

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2699 SLC HB 182 - HB 202

2699

(b) No part of the wage earned by the patient worker can be deducted for the cost of room, board or services. The program, however, after the payment of wages, may assess and collect the reasonable cost of treatment according to rates established in accordance with AS 47.37.240, and on the same basis as it assesses and collects from non-working patients.

(c) Wages earned by the patient worker may be held in trust by the program for the benefit of the patient, and disbursed by the program, with the patient's consent

(1) for the support of the patient's dependents,

(2) to pay a civil judgment,

(3) for the purchase of gifts, clothing, and items of personal use,

(4) to pay restitution or a fine,

(5) for other purposes deemed appropriate by the treatment program.

4. Amend Section 3 of H.B. 182 to read as follows:

Work therapy means an activity that involves a patient in basic employment skills and assists the patient in reintegration into a community, but does not include such activities as personal housekeeping chores or cooperative responsibilities expected of each patient in the program.

Representative Barbara Lacher
February 18, 1983
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Finally, on behalf of my clients I want to thank you for all of your efforts in getting the legislation introduced. Your attention to the problems faced by many drug and alcohol treatment programs reflects your conscientious attitude toward your constituents.

I hope that my comments have been helpful. Please keep me apprised of developments with H.B. 182 and feel free to call if I can be of further assistance.

Sincerely,

REESE, RICE AND VOLLAND, P.C.

Philip R. Volland

Enclosures

cc: Board of Directors, AARS
Mr. and Mrs. Leonard Nugen

LAW OFFICES OF
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May 6, 1983

via Express Mail

Ms. Judy G. Knight
Special Assistant to the Commissioner
Department of Labor
State of Alaska
P.O. Box 1149
Juneau, Alaska 99811

Re: CSHB 182

Dear Ms. Knight:

As you know, I currently represent Alaska Alcoholism Rehabilitation Services, the non-profit corporation which owns and operates a long-term residential alcoholism treatment center in Wasilla, Alaska known as Nugen's Ranch. I testified in favor of CSHB 182 before the House Committee on Health, Education and Social Services because Nugen's Ranch, as one of the treatment programs in the state which hopes to implement a work therapy program, will benefit from the legislation. With this letter I hope to clear up a few misconceptions that may have developed as a result of certain comments I made during my testimony.

The residents at Nugen's Ranch are most likely to be individuals who have a life-long history of alcoholism. A good number of these individuals will be skid-row alcoholics and public inebriates who have spent many years on the street drifting from one detoxification facility to another. They have few life management skills and, practically speaking, are unemployable. Their treatment will require institutionalization for as long as two years.

The Ranch hopes to engage these individuals in "work therapy" part of their treatment. Work therapy is activity of a constructive nature which may be supervised or unsupervised, and which will require the resident to assume certain responsibilities. The work will involve housekeeping chores, agricultural work, and unskilled labor associated with minor renovation and maintenance at the facility.

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You indicated a concern on the part of the Department based on the fact that during my testimony before the HESS Committee I referred to residents at the facility performing certain maintenance tasks that might involve electrical or mechanical skills. My comments were only for the purpose of explaining to committee members that residents would regularly perform work that was non-agricultural in nature. I certainly did not intend to give the impression that Nugen's Ranch planned to displace existing employee positions through work therapy, or that the Ranch planned to have residents engage in work such as might be done by an electrician or mechanic and which would require specialized skills and training. I am sure you realize that it would be foolish for the corporation to do so, and I would never recommend such a course of action. The potential liability of the corporation as a result of any negligent work performed by a resident working beyond his skill level is itself a sufficient deterrent that the Ranch would never consider engaging residents in such activity.

To be more specific, the following tasks are those likely to be performed by residents involved in work therapy. I have listed the activities without regard to whether 29 CFR 529 requires the payment of wages for the activity.

1. Personal housekeeping chores (making beds, cleaning rooms);
2. General housekeeping chores (sweeping floors, trash removal, etc.);
3. Kitchen detail (setting and clearing tables, etc.);
4. Feeding livestock (poultry and swine);
5. Cleaning animal pens and sheds;
6. Planting and cultivating vegetable crops;
7. Planting and tending to bedding plants grown in the greenhouse;
8. Assisting in the slaughtering of livestock and the harvesting of crops;
9. Minor maintenance (e.g., painting);
10. Care of the grounds;
11. Snow removal during winter;
12. General labor, such as erecting fences, tearing down sheds, hauling trash, stacking lumber, cutting firewood, etc.

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daily intoxication has a productive capacity that is, at best, minimal, even with constant supervision. Although I understand that the Department is concerned because even the most basic entry level positions in the private sector pay at least the minimum wage, I hope that the Department appreciates the fact that residents who will be referred to Nugen's Ranch are individuals who are presently not even counted among the labor force because of their inability to work.

It is the intention of the Ranch to base the wage scale on the disability of the patient worker, as is required by federal regulation. It seems clear to me that the federal regulations concerning patient workers at 29 CFR part 529 contemplate wage scales between 50 percent of the minimum wage and the full minimum wage, or higher, depending on the disabilities of the various clients. I have anticipated that in the process of applying for a certificate under 29 CFR 529 the Ranch would seek approval for a number of classes of wage scales between the minimum permitted under the regulations (50 percent of the minimum wage) and the minimum wage itself. This would enable the Ranch to automatically move a patient worker into a higher paying classification as his treatment progressed. It also seems to me that it is entirely possible in the future for the Ranch to budget itself for certain positions (such as dishwasher or kitchen helper) which would be paid at a prevailing wage rate and which would be filled by patient workers who are no longer under a disability.

The Ranch is not intending, nor does it expect, to pay patient workers less than is required under federal regulations or law. Both the federal regulations and the leading federal court cases in the field make it clear that if a patient worker is not suffering from any disability, he must be paid a wage comparable to the wage paid in the private sector for the equivalent work. I have advised my clients of this fact and they recognize that for any non-disabled patient worker they may be required to pay the patient a wage comparable to that in the private sector. At this time, however, the Ranch does not anticipate treating patients who are not already suffering from a considerable disability.

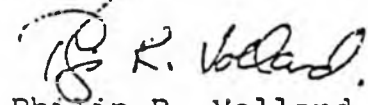
Ms. Judy G. Knight
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I hope this letter answers some of your concerns. I hope to be able to work with you and other representatives of the Department in order to ensure that you clearly understand what the Ranch intends to do through the work therapy program, and what is hoped to be accomplished by CSHB 182.

Please call me if you have any questions.

Sincerely,

REESE, RICE AND VOLLAND, P.C.


Philip R. Volland

Ms. Judy G. Knight
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In some cases I anticipate that residents will watch qualified personnel perform regular maintenance tasks which require specific training and skills. In all cases, the "work" performed by the resident would not involve activity requiring a special skill, but nonetheless will allow the resident patient to learn some basic aspects of the skill.

For example, the Ranch might have the need to build a small tool shed adjacent to one of the existing buildings. This is work for which the Ranch would use the services of one of its regular maintenance personnel, or contract with someone to do the construction. This work, however, also would present an excellent opportunity to prepare a work therapy program which involves training in some carpentry skills. Residents could be asked to stack and haul lumber while observing how framing is done and receiving instruction in the proper use of power tools. Similarly, the residents could watch how electrical conduit is laid, learn how to lay shingle on a roof, learn how windows and doors are hung, and how steps and railings are made, etc. Throughout all of this "work therapy" the residents may do nothing more than stack lumber and paint the building. Nonetheless, the experience will have taught them some basic lessons of carpentry and electrical work.

I want to make it clear that the work therapy program designed for the Ranch will not displace any employment positions that are filled from the private sector and which are paid at a rate considerably higher than the prevailing minimum wage. If you examine the grant-in-aid documents for Nugen's Ranch available at the State Office of Alcoholism and Drug Abuse, you will see that the Ranch has, and intends to keep, fully paid and qualified maintenance, kitchen, and night attendant positions. Work therapy is designed for the benefit of the patient; it is not a concept which will result in the displacement of regular employees at the Ranch.

I do not believe it is unreasonable for the Ranch to expect that the quality of "work" they will receive from an individual during the initial stages of treatment is work for which something less than the minimum wage is still fair compensation. I am sure you can appreciate that someone who has been unable to work in five or six years because of

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February 23, 1982

Mr. George Mundell
Office of Alcoholism and
Drug Abuse
STATE OF ALASKA
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RE: Nugens Ranch

Dear George:

During our phone call two weeks ago, I requested that your office seek an Attorney General's opinion on the applicability of the Alaska Wage and Hour Act to the work therapy planned for clients at Nugens Ranch. With this letter I would like to express my thoughts about the legal aspects of the issue and the practical problems which it presents to the program. I have copied this letter to Loyd Gathman and Bruce Botelho with the hope that a sharing of ideas may expedite a resolution to the question. I have also discussed my conclusions and recommendations with the program's Board of Directors and they fully support the suggestions I make.

The Plan for the Ranch

As you know, clients at Nugens Ranch will, as part of their treatment, be engaged in the cultivation of crops, the raising of livestock, general housekeeping chores, and minor repairs and maintenance at the facility, including the future construction of sheds, fences and the like. All of this work is intended to be an integral part of the treatment for each client. At the time of admission, each client's treatment plan will involve a scheme of personal and group work therapy. All client work will occur with and under the supervision of a counselor. In fact, individual counseling is expected to occur during the work therapy. Counselors will evaluate each client's ability to perform the various assigned tasks as a measure of the client's progress in treatment and the client's employment skills. The progress of each client in the work therapy program will be recorded in the client file, and adjustments in the treatment plan made accordingly.

