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226

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12. Compulsory Schooling and Nontraditional Education

The Issue

Some parents today believe that traditional schooling (public or private) is not necessarily equivalent to "education" nor "right" for every child. They are placing their children in nontraditional schools (not necessarily accredited) or educating them at home. Their reasons vary. Some have overriding religious concerns; others are dissatisfied with or mistrust the public school system. Occasionally they seek only to escape the effects of public desegregation policies.

Some private options may violate state compulsory attendance laws. In some states, parents and individuals operating unaccredited private schools have received or are faced with jail sentences. One fundamentalist Christian clergyman in Nebraska has refused to comply with court orders directing him to either obtain state approval for his school or cease operating, and he has been jailed twice. A church has been padlocked to enforce laws requiring private schools to obtain state approval and comply with state rules for operating a school.

The Choice Before
State Education Policy Makers

In states that require compulsory school attendance (rather than compulsory education) and require certified teachers in private schools, policy makers are being asked to change the laws. Private school people seek fewer requirements for private schools, exemption of church schools, provision for home instructions, removal of teacher certification requirements or other policies that would make it easier for individuals to choose nontraditional education options free of state accreditation or approval.

How Many Children are in Unapproved Education Options?

While most children in nonpublic schools are enrolled in Roman Catholic institutions, the U.S. Bureau of Census estimated that (as of 1975) there were close to 1.4 million children in non-Catholic, private schools. Most likely the census bureau counted only traditional and accredited schools. A more careful study for the National Center for Statistics suggests there are about 15,000 non-Catholic private schools serving approximately 2 million students, and that this population is increasing by 100,000 students per year. One might speculate that the difference of some 500,000 to 600,000 children between the official census and this study represents the number of children in unapproved schools.

By contrast, public school enrollments declined from approximately 45.9 million in 1970 to 42.6 million in 1978.

Estimates of the numbers of children being taught at home vary from 10,000 to 50,000.

Education In An Unapproved Setting

When available, testing data shows that children in these schools are performing above national standards. The data do not show whether this is due to socioeconomic status, other individual characteristics, or the education program. With this caveat, the data show children in a Los Angeles home tutorial program (approved by the state) scored higher than children in public schools on nationally standardized tests.. Experimental work done about ten years ago showed no significant difference in students' test scores whether they were taught by an experienced teacher or by a lay person knowledgeable in the subject taught. Finally, in three court cases, attorneys introduced evidence of test scores showing

improvement as children moved from a public school to a private, unapproved education option.

State Education Requirements

Traditionally, states enforce minimum standards for private education through compulsory school attendance laws, which provide for punitive action for noncomplying parents and children, but not for those who offer private instruction. Although these laws vary, they contain the following features:

- o All states have some kind of compulsory law requiring school attendance or education of children.
- o States that require education of the child rather than attendance include Connecticut, Delaware, Idaho, New Jersey, South Dakota and Vermont. Most states require school attendance, although many of these provide exceptions for home instruction.
- o Almost every state provides for jail sentences and fines for parents who fail to comply with the state's compulsory attendance law.
- o Without exception, compulsory requirements can be fulfilled by attendance at a nonpublic school that is properly approved or accredited. A number of states require the teachers to be certified, or require approval of the curriculum and similar matters.
- o Some states have recently "deregulated" private schools, and have restricted the authority of the state board of education to regulate them. These include Alabama, Arizona, Louisiana, North Carolina, and Tennessee. Washington restricts state board authority but contains a number of important statutory requirements, such as a teacher certification requirement.
- o Laws in about half the states permit home instruction by a parent whether the parent has a teaching certificate or not.
- o In some states, courts or attorneys general have ruled that if the home meets the standards for private school (generally, where a parent is a certified teacher), home instruction is allowed even if state law does not expressly so provide.

Court Challenges

The United States Supreme Court has indicated that regulation of nonpublic education can go too far. In a landmark case, Yoder v. Wisconsin, the high court narrowly ruled that Wisconsin's compulsory attendance law could not be enforced against the Amish (a religious community). The Court held that the state cannot compel attendance of children in the face of strong religious objections, so long as the children are adequately educated in an alternative setting. Lower courts have extended Yoder only when traditional religious beliefs are involved. Decisions outside of this narrow realm have been mixed, with most cases turning on state constitutional or statutory grounds.

Litigation over the status of private education has culminated in court rulings in a number of states, among them Florida, Hawaii, Iowa, Kentucky, Michigan, Nebraska, North Dakota, Ohio, Washington, and West Virginia. Generally, states undergoing litigation require school attendance and certification of private school teachers. In a few states the central issue is approval of curriculum or facilities, or zoning rules. Additional cases have been or will soon be filed in many states, including Iowa, Maine, Michigan, New Hampshire, North Dakota, and Virginia. Given the growth of fundamentalist Christian schools, other nontraditional private schools and home instruction, states that require compulsory school attendance and set standards for the school, will probably be challenged in the near future.

The litigation receiving the most attention from the media appears to be State v. Faith Baptist Church, dealing with the refusal of Reverend Everett Silevan to obtain approval from Nebraska for any aspect of his church-run school. The school uses a series of booklets called the Packet of Accelerated Christian Education (PACE), including instructional information and self administered tests. The school does not use state-certified teachers, a requirement under Nebraska's compulsory school attendance law. The Nebraska high court found the materials adequate, but upheld the state's requirement for certified teachers. On appeal to the United States Supreme Court, the case was summarily dismissed because, based on the papers filed before it, the high court could not identify an important constitutional issue.

Somewhat similar opinions (not going to the U.S. Supreme Court) have been handed down by state courts in Florida, North Dakota, and Wisconsin. In some of these cases, parents refused to provide any evidence about the child's schooling.

In other cases, state courts have ruled in favor of parents. In Ohio, in State v. Whisner, the state supreme court struck down a system of state regulation that, by its literal terms, left no time for religious instruction in a private school. A Michigan court was reluctant to find a mother teaching a child at home guilty under the state's compulsory attendance law, as she met the requirements for teacher certification but refused to obtain a certificate for religious reasons. (Michigan allows home instruction only by certified teachers.) In a Kentucky case, the state court applied a state constitutional provision (found only in a handful of state constitutions) that prohibits requiring a child to attend a school which parents find objectionable for conscientious reasons.

Policy Alternatives

Where statutory requirements are flexible, imaginative administrative solutions to the issue become possible. In New Hampshire, for example, state officials reached a somewhat fragile agreement with fundamentalists that required information to be submitted on church stationery rather than on official state forms. This fulfills the state's need for certain information, but recognizes the fundamentalists' tenet that they should not submit to state regulatory systems. In Iowa, the state accepts reports from parents instead of the fundamentalist school. The fundamentalists involved felt individual reporting was no different than filing an income tax form, while a church report was tantamount to church submission to state regulation.

A state considering a change in its policy can look to sister states for models. In the past five years several states have deregulated private education.

- o Tennessee, for example, prohibits the state board and local boards from regulating faculties, textbooks, or curricula in church affiliated schools.
- o North Carolina requires only that private schools keep records on pupil attendance and disease immunization and that they select and administer a nationally standardized test to students each year. The schools keep the tests on file and make them available to state inspectors. They must also meet fire, health, and safety standards established by other laws.
- o Washington prevents state agencies from expanding on statutory provisions, but these provisions set minimum

standards as to length of school year, length of day, subjects to be taught, and teacher qualifications. Teacher certification is required, except for courses in religion and other subjects not taught in the public schools. State law in Washington allows persons of "unusual competence" to teach, if they are supervised by certified teachers.

- o The Vermont legislature, following efforts by its state board to require teachers certification, made it clear it could not do so, and also strengthened its child abuse laws in order to narrowly focus on actual problems, rather than to sweepingly subject all private educators to regulation.
- o In mid-1982 the Arizona legislature determined to permit home instruction, so long as the child shows academic progress, as indicated by test scores or an impartial professional evaluation.
- o Louisiana exempted schools which receive no local, state or federal funds from most reporting requirements.
- o Arizona, Oregon, and North Carolina require testing of the children, to help provide assurance that they are being educated.
- o Teacher certification is the mechanism used in Washington, although it reduces flexibility for private education alternatives and precludes instruction by a parent in most cases.

Policy Questions

Policy makers contemplating a change in state compulsory education laws need to ask the following questions before deciding on a course of action.

- o Should compulsory attendance laws carry criminal sanctions against parents honestly acting in the best interests of their children?
- o Are the children educated in unapproved settings acquiring what they need for good citizenship and self-sufficiency?
- o What are the long-range implications of large segments of the population insulating themselves from the mainstream of society -- in this case, by avoiding state-approved education for their children?

- o Are private schools havens for those wishing to avoid integration?
- o Do existing consumer protection laws assure that parents are evaluating small nontraditional schools on the basis of adequate and correct information?
- o What are the political implications of the growing exodus from public schools, when local school districts depend on state aid based on enrollment or attendance?

Policy Implications

Organizations and individuals urging more flexible compulsory education laws argue that this is required to preserve the free exercise of religion. These groups argue that parents know what is best for the child. They include those participating in nontraditional options, fundamentalist Christians, more traditional private schools and, to some extent, organizations and individuals concerned with civil liberties. The national ACLU, for example, in its Policy #71A, states: "We believe that, in the interest of parental right to choose an alternative to public education, [home instruction with safeguards, such as approval of curriculum or testing of the child] . . . should be extended to all jurisdictions because the state's interest in assuring minimum levels of education does not extend to control of the means by which that interest is realized."

Organizations and individuals urging retention or adoption of stricter requirements for private education generally argue that these regulations are needed to assure the best interests of the child, and to prevent balkanization of society. These groups include teachers' organizations and public school administrators.

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COMMENTS ON
HOUSE BILL #357
and
SENATE BILL # 321

The subject at hand has to do with House Bill #357, currently before the Legislature, and a Senate Bill with identical language for which I have no number at the present time.

This is an act relating to the regulation of religious schools.

The First Amendment to the U.S. Constitution says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" With these words, the First Amendment guarantees a separate church and state. Historically, this has meant that the church was not subject to the state, nor was the state subject to the church.

The First Amendment also guarantees "free exercise of religion." Our nation has repeatedly recognized the value of this most important clause and has resisted infringement of First Amendment rights of the citizenry.

It is also true that the language of the Constitution of the State of Alaska provides similar liberties to those spoken to in the Constitution of the United States.

At the outset of these remarks, it should be noted that it is the responsibility of the church to provide buildings and equipment that meet reasonable regulations for fire, life safety, health, and sanitation when they are equally and fairly applied to all.

One of the reasons for the presentation of the proposed legislation has to do with some language found in the Constitution of the State of Alaska. That language reads as follows:

ARTICLE VII. HEALTH, EDUCATION, AND WELFARE.

Section 1. The Legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

We have no quarrel with the language set forth in the paragraph above excerpted from the Constitution of the State of Alaska. However, since the provision is made that the public school system of the State of Alaska shall be free from sectarian control, we believe it follows reason and logic that the church-operated schools of the State of Alaska should be free from state control.

For this reason, we have addressed the importance of certain changes that need to be made in the present structure of the Alaska Statutes that would bring present law into line with the provision of the Federal and State Constitutions.

Our special concern has to do with the impact of present law and the resultant regulations that could be written under the umbrella of the existing language.

While we have stated above that we have no quarrel with the right of the State to require reasonable fire, life safety, health, and sanitation standards, we would never submit to the inspection of personnel, programs, finances, records, curricula, etc., since this is clearly a violation of the First Amendment, and cannot be permitted by the local church.

For these and other reasons, we have proposed an Amendment to Section 1. A.S. 14.07.020(8).

In this Amendment, we have addressed the fact that it is our sincere conviction that neither the Department of Education nor the Department of Health and Social Services has the constitutional right to general supervision over our pre-elementary schools, nor over the educational component of our nurseries.

We have also offered an Amendment to Section 2. A.S. 14.30.010(b)(1).

One of the reasons why we have suggested the addition of paragraph (D) has to do with the requirements set forth in paragraph (C). You see, it is our policy to regularly measure the progress of our students in our church-operated schools through the use of national achievement tests, and we would have no problem with making that information available to anybody on a request basis. However, since the Constitution says that no law shall be made concerning the establishment of religion, we simply believe that the State has no right to REQUIRE that information. So, we have proposed paragraph (D) as an amendment to that section.

One of the questions that has been raised with regard to paragraph (D) is as follows: "If paragraph (D) should become law, what assurance do we have that some 'fly-by-night' type church such as the Jim Jones syndrome or the Moonies won't pop up and start what they would call a church-operated school?"

Quite honestly, we don't have any assurance that that wouldn't happen. However, there are some reasons why I believe it would not happen. One of the reasons why I would question that a "Jim Jones" church or a "Moonies" church would start a school is simply that it is not as lucrative an operation as that which generally interests them. They are usually looking for ways to get their hands on large amounts of money as quickly as they can with a minimum of work involved.

The operation of a school involves a great deal of hard work, dedication, consecration, and plain, old-fashioned elbow grease!

Church-operated schools must function in a free-market society, and they simply must produce what they claim to produce, or the parents will take their children elsewhere.

My second response to the original question would be as follows: It is our understanding that laws should be made for the benefit of and the protection of the majority of the people. While it is true that there is the possibility that some church like the Jim Jones, Moonies, or Universal Life Church people might start a school under the provision of paragraph (D), why would the Legislature of the State of Alaska wish to continue to impose an unconstitutional burden on the many churches in the State of Alaska who are doing a great job in the field of private education because it was afraid a possible small minority might start an educational program that would be undesirable?

Why would the Legislature want to take away the liberties of the many because it feared the abuses of a few?

Section 3 has been amended by the Department of Law as a housekeeping measure to bring it into line with the rest of the proposed legislation in this bill.

The next item under consideration is Section 14.45.030. Once again, this is a matter where we believe constitutional liberties are being abrogated. While it is a fact that we would have no problem providing this information on a request basis in cooperation with the State Department of Education, we are convinced that it should not be required by law in order to maintain the true separation of church and state.

The last amendment proposed in this bill is found in A.S. 44.27.020(1).

This amendment is proposed in order to maintain the separation of church and state. Present law says that the Department of Education shall administer the State's program of education at the elementary, secondary, and adult levels. What we are

saying in our proposed amendment is simply that the State Department of Education does not have the right to administer the church's programs of education, since the State neither founded nor funded our church educational programs.

Respectfully submitted,

Paul E. Glover

4/18/83
PEG:hm



CHRISTIAN SCHOOL COMMENT

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No. 8

WHAT EVERY PARENT SHOULD KNOW ABOUT THE ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL

by Dr. Paul A. Kienel, Executive Director
Association of Christian Schools International

The Association of Christian Schools International (ACSI) is a non-profit service organization serving Bible-centered Christian schools and colleges. It is the largest association of Christian schools in the world with a membership of 1,933 schools and a combined student enrollment of 337,554. Over the past five years, ACSI membership has nearly doubled in size. The annual cost of school membership is \$3.00 per student payable on October 1. Most schools include this small amount in their annual student registration fee. As a parent, you need to know about the wide variety of services offered by ACSI that directly benefit your Christian school and ultimately your child or children in the school.

LEGAL/LEGISLATIVE SERVICES

Over the past five years, ACSI has raised and spent more than \$400,000 to preserve your school's religious freedom. We have had major struggles with the U.S. Department of Labor and the IRS. There have been several important victories but the struggle continues. Last week, for example, I met with U.S. Department of Education leaders in Washington, D.C. to discuss guidelines on how state departments of education can work cooperatively with Christian schools instead of attempting to control them. Next week I fly to Washington, D.C. again to meet with U.S. Department of Labor officials. We will attempt to reverse a decision made by the previous U.S. Secretary of Labor under the Carter Administration that claimed Christian school teachers are secular employees subject to government agency control. In the past ACSI has organized parent and teacher letter-writing campaigns to the White House and members of Congress on various issues. The results have been important to your school and your children.

CONVENTIONS AND CONFERENCES

Another service of ACSI is to encourage the spiritual and professional growth of your school's staff through ACSI conventions and conferences. Your child's teacher comes away from these meetings with fresh insight and inspiration for his or her ministry in the classroom. The ACSI staff of 42 people work year-round preparing for these meetings. More than 20,000 teachers, administrators and board members will attend the seventeen ACSI conventions held in the United States and Canada this year. ACSI also conducts similar programs in other countries.

ACCREDITATION AND CERTIFICATION

Under the capable leadership of ACSI's president, Dr. Roy W. Lowrie, Jr., the association offers a quality program of school accreditation and teacher and administrator certification. These professional services are designed to raise the spiritual and academic levels of our schools and to provide testimony to all, including government agencies, that the Christian school community has its own forms of

professional recognition. Dr. Lowrie is also the editor of *Christian School*, a professional journal for Christian school teachers and board members. It is provided free of charge to teachers in ACSI member schools.

STUDENT ACTIVITIES

Approximately 25,000 Christian school students participate annually in ACSI student activities. I am referring to speech meets, spelling bees, choir festivals, science fairs, art festivals, sporting events, piano festivals, academic meets, band festivals, cheerleader camps and student leadership conferences. Each of these events is designed to inspire leadership qualities and communication skills so that students will be effective in sharing Jesus Christ with others.

PROFESSIONAL COUNSEL

ACSI personnel are located in twelve offices throughout the country. They are available to offer counsel and information to Christian schools in the United States and Canada. The ACSI regional directors are competent leaders in the Christian school movement. Pray for them as they travel thousands of miles each year on behalf of ACSI member schools.

PROFESSIONAL BOOKS

ACSI publishes many books and manuals for parents, administrators, board members, teachers, school secretaries and students. The association also publishes a monthly teacher placement list, an annual directory of member schools and colleges, regional newsletters and our professional journal, *Christian School*. This flow of vital information is important to the quality of education in your child's Christian school. Without the strong flow of written communication provided by ACSI, the Christian school movement would soon lose its cohesive thrust.

REDUCED INSURANCE RATES

ACSI insurance programs return more than one million dollars a year to its member schools and colleges via savings in premiums and worker's compensation rebates. Many schools more than offset the annual cost of ACSI membership with savings from the group insurances offered through ACSI.

Finally, the most important thing parents should know about ACSI is that everyone who is a part of the association is vitally concerned about children and young people. The 42 staff members, the 26 people who serve on the ACSI Board and scores of others who assist with ACSI programs are all born-again believers in Jesus Christ. We are strongly committed to quality Christ-centered education. Along with the staff of your fine Christian school, we have devoted our lives to the task of inspiring the next generation to be followers of Jesus Christ. □

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SB 261 AND HB 357

Summary of the Legislation

SB 261 and HB 357 deal exclusively with private church schools and schools operated by religious organizations and, as amended, are modeled after the legislation adopted by North Carolina in 1979 and by West Virginia in 1982 to remedy church-state constitutional conflicts. These laws, if enacted by the Legislature, would establish requirements that must be met by private religious schools in order for parents whose children attend them to satisfy the compulsory education law. They would also exempt pre-elementary and nursery programs operated by religious organizations from the supervision of the Departments of Education and of Health and Social Services. The purpose of these bills is to remedy existing church-state constitutional conflicts by protecting the guaranteed religious freedom of church schools in Alaska and, at the same time, to balance the state's interest in assuring that each child receives a good education.

This legislation only covers schools, pre-elementary programs or nursery programs operated by a church or other nonprofit religious organization exempt from federal taxation and not receiving state or federal funding. These are constitutionally protected groups and activities.

More specifically, church schools (or denominational schools as defined in the proposed legislation) would be required to maintain attendance and immunization records. Since current compulsory education laws make parents liable for their children's failure to attend school, these bills, as amended, would require the parents to file statements with the public school authorities to establish their children's attendance at a church sponsored private school. By placing the requirement on the parent, the bills avoid the constitutional problems created by the state's excessive entanglement in religious activities. The school would also be required to operate on a regular schedule, at least nine calendar months per year, and to be subject to reasonable fire, health, and safety regulations.

To ensure that children attain certain minimum educational standards, each religious school would be required to administer a nationally standardized test to students in the first, third, sixth and ninth grades and to make the school results available for the Department of Education. This would satisfy the state's interest in compulsory education and still avoid the constitutional problem of excessive state entanglement in religion.

Any church school that satisfied all the requirements of AS 14.45 would be exempt from any additional provision of law

relating to education except those requirements of law relating to fire, health, and safety.

Constitutional Requirements

The changes set out in SB 261 and HB 357, as amended, are required to correct existing Alaskan laws which run afoul of the constitutional mandate requiring the states to avoid excessive entanglement in religious activities. The state's right to impose minimum requirements on private religious schools is very limited, because these religious activities are protected by the First Amendment of the United States Constitution and its identical counterpart in the Alaska Constitution, Art. I, sec. 4.¹

Schools operated by churches or by nonprofit religious organizations are quite different from other private schools. They enjoy a constitutionally protected status.

"Church operated schools are generally integral parts of their sponsoring churches. Their superintendents are generally pastors or assistant pastors of the sponsoring churches; their teachers are generally members; and their doctrinal stances are generally set by the sponsoring churches."²

Federal and state courts recognize that operating a church school is an integral part of the free exercise of religion.³ For many churches, it is in fact the ministry of the church. Because

¹ E.g., Kentucky State Bd. for Elem. & Secondary Education v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. den., 446 U.S. 938 (1980); Wisconsin v. Yoder, 406 U.S. 205 (1972); Lemon v. Kurtzman, 403 U.S. 602 (1970); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

² "State Regulation of Private Religious Schools in North Carolina -- A Model Approach," 16 Wake Forest Law Review 405, 431-32 (1980).

³ See, e.g., NLRB v. Catholic Bishop, 99 S. Ct. 1313 (1979) (Catholic parochial schools are founded for religious reasons and religious doctrine is pervasive); Surinach v. Pasquera de Busquets, 604 F.2d 73 (1st Cir. 1979) (private Catholic schools are an integral part of the Catholic Church and as such "involve substantial religious activity and purpose"); Hunt v. McNair, 413 U.S. 734, 743 (1973) ("[R]eligion is so pervasive that a substantial portion of [religious school] functions are subsumed in the religious mission."); Lemon v. Kurtzman, 403 U.S. 602, 616 (1971) ("[T]he parochial schools constituted 'an integral part of the religious mission of the Catholic Church'. . . In short, parochial schools involve substantial religious activity and purpose.").

church operated schools clearly come within the First Amendment free-exercise clause, their activities are constitutionally protected as fundamental rights.⁴

In the area of First Amendment individual liberties, any state legislation that burdens parents', childrens', or a church's free exercise of religious beliefs is unconstitutional unless, the state can demonstrate "a compelling state interest in the regulation of a subject within the state's constitutional power to regulate." Sherbert v. Verner, 374 U.S. 398, 403 (1963).

To establish the existence of a compelling state interest, it is not enough for the state to merely show that a rational relationship exists between a colorable state interest and the proposed regulation. According to Sherbert, "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

More importantly, the state must demonstrate that it is using the least burdensome method for addressing the compelling state interest. The current law violates this mandate, because the legislative goals can be achieved with less burdensome methods. SB 261 and HB 357, as amended, use North Carolina and West Virginia laws as models and are less burdensome while still accomplishing legislative goals.

Eventhough SB 261 and HB 357, as amended, would create two classes of private schools and treat them differently, these bills would not violate the Equal Protection clause of the Fourteenth Amendment. According to established legal principles⁵, the equal protection guarantee of the Fourteenth Amendment does not take from the state legislatures all power to classify persons or objects. The state may classify persons for the purpose of legislation. Classification is an inherent right and power of the legislature.

The important issue for these proposed bills is whether the distinction between private schools operated for profit and private schools operated by churches is based on a real and substantial difference between the two classes. Clearly, there is a substantial difference. The decision of the legislature to recognize its limited ability to regulate church schools is based on a constitutional distinction between the two classes. Church schools are in a protected class, enjoying the protection of the First Amendment. Private schools are not.⁶

⁴ Ibid.

⁵ 16A Am Jur 2d, Constitutional Law, §746, et. seq.

⁶ In addition, it must noted that the motivations for operating

In the area of religious freedom and expression, the Constitution demands neutrality. The government cannot demonstrate a hostility toward religion or religious activity. The mere fact that the government specifically exempts religious groups from complying with certain laws does not violate the Constitution. For example, federal law clearly creates two classes when it exempts the property and income of religious organizations from federal taxation. These two classes parallel the two classes which would be created by SB 261 and HB 357, as amended. The Supreme Court held this was proper legislation in Walz v. Tax Commission, 397 U.S. 664,669 (1970). The Supreme Court found that neither the purpose nor the effect of such exemption was to advance or inhibit religion. It was "benevolently neutral."

The distinction between private schools operated for profit and those operated by churches is real and parallels distinctions created by the federal tax laws. Therefore, there is no violation of equal protection guarantees.

In summary, the present law violates both the United States Constitution and the Alaska Constitution. SB 261 and HB 357, as amended, balance the state's interest in ensuring that each child receives a good education with the fundamental right to religious freedom and should be adopted.

a private school for profit and a school operated by a church are entirely different.

* Section 1. AS 14.07.020 (8) is amended to read:

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080 (4) excluding pre-elementary schools and nurseries operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding; pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

* Section 2. AS 14.30.010 (b)(1) is amended to read:

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; [OR]

(C) except as provided in (D) of this paragraph, attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement tests; the department with assistance from representatives of the private schools shall promulgate regulations defining the subject areas to be tested and the minimum average scores to be achieved; or

(D) attendance in an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding and provided that the church or other nonprofit religious organization elects to comply with the provisions of AS 14.45;

* Section 3. AS 14.45.015 is added to read:

Sec. 14.45.015. POLICY. In conformity with the fundamental right to freedom of religion guaranteed by the constitutions of the United States and of Alaska, it is the public policy of the State in the matters of education by religious organizations that the state shall not control or interfere with the rights of conscience or with religious liberty. The State further finds that there is no compelling reason to interfere with this fundamental right.

* Section 4. AS 14.45.020 is repealed.

* Section 5. AS 14.45.025 is added to read:

AS 14.45.025. STANDARDIZED TESTING REQUIREMENTS. Each school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with this chapter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades one, three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after testing, all records shall be made available to the parents at the principal's office, and the school composite test results shall be made available at all reasonable times for annual inspection by a duly authorized representative of the State of Alaska.

* Section 6. AS 14.45.030. is amended to read:

Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED.

(a) Teachers and others in charge of private [OR DENOMINATIONAL] schools not operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with AS 14.45 shall make regular monthly attendance reports and annual reports to the commissioner in the same manner as teachers and superintendents in the public schools.

(b) The enrollment and attendance of a child in a school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding shall be filed with the local public school superintendent by the parent, guardian or other person in charge or control of the child on a form provided by the superintendent which shall be countersigned by the administrator of the church school and returned to the public school superintendent by the parent. Should said child cease attendance at a church school, the parent, guardian, or other person in charge or control of the child shall by prior consent at the time of enrollment direct the church school to notify the local public school superintendent that said child no longer is in attendance at a church school.

(c) Each school operated by a church or other nonprofit religious organization exempt from federal taxation and which does not receive state or federal funding shall make and maintain monthly attendance records for each student enrolled and regularly attending classes. Such school shall operate on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year.

* Section 7. AS 14.45.035 is added to read:

AS 14.45.035. REQUIREMENTS EXCLUSIVE. No school operated by any church or other nonprofit religious organization exempt from federal taxation which does not receive state or federal funding and which has complied with this chapter shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation, *physical* and immunization. *examinations*

* Section 8. AS 44.27.020(1) is amended to read:

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondance courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education or an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation if the program does not receive state or federal funding and if that school has elected to comply with the requirements of AS 14.45;

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CHERI C. JACOBUS
ATTORNEY AT LAW
1348 CRESCENT AVENUE
ANCHORAGE, ALASKA 99504

19 May 1983

Representative Sam Pestinger
State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: HB 357 -- Regulation of Religious Schools

Dear Representative Pestinger:

Thank-you for your support and for the excellent help provided to Burt Carney and to me by Ed Essa during our recent trip to Juneau to work for the passage of HB 357. As we discussed, this legislation is extremely important if the state is to avoid the church-state conflicts that have occurred in other states. While the results are generally pleasing, in reviewing the final Health, Education and Social Services committee substitute, one problem is apparent in the language added to Section 1. The section as amended reads as follows:

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080(4) excluding the educational component of pre-elementary schools and nurseries operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding; pre-elementary schools in this paragraph means schools for children ages three through five years when the school's primary function is educational; (the added language is in bold type)

While the phrase "the educational component" may seem innocuous, it really defeats the purpose of this legislation. The change in the language is improper on three grounds. First, it violates the Equal Protection clause of the U. S. Constitution by apparently delegating to the Department of Education more supervision over church schools than it has over public schools. Second, it is unclear what non-educational general supervisory powers the legislature intends to grant to the Department of Education over church schools and, therefore, this broad grant is an unconstitutional delegation of legislative power to the executive branch of government. Third, if by this grant of power, the department through regulation can unduly burden religious exercise, it is unconstitutional as a violation

of the First Amendment.

If the legislation excludes only "the educational component" of church schools, there is a clear implication that the church school may be regulated in other ways under the "general supervision" language. Not even the public schools are subject to "general supervision," but the department's duties regarding them are specifically set forth. The existing statute includes: providing consulting and advisory services to the public schools, prescribing a minimum course of study for the public schools, establishing educational programs for children in detention, accrediting public schools, prescribing standards to assure healthful and safe conditions in public and private schools, providing correspondence courses, accrediting private schools that request accreditation, reviewing construction plans of public schools, and providing vocational education to those persons older than sixteen. These specific powers are generally not relevant or applicable to church schools.

Unless church schools are totally exempt from "general supervision," and not exempt only with respect to the educational component, there would be a denial of equal protection under the Constitution, because the department would have more authority over religious schools than it has over public schools.

Because the words, "general supervision," are not defined it is not clear what the legislature intends by them. By leaving it up to the department to decide what is meant by these words, the legislature would be violating a basic principle of our form of government. The legislature writes the laws and sets policy and the executive branch implements that policy. The separation of power is essential to effective government and where a delegation is too vague, the courts generally strike the law down.

Finally, the state cannot do indirectly what it is prohibited from doing directly. As we have discussed, the state's right to impose minimum requirements on private religious schools is very limited, because those religious activities are protected by the First Amendment of the U. S. Constitution and its identical counterpart in the Alaska State Constitution, Art. I, sec. 4. Any legislation that directly or indirectly burdens parents', childrens', or a church's free exercise of religious beliefs is unconstitutional unless, the state can demonstrate that it has a compelling state interest in the regulation and that it has chosen the least burdensome method for protecting that interest.

In this case, since the legislature has not even identified the compelling state interest in granting to the department "general supervision" of church pre-elementary and nursery programs and has left the definition of the term, as well as the method, up to the department, this would clearly violate the First Amendment.

Again, I appreciate the time and the support you and your staff have provided to me. Please delete the phrase "the educational component of" added by the HESS Committee to HB 357.

Sincerely,

Cheri C. Jacobus

Cheri C. Jacobus

cc: Rep. Mae Tischer
Rep. Milo Fritz, M.D.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 18, 1983

SUBJECT: Regulation of religious schools
(CSHB 357 (HESS))

TO: Representative Mae Tischer
Chairman, House Health, Education and
Social Services Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

You have asked for an opinion as to the effect of the amendment made to sec. 1 of CSHB 357 (HESS) at the Health, Education and Social Services Committee meeting of May 17, 1983. Before the committee amendment, sec. 1 amended AS 14.07.020(8) to provide that certain religious schools are excluded from the general supervision of the Department of Education and the Department of Health and Social Services. The committee amendment makes it clear that only the educational component of those schools is exempt from departmental supervision.

More specifically, before the committee amendment, sec. 1 provided that the departments would exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries, excluding pre-elementary schools and nurseries run by religious organizations. In other words, religious pre-elementary schools would be exempt from any supervision whereas religious nurseries would only be exempt from supervision of their educational component. This would leave the religious nurseries open to regulation as to such matters as health and safety, but not curriculum. The amendment made in the committee meeting added the words "educational component" to the exemption from departmental supervision. The effect of the amendment is to make it clear that the departments can regulate both religious pre-elementary schools and nurseries only in regard to matters other than education, e.g., health and safety.

KBL:ljb
20/024

CHERI C. JACOBUS
ATTORNEY AT LAW
1348 CRESCENT AVENUE
ANCHORAGE, ALASKA 99504

Representative Milo Fritz, M.D.
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Draft Letter of Intent for CSHB 357 -- Regulation of
Religious Schools

Dear Dr. Fritz:

Attached is a draft Letter of Intent to accompany CSHB 357. I have attempted to cover all the issues which might arise in the state's later interpretation of this legislation. If you or your staff have any questions or think that it can be clarified, please feel free to call me. I especially enjoyed our short meeting together.

In carefully reviewing the draft CSHB 357 a few minor problems came to my attention. The Legislative Affairs Assistant Counsel added some language and left out other language which would have made the committee substitute more clear, without changing its meaning.

Pursuant to discussions with the representative of the Department of Education, Steve Hole, the following sentence should be added to page 2, line 21 to make it clear that religious schools are treated in the sub-sections that follow:

This sub-section does not apply to religious schools as defined in AS 14.45.040 which comply with this chapter.

Since it is clearly not practical for the parents to provide daily attendance records, that requirement should be deleted from the committee substitute. Section 5 found on page 2, beginning on line 23, would then read:

(b) The parent or guardian of a child enrolled in a religious school that complies with this chapter shall file annual enrollment [and attendance records] for the child with the public school superintendent for the area in which the child resides on a form provided by the public school superintendent. . .
(bracketed part is deleted.)

As I testified in the teleconference, the last sentence of that section should also read differently to protect the state's interest in assuring compliance with the state's compulsory education law. Since this is more practical, the change would require the church school to notify authorities if a child leaves the church school. Line 29 on page 2 and lines 1 and 2 on page 3 should read as follows:

The religious school [parent] shall notify

the public school superintendent immediately if the child is no longer in or attending the religious school.

As I was leaving Juneau, it came to my attention that the Administration was considering lengthening the school year. Therefore, with that in mind, the following language change is suggested to ensure that religious schools operate for similar lengths of time. Line 6 on page 3 should read:

. . . [during at least nine calendar months of the year] for at least the same number of days that the public schools operate.

Finally, to avoid an interpretation that would require intrusive regulations, it is suggested that the following language be added to Section 6, beginning at line 19. That subsection would then read:

(c) A religious school shall maintain records of the results of the nationally standardized tests and the records shall be made available to the parent or guardian of the student and to authorized representatives of the state in the school office.

Thank-you for all your help on this important issue. If Alaska can avoid all the problems that have occurred in the lower 48 states, it will be worth the effort. I look forward to working with you again.

Sincerely yours,

Cheri C. Jacobus
Cheri C. Jacobus

attachment

LETTER OF INTENT
HB 357

The House Health, Education and Social Services Committee recognizes that operating a church school is an integral part of the free expression of religion and that schools operated by religious bodies are quite different from other private schools. Therefore, the Committee's purpose in referring HB 357 to the floor and in urging its passage is to prevent possible church-state constitutional conflicts by protecting the fundamental rights of religious freedom of parents, children, and church schools in Alaska and, at the same time, to balance the state's interest in assuring that each child receives a good education. The Committee specifically intends to exempt pre-elementary and nursery programs operated by religious organizations from the general supervision of the Departments of Education and of Health and Social Services.

The Committee only intends to exclude from the purview of this bill those church schools that receive direct federal or state funds. This would not affect those schools that receive incidental benefits from government, such as fire or police protection, health care or other benefits to which all citizens are entitled.

Any church school that satisfies all the requirements of AS 14.45 would be exempt from any additional provision of law relating to education except those requirements of law relating to fire, health, and safety. While each church school would be subject to reasonable fire, health, and safety regulation, the House Health, Education and Social Services Committee intends to specifically limit health regulation to that regulation that is reasonably related to the state's interest in preventing and curing physical diseases. For example, the Committee does not intend for the state to regulate minimum space requirements (except as it directly relates to the fire code), hours of attendance, or reasonable methods of discipline.

In summary, the House Health, Education and Social Services Committee Substitute for HB 357 balances the state's interest in ensuring that each child receives a good education with the constitutional right to religious freedom.

Respectfully submitted,
/s/

OFFERED IN THE HOUSE:

BY: Koponen and Phillips

To: CS HOUSE BILL No. 357 (RULES)

SENATE BILL No. _____

PAGE: _____

LINE: _____

PAGE 1, LINE 6

Delete: "religious"

Insert: "private"

PAGE 1, LINE 14, following "by a"

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 2, LINE 6, following "by a "

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 2, LINE 10, following "A"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 23, following "in a"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 25, following "in the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 29, before "school"

delete: "religious"

insert: "private nonprofit"

Failed
13 - 23

A M E N D M E N T #1 (continued)

OFFERED IN THE HOUSE: By: _____
 To: _____ HOUSE BILL No. _____
 SENATE BILL No. _____
 PAGE: _____ LINE: _____

PAGE 3, LINE 1, following "The"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 3, following "the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 4, following "a"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 12, before "school"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 14, following "the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 18, following "A"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 22, following "A"

Delete: "religious"

Insert: "private nonprofit"

OFFERED IN THE HOUSE:

By: _____

To: _____ HOUSE BILL No. _____

SENATE BILL No. _____

PAGE: _____

LINE: _____

PAGE 3, LINE 25, following "the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 26, following "chapter"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 27, following "by a "

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 4, LINE 8, following "by a"

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

AMENDMENT #2

OFFERED IN THE HOUSE:

By: KOPONEN AND PHILLIPS

To: CS HOUSE BILL No. 357 (RULES)

SENATE BILL No. _____

PAGE: _____

LINE: _____

PAGE 1, LINE 15

Delete: "direct"

PAGE 2, LINE 8

Delete: "direct"

PAGE 3, LINE 29

Delete: "direct"

PAGE 4, LINE 10

Delete: "direct"

Failed 23-14

Levy
5/20/83

Original sponsors: Fritz, Tischer,
Pestinger, et al

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 357 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of religious
7 schools."

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

9 * Section 1. AS 14.07.020(8) is amended to read:

10 (8) in cooperation with the Department of Health and Social
11 Services, exercise general supervision over public and private pre-
12 elementary schc ls and over the educational component of nurseries as
13 defined in AS 47.35.080(4) ~~excluding pre-elementary schools and nur-~~
14 series operated by a church or other nonprofit religious organization
15 that is exempt from federal taxation and does not receive direct state
16 or federal funding; pre-elementary schools in this paragraph means
17 schools for children ages three through five years when the schools'
18 primary function is educational;

*CS deletes
"the educational
component of"*

19 * Sec. 2. AS 14.30.010(b)(1) is amended to read:

20 (1) is provided an academic education comparable to that
21 offered by the public schools in the area, either by

22 (A) attendance at a private school in which the teach-
23 ers are certificated according to AS 14.20.020;

24 (B) tutoring by personnel certificated according to
25 AS 14.20.020; [OR]

26 (C) except as provided in (D) of this paragraph,
27 attendance at a private school in which the average student
28 proficiency is not less than the average proficiency found in the
29 public schools in the area as measured by national achievement

1 tests; the board of education [DEPARTMENT] with assistance from
2 representatives of the private schools shall adopt [PROMULGATE]
3 regulations defining the subject areas to be tested and the
4 minimum average scores to be achieved; or

5 (D) attendance in an educational program operated in
6 compliance with AS 14.45 by a church or other nonprofit religious
7 organization that is exempt from federal taxation and does not
8 receive direct state or federal funding;

9 * Sec. 3. AS 14.45 is amended by adding a new section to read:

10 Sec. 14.45.025. EXEMPTION FROM EDUCATION LAWS. A religious
11 school that complies with this chapter is exempt from other provisions
12 of state law and regulations relating to education except laws and
13 regulations relating to health, fire safety, sanitation, immunization,
14 and physical examinations.

15 * Sec. 4. AS 14.45.030 is amended to read:

16 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. (a)
17 Except as provided in (b) and (c) of this section, teachers [TEACHERS]
18 and others in charge of private or denominational schools shall make
19 regular monthly attendance reports and annual reports to the commis-
20 sioner in the same manner as teachers and superintendents in the
21 public schools.

22 * Sec. 5. AS 14.45.030 is amended by adding new subsections to read:

23 (b) The parent or guardian of a child enrolled in a religious
24 school that complies with this chapter shall file an annual notice of
25 enrollment in the religious school for the child with the public
26 school superintendent for the area in which the child resides on a
27 form provided by the public school superintendent. The form shall be
28 signed by the parent and the chief administrative officer of the
29 religious school and returned to the public school superintendent by

1 the parent. The religious school shall notify the public school
2 superintendent immediately if the child is no longer enrolled in or
3 attending the religious school.

4 (c) A religious school that elects to comply with this chapter
5 shall maintain monthly attendance records for each student enrolled in
6 the school, shall operate on a regular schedule, excluding reasonable
7 holidays and vacations, during at least 180 days of the year, and
8 shall make an annual report to the commissioner of the number of
9 students in each grade and the school calendar.

10 * Sec. 6. AS 14.45 is amended by adding new sections to read:

11 Sec. 14.45.035. STANDARDIZED TESTING REQUIREMENTS. (a) A
12 religious school that elects to comply with this chapter shall admin-
13 ister a nationally standardized test selected by the chief administra-
14 tive officer of the religious school to all students enrolled in
15 grades one, three, six, and nine at least once each school year.

16 (b) The nationally standardized test must measure achievement in
17 English grammar, reading, spelling, and mathematics.

18 (c) A religious school that elects to comply with this chapter
19 shall maintain records of the results of the nationally standardized
20 tests and the records shall be made available to the parent or guar-
21 dian of the student and to authorized representatives of the state.

22 Sec. 14.45.040. RECORDS. A religious school that elects to
23 comply with this chapter shall maintain adequate student records,
24 including records of immunizations, physical examinations, testing,
25 and courses taken at the religious school.

26 Sec. 14.45.045. DEFINITION. In this chapter, "religious school"
27 means a school operated by a church or other nonprofit religious
28 organization that is exempt from federal taxation and does not receive
29 direct state or federal funding.

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* Sec. 7. AS 44.27.020(1) is amended to read:

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondence courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education or an educational program operated in compliance with AS 14.45 by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive direct state or federal funding;

* Sec. 8. AS 14.45.020 is repealed.

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COMMITTEE REPORT

HOUSE

STATE AFFAIRS

JUDICIARY

FURTHER:

(7)

(HESS and Judiciary added 4/26/83; Finance removed 4/26/83)

4/26/83

Date:

5/6/83

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES

has had SSNB 374

An Act relating to the establishment of maximum security prison facilities at Anderson and Palmer/Sutton."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SSNB 374 same title
 new title
- and recommends amend bill indicate of 2 months delay
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Miss Miller

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

POSITION PAPER

Sponsor Substitute for House Bill No. 374

"An Act relating to the establishment of maximum security prison facilities at Anderson and Palmer/Sutton."

House Bill No. 374 modifies AS 33.30.020 by making that section subject to the provisions of AS 33.30.025 which is entitled Location of Facilities. AS 33.30.025 requires that after July 1, 1983, the Commissioner shall locate all newly constructed maximum security prison facilities that contain 200 or more beds within the vicinity of Anderson and Palmer/Sutton.

The Department of Health and Social Services and the Division of Adult Corrections totally opposes the concept of predetermined building sites for prison facilities. It is imperative that such decisions be made by professional correctional practitioners and based on sound criminal justice criteria for site location to ensure that the prison facilities meet standards for programming, security, and safety.

Recommended by: *for Roger V. Endell*
Roger V. Endell, Director
Division of Adult Corrections

Date: 4-29-83

Approved by: *Robert London Smith*
Robert London Smith, Ph.D.
Commissioner

Date: 4/29/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SS for HB #374
 Title: Act relating to estab. of max pris fac
 Sponsor: Schultz
 Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected: Adm. of Just.
 BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
 Division: Adult Corrections Date: April 28, 1983
 Approved by Commissioner: Keith Gordon Smith, M.D. *Keith Gordon Smith, M.D.* Date: 4/29/83
 Department: Health & Social Services

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

FISCAL NOTE

Sponsor Substitute for House Bill No. 374

Page 2

IV. ANALYSIS

No specific additional costs can be identified related to the requirement to locate all newly constructed maximum security prison facilities within the vicinity of Anderson and Palmer/Sutton.

POSITION PAPER

CS for Sponsor Substitute for House Bill No. 374 (HESS)

"An Act relating to the establishment of maximum security prison facilities at Anderson and Palmer/Sutton."

House Bill No. 374 modifies AS 33.30.020 by making that section subject to the provisions of AS 33.30.025 which is entitled Location of Facilities. AS 33.30.025 requires that after July 1, 1983, the Commissioner shall locate all new maximum security prison facilities that contain 200 or more beds within the vicinity of Anderson and Palmer/Sutton.

The Department of Health and Social Services and the Division of Adult Corrections totally opposes the concept of predetermined building sites for prison facilities. It is imperative that such decisions be made by professional correctional practitioners and based on sound criminal justice criteria for site location to ensure that the prison facilities meet standards for programming, security, and safety.

Recommended by: *Roger V. Endell*
for Roger V. Endell, Director
Division of Adult Corrections

Date: May 13, 1983

Approved by: *Robert London Smith*
Robert London Smith, Ph.D.
Commissioner

Date: 5/17/83

I. REQUEST CS for SS for II. FISCAL DETAIL
Bill/Resolution No.: HB #374 (HESS) Agency Affected: Health & Social Services
Title: Act relating to estab. of max pris fac Program Category Affected: Adm. of Just.
Sponsor: Schultz BRU, Program of Subprogram(s) Affected:
Requestor: House HESS Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
 Division: Adult Corrections Date: May 12, 1983
 Approved by Commissioner: Robert Gordon Smith, Ph.D. Date: 5/17/83
 Department: Health & Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

FISCAL NOTE
CS for SS for HB #374 (HESS)
Page 2

IV. ANALYSIS

No specific additional costs can be identified related to the requirement to locate all new maximum security prison facilities within the vicinity of Anderson and Palmer/Sutton.

TO: HESS Committee Members

FROM: Heidi H. Borson

RE: Staff Report - HB 347 - An act relating to the establishment of maximum security prison facilities at Anderson and Palmer/Sutton.

HB 347 mandates that all newly constructed maximum security prisons with 200 or more beds be located within the vicinity of Anderson and Palmer/Sutton. The fiscal note for HB 374 is zero due to a lack of information, and the next committee of referral is Judiciary.

The Department of Health & Social Services totally opposes the concept of predetermined building sites for prison facilities; and thus opposes HB 374, as well as HB 217 and HB 275.

The language in Section 33.30.025 of HB 374 differs from HB 217 and HB 275 in two respects:

1. the name of the designated location
2. the added stipulation that the prison facilities contain 200 or more beds

Note that in previous deliberations over HB 217 and HB 275, the committee voted to adopt committee substitutes for the bills which changed the wording in Section 33.30.025 from locating "all newly constructed maximum security prison facilities" within the vicinity of X to locating "the next maximum security prison facility" within the vicinity of X.

Backup material from the sponsor of HB 374 is attached to this report.

EXECUTIVE SUMMARY
FOR THE LEGISLATURE

The Anderson Case
for a
Maximum Security Prison
April 26, 1983

We'd like to be taken seriously.

Now that the attention-getting phase of our program has concluded, we'd like to firmly establish our position on maximum security prisons by briefly re-stating it:

1. The Legislature should decide on the location of any correctional facility such as this one. The impacts on a community are enormous and of long-term economic and social importance. It is the kind of decision that determines which part of the State will or will not grow. This is the kind of decision Legislatures should be making. Legislatures prevail, over time. Commissioners come and go, and policies with them. It is obvious that you and your colleagues must make this decision. It is just as obvious that the management decisions belong to the professionals.

2. It is decision time. Information we have developed during our research tells us that the State of Alaska is at peril if a decision is not reached during this Session of the Thirteenth! We have mentioned this to no one up to now, but, we'll appreciate being able to fill you in during the coming week. Please let us have a couple of minutes to do so. Thank you.

3. Two small prisons, not one large one. Our research among Alaska prison managers, those in the Lesser-48, and throughout the professional literature support the validity of this concept, and it may actually cost less to operate two smaller, than one large. Costs to construct two will be only about 22% more than to build the single larger unit, we have been told by prison architects.

4. Palmer and Anderson are appropriate locations to serve the north and south of the State since about 46% of all inmates resided in the Greater Anchorage area and about 41% came from Fairbanks and the Bush before their placement in institutions.

5. And finally, Anderson has the same kind of locational advantages as any other site, except one -- and that's where we have it all over everybody -- our citizens voted for it in a legal Referendum. To this time, no other city has done that!

THE CITY OF ANDERSON

G. W. Mueller
Mayor

White Paper

+ + + + +

A Consideration
For Location of
Maximum Security
Prison
In
Anderson

Developed In Cooperation With
GAPY COPUS, Ph.D
Criminal Justice Division
University of Alaska
Fairbanks

Credentials Brief

GARY COPUS, PH.D

Currently serving the Thirteenth Alaska Legislature as a consultant in Corrections, Dr. Copus has also assisted the Mayor and Council of the City of Anderson in determining its viability for siting a Maximum Security Prison.

He received his Doctorate in Sociology at the University of Missouri-Columbia.

From 1970 until 1979, he was instructor in Criminal Justice in the graduate school at Sam Houston University, Huntsville, Texas.

From 1980 to the present he served in the Criminal Justice program in which he has published and lectured in all areas of corrections and its alternates.

We are very proud to have the assistance of Dr. Copus in developing our position.

White Paper

+ + + + +

A Consideration
For Location of
Maximum Security
Prison
In
Anderson

CONSIDERATIONS ABOUT ANDERSON AND MAXIMUM SECURITY PRISONS

- o Purpose of maximum facilities is LESS REHABILITATION AND MORE WAREHOUSING. Lessens the necessity to establish facilities in urban, or near urban, areas.
- o Availability of the Anderson Site for VISITATION is enhanced by the TRAIN STOP and HIGHWAY connecting Alaska's two largest cities.
- o There is no other prison system in Anderson. The modern trend is to keep prison facilities: less than 500 bed capacity, and GEOGRAPHICALLY SEPARATE, so as NOT TO CREATE A "PRISON MEGALOPOLIS." This latter characteristic allows for 1) distribution of the economic advantages and 2) the flexibility for prison management to have access to a variety of resources from the land and the community.
- o Anderson is in the middle of a growth/development corridor of Alaska. Remembering that given the prison facility will last many generations to come the Anderson site makes an excellent choice given the emerging DEVELOPMENT PATTERNS ALONG THE RAIL-BELT.
- o The facility, if a 400 bed one as currently proposed, will employ between 175 and 250 persons. The City of Anderson looks forward to the advantages new citizens afford and to the opportunity for current and future citizens to obtain correctional employment.
- o With OVERWHELMING COMMUNITY SUPPORT any deficit Anderson may have will be overcome or lessened. No matter where a site is located, there will be positive and negative factors to be dealt with. It is emphasized that where Anderson differs is the community spirit so necessary for what successes prisons can achieve.
- o IN SUMMARY, Prisons need four things to operate: a physical facility, personnel to staff and administer, offenders to be located there, and supplies. Anderson can provide a location whereby the state can satisfy these needs efficiently, economically, and continually.

COMMUNITY SUPPORT

- o Referendum on February 29, 1983 supported prison by 2-to-1.
- o 61% voter turnout
- o Five public meetings informed citizens
- o Reasons Anderson wants prison are community expansion and employment opportunities in future generations.

LAND AVAILABILITY

- o Multiple sites for selection
- o Sites are available by State Land Selection Process from Cook Inlet Region, Incorporated; or, Federal Lands

ELEMENTS OF PHYSICAL ENVIRONMENT

- o Water - pure, unlimited, and without fee via prison's own wells and distribution facilities.
- o Sewage - Cost saving from construction/operation of on-site treatment system.
- o Power - Optional excess power available from Clear AFB or, Golden Valley Electric Association and potential Anchorage-Fairbanks intertie.
- o Heating - Coal from Usibelli Mines 50 miles away, and/or fuel from North Pole Refinery 100 miles away.
- o Transportation available by highway, rail, and air.

ELEMENTS OF HUMAN ENVIRONMENT

- o Recreational areas and activities plentiful in Anderson area.
- o Modern elementary and high school expandable to accommodate increased student body.
- o Medical facilities currently 80 miles north in Fairbanks via highway, but, with increased population expect Anderson facility.
- o Fire protection supported by Anderson and Clear AFB.
- o The prison will attract quality personnel to work there and live in Anderson. Precedent in support is Clear AFB personnel educational level and technical skill level in Anderson for 20+ years. AFB also offers supply of potential quality employees from those retired or wishing a job change.

White Paper

+ + + + +

A Consideration
For Location of
Maximum Security
Prison
In
Anderson

MODERN
PRISONS
DESCRIBED

1. In modern penal systems the purpose of maximum security units has changed little since the inception of the first prison in our nation. The purpose is simply to provide for the safe keeping of those individual offenders who have shown themselves incapable of co-existing with others, or are deemed a danger to themselves or others, or are in danger from others.

Less
Rehabilitation

Individuals are assigned to maximum units via a thorough process called classification and end up "max-rated" only as a last resort. Given these considerations, experts argue that "max units" are simply warehousing units, with less emphasis on rehabilitation.

Rehabilitation is attempted in minimum or medium security units -- an assignment available to max inmates through re-classification. Thus

FOR SITE SELECTION OF A MAXIMUM SECURITY UNIT
THE AVAILABILITY OF REHABILITATION SERVICES
SHOULD NOT BE A MAJOR FACTOR OF CONSIDERATION.

EASY
TRAVEL

2. An Anderson site would be ideal for friends and relatives wishing to visit inmates because of its accessibility by highway and rail. The train is a particularly good asset for families not having access to automobile transportation and during most of the year the frequency of the local runs is such that persons visiting the prison could make convenient connections. Additionally, for persons visiting from Fairbanks, Anderson is a short, scenic drive.

NO PLACE
PERFECT

3. With the numerous points to consider, no matter which site the State selects, all points will not be positive relative to other sites. For example, one might argue that Haines would have been more positively effected economically than a Palmer area site, but Palmer is nearest the largest city. Anderson may have transportation and utility advantages over Palmer. Given that no one site will score relatively higher than other sites on all points, what becomes important is how to handle the deficits and then the community becomes an indispensable part of site consideration.

Positive
Community
Attitude

A positive community outlook supports the goals of the prison in many direct and subtle ways. For example, a positive community attitude attracts, in part, quality personnel to staff the prison; assists those families moving to the area because a friend or relative is incarcerated and thus eliminates worry on part of the inmate; works with the prison administration to provide for staff housing, supplies, and emergency labor needs thus resulting in an efficient institution with a high morale.

ANDERSON IS A CITY WHICH HAS PUBLICLY ANNOUNCED, ON THE BASIS OF INFORMED DECISION MAKING, THAT IT WILLINGLY ACCEPTS THE COMMUNITY RESPONSIBILITY.

LONG
USEFUL
LIFE

4. Prisons last for many years, a conservative estimate being a useful life of between 60 to 90 years. A good many prisons operating today are "centenarians". Thus when considering a site, the future of the area must be carefully taken into account. Any points negative with respect to Anderson should be assessed with the question, "What will the Anderson area be like 5, 10, 20, 50 years from now?" The current projections are that Anderson will be part of a rapidly developing area along the rail belt which could make it a center point of population in the next 20 years. This, accompanied by projected increases in transportation facilities demotes any current concerns about "out-of-the-wayness" to only temporal concerns at best.

MAJOR
PRISON
PROBLEMS

5. Many of the major problems in prisons today are in part related to their mere magnitude in terms of numbers of persons locked up under one roof. Recent national recommendations stress the importance of keeping newly constructed units less than 500 bed capacity, and the physical separation of units. In other words, the recommendations could be interpreted as "do not build a prison megalopolis" be it under one roof or by building multiple adjacent structures. Separation of facilities, geographically, has several advantages.

Physical
Separation

First from the standpoint of the state the economic advantages are spread as well as any disadvantages which communities might accrue. For example, suppose the presence of a facility attracts inmate families which have children who in turn have learning problems, behavior problems in school, and relatively high delinquency rates. Why concentrate these traits versus spreading them out and subject them to strong positive community influence (like Anderson can provide)?

Other
Advantages

Second building a facility geographically separate from other current institutions makes good sense from a management point of view. Take the hopefully unlikely and extreme case of a major earthquake in the vicinity of a prison creating the need for evacuation. Would it not be better to evacuate only one facility than several too closely juxtaposed? Further, physical separation enhances identification by staff with "their" facility and increases pride, morale, and dedication as opposed to "working in a large network of prisons." Management also has a variety of land and community resources, the variety offering the opportunity to install new programs and ideas which may not be acceptable in just any one location. These are only a few of the reasons not to build prisons in the same geographical locale.

Gary Copus, Ph.D

INTRODUCTION TO ANDERSON

Anderson, Alaska thinks it would be a good place for a Maximum Security Prison--But only a Maximum Security Prison! The people of Anderson are pretty outspoken on that point. They have talked it over.

You say you've never heard of Anderson-- and haven't the foggiest notion of where it is?

Touche!

No convention mecca, is Anderson. It is not on the tourist highways and by-ways or the slick travel maps. But, it is well connected--very well connected, to an all-weather highway, an airport and ocean-going barges via the Alaska Railroad, right in the middle of nowhere! Between Anchorage and Fairbanks.

Now you've heard of Anderson! a town of 550 people which comes of age on its 21st birthday in June.

The reasons for putting forth Anderson's name stem from a package of advantages no where else available in quite the same magnitude or combination, as they are available in Anderson.

..... READ ON!

COMMUNITY SUPPORT

The City of Anderson has made a pointed and energetic effort to inform the citizens of all aspects, both negative and positive, of having a maximum security prison within close proximity of the town. The idea was first publicly presented on February 8 at a City Council meeting where the decision was made to continue by informing the public and assessing the general opinion. During further public hearings and Town Hall meetings occurring on February 17, 18, 25, 26, and March 18, 26 it is estimated that over 60% of all citizens in Anderson were personally involved in acquiring knowledge and asking questions. Undoubtedly, 100% became informed through informal discussion.

During the meetings, material used to guide informative discussion was used from the American Correctional Association, The Federal Bureau of Prisons and the Criminal Justice Institute at Hemlock Hill, New York. In addition, at the March 18th Town Hall meeting, professionals in the correctional area were invited to address the citizenry. Invited and accepting were Captains Douglas Nowak and Lawrence Jackson of the U.S. Air Force, and Dr. Gary Copus.

Dr. Copus, with academic and practical expertise in community impact by prisons, was very careful to point out what to some communities might be undesirable impacts. No area was left unexamined and the result was--

BASED ON SOUND AND TOTAL INFORMATION THE CITIZENS OF ANDERSON VOTED ON FEBRUARY 29TH TO DIRECT THE CITY COUNCIL TO PURSUE WITH VIGOR THE ATTRACTION OF THE MAXIMUM SECURITY PRISON TO ANDERSON.

The resulting 2-to-1 vote was based on 61% of the registered voters. Voting was done in an official manner in all precincts, locked ballot boxes and election judges. Noteworthy is that the prison issue was the only item on the ballot so that the largest turnout in Anderson's voting history was due to the community interest which was overwhelmingly positive.

An informal assessment was made as to the reasons the community obviously wanted a maximum security prison.

First the community sees the prison as an employment opportunity for its future generations. Correctional employment was seen as not only an opportunity for young adults to have the alternative of remaining in Anderson as productive citizens, but the community also recognized modern corrections as providing a desirable career opportunity. Present employment was of lesser concern. Anderson is not currently impacted by any economic crisis which might sway a community's opinion to be only temporally positive. Anderson is in a reasonably good economic and employment status.

Second the community saw many positive aspects of development and growth. Among those mentioned were cultural and social growth, economic growth through curricula expansion and attraction of additional qualified teachers, and the establishment of social and health services. The community looks at the prison as offering a challenge to develop and manage a "new Anderson."

ECONOMIC ADVANTAGES
OF ANDERSON

The economical advantages of an Anderson site could vastly outweigh those of many other potential sites if life cycle economics is considered.

Life cycle economics center upon options available for essential operating utilities, such as:

heating/air conditioning
electric power
water
sewage treatment
transportation

HEATING Healy coal, transported by the Alaska Railroad, powers the generators and boilers at the Anderson-located Clear Air Force Station. Three Anderson sites are located immediately adjacent to the Alaska Railroad. Options for heating and power generation include both coal and/or diesel transported by the Alaska Railroad:

- o Coal: Usibelli Mines, Inc.
Healy, Alaska
50 miles South
- o Diesel: North Pole Refinery Co.
North Pole, Alaska
100 miles North

ELECTRIC POWER An option available only at an Anderson site includes the potential of purchasing the stable excess power generated at Clear Air Force Station, as many other Alaskan communities do from nearby U.S. Government facilities. The City of Anderson itself purchases power from the Golden Valley Electric Association, soon to be served by the Anchorage-Fairbanks Power Intertie, providing still another option for sub-station service at about the same time the Maximum Security Prison is expected to be operational.

WATER Anderson does not offer city-treated or supplied water to the Clear Air Force Station which consumes in excess of One Hundred Fifty Million Gallons per Month, or to the 117

domestic users inside the Municipality. The prison facility would drill its own wells and provide its own water from the uniquely-abundant natural supply of superior quality potable water available in Anderson--one of its priceless natural resources. Thus the prison would not now, or later, be in the position of having to purchase water supplies from a Municipality. And, the water in Anderson is hygienically pure without treatment. The prison would, of course, have established water rights, thereby protecting its call upon the natural resource forever.

A comprehensive water study, funded by the Alaska State Legislature, was completed on February 7, 1983 by URS Engineers, an internationally-connected firm of engineers and scientists with an Anchorage operations base. The final Draft Report, accepted by the Anderson City Council on February 15, 1983, found the water to be not only pure, but plentiful for domestic needs for generations into the future in the built-up residential area, and, of unlimited industrial supply nearly everywhere else in the Municipality.

In further testimony of the purity and abundance of water for large-demand-users such as the prison might be considered, the State-owned/operated Clear Fish Hatchery draws water from its complex of wells directly into its propagation system, using 60 million gallons per month. Brewing and soft drink industries are looking at Anderson not only because of its abundance of pure water, but also because of its logistical advantages.

SEWAGE TREATMENT Another cost saving advantage of an Anderson site is that the prison would construct and operate its own small, self-contained treatment system, just as does the Clear Air Force Station for its 500+ military and civilian personnel forces. The State may wish to acquire slightly more than the proposed 100-acre-reservation for these purposes. Everywhere at all Anderson sites, land is available to the State for its purposes and needs.

TRANSPORTATION The advantages of prisoner transfer transportation has been earlier addressed. In this section, logistical transportation is discussed.

The locational advantage of an inter-modal transportation network must not be under-estimated, either for the construction phase or the ultimate operational life of the prison.

Construction materials can be boarded on rail cars at any point in the Lower-48 or the Orient and off-loaded near any of the potential Anderson sites. This same transportation system will greatly reduce costs of consumable supplies for the operation phases through use of the rail-barge-rail-truck-road inter-modal matrix available only at Anderson, while utilizing the state-owned Alaska Railroad utility. The air link to Anderson sites has been prior addressed.

CULTURAL-SOCIAL-RECREATIONAL
ADVANTAGES OF ANDERSON

Since Anderson is just 90 minutes driving time from the main campus of the University of Alaska/Fairbanks, and the university's Nenana Valley Rural Education Center presents credit-courses at Anderson and throughout the region, opportunities to take or teach graduate and under-graduate courses are readily available, as are symphony, drama, music and art, sports and popular music. The Fairbanks Regional Medical Center is only 30 air minutes from Anderson and provides a wide range of modern medical procedures.

In Anderson itself, there is an opportunity to participate in social and fraternal clubs and organizations as well as sports and educational activities. Anderson's new and modern elementary and High School can absorb a hundred or more students with only the addition of a few staff positions. By adding new rooms to the architecturally expandable complex, up to 250 additional students could be responsibly accommodated.

A new gun club and indoor shooting range will be completed next year in Anderson and, cross-country ski, snowmachine and ATV trails criss-cross the area and sport fishing and hunting are very nearby. Youth and large all-family parks are popular and in use. All roads and water removal ditching will have been completed prior to commencement of major construction.

Anderson is a Second Class City with an experienced, stable government and Council. There is no property tax. Except for educators and government employees, most adults work at Anderson's Clear Air Force Station as technical or management personnel. While Anderson has obvious employment stability, second and eventually third generation citizens face chronic unemployment and welcome the opportunity to train and to qualify for positions at the prison, now, and into its future life cycle.

LAND AVAILABILITY
IN ANDERSON

Anderson is surrounded on both sides by land available to the State through the State land selection process. Most specifically, from removal from the Cook Inlet Region, Incorporated selection pool, or from other federally owned land from which it may select. The State itself owns land which should be considered, and will soon receive numerous Sections of land in Township 7 South, Range 7 West, F.M. which affords a number of site potentials. The City of Anderson recommend sites in Sections 15, 14, 10, 11 of T7S, R7W FM be studied; then, section 8 or 4 of T7S, R7W FM; finally sections 13, 23, 26, 27 and 34 T7S, R7W FM.

POINTS TO CONSIDER FOR LOCATING PRISON IN ANDERSON

1. Prison would be close enough to Fairbanks to benefit that area's labor, logistics and transportation.
2. All supplies for the prison would probably come through Fairbanks.
3. Prison would not have the annual expense of paying a city for water and sewage treatment. The community of Clear, adjacent to the proposed prison site, has ample supply of water and the ground percolates well for sewage treatment.
4. Fairbanks Bar Association has advised that they are for this location and will process any services that are needed at the prison.
5. Population of Anderson voted on a regular ballot (not straw vote - as did Haines) to locate the prison there and by a vote of two to one. Haines citizens are against locating prison in Haines.
6. City of Anderson has hired Dr. Copus to assist them in setting up, administering and supporting the prison efforts there. He is an expert on prisons, having written many books on the subject.

(Above information supplied by Vern McCorkle and Jerry Mueller)

Anderson says yes to high security jail

If residents in the City of Anderson have their way, the state will build Alaska's first maximum security prison in their small Railbelt community.

Anderson residents voted nearly 2-1 last week in favor of offering their community as a site for a maximum security prison, jumping into competition with Palmer for the \$49 million facility.

Division of Corrections Director Roger Endell has told the Anderson city council he is not interested in Anderson as a site, but city officials are hoping the vote will change his mind.

"We know Endell has always said he'd never build the prison in a town where the people were not solidly behind the project, and we intend to hold him to that," said Anderson Mayor G.W. Mueller.

Mueller said the first thing the Anderson city council did was schedule public hearings and a "town hall" meeting to get in-

formation to residents and an indication of their sentiments.

"Now that the people are behind us, we are hoping for some support from Juneau, and we'll be there to make our case," Mueller said.

"We know that Endell has already selected the Palmer area, but Anderson has some definite advantages no other site can offer, including Palmer."

Mueller said one of the main advantages is the local support in the 550-resident community.

Mueller also said Anderson is only an hour south of Fairbanks and three hours north of Anchorage, a statement that might be disputed by highway drivers who maintain the 55-mph speed limit.

However, Mueller said Anderson also sits in the middle of the heart of Alaska's new growth corridor, and offers rail and air service.

Mueller said the town has already made wide contact with legislators and that Anderson is the most logical site for the prison.

ALASKA

Anderson ready for tough fight to get prison

By DAVID RAMSEUR
News-Miner Bureau

JUNEAU—City Manager Vern McCorkle likens it to David and Goliath. Others say it's more like the impossible dream.

The tiny town of Anderson, about 75 miles south of Fairbanks on the Parks Highway, has tossed its hat in the ring for a new maximum security state prison.

Even though state officials have all but narrowed the prison site to two other locations, Anderson is not giving up. In fact, Anderson officials say they've just now begun to fight.

"It's definitely uphill," city Manager McCorkle admitted Wednesday between appointments with legislators. "We just know it's not going to be an easy fight."

He and Mayor Gerald Mueller are here for the week trying to convince enough lawmakers that their community of 550 is the best spot to house 300 hardened criminals.

"Our position is it's all well and good for the president of the Senate to want the prison in his backyard but we'd like equal consideration," McCorkle said.

Politicizing the issue with state

ments like that is part of Anderson's strategy. City officials are carefully counting noses in case selection of the prison site falls to the Legislature.

They hope to recruit the co-chairmen of the powerful Senate Finance Committee and on the surface appear to stand a good chance. Sen. Don Bennett is from nearby Fairbanks and Sen. John Sackett once represented Anderson.

But state officials have different ideas. Three areas—Seward, Haines and the Mitanuska Susitna Valley, probably Sutton—are still in the running for the prison estimated to cost

\$45 million, according to state Corrections Director Roger Endell.

Sutton is near Palmer, the hometown of Senate President Jay Kertula.

Endell told a legislative panel this week that despite heavy lobbying, Haines stands little chance. Endell said he'll probably wait until the Legislature approves funding for the prison before selecting a site.

According to McCorkle, Endell also has told Anderson officials they're out of luck and that he even refused to visit their town to check out the proposed sites.

The smooth-talking McCorkle however, looks on the bright side.

Following four public hearings, Anderson voted 102-59 on March 29 to support location of the prison in their town.

The community is a transportation hub, McCorkle says, with the Alaska Railroad and Parks Highway with a

stone's throw and support services such as a hospital and court system nearby in Fairbanks.

Healy coal or North Pole produced fuel oil could heat the prison. It could probably be located on land soon to be owned by the Cook Inlet Native Corp., which would increase the value of the firm's other land in the area, McCorkle said.

Unlike other areas in the running, McCorkle said Anderson doesn't need the prison to bail it out of tough economic times.

"We're looking beyond the immediate job seekers in the area," he said. "We're looking to the next 100 years."

The prison is expected to provide up to 175 jobs when in operation and many more during its construction.

McCorkle said he hopes the prison will attract small businesses which will help provide an incentive for Anderson area youth to remain in their community.



Greater Fairbanks

Chamber

of Commerce

First National Center
100 Cushman Street

(907) 452-1105

P.O. Box 74446
Fairbanks, Alaska 99707

April 26, 1983

Representative Richard Shultz
Pouch V
Juneau, Alaska 99811

Re: Location of Maximum Security Prison Facility

Dear Representative Shultz:

I am pleased to inform you that at a recent special meeting, the Board of Directors of the Greater Fairbanks Chamber of Commerce unanimously endorsed the concept of locating a maximum security prison facility in the community of Anderson. We feel that location is well suited for a maximum security facility, as it has a good location, access, adequate support services, and strong community support.

The location of such a facility at Anderson would have a positive economic effect on the Fairbanks community as well. For goods and services, the community of Anderson, in many cases, relies on Fairbanks suppliers. An enhancement of Anderson's economic base would have an equivalent enhancing effect on the economy of the entire Interior.

I realize that it's late in the game for making a decision on this facility. However, we are convinced that the Anderson proposal warrants serious consideration as an option that will serve the best interest of all Alaskans.

Thank you very much for your consideration.

Sincerely,

Buki Wright
President

Dr. Gary Copus, Prof of Criminal Justice, UAF

4B 374 has 2 issues - 1) size - 2) location

1) size - used to consider 1 400 bed facility
people in Anderson cognizant of trend
towards smaller prisons

2) have a variety of locations to offer

+ of smaller institutions - more humane
greater control
managerial flexibility

200 or more - reflects the intent to keep
prisons small

role of the legislature re: site selection

1) do nothing - leave it to Dept of Corrections

2) jelly bean option - give several alternatives
to pick from

3) make a recommendation for a specific site
advocated the 3rd option

Should consider 2 factors:

functional - water, land, power, transportation - all
available

political - prisons affect those inside + outside
wealth distributed through prison

positive community attitude 61% toward
2 to 1 in support

Anderson is as viable as the other sites.

Legislatures resp to locate site for the benefit of the state, look at site, don't tell how to run the prison.

Make decision quickly - state under the Cleary Decision

face material - commission doesn't support any profound summation

Anderson Palmer/Sutton
facility to serve both Northern + Southern axis of the State

my personal ~~with~~ observation, feeling and philosophy is ...

Introduced: 4/25/83
Referred: State Affairs and
Finance

1 IN THE HOUSE

BY SHULTZ

COMMITTEE

2

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 374

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the establishment of maximum

7

security prison facilities at Anderson and Palmer/-

8

Sutton."

9

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

10

* Section 1. AS 33.30.020 is amended to read:

11

Sec. 33.30.020. COMMISSIONER TO ESTABLISH AND ADMINISTER PRISON

12

FACILITIES. Subject to the provisions of AS 33.30.025, the [THE]

13

commissioner shall establish prison facilities and classify the pris-

14

oners in prison facilities. The commissioner shall provide for the

15

safety, subsistence, proper government, and discipline of prisoners.

16

The commissioner shall establish programs for the treatment, care,

17

rehabilitation and reformation of prisoners.

18

* Sec. 2. AS 33.30 is amended by adding a new section to read:

19

Sec. 33.30.025. LOCATION OF FACILITIES. After July 1, 1983, the

20

commissioner shall locate within the vicinity of Anderson and Palmer/-

21

Sutton ^{the next} ~~all newly constructed~~ maximum security prison facilities that

22

contain 200 or more beds.



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811
465-4907
465-4908

Committee Report by the

Senate Health, Education and Social Services Committee

May 3, 1983

SITE SELECTION FOR A MAXIMUM SECURITY PRISON

The Senate Health, Education and Social Services Committee, in considering SB 224 and SB 267 relating to the location of maximum security prison facilities, recommends that the new facility be constructed in the Palmer area within the vicinity of Sutton.

The Committee also considered the testimony and presentation by Anderson, Alaska, and wishes to commend its citizens for their enthusiasm and support for the prison site.

In future planning for regionalization of prison sites, the Committee would recommend that the Commissioner of the new Department of Corrections grant serious consideration to Anderson as a possible prison location.

Anticipated development in the Railbelt Corridor coupled with transportation, utility and land availability make Anderson an attractive site.

The Committee is aware that Haines, Seward, Valdez and Whittier may have an interest in being chosen as the site for the proposed facility, but no testimony was received on their behalf.

Findings of the Committee in selecting the Sutton site were:

1. Construction and operating costs are lower than other areas of the state under consideration for the prison site.
2. State-owned land in the area is readily available allowing sufficient capacity for development and the recommended "buffer zone" between the facility and the community.

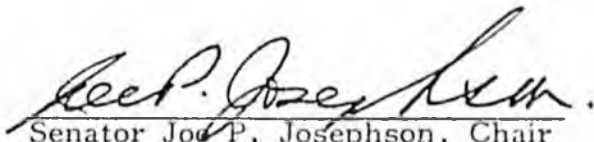
CSSB 224

- 1) a maximum security prison will be built in the Sutton area
- 2) the commissioner shall consider Anderson as a future site
- 3) no date stipulation

3. Road access is available through the Glenn Highway, with the proximity to Anchorage offering reasonable access to a large percentage of the anticipated prison population for supportive contact with families and friends, as well as members of the parole board.
4. Support services are locally available through the court system, the hospital and health centers, the mental health centers, and public transportation. (There is a new Superior Court at Palmer, and in FY 1984, a public defender.)
5. Utilities can be made available at the site through the Palmer Correctional Facility, which also presents the possibility of sharing prison ancillary services between facilities.
6. The Mat-Su Borough offers a large potential labor force and commuter access to the state's largest population area, with housing and land locally existing.
7. Public support for the prison facility is widespread.

The above mentioned facets of the Sutton site appear to fulfill the siting criteria outlined by the Criminal Justice Planning Agency. Combined with the economic savings that would be realized in the selection of Sutton, and the urgent need to commence the project to meet the 1987 deadline for returning Alaska felons to the state, the Senate Hess Committee respectfully recommends that Sutton be selected for the new maximum security prison.

To this end, the Committee is forwarding the Committee Substitute for SB 224 to the Finance Committee.



Senator Joe P. Josephson, Chair
Senate Health, Education and Social Services Committee

H

B

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COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

(7)

4/27/83

Date: 5/9/83

Mr. Speaker:

HEALTH, EDUCATION AND
SOCIAL SERVICES

HB 383

The Committee on _____ has had _____

"An Act relating to payments authorized for residential child care services; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 382 (1155) same title
- new title
- and recommends ~~the~~ individual acc.
- AND attaches a "Letter of Intent" New Fiscal Note
- Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Paul

Robert

Christopher Hernandez, Do Pass

Michael

M.W. Miller

Mr. Tucker

(NO OTHER)

Mr. Tucker

CHAIRMAN

POSITION PAPER

HOUSE BILL NO. 383

PAGE 1

"An Act relating to payments authorized for residential child care services; and providing for an effective date."

House Bill No. 383 amends Section 3, Chapter 138, SLA 1982 by increasing by 5% the rates for all residential child care facilities which are paid under AS 47.40. Each of the facilities currently being paid under AS 47.40 is listed in this Bill. A few facilities which are being paid under contract are not included in this legislation.

1. Services Provided by Facilities

Residential child care facilities provide a needed service to dependent and delinquent children who need specialized treatment services. The majority of the children the Division of Family and Youth Services serves live in their own homes (67.1%). Most of the children the Division places away from their homes can stay with relatives (6.9%), with non-relatives (6.9%), or in foster homes (10.1%). Nine percent (9%) of the children are placed in residential child care facilities because they have such severe behavioral or emotional problems that they cannot be served in less restrictive settings. These children require structured treatment programs run by trained staff. This specialized care is much more expensive. Some of the facilities provide receiving home services, taking adolescents who need short term supervised care until court disposition occurs or until a treatment plan can be developed.

Residential child care facilities need to be available throughout the State so that children can be served as near to their homes and families as possible. They also need to be available when the need for placement arises, which the Department cannot control.

2. Budget Projections

Current projections in the institutional care budget indicate that there will be a balance of \$552,762. This does not take into account the following expenditures which are expected to come out of the budget:

- A. The Maniilaq Human Services program will receive a contract amendment of \$107,600 because their budget was not fully funded last year.
- B. Legislation to cover a supplemental to the Bethel Receiving Home amounts to \$65,000.

POSITION PAPER

HOUSE BILL NO. 383

PAGE 2

- C. The Bethel Group Home needs to hire paid staff in order to serve the Division's needs in the Lower Kuskokwim area and to be in compliance with licensing regulations. Legislation has been introduced to cover this need.
- D. There is a possibility that \$35,000 which is currently owed to Presbyterian Hospitality House for a prior year due to an auditing report should be reappropriated from this year's funds to cover the prior year Bill.

Subtracting these costs, there will be a projected balance of \$273,000. It is assumed that the rate increase would come out of this budget line. This balance would only permit a 2.5% increase to each facility, not the 5% proposed by this Bill.

3. Cost Study

The 1982 legislature froze the rates at the 1981 rate level and ordered the Department to conduct a study of costs to residential child care facilities. A committee was appointed, as ordered by the legislation, and has held meetings to consider AS 47.40 and the problems in the current method of payment to facilities. The committee will be recommending changes to AS 47.40, as well as to the regulations. In addition, a study to analyze existing costs to facilities will be made to determine new base rates.

4. Conclusions

The 1982 Legislature froze the rates at the 1981 level. It has now become apparent that the rate freeze combined with a placement utilization decrease has created hardship for a number of facilities. This Bill seeks to alleviate these hardships for facilities under this legislation. Should the Legislature wish to increase the rates, current projections indicate that the most that will be permitted out of this budget is a 2.5% increase. However, the projections are based on placement patterns to date, and these could change during the remainder of the calendar year. Therefore, the

POSITION PAPER

HOUSE BILL NO. 383
PAGE 3

Department recommends that if this Bill is favorably considered, there be a clause added to the Bill permitting the increase to be determined on a prorated basis once the actual placement pattern for the year is known.

RECOMMENDED:

Michael L. Price

Michael L. Price, Director
Division of Family and
Youth Services

DATE:

May 9, 1983

APPROVED BY:

Robert London Smith

Robert London Smith, Ph.D.
Commissioner

DATE:

5/4/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 383
 Title: "...Payments authorized for child care"
 Sponsor: Fritz
 Requestor: Fritz

II. FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected:
 BRU, Program of Subprogram(s) Affected: Juvenile Custody

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC	440.4	462.4	485.5	509.8	535.3	562.1
TOTAL OPERATING	440.4	462.4	485.5	509.8	535.3	562.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	440.4	462.4	485.5	509.8	535.3	562.1
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funding was not identified in the bill.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael L. Price *Michael L. Price* Phone: 465-3170
 Division: Family & Youth Services Date: 4/29/83
 Approved by Commissioner: Robert London Smith, M.D. Date: 5/14/83
 Department:

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Business (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

IV. ANALYSISA. Assumptions

Enactment of this bill would result in a 5% increase in the cost of residential child care for the Fiscal Year 1983.

B. Program Summary

No new positions would be necessary if the Bill were enacted. There would be an increase of \$440,422 in the Benefits to Individuals costs for FY83.

C. Computations

<u>Facility</u>	<u>Total Units Projected FY83</u>	<u>5% Rate Increase</u>	<u>Total Cost</u>
ACS Receiving Home	4,277	\$7.49	\$ 32,035
ACS Jesse Lee	12,915	8.27	106,807
ACS Rabbit Creek	3,695	8.32	30,742
ACS North Star	1,588	5.17	8,210
ACS Aquarius	1,601	5.38	8,613
ACS Colletti	1,617	5.87	9,492
Alaska Baptist	3,167	5.85	18,527
Booth Memorial	3,235	7.34	23,745
Hilltop Home	1,028	4.27	4,390
Kenai Community Care Ctr	1,878	4.58	8,601
Kodiak Baptist Mission	4,850	3.08	14,938
Turning Point	6,438	5.26	33,864
North Star Home	513	3.11	1,595
Presbyterian Hosp Hse	4,683	5.59	26,178
Juneau Receiving Home	4,334	5.30	22,970
St. Judes Center	225	3.61	812
Nome Receiving Home	1,553	5.84	9,070
Maniilaq Group Home	1,674	8.25	13,978
North Slope Borough	2,032	8.41	17,089
Ketchikan Teen I	2,226	3.71	8,258
Ketchikan Teen II	2,285	4.08	9,323
Ketchikan Intensive Care	1,818	7.62	13,853
Sitka Receiving Home	1,353	2.03	2,747
Bethel Receiving Home	2,212	3.77	8,341
Bethel Group Home	2,083	2.95	6,145
Covenant High School	39	2.55	99
Totals	73,319		\$440,422

D. Economic Impact

Passage of this Bill would not have a significant impact on the State's economy.

E. Impact on Local Governments

There would be no impact on local governments.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 30, 1983

SUBJECT: Payments authorized for residential child care
services (HB 383)

TO: Representative Milo Fritz
Chairman, House Health, Education
and Social Services Committee

FROM: Edward H. Hein *EH*
Legislative Counsel

Section 1 of the bill amends sec. 3, Chapter 138, SLA 1982, by adding five percent to the FY 1983 payment rate authorized per day for each child placed by the Department of Health and Social Services in named residential care facilities.

Section 2 of the bill makes the rate increase retroactive to the beginning of the current fiscal year.

Section 3 provides for an immediate effective date. Note that under sec. 4, Chapter 138, SLA 1982, the rates for fiscal year 1984 will be another five percent higher than the rates provided in this bill.

EHH:ljb
17/010



ALASKA CHILDREN'S SERVICES, INC.

1200 East 27th Avenue
Anchorage, Alaska 99508-3999
(907) 276-4515

May 31, 1983

JUN 3 1983

The Honorable Mae Tischer
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: CSHB 383 - A BILL THAT WOULD AUTHORIZE DHSS TO INCREASE RESIDENTIAL CHILD CARE RATES BY 2 1/2% RETROACTIVE TO JULY 1, 1982, USING UNEXPENDED FUNDS FROM FY '83 APPROPRIATION.

Dear Representative Tischer:

Alaska Children's Services (ACS) provides residential care and treatment for emotionally disturbed, neglected, abused and troubled children and youth placed in custody of the State by the court system. Our agency in partnership with the State is committed to providing quality services.

Due to 1982 legislative action, cost-of-care rates for FY '83 were frozen at the FY '82 level. Also, during the first half of the FY, there was a 7% reduction in placements. As a result, ACS had a \$180,000 deficit (8% of the operating budget) the first half of FY '83. We desperately need at least the 2 1/2% increase proposed by CSHB 383 in order to continue to provide professional care and treatment to the children referred by the State.

At a recent ACS Board of Directors meeting a resolution endorsing this bill was passed unanimously. I am enclosing a copy for your information.

Your wholehearted support of this legislation is urged and will be greatly appreciated.

Sincerely yours,

J. Helen Gamble, Secretary
Alaska Children's Services' Board of Directors

JHG/rv

Enclosure

Serving Alaska's

Children and Families through:

- Residential Treatment Center
- Group Homes
- Emergency Shelter Services

- American Baptist
- American Lutheran
- United Methodist Churches

Member:

- United Way of Anchorage
- Child Welfare League of America
- Alaska Association of Homes for Children
- Affiliate of the National Benevolent Association of the Christian Church (Disciples of Christ)