why they should not be amenable to the provisions of PERA. The reasoning of the supreme court in Hafling, supra, is particularly applicable here. In that case, the court observed that, while under the earlier statute successful agreements had been negotiated, there was no assurance that the system would continue to work. The court then stated:

It is preferable then to have any future problems controlled by the same general mechanism that governs collective bargaining agreements by other public employees. (Id., p. 876)

The teachers maintain that the Agency has jurisdiction over any collective bargaining pursuant to AS 14.20.550, and that it should accept that jurisdiction. AS 14.20.550 and PERA should be construed together for the two very important reasons set out by the court in Hafling, supra: First, it provides a uniform mechanism to govern collective bargaining agreements with state employees. Second, it secures a speedy and efficient resolution of any problems that might arise in the course of negotiating or carrying out collective bargaining agreements. The first reason speaks to administrative efficiency, and will benefit the employer. The second reason speaks to protection of the rights of the employees; the record in this proceeding amply demonstrates the need for that protection.

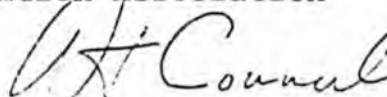
4. Conclusion

For the foregoing reasons, it is respectfully submitted that the Agency order that an election be held among all personnel employed on certified teachers' contracts in the Centralized Correspondence Study School administered by the Alaska Department of Education. Voters should be given the choice of deciding between (1) recognition as a separate bargaining unit, or (2) inclusion in the General Government Employees Bargaining Unit and representation by the Alaska Public Employees Association.

Dated at Juneau, Alaska, this 17th day of November, 1980.

CARPENETI & COUNCIL
Attorneys for Centralized
Correspondence Study
Education Association

By:


William T. Council

STATE OF ALASKA

LABOR RELATIONS AGENCY

In the Matter of)
)
The Petition of Centralized)
Correspondence Study Education)
Association for Certification)
and Determination of Appropriate)
Bargaining Unit.)
_____) No. UA 79-2

PETITION FOR CERTIFICATION OF PUBLIC EMPLOYEE
REPRESENTATIVE AND FOR DETERMINATION OF QUESTION
OF AFFILIATION WITH LABOR ORGANIZATION

1. The petitioners, comprising teachers employed on certified teachers' contracts in the Centralized Correspondence Study Program administered by the Alaska Department of Education (hereinafter referred to as "the teachers") and organized as an association known as the Centralized Correspondence Study Education Association (hereinafter referred to as "CCSEA"), hereby petition the Labor Relations Agency (hereinafter referred to as "the agency") pursuant to 2 AAC 10.010 et seq. and the agency's Order and Decision No. 56B dated December, 19, 1980, to conduct an election on the following two questions:

1.1 First question; representation. Whether or not the teachers wish to engage in collective bargaining with their employer on the terms and conditions of their employment. The choices to be presented to the teachers on that question are:

1.1.1 Whether the teachers wish to engage in collective bargaining with their employer on the terms and conditions of their employment, and accordingly wish to have the agency certify CCSEA as the teachers' public employee representative for collective bargaining purposes; or

1.1.2 Whether the teachers wish not to engage in collective bargaining with their employer on the terms and conditions of their employment.

1.2 Second question; affiliation. Whether or not the teachers wish to have CCSEA, their public employee representative, affiliate with a labor organization to assist in the collective bargaining process. The purpose of a vote on this question is to allow the teachers the opportunity to express by secret ballot their wishes on the question of affiliation. The effectiveness of the vote on this second question is contingent upon the outcome of the election on the first question; in other words, if the teachers on the first question vote against collective bargaining (1.1.2 above), then the results of the election on the second question are irrelevant. The choices to be presented to the teachers on that question are:

1.2.1 Whether the teachers wish to affiliate with the Alaska Public Employees Association for collective bargaining purposes.

1.2.2 Whether the teachers wish to affiliate with the National Education Association for collective bargaining purposes; or

1.2.3 Whether the teachers want no affiliation at all for collective bargaining purposes.

2. In accordance with 2 AAC 10.020, petitioners submit the following information:

2.1 The public employer is the Department of Education, State of Alaska, Sixth Floor, State Office Building, Pouch F, Juneau, Alaska 99811, telephone (907)465-2800. The person to contact on the employer's behalf is William D. Thomson, at the address and telephone number noted in this paragraph.

2.2 As provided in Order and Decision No. 56B, dated December 19, 1980, the unit appropriate for purposes of collective bargaining is comprised of all of the teachers employed on certified teachers' contracts in the Centralized Correspondence Study Program administered by the Alaska Department of Education. All of the teachers work in the Community Building located at 3rd and Main Streets, Pouch GA, Juneau, Alaska 99811, telephone (907)465-2835. The number of employees in the unit is seventeen (17). The teachers have no job classifications or position control numbers.

2.3 The undersigned, comprising in excess of thirty percent of the permanent and probationary employees

in the proposed bargaining unit, want to be represented by CCSEA for collective bargaining purposes, and want the opportunity to vote by secret ballot on the question of CCSEA's affiliation with the above-named labor organizations for collective bargaining purposes.

2.4 Petitioners are teachers employed on certified teachers' contracts in the Centralized Correspondence Study Program administered by the Alaska Department of Education and are organized as an association known as the Centralized Correspondence Study Education Association. CCSEA's address and telephone number are 4950 Steelhead, Juneau, Alaska 99801, telephone (907)789-0111. Neither petitioners nor CCSEA are at present affiliated with any other organization for collective bargaining purposes.

2.5 Copies of a current roster of CCSEA's officers and board members and of CCSEA's constitution and by-laws are attached to this petition as Exhibit A.

2.6 This petition constitutes, pursuant to 2 AAC 10.020(c), the showing of interest of not less than thirty percent of the permanent and probationary employees in the bargaining unit.

2.7 Petitioners request that the agency conduct an election on the question of CCSEA's affiliation for collective bargaining purposes with the above-named labor organizations in order to allow the teachers the

opportunity to express by secret ballot their wishes on the question of affiliation. This request is not to be construed as an acknowledgment by the teachers or the above-named labor organizations that the agency has jurisdiction over the question of affiliation with a labor organization for collective bargaining purposes, nor does the acquiescence by any party to this proceeding in the agency's conducting that election constitute a similar acknowledgment. It is also understood that the agency's consent to conduct the election is not to be construed as an assertion by the agency that it has jurisdiction over questions of affiliation with labor organizations; to the extent that there is any question about the agency's jurisdiction over such questions, then it is understood that no actions by the agency or any party to this proceeding have any relevance to a determination of that question.

3. The undersigned, including the petitioners, CCSEA and the labor organizations, pursuant to 2 AAC 10.120 hereby waive the labor relations hearing provided for in 2 AAC 10.060 and agree to a consent election. The bargaining unit, as approved by the agency in Order and Decision No. 56B, dated December 19, 1980, is comprised of all of the teachers employed on certified teachers' contracts in the Centralized Correspondence Study Program administered by the Alaska Department of Education. The undersigned hereby stipulate

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18-61-81

18-20-81

18-61-81

18-81-81

18-19-81

Jean Ann Alter
Jean Ann Alter, Member Dated: Feb. 19, 1981

Janine Andersen
Janine Andersen, Member Dated: Feb. 19, 1981

Natalie Bradford
Natalie Bradford, Member Dated: 2-23-81

Don Cary
Don Cary, Member Dated: 2-19-81

Guy Condreay
Guy Condreay, Member Dated: 2-19-81

Bob Falle
Bob Falle, Member Dated: 2-19-81

Lee Grogan
Lee Grogan, Member Dated: 2-19-81

Gail Hocker
Gail Hocker, Member Dated: 2-20-81

Barbara Huerth
Barbara Huerth, Member Dated: 2-23-81

Claudia Jones
Claudia Jones, Member Dated: 2-23-81

Duke Ludwig
Duke Ludwig, Member Dated: 2-18-81

Margaret Mackinnon
Margaret Mackinnon, Member Dated: 2-18-81

Phyllis E. Marchese
Phyllis Marchese, Member Dated: 2-23-81

Mary Lou Purvis
Mary Lou Purvis, Member

Dated: 2/20/81

Linda Schultz
Linda Schultz, Member

Dated: 2-19-81

Ann Symons
Ann Symons, Member

Dated: 2-18-81

Judy Woytowich
Judy Woytowich, Member

Dated: 2-19-81

The undersigned hereby stipulate that an election on the issues described in the foregoing petition may be held in accordance with 2 AAC 10.120 and other applicable law and regulation.

ALASKA PUBLIC EMPLOYEES ASSOCIATION

By: John E. Casperson
John E. Casperson

Dated: Feb 26, 1981

NATIONAL EDUCATION ASSOCIATION

By: Robert C. Manners
Robert C. Manners

Dated: 2/20/81

DIVISION OF LABOR RELATIONS

By: [see attached letter]
Robert Stewart

Dated: _____

Finance

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 193 Page 1 of 4
 Title An Act amending the State Personnel Act (AS 39.25)
 Requested by Rules Committee (for the Blue Ribbon Commission) Date 02-20-81

II. FISCAL DETAIL

Agency Affected Administration
 Program Category Affected General Government
 BRU, Program, or Subprogram(s) Affected Personnel

(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 | | 56.4 | 62.1 | 68.3 | 75.1 | 82.6 |
| 200 TRAVEL | | .7 | .8 | .9 | 1.0 | 1.1 |
| 300 CONTRACTUAL | | 6.4 | 7.0 | 7.7 | 8.5 | 9.4 |
| 400 COMMODITIES | | 6.0 | .9 | 1.0 | 1.1 | 1.2 |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | | 69.5 | 70.8 | 77.9 | 85.9 | 94.3 |

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------------------|--|------|------|------|------|------|
| GENERAL FUND | | 69.5 | 70.8 | 77.9 | 85.9 | 94.3 |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |
| | | | | | | |

POSITIONS

| | | | | | | |
|-----------|--|---|---|---|---|---|
| FULL TIME | | 2 | 2 | 2 | 2 | 2 |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

Personal Services: A Regulations Specialist II and a Clerk II will be needed to fulfill the requirements of the Administrative Procedures Act.

Travel was inflated at a rate of 12 per cent. All other factors were inflated at a rate of 10 per cent. FY 82 contains one time furnishing costs in commodities.

The cost of the Hearing Officer and Legal Notices will be sustained by the Personnel Board Budget.

IV. DATE March 12, 1981

PREPARED BY Bruce Cummings
 AGENCY Division of Personnel
 PHONE 465-4430

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) Senator Ray
 cc: Keith Specking (Office of the Governor)

Richard B. P. Finzel

| | | | | | | | | | | |
|--------------------------------------|---|--------------------|----------|---------|--------------------|--|--------------------|-----|---------|---------|
| 1 | POSITION TITLE Regulations Specialist II | | | | RANGE/STEP 16 A | BARG. UNIT. K | LOCATION Juneau | GOV | APPROV. | DISAPP. |
| 2 | TYPE OF POSITION PFT | STAFF MONTHS 12 | RP No. | PCN No. | PRIORITY | FORM 12 | PAGE/LINE | LEG | | |
| 3 | TYPE OF EXPENDITURE | | | AMOUNT | | JUSTIFICATION: To properly implement Senate Bill 193, as it has been presented, will require the services of a Regulation Specialist II. The Regulation Specialist II will assist the Director of Personnel in the proper preparation and drafting of new or revised regulations under the Admin. Proc. Act. | | | | |
| | 1 | 2 | 3 | | | | | | | |
| 4 | PERSONAL SERVICES: | | | | | | | | | |
| | SALARY | 2,291 per mo. | 27,492 | | | | | | | |
| 5 | BENEFITS | 15.79 % | 4,341 | | | | | | | |
| 6 | FICA | 6.13 % | 1,685 | | | | | | | |
| 7 | HEALTH INS. | 150 per mo. | 1,800 | | | | | | | |
| 8 | TOTAL PERSONAL SERVICES | | 01 | 35,318 | | | | | | |
| 9 | TRAVEL | | 02 | 700 | | | | | | |
| 10 | CONTRACTUAL | | 03 | 3,200 | | | | | | |
| 11 | COMMODITIES | | 04 | 3,000 | | | | | | |
| 12 | EQUIPMENT | | 05 | | | | | | | |
| 13 | OTHER | | | | | | | | | |
| 14 | TOTAL COST | | complete | 42,218 | | | | | | |
| | CODE | FUNDING SOURCE | | | | | | | | |
| 15 | | FED RCPTS. 1002 | | | | | | | | |
| 16 | | GF MATCH. 1003 | | | | | | | | |
| 17 | | GEN. FUND 1004 | | 42,218 | | | | | | |
| 18 | | I-A RCPTS. 1005 | | | | | | | | |
| 19 | | PGM RCPTS 1006 | | | | | | | | |
| 20 | | OTHER | | | | | | | | |
| 21 | CONTINUATION | | | | | | | | | |
| 22 | ADDITION | FOR B&M USE ONLY | | | | | | | | |
| 4A KEY NUMBER _____ COLUMN NO. _____ | | | | | | | | | | |

AGENCY Administration PROGRAM Centralized Administrative Services

BRU Personnel

COMPONENT Personnel

Page 2 of 4

REVISED DATE _____

13 REQUEST FOR NEW POSITION.

FY 82

| | | | | | | | | | |
|--------------------------------------|----------------------------|--------------------|------------------|-------------------|------------------|--------------------|-----|---------|---------|
| 1 | POSITION TITLE Clerk II | | | RANGE/STEP 7 A | BARG. UNIT. K | LOCATION Juneau | GOV | APPROV. | DISAPP. |
| 2 | TYPE OF POSITION PFT | STAFF MONTHS 12 | RP No. | PCN No. | PRIORITY | FORM 12 PAGE/LINE | LEG | | |
| 3 | TYPE OF EXPENDITURE | | | AMOUNT | | | | | |
| | 1 | | | 2 | | 3 | | | |
| 4 | PERSONAL SERVICES: | | | | | | | | |
| | SALARY 1,319 per mo. | | | 15,828 | | | | | |
| 6 | BENEFITS 15.79 % | | | 2,500 | | | | | |
| 6 | FICA 6.13 % | | | 970 | | | | | |
| 7 | HEALTH INS. 150 per mo. | | | 1,800 | | | | | |
| 8 | TOTAL PERSONAL SERVICES 01 | | | 21,098 | | | | | |
| 9 | TRAVEL 02 | | | | | | | | |
| 10 | CONTRACTUAL 03 | | | 3,200 | | | | | |
| 11 | COMMODITIES 04 | | | 3,000 | | | | | |
| 12 | EQUIPMENT 05 | | | | | | | | |
| 13 | OTHER | | | | | | | | |
| 14 | TOTAL COST | | | 27,298 | | | | | |
| | CODE | FUNDING SOURCE | | | | | | | |
| 15 | | FED RCPTS. 1002 | | | | | | | |
| 16 | | GF MATCH. 1003 | | | | | | | |
| 17 | | GEN. FUND 1001 | | 27,298 | | | | | |
| 18 | | I-A RCPTS. 1005 | | | | | | | |
| 19 | | PGM RCPTS 1009 | | | | | | | |
| 20 | | OTHER | | | | | | | |
| 21 | CONTINUATION | | | | | | | | |
| 22 | ADDITION | | FOR B&M USE ONLY | | | | | | |
| 4A KEY NUMBER _____ COLUMN NO. _____ | | | | | | | | | |

JUSTIFICATION:

To properly implement Senate Bill 193, as it has been presented, will require the services of a Clerk I. The Clerk I will assist the Regulation Specialist II in the proper distribution of the proposals and in the technical requirements.

AGENCY Administration PROGRAM Centralized Administrative Services

BRU Personnel

COMPONENT Personnel

Page 3 of 4

REVISED DATE _____

13 REQUEST FOR NEW POSITION.

FY 82

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 193 Page 4 of 4
 Title An Act amending the State Personnel Act
 Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Administration
 Program Category Affected General Government
 BRU, Program, or Subprogram(s) Affected Labor Relations Agency (Personnel Board)
 (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 | | 17.0 | 18.7 | 20.6 | 22.6 | 24.9 |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | | 17.0 | 18.7 | 20.6 | 22.6 | 24.9 |

FUNDING (Thousands of Dollars)

| | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 | FY 86 |
|-----------------------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND | | 17.0 | 18.7 | 20.6 | 22.6 | 24.9 |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |

POSITIONS

| | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 | FY 86 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

Above costs assume costs of \$75/hour for a hearing Officer and a total of 120 hours; \$500/month for contracted secretarial services and 2.0 publications costs. Inflation beyond FY 82 is calculated at 10%.

IV. DATE 03-06-81 PREPARED BY Judy Crondahl
 AGENCY Administration
 PHONE 465-2277

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 Senator Ray
 33-001 (Rev. 12/80)
 Keith Specking

TO: Senator Vic Fischer
Chairman
Senate State Affairs Committee

DATE : April 6, 1981

FROM: Robert J. Simon
Chairman
Commercial Fisheries Entry
Commission

SUBJECT: SB 193 (Personnel Act
Amendments)

A member of the Commercial Fisheries Entry Commission (CFEC) has listened to a tape recording of the testimony of Cherie Shelley (APEA) regarding the exempt status of CFEC staff. Her testimony was a bit ambiguous regarding the appearance last year of CFEC before the Blue Ribbon Commission on the State Personnel Act.

At the time the Entry Commission was asked to make a presentation to the Blue Ribbon Commission, we offered evidence regarding the legal status of the Entry Commission and the results of a secret ballot which the staff completed regarding their classification preferences. Briefly, the Commission is a quasi-judicial, regulatory commission created outside of the executive. It is not "subject" to the executive, and is therefore appropriately placed in the exempt service under guidelines developed by the Blue Ribbon Commission.

The results of the secret ballot were also disclosed to the Blue Ribbon Commission. No staff member of the CFEC voted in favor of being changed to classified service. Four staff voted for partially exempt service. The remainder voted to stay as exempt. A tape recording was provided the Blue Ribbon Commission of the discussion which occurred between the staff and the commission directors prior to that vote. That tape could be obtained from them if you should wish to review the instructions which were provided the staff.

We are providing you with this memorandum to clarify any misconception which may have resulted from Ms. Shelley's testimony. Should you desire the commission to present formal testimony on this matter, we would be happy to do so. Our testimony would be in favor of the Commercial Fisheries Entry Commission's officers and employees being in the exempt service in accordance with Sec. 39.25.110(11)(A) as proposed in SB 193.



STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA COMMISSION ON THE STATUS OF WOMEN
338 DENALI STREET, SUITE 850
ANCHORAGE, ALASKA 99501

STATEMENT ON DISCRIMINATION IN STATE EMPLOYMENT

Presented to Blue Ribbon Commission on the
State Personnel Act by
Barbara Schuhmann, Chair
Alaska Commission on the Status of Women
November 19, 1981

Chairman Ray and members of the Blue Ribbon Commission, my name is Barbara Schuhmann and as Chair of the Alaska Commission on the Status of Women I am pleased to be able to address you today on a topic which is of great importance to the well-being of Alaska's women and minorities. The Commission on the Status of Women wanted to undertake an overall review of the state's personnel system, following testimony we received that criticized the system itself as discriminating against women. Our lack of money and time prevented us from undertaking such a study. In addition, the Commission felt that if such a review were undertaken, it could not be limited to questions of sex discrimination, but should include questions as to other bases of unconstitutional discrimination as well.

So, my purpose in coming here today is to thank you for holding these hearings, and to ask that you undertake the review that the Commission would have done if it had the time and resources.

The most recent comprehensive study of the distribution of women and minorities in state government was that done by the Alaska Advisory Committee to the United States Commission on Civil Rights in July, 1980. Among the

findings of that study are that:

- state employment "tends to be mostly white and male;"
- the state offers no child care facilities to encourage women to work for the state;
- when women are hired they are "for the most part relegated to the lowest paying jobs in clerical, secretarial and technical fields;"
- the hiring procedures in some departments are "both consciously and unconsciously discriminatory;"
- the state has not adequately communicated hiring and promotional opportunities.

While there has been some progress made since the release of that report the statistics which it included have not changed significantly.

Persons claiming discrimination on the basis of race or sex against private employers often prove their cases by the use of statistics. If a statistical case were built against the state of Alaska, the state would have a very hard time showing it has not discriminated in hiring and promotion on the basis of race and sex.

According to the report published by the Civil Rights Commission, in 1977 only 8% of those people in the top state salary ranges (22-28) were women, while at the same time women occupied over 35% of those at the lowest end of the salary scale (ranges 05-09). In five state departments not a single woman occupied a position in these top salary ranges.

While women in general were faring too poorly the situation for

Page Three
Statement on Discrimination in State Employment
November 19, 1981

minority women was even worse. In all of the administrative departments of the state government, only one, solitary minority woman could be found who occupied a position in the top salary ranges (22-28).

A more recent survey of the state's affirmative action effort was released by the Division of Equal Employment Opportunity this year, and it does not offer much encouragement. Minority women represent less than 6% of the state's workforce and only 1% of the state's officials and administrators. Women in general fare somewhat better than minority women. Women comprise 42% of the state's workforce but that figure alone may not represent any real growth. Over 90% of the clerical positions in state government are filled by women, according to the Division of Equal Employment Opportunity, while at the same time only 17% of the official and administrators are female.

I think these figures support what we believe to be the case -- that despite the fact that we have a preponderance of highly educated, capable, and experienced females in the Alaskan population, many of these same women experience a tremendous amount of difficulty in breaking into the state personnel system or rising in it once they have entered. You are here today to receive testimony from women and minorities as to the difficulties that they have experienced, and any solutions which they can offer. The Commission which I represent has held public hearings throughout the state at which women have cited many instances where the state personnel system was obstructive to them in their attempts to find suitable employment. I want to share some of their observations with you because the state, as one of the largest single employers in Alaska, can

have a very significant impact on the lives of many by correcting the weaknesses in its personnel system.

In testimony to us women have cited repeated instances where the inflexibility of the personnel system prevented qualified women from obtaining suitable employment or achieving upward mobility. Women in professional positions have had difficulty advancing to supervisory positions and receiving equal compensation for equal work. In some instances they have performed comparable work as male counterparts but have not received equal compensation or have had to take extreme measures to obtain it. It would appear from the testimony we have heard that most women in the lower paid clerical positions (where nearly half of the women employed by the state are located) are afforded practically no incentive to learn new skills or take on additional responsibility; little, if any, on-the-job training for career advancement; and no career ladders or clearly defined steps which, if followed, would help them move toward promotion and advancement. The personnel system needs the flexibility to reward employees for shouldering additional responsibilities. Bonuses based on performance and career ladders that enable staff to advance systematically are essential management tools. Without these incentives the employees will no doubt restrict themselves to performing only those duties which are part of the job description. We need a personnel system which encourages all workers to grow and develop and rewards them for doing so. This is not only fair and equitable - it is good business sense. The somewhat perfunctory merit increase which discriminates quite significantly against those employees found in the

lower ranges of the state salary system, does not qualify as a monetary incentive for excellence such as what I am referring to here.

We experienced frustration with the inflexibility of the personnel system when we attempted to hire staff for our own Commission. We wanted to hire people with very diverse skills so that in a small office they could each do a wide variety of tasks. The classifications of the state personnel system were too rigid to allow for our needs and I'm sure our experience was not unique. This inflexibility costs the state in more ways than one because too often the solution to the problems caused by the inflexibility of the personnel system is to create more exempt positions than already exist. Exempt positions are outside of the very EEO (Equal Employment Opportunity) directives which the Commission strongly supports, and they are frequently overpriced.

I mentioned that merit increases also discriminate against those in the lower salary ranges and I would like to clarify that point. In positions from range 05 to 09, an employee would receive between a 2.6% and a 3% merit increase when moving from step A to B. On the other hand, in positions that are range 15 or above the first step increase is never below 3.5%. Not only are many women trapped in dead end jobs at the lower ranges of the salary scale but they suffer the double hardship of receiving a smaller percentage merit increase as well.

On a more positive note, we believe that there are several efforts presently underway which bear great potential for correcting some of the systemic problems in the personnel procedures which have had adverse impact on women and minorities. First, the practice of expanded certification or the "5 + 5" system is a valuable management tool for obtaining

the opportunity to interview the five most qualified women and minorities to achieve better representation in all levels of the workforce. When the House Committee on Education and Labor reported on the (successful) efforts to extend Title VII to cover government as an employer in 1972, they observed the following:

"Civil Service requirements (are) replete with artificial selection and promotion requirements which place a premium on paper credentials which frequently prove of questionable value as a means of predicting actual job performance."

What the expanded certification process enables a manager to do is to go beyond those paper credentials which may or may not be predictive of job performance; and to go beyond those tests which may be culturally biased; to go to the actual candidates who meet the basic requirements for the job to determine if their interest, motivation and commitment suggest them as the most qualified for the needs of that office -- including the need for better representation of protected classes.

Female state employees have testified to us that the main problem with this tool is that it is optional and many managers simply never request the additional names. We would hope to see a system developed which better encouraged managers to use this tool on a regular basis until their utilization goals were reached.

We also support the law passed several years ago which enables state employees to share jobs. Women frequently interrupt their careers to assume the duties of homemaking and are placed at a disadvantage when it comes to full time employment. They often experience greater need for such options as job sharing, flextime and part time work. Our

concern in these areas is that too many employees are unaware of the existence of these options, or have great difficulty pursuing them. All such programs, including any internships or tuition reimbursement plans should be well publicized in all state offices and information should be readily available. It should not require long distance telephone calls to distant voices in the central offices in Juneau to find out about these programs, as is often the case today.

In addition to expanded certification, the concepts reflected in two bills which were introduced last session have our Commission's support. HB 906 was introduced for your Commission by the Rules Committee and it addresses an issue which we have also addressed in a slightly different context. It is sometimes reasonable to extend preference for non-merit reasons under certain conditions and one of the conditions which has received such preference is that of veterans' scoring. Because of the original purpose of veterans' preference, which included reward for sacrifice and ease of transition into civilian life it is certainly more reasonable to grant this preference only upon return from active duty and for a period of time not to exceed three years, rather than for a lifetime, as is presently the case. Passage of such a bill limiting the duration of any veterans' preference will have a significant impact on what has been a major source of systemic discrimination against women in the state personnel system.

Finally, the Committee Substitute for Senate Bill 248 deserves attention during the next session. The Division of Equal Employment Opportunity now has the responsibility for carrying out the State's

policy equal opportunity, for monitoring the activities of all departments and ensuring that compliance occurs. As I understand it this bill (CSSB 248) would define those responsibilities in state law. We believe it is essential to have a fully functioning, adequately staffed Division of Equal Employment Opportunity and would urge your favorable consideration of this bill as well as a fiscal note sufficient to appoint an Equal Employment Officer for each department within the Executive branch.

In summary I would like to say that the testimony we have heard and the reports we have studied make it clear that:

- state employment, particularly at the higher levels of responsibility and salary, is primarily white and male;
- women are for the most part relegated to the lowest paying jobs in clerical and technical fields;
- no systematic process of recruitment and promotion exists which would enable women to recognize and use opportunities for promotion;
- hiring procedures such as the expanded certification process are helpful, but must be used on a regular rather than a hit-or-miss basis if they are to prove effective.

In addition we believe that the subjects of sexual harassment, comparable worth and discriminatory hiring practices should be thoroughly studied to determine the impact they have on women's employment opportunities and conditions.

Finally, we would urge that as much information as is necessary for comparison and analysis be included in all reports. For example, the

Page Nine
Statement on Discrimination in State Employment
November 19, 1981

recent affirmative action report published by the Division of Equal Employment Opportunity does not contain any salary figures and these are essential data for conducting a thorough and comprehensive review.

We appreciate this opportunity to address you and look forward to your work on resolving some of the aspects of discrimination in state employment.

1 IN THE SENATE

BY BRADLEY

2 SENATE BILL NO. 104

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 veteran's preference in state
7 employment."

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

9 * Section 1. AS 39.25.150(23) is repealed and reenacted to read:

10 (23) the granting of employment preference rights to a veteran
11 in accordance with AS 39.25.185.

12 * Sec. 2. AS 39.25 is amended by adding a new section to read:

13 Sec. 39.25.185. VETERAN'S PREFERENCE. (a) a veteran who applies
14 for employment in the state service, not within the area of promotion,
15 and who possesses the qualifications in the job classification for
16 which he applies shall have

17 (1) five extra points added to his passing score on a merit
18 system examination;

19 (2) ten extra points added to his passing score on a merit
20 system examination if he is a disabled veteran;

21 (3) notification of his position on an eligible list within
22 72 hours of his request for notification;

23 (4) at least 30 days to respond to an inquiry concerning his
24 continued availability for employment before his name is removed from
25 an eligible list;

26 (5) immediate notification of an offer of employment; and at
27 least 72 hours to accept an offer of employment before another person
28 is appointed.

29 (b) If a veteran is not hired for a position for which he is

Bruce Cummings
[Signature]

[Handwritten mark]

1 eligible, he may request and receive a statement of reasons explaining
2 why he was not hired.

3 (c) If a position in the classified service is eliminated and
4 employees must be released, a non-veteran shall be released before a
5 veteran if job qualifications are equal. *and all other things pertinent to positions*

6 (d) If job qualifications are equal, a veteran shall be promoted
7 from one position in the classified service to another before a non-
8 veteran. *If* and if examination results are used in determining qualifica-
9 tion for promotion, the additional points allowed under (a)(1) and (2)
10 of this section remain in effect during the promotion process. *?*

11 (e) In this section

12 (1) "veteran" means a person with ¹⁸¹90 days or more active
13 service in the armed forces of the United States who has been honorably
14 discharged;

15 (2) "disabled veteran" means a ^{person.} veteran who is rated by the
16 United States Veterans' Administration as having at least a ten percent
17 service-connected disability.

AMENDMENT

Page 2, Line 6: After the word "qualifications," insert "and all other things pertinent to position status"

Page 2, Line 8 through 10: After the word "veteran", delete remainder of the sentence and insert the following sentence: "If a veteran or disabled veteran desires to waive his additional preference points for an entry position into the classified service, he may, at his discretion, use those points at a later time for another position within the same job classification exclusive of an area of promotion."

(A)

Page 2, Line 12: Delete "90" and insert "181"

Terry Cramer
Bruce Cummings
Vic - see pgs. 11 & 12, 14, 15, 16
Nan

Introduced: 2/20/81
Referred: State Affairs and
Judiciary

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL (for
the ~~Blue Ribbon Commission~~ on the
State Personnel Act)

1 IN THE SENATE

2 SENATE BILL NO. 193

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending the State Personnel Act (AS 39.25);
7 and providing for an effective date."

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

9 * Section 1. AS 39.25.040 is amended to read:

10 Sec. 39.25.040. DIRECTOR OF PERSONNEL. The head of the division
11 of personnel is the director of personnel appointed by the commissioner
12 of administration and responsible to the commissioner of administration
13 for the execution of the duties and responsibilities imposed by this
14 chapter and the rules adopted under this chapter. The director of
15 personnel shall [MUST] have at least three years of practical working
16 experience in the field of personnel administration.

17 * Sec. 2. AS 39.25.060(b) is amended to read:

18 (b) Members of the board may not be [SHALL BE QUALIFIED ELECTORS
19 OF THE STATE WHO ARE NOT] employees [OR OFFICERS] of the state. Not
20 more than two members of the board may be members of the same political
21 party.

22 * Sec. 3. AS 39.25.070(1) is amended to read:

23 (1) approve or disapprove amendments to the personnel rules
24 in accordance with AS 39.25.140 [THE ORIGINAL RULES OR A PART OF THEM
25 WITHIN 60 DAYS OF THEIR SUBMISSION TO THE BOARD AND APPROVE OR DIS-
26 APPROVE AMENDMENT TO THE RULES WITHIN 30 DAYS OF SUBMISSION TO THE
27 BOARD, AND IN CARRYING OUT THIS DUTY, THE BOARD, IF REQUESTED, MAY HOLD
28 THE PUBLIC HEARINGS IT CONSIDERS NECESSARY];

29 * Sec. 4. AS 39.25.070(3) is amended to read:

1 (3) hear and determine appeals by employees [IN THE CLASSI-
2 FIED SERVICE] as provided in AS 39.25.170;

3 * Sec. 5. AS 39.25.070 is amended by adding a new paragraph to read:

4 (7) employ staff members, who shall be in the classified
5 service.

6 * Sec. 6. AS 39.25.080 is repealed and reenacted to read:

7 Sec. 39.25.080. PUBLIC RECORDS. (a) State personnel records,
8 including employment applications and examination materials, are confi-
9 dential and are not open to public inspection except as provided in
10 this section.

11 (b) The following information is available for public inspection,
12 subject to reasonable regulations on the time and manner of inspection:

13 (1) the names and position titles of all state employees;

14 (2) the position held by a state employee;

15 (3) prior positions held by a state employee;

16 (4) whether a state employee is in the classified, partially
17 exempt, or exempt service;

18 (5) the dates of appointment and separation of a state em-
19 ployee; and

20 (6) the compensation authorized for a state employee.

21 (c) A state employee has the right to examine his own personnel
22 files and may authorize others to examine his files.

23 (d) An applicant for state employment who appeals an examination
24 score may review written examination questions relating to the examina-
25 tion unless the questions are to be used in future examinations.

26 * Sec. 7. AS 39.25.090 is amended to read:

27 Sec. 39.25.090. COVERAGE OF CHAPTER. This chapter and the rules
28 adopted under it apply to all positions in (1) the classified service,
29 and (2) the exempt and partially exempt service as specifically pro-

1 vided.

2 * Sec. 8. AS 39.25.110 is repealed and reenacted to read:

3 Sec. 39.25.110. EXEMPT SERVICE. Unless otherwise provided by
4 law, the following positions in the state service constitute the exempt
5 service and are exempt from the provisions of this chapter and the
6 rules adopted under it:

7 (1) persons elected to public office by popular vote or
8 appointed to fill vacancies in elected offices;

9 (2) justices of the supreme court, judges of the court of
10 appeals, judges of the superior court, and judges and magistrates of
11 other state courts established by law;

12 (3) employees of the state court system, and employees and
13 members of the Judicial Council;

14 (4) employees of the state legislature and its agencies;

15 (5) the head of each principal department in the executive
16 branch;

17 (6) officers and employees of the University of Alaska;

18 (7) certificated teachers and noncertificated employees
19 employed by a regional educational attendance area established and
20 organized under AS 14.08.031 - 14.08.041 to teach in, administer, or
21 operate schools under the control of a regional educational attendance
22 area school board;

23 (8) patients and inmates employed in state institutions;

24 (9) persons employed in a professional capacity to make a
25 temporary or special inquiry, study or examination as authorized by the
26 governor, the legislature, or a legislative committee;

27 (10) members of boards, commissions, or authorities;

28 (11) the officers and employees of the following boards,
29 commissions and authorities;

classif

1 (A) ~~Alaska Commercial Fisheries Entry Commission;~~

2 (B) Alaska Gas Pipeline Financing Authority;

3 (C) Alaska Permanent Fund Corporation;

4 (D) Alaska Energy Center;

5 (E) Alaska Industrial Development Authority;

6 (12) the executive officer of the Alaska Commission on Post-
7 secondary Education;

8 (13) the ombudsman and his staff;

9 (14) the executive secretary and legal counsel of the Alaska
10 Municipal Bond Bank Authority;

11 (15) licensed physicians, as defined in AS 47.30.340(9),
12 employed by the division of mental health and developmental disabili-
13 ties, Department of Health and Social Services;

14 (16) petroleum engineers and petroleum geologists employed in
15 a professional capacity by the Department of Natural Resources except
16 for those employed in the division of geological and geophysical sur-
17 veys;

18 (17) officers, agents, and employees of the Alcoholic Bever-
19 age Control Board granted limited peace officer powers by the Alcoholic
20 Beverage Control Board under AS 04.06.110;

21 (18) persons employed by the division of marine transporta-
22 tion as masters and members of the crews of vessels who operate the
23 state ferry system and who are covered by a collective bargaining
24 agreement provided in AS 23.40.040.

25 * Sec. 9. AS 39.25.120 is repealed and reenacted to read:

26 Sec. 39.25.120. PARTIALLY EXEMPT SERVICE. (a) Positions in the
27 partially exempt service are included in the position classification
28 plan established under this chapter and are compensated according to
29 the pay plan (AS 39.27.011).