No client will be working full time, nor assigned to a specific and regular task. Although each client will be expected to perform general housekeeping chores, the work therapy projects will change from day to day and week to week. The tasks assigned to each client will be based on the client's ability to perform the work.

It is doubtful that any of the clients admitted to the Ranch will be considered "employable" in the job market. The years of heavy drinking and street life typical of the chronic inebriate who will be treated at the facility can be considered as much of a barrier to employment as a traditional physical or mental handicap. Many clients may also be suffering from alcohol related health problems which impair their employment potential. The work therapy at the Ranch will, in effect, provide vocational rehabilitation to clients as much as it will promote future sobriety.

For the most part, the work therapy performed by the clients will not displace employment positions at the ranch. The cultivation of crops and the raising of livestock, for instance, are projects entirely incidental to the purpose of the facility and are designed purely for the benefit of the clients. The daily housekeeping chores expected of each client (cleaning his or her room, making the bed, sweeping, etc.) are tasks normally required of clients in residential treatment programs. The Ranch will have regular employees who will be responsible for general custodial care and minor maintenance. Also, although some clients may assist with the preparation of food, the Ranch will employ full time cooks for the operation of the kitchen.

The painting and minor renovation which clients will be performing on the main building and, later on, the construction of sheds, fences, and the like, are another matter. Although this work is also designed to be an integral part of the work therapy program, it is difficult to argue that the Ranch would not otherwise be required to contract for the completion of this work. Nonetheless, from a counselor's point of view, the work therapy involved in a group of clients painting the hallways is indistinguishable from the work therapy involved in weeding the garden.

In addition to the therapeutic benefits of the work to each client, it is important to recognize the importance of the work therapy plan to the concept of the Ranch. Despite the size of the facility, every attempt is being made to preserve a "family" atmosphere at the Ranch. No one intends for the Ranch to simply "warehouse" clients while they are going through a long period of sobriety. Rather, the Nogens

plan to operate the facility in such a way that the clients feel a sense of belonging, and feel that they have a stake in the venture - that the Ranch is as much theirs as it is the Nugens. Having the clients work at the Ranch, and become part of the gradual expansion and renovation of the facility is essential to achieving this goal. That sense of family, and feeling of belonging, is virtually impossible to achieve with a client group who perceives their relationship to the program as one of employees.

The Applicable State and Federal Statutes

(a) The Alaska Wage and Hour Act. The Alaska Wage and Hour Act, A.S. 23.10.050-150, is the basic minimum wage, maximum work week, and overtime compensation law in force in the State of Alaska. The Act establishes a minimum wage at a rate not less than \$.50 an hour greater than the prevailing federal minimum wage of \$3.35 per hour. A.S. 22.10.065. Other provisions of the Act require the payment of overtime for work in excess of eight hours per day or 40 hours per week (A.S. 23.10.060) and establish certain penalties for employer violations (A.S. 23.10.135-140).

The Act provides exemptions for employees engaged in agriculture, fishing, domestic service, volunteer work for non-profit organizations, etc., but none of the exemptions enumerated in A.S. 23.10.055 specifically apply to patient workers in alcohol or drug treatment programs. Subsection 70 of the Act, however, permits employers to pay subminimum wages to individuals whose earning capacity is impaired by physical or mental deficiency. [See, A.S. 23.10.070(1)]. This "handicapped worker" provision is similar to Section 14 of the federal Fair Labor Standards Act, 29 U.S.C. 214. But the State regulations promulgated pursuant to A.S. 23.10.070 make it clear that the handicap exception is not intended to apply to clients in alcoholism treatment facilities. 8 AAC 15.120(f) reads as follows:

Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of A.S. 23.10.070 and this section.

Thus, the "handicapped worker" exception to the Alaska Wage and Hour Act does not authorize the payment of sub-minimum wages to clients at the Ranch.

Reference to other state labor statutes provides little guidance to the interpretation of the Wage and Hour Act. Provisions of the Employment Services Act referring to vocational rehabilitation do not mention drug or alcohol addiction as a disability. See, e.g., A.S. 23.15.210(4),

(5), and (9). Similarly, the expansive definitions of "employer" and "employee" in the Alaska Employment Security Act, A.S. 23.20.005-535, provide little guidance for patient worker situations. A.S. 23.20.526(d)(2) does, however, exclude from the definition of "employment" services performed

a facility conducted for the purpose of carrying out a program of rehabilitation of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving the rehabilitation or remunerative work.

Arguably, this exclusion can be read to cover patient workers in drug or alcoholism treatment facilities. But I doubt that any court would read A.S. 23.20.526(d)(2) as providing any broader coverage than the "handicapped worker" exemptions to the Alaska Wage and Hour Act. The provisions of the Employment Services Act [A.S. 23.15.210(4), (5) and (9)], the Employment Security Act [A.S. 23.20.526(d)(2)], and the Wage and Hour Act [A.S. 23.10.070(1)] all seem to contemplate traditional notions of physical and mental disability. For whatever reasons, the Legislature has apparently chosen not to include alcohol and drug addiction as an employment handicap for the purposes of state wage and hour law. See, 8 AAC 15.120(f).

There is some indication that the limited handicapped worker exemptions found in A.S. 23.10.070 are the only authorized exceptions for the payment of a subminimum wage. 8 AAC 15.120(e) states that as a general rule "approval for payment of a wage lower than established under A.S. 23.10.065 to persons with a temporary handicap will not be granted." So long as alcoholism and drug addiction are considered "temporary" handicaps, it seems unlikely the State Department of Labor would authorize payment of a subminimum wage to clients at the Ranch.

The fact that there is no specific procedure authorizing the program to seek an exemption from the payment of minimum wages does not absolve the Ranch of future liability. In State Ex Rel State Labor Commissioner vs. Goodwill Industries, 478 P.2d 543 (N. Mex. 1970) the New Mexico Supreme Court held that the absence of a specific regulatory scheme regarding the payment of subminimum wages to patient workers did not relieve a program from liability when it employed an alcoholic in a driver position arguing that the work was "therapy".

The absence of any specific regulations or case law regarding patient worker payments under the Alaska Wage and Hour Act does not leave the program without any interpretative guidelines. The Alaska Act was modeled after the Fair Labor Standards Act, 29 U.S.C. 201 et. seq. (hereinafter "the FLSA"). The Alaska Supreme Court has held that questions of interpretation regarding the intent of the Alaska Wage and Hour Act are to be based upon federal law. McGinnis vs. Stevens, 543 P.2d 1221 (Alas. 1975). The Alaska Act itself refers to the FLSA as a guide to defining terms. A.S. 23.10.145. Thus, it is fair to say that the record of how federal courts have applied the FLSA to patient worker situations will predict an Alaska court's interpretation of the issue.

(b) The Fair Labor Standards Act. As mentioned, the Alaska Act was based on the Fair Labor Standards Act of 1938 as amended. With some differences, the FLSA includes provisions similar to Alaska's, law for the payment of minimum wages, overtime compensation, etc.

Amendments to the Fair Labor Standards Act in 1966 specifically included hospitals or institutions "primarily engaged in the care of the sick, the aged, the mentally ill or defective" within the Act's coverage. Section 14 of the FLSA, the federal counterpart to the "handicapped worker" provisions under State law, permits the payment of subminimum wages to handicapped workers engaged in training or evaluation programs, and work activity centers. The Act authorizes the Secretary of Labor to grant a certificate of exemption for handicap workers in a number of different situations, and at a wage rate not less than 50 per cent of the prevailing minimum wage. Regulations promulgated pursuant to Section 14 can be found in 29 C.F.R., parts 524, 525 and 529.

The application of the Fair Labor Standards Act to patient workers has been the subject of some litigation. In Souder v. Brennan, 367 F. Supp. 808 (D.D.C. 1973), the Act was held to apply to patient workers in non-federal hospitals, homes and institutions for the mentally retarded and mentally ill. Similarly, Weidenfeller v. Kidulis, 380 F. Supp. 445 (E.D. Wis. 1974) applied the Fair Labor Standards Act minimum wage provisions to mentally handicapped persons in private boarding homes who had been released to those homes from the State Department of Public Welfare. King v. Carey, 405 F. Supp. 41 (W.D.N.Y. 1975) held the FLSA applicable to minors who were civilly committed to state camps after being adjudicated delinquent and in need of supervision. Of significant importance is Wyatt v. Stickney, 344 F. Supp. 373, 387 (M.D. Ala. 1972) affirmed sub nom Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

Wyatt held the Act applicable to Alabama state schools designed to habilitate the mentally retarded, and to patients involuntarily committed to Alabama mental institutions. Wyatt adopted minimum constitutional standards for the adequate treatment of the mentally ill.

In establishing standards for therapeutic work programs for the severely retarded, the Wyatt court held:

(1) Patients may be required to perform therapeutic tasks which do not involve the operation and maintenance of the hospital, provided the specific task or any change in assignment is:

(a) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a qualified mental health professional responsible for supervising the patient's treatment; and

(b) supervised by a staff member to oversee the therapeutic aspects of the activity.

(2) Patients may voluntarily engage in therapeutic labor for which the hospital would otherwise have to pay an employee, provided the specific labor or any change in labor assignment is:

(a) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a qualified mental health professional responsible for supervising the patient's treatment; and

(b) supervised by a staff member to oversee the therapeutic aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. 206 as amended 1966.

Id. at 381.

Wyatt also established similar standards for the mentally ill. See, 344 F. Supp. 402.

The argument that patient work is therapeutic for the patient, and therefore not traditional "employment", seems to have had little persuasive value with the courts. In Souder v. Brennan, supra, Judge Robinson noted that:

The fallacy of the argument that the work of the patient-worker is therapeutic can be seen in extension to its logical extreme, for the work of most people, inside and out of institutions, is therapeutic in the sense that it provides a sense of accomplishment, something to occupy the time, and a means to earn one's way. Yet that hardly means that employers should pay workers less for what they produce for them. Id. at 813, n. 21.

In interpreting the FLSA, the courts viewed the "economic reality test", and not the counselor/patient relationship, as the key to the applicability of the law. This test holds that so long as an institution derives any consequential economic benefit from the activity, an employer/employee relationship exists rather than a therapeutic one. Thus, if a patient performs work for which he or she is in no way handicapped, and from which the institution derives any economic benefit, the economic reality test is met and minimum wages must be paid.

One can argue that Souder, Weindefeller, Wyatt, et al. are distinguishable because those cases primarily involved individuals who had been involuntarily committed to state or private institutions. With the exception of King v. Carey, each case involved long-term placement of physically or mentally disabled patients who were required to perform tasks of questionable therapeutic value. Although the 1966 amendments to the FLSA specifically extended the coverage of the Act to hospitals and mental institutions, nothing in the legislative history suggests that Congress also intended to cover half-way houses and residential treatment centers. It is certainly true that the services provided by drug and alcohol programs are distinctly different than those provided by large institutions for the mentally retarded.

But these technical arguments may be of little value in avoiding the applicability of the federal Act. Without question the Fair Labor Standards Act has been broadly construed in favor of the employee, Gulf King Shrimp Company vs. Wirtz, 407 F.2d 508 (5th Cir. 1969) and exceptions to the Act are to be strictly and narrowly construed. Brennan vs. Great American Discount and Credit Company, Inc., 477 F.2d 292, cert. denied, Walker vs. Brennan, 414 U.S. 856. Questions of treatment modality aside, I would be hardpressed to argue that the basic policy considerations inherent in the Souder and Wyatt decisions are not also applicable to clients in long-term residential treatment programs such as the Ranch. And too, the regulations adopted as a result of Souder v. Brennan, supra, suggest that clients at the Ranch will be covered by the patient-worker provisions of the FLSA.

Following the court's ruling in Souder vs. Brennan, the United States Department of Labor adopted specific regulations governing the employment of patient workers in hospitals and institutions at some subminimum wages. See, 29 C.F.R. Parts 524, 525 and 529. These regulations have led to greater clarity on the issue, and are of some help in determining the applicability of minimum wage provisions to clients at Nugens Ranch.

29 C.F.R. 529 now provides a procedure for the application of a certificate to employ patient workers in hospital and institutions at subminimum wages. Unlike Alaska's parallel provision, however, the federal regulations interpret the handicapped worker provisions to include patients at "intermediate care facilities...half-way houses, residential centers for drug addicts or alcoholics, and the like whether licensed or not licensed." 29 C.F.R. 529.2(c). ^{1/}

The regulations embody the "economic reality test" and include many of those factors articulated in Wyatt and Souder. Patient workers whose earning capacity is not impaired must be paid the statutory minimum wage. 29 C.F.R. 529.4(a). Patients whose earning capacity or productive capacity is impaired may be paid a subminimum wage, but only after one of four types of certificates are issued to the facility by the Secretary of Labor. Although a program can assess the cost of room and board against the patient, this assessment cannot come in the form of a deduction from the pay otherwise to be made to the patient. 29 C.F.R. 529.4(i).

^{1/} This difference in coverage between the "handicapped worker" provisions of federal and state law presents an interesting legal question. Because federal regulations include residential care centers for drug addicts and alcoholics within the definition of "hospitals and institutions", one can presume that Section 14 of the FLSA was meant to cover alcoholics within the meaning of "handicapped worker". The State regulations, however, specifically exclude alcoholics and drug addicts from the coverage of Alaska's "handicapped worker" provision. This presents a conflict with A.S. 23.10.145 which reads that "terms used in [the Alaska Wage and Hour Act] shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it." The Alaska Supreme Court's application of the preemption principle to labor law, however, suggests that the State law will apply. Webster vs. Bechte, 621 P.2d 890 (Alas. 1980).

The Federal Department of Labor will treat patient worker situations on a case by case basis. Coverage of the Fair Labor Standards Act to patient worker situations has been asserted by the Wage and Hour administrator in the following situations: a home for emotionally disturbed children (WH Adm Op, June 7, 1967); a school for the mentally retarded (WH Adm Op, July 11, 1967); a home for the blind (WH Adm Op, June 16, 1967); a home for the aged (WH Adm Op, July 18, 1967); a nursing home (WH-286, August 27, 1974); a residential rehabilitation center (WH Adm Op, October 20, 1967); and a community health center operating a drug abuse detoxication unit, a residential care facility and three half-way houses (WH-256, February 27, 1974). However, the courts and the Wage and Hour Division have found the Act not applicable to the following institutions: a children's home (Critchlow vs. Children's Home Association, 22 WH Cases 203, (D.C. Ohio)); a poor house where no medical services were rendered (Hodgson vs. Harrison County, 22 WH Cases 76, (5th Cir. 1976)); a home for neglected children (WH Adm Op, June 7, 1967); a home for unmarried mothers (WH Adm Op, June 7, 1967); a retirement home (WH Adm Op, December 6, 1968, WH-216, April 30, 1973); and a religious orphanage (WH Adm Op, February, 1968).

Administrative interpretations by the Wage and Hour Division have consistently applied the economic reality test to the determination of whether or not an employer/employee relationship exists in a work therapy program. Accordingly, a patient enters into an employment relationship when engaged in the ordinary maintenance, patient care, office work and other activities that are performed in the operation of an institution, but does not become an employee when performing personal housekeeping chores in his or her immediate living quarters. However, the cleaning of common hallways, kitchen or diningroom detail, garbage detail, etc., fall within the ordinary maintenance of a facility and therefore involve an employment relationship. (Opinion WH-375, signed by Wage Hour Administrator Ronald J. James, March 1, 1976.)

The development of individual rehabilitation plans, and an intention to rehabilitate clients for the ultimate purpose of entering the competitive labor market, does not of itself make a patient engaged in work a non-employee under the Act. The critical factor in determining the employment relationship is the consequential economic benefit to the institution. (Opinion WH-334, signed by Acting Wage Hour Administrator Warren D. Landis, April 18, 1975.)

Whether or not the farming activities performed by clients at the Ranch meets the "economic reality test" is an open question. A persuasive argument can be made that this work does not result in any economic benefit to the program. Leonard would undoubtedly weed the garden and feed the hogs regardless of whether or not clients assist in those efforts. The program has no intention of either raising crops or livestock for profit, and the impact to the program of a reduced food budget will be minimal at best. It is probably true that the costs of raising fresh produce is greater than any expense to the program for the purchase of such foods, considering their wholesale price, and the large volume of foodstuffs which will be donated to the Ranch. Nonetheless, there may be a real savings to the program with the raising of livestock. The number of hogs raised and slaughtered at the Ranch may well be cheaper than the cost of purchasing pork wholesale.

I am troubled though by the maintenance, renovation and construction work which clients at Nugens Ranch will be performing this year, and in coming years. Although this work is no different in kind to the housekeeping chores and the garden chores that clients and staff will be performing, it does provide an economic benefit to the program. If clients at Nugens Ranch paint the exterior of the main building during the summer, this will result in a substantial savings to the program compared to the costs of contractual labor. The same can be said for minor renovations in the interior of the building, and the construction of fences, sheds, etc., on the land surrounding the building. I believe that, on its face, this type of work therapy meets the "economic reality test" and therefore requires the payment of wages.

Arguably, the program's entire work-therapy plan could slip past federal coverage under the "family setting" exception outlined in WH Adm Op-317. The Ranch certainly seeks to establish a family atmosphere, and has designed its work programs solely for the mutual benefit of its clients. But three problems may preclude the program from obtaining the protection of WH Adm Op-317: (1) some of the work (e.g., the renovation and maintenance) will displace outside contractors who would otherwise be hired to perform the work; (2) some clients will reside at the Ranch on a "long-term" basis, that is, more than one year; and (3) the facility's capacity to treat 48 clients, and its employment of a paid staff other than counselors may well mean that it is not a "relatively small" institution as envisioned by that Opinion.

I have discussed this specific matter with Ms. Kathy Maloney, a patient-worker specialist for the Regional Office of the Wage and Hour Division of the Department of Labor in Seattle. It is her opinion that the Ranch is simply too large of an operation -- measured by the size of its budget, number of clients, and number of fulltime staff -- to be considered a "family" type program. She did recommend, however, that the Ranch apply for a certificate to pay subminimum wages to clients engaged in work therapy, depending on the results of the application of state law.

This leads me to a discussion of the final issue, that is, the problems of dual coverage under State and Federal law.

(c) The Dual Application of State and Federal Law to the Program. Nugens Ranch, as an employer in the State, is clearly obligated by the Alaska Wage and Hour Act to pay its employees a wage at least \$.50 an hour higher than the federal minimum wage. As I have discussed, however, the State Act does not tell us whether patient-workers are "employees" under the Act. All the Act does is exclude from the definition of "handicapped worker" those individuals undergoing treatment in alcoholism rehabilitation programs, thus precluding the Ranch from paying a subminimum wage to its clients, if those clients are deemed to be "employees" by virtue of their work therapy.

Federal law has a different scheme, however. Patient workers have been deemed to be "employees" under the Fair Labor Standards Act when and if the work therapy they are engaged in meets the "economic reality test". Under certain circumstances and with proper authorization, patient-workers may be paid a subminimum wage pursuant to Section 14 of the FLSA, 29 U.S.C. 214 -- the "handicapped worker" provision of the Act.

Thus, if Nugens Ranch is covered by the FLSA, there are, at least, specific guidelines for the application of the Act to patient-workers, and procedures for the authorization of the payment of subminimum wages to clients. But the specific application of federal law will depend on three factors: (1) whether or not state law imposes a higher standard; (2) whether or not Nugens Ranch is actually covered by the FLSA and; (3) whether or not FLSA coverage can be asserted given the constitutional limitations imposed by National League of Cities v. Usery, 436 U.S. 833 (1976).

If the Alaska Wage and Hour Act is held to apply to the work therapy program at the Ranch, and if 8 AAC 15.120(e) and (f) are interpreted to prohibit the payment of subminimum wages to clients, then the Ranch will be obligated to pay the statutory minimum wage to clients (\$3.85/hour) regardless of the more relaxed provisions of federal law. Webster v. Bachtel, supra.

On the other hand, it is possible (but extremely unlikely) that the "handicap worker" provisions of the Alaska Act are interpreted to include patient workers at residential treatment facilities, notwithstanding the language in 8 AAC 15.120(f). If that were to happen, the federal regulations issued pursuant to Section 14 of the Fair Labor Standards Act will probably apply to obtaining the subminimum wage certificate from the State Department of Labor. The State regulations, 8 AAC 15.120, refer to the federal regulations, 29 C.F.R. Part 525, for securing an application to employ a person at less than the minimum wage.

If it is determined, however, that neither the minimum wage provisions of State law, nor the handicap worker provisions of State law, apply to work therapy programs at Nugens Ranch, one must then answer the question of whether the FLSA covers the Ranch.

For the program to be covered under the Fair Labor Standards Act, Nugens Ranch must be deemed to be a "enterprise" which is "engaged in commerce". With the 1966 amendments to the Act, Congress expanded the definition of "enterprise" to include hospitals and other health care facilities. 29 C.F.R. 529 clarifies the definition of hospitals and institutions to include half-way houses and residential alcoholism and drug treatment programs. But coverage under the "enterprise" definition is not sufficient, since the program must also be considered an enterprise "engaged in commerce".

Although activities at the Ranch will not involve traditional notions of interstate commerce, i.e., the interstate transfer of clients and goods, the term "commerce" as defined in the FLSA is broad enough to include even the most minimal activities that might cross state lines. In Adm. Op-256 (signed by Warren D. Landis, Acting Administrator, Wage and Hour Division, February 27, 1974), the Wage and Hour Division indicated that the use of interstate mails, telephone, and other instrumentalities of commerce by a community health center for the purpose of obtaining information about clients was sufficient to trigger coverage under the Act. In Marshal v. Sunshine and Leisure, Inc., 25 WH Cases 80 (M.D. Fla. 1980), a resthome

for the aged was deemed to be a "enterprise engaged in commerce" simply by virtue of the staff's use and purchase of foodstuffs which had crossed interstate lines. Thus, even though the program is comparatively small, and will be working and referring with clients entirely within the State of Alaska, the definition of "commerce" is so broad that it brings the program within the ambit of the Fair Labor Standards Act.

But the authority of Congress to pass remedial legislation based on the commerce clause of the Constitution which has the effect of infringing on responsibilities traditionally delegated to the states is now in question. The passage of the 1966 and 1974 amendments to the Fair Labor Standards Act, which included state government employees within the coverage of the Act (as well as hospitals and other institutions) triggered two significant cases. In the first case, Maryland vs. Wirtz, 398 U.S. 183 (1968) the United States Supreme Court upheld the extension of the Act to employees of state schools, hospitals and public institutions. In 1976, however, the Supreme Court reversed its position in Wirtz, finding that the 1974 amendments to the Fair Labor Standards Act violated the 10th Amendment. National League of Cities vs. Usery, 426 U.S. 833 (1976) held that wage and hour determinations with respect to

functions...which state and local governments are created to provide, (including) services...which the states have traditionally afforded to their citizens

were matters essential to the separate and independent existence of these governments and therefore beyond the reach of Congressional power under the commerce clause. National League, supra at 851. By overruling Wirtz, the Court implicitly included the operation of public schools, hospitals and health care institutions within the category of traditional governmental functions. National League therefore suggests that it is impermissible for the federal government to pass wage and hour legislation affecting a local health care program such as Nogens Ranch which is funded by the state and serves an important state function.

The only two courts which have addressed the applicability of National League to local health care programs are divided on the issue. In Williams vs. Eastside Mental Health Center, 25 WH Cases 119 (N.D. Ala.) the Court held that the National League decision prohibited the application of the Fair Labor Standards Act to a community mental health center, finding that the care of mental patients was a power traditionally delegated to the states

within the meaning of National League. In Richland County Association vs. Marshal, 25 W.H. Cases 142 (9th Cir. 1981) the Court reached a different conclusion, finding that the National League decision did not prohibit the application of the Fair Labor Standards Act to a private, non-profit corporation which operated a residential home for mentally retarded adults. The 9th Circuit based its decision on the fact that the group home in question was private, and although funded by the state, operated its program independent of state control.

The description of the program involved in the Richland case seems more similar to the actual operation of the Ranch than the mental health facility in Alabama involved in the Williams case. One difference, however, which may be significant, is the fact that A.S. 47.37.010 et. seq. establishes a scheme of significant state control over the operation and approval of local alcoholism programs. This extent of state regulation appeared to be a persuasive factor for the Williams court in ruling that the operation of a mental health center by a private non-profit corporation served an integral governmental function and was therefore immune from FLSA coverage by virtue of National League. This jurisdiction, however, will be bound by the holding in Richland, notwithstanding Judge Frye's well reasoned dissent in that case, and the contrary holding in Williams v. Eastside Mental Health Center, supra.

The Impact on the Program and the State

Any requirement that a minimum wage, or subminimum wage must be paid by the Ranch to clients engaged in the work therapy opens a Pandora's box for the program. The creation of an "employment" relationship with 48 clients presents a significant administrative burden with respect to payroll taxes, worker's compensation, unemployment insurance and the like. Its likely that a new employee position would need to be added to handle accounting and administrative work related to the payroll. The Ranch will also face an annual administrative review and application process to pay subminimum wages under the FLSA and this process requires an evaluation of the earning and productive capacity of clients at three and six month intervals. More importantly, the development of an employer/employee relationship with the clients and the program seriously affects the counselor/client relationship. This will be particularly true if the law requires the payment of wages for some work (e.g., the maintenance and renovation), but not other work, such as gardening.

From a counselor's point of view, the gardening work requested of clients is no different a form of therapy than renovation work which clients would be asked to perform. Nonetheless, if clients know they will be paid a minimum wage for one form of work, but not the other, the counselor's ability to engage the clients in the various forms of therapy will be jeopardized.

There is also the problem of maintaining client sobriety if the payment of wages results in an increased amount of cash available to each client on a weekly basis. The Ranch is not designed as a lock-in facility, and clients will always be free to leave the building. As presently structured, however, clients will only be allocated a minimal amount of cash per month for the purchase of necessary incidentals, and therefore, the temptation to run into town with a pocket full of cash for a "binge" is reduced. But if federal or state regulations require the program to hand each client a paycheck at the end of each pay period this element of control is eroded.

The most serious consequences may well be a dramatic change in the spirit and philosophy of the Ranch. The Nugens have always been adept at creating a sense of family and personal belonging with their clients, and this has been the essence of their success in treatment. If this atmosphere is lost -- and it may well be lost by the creation of an employment relationship with clients -- then the program may be doomed to failure from the start.

The burden on your office is no less significant. Moni Butts, the accountant for the program, has estimated that if the Ranch is required to pay a minimum wage to 48 residents at the facility, assuming that clients work for 14 hours per week, that it will mean an increase in the operational budget of the Ranch of some \$230,000.00 next fiscal year. This is a particularly troublesome financial burden for SOADA when you consider what it will mean for the expansion of long-term care programs in other areas of the state.

I have spoken to Judy Madsen of the Cedar Hills facility in Washington to determine how that program has avoided the application of minimum wage laws to patient work. The Nugens Ranch model is similar to that which is now in operation at Cedar Hills, and according to Ms. Madsen, Cedar Hills has not run into any problem with either state or federal law. I don't know, however, how Washington state law may differ from Alaska law. It is also my understanding that Cedar Hills has not applied to Wage and Hour for a subminimum wage certificate pursuant to the FLSA. I suspect this simply means that neither Wage and Hour, nor Cedar Hills, have investigated the program's probable coverage under the federal Act.

Conclusions

The legal opinions and policy considerations which I have discussed above lead me to the following conclusions:

1. The Alaska Wage and Hour Act, as presently written, will require the Ranch to pay the statutory minimum wage to clients engaged in work therapy which results in any economic benefit to the facility. This conclusion is based on my presumption that the Alaska Act will be interpreted according to principles established under the FLSA, and my presumption that 8 AAC 15.120(f) will be viewed as a prohibition against paying less than a minimum wage to alcoholics engaged in work therapy at a residential treatment center. As a practical matter, this will mean that the Ranch will have to pay clients for any work therapy that involves repair or renovation on the building, farming activities, and any other work at the facility that has the effect of displacing an employment position, but will not require the Ranch to pay clients for general housekeeping chores.

2. The Ranch is covered by the provisions of the Fair Labor Standards Act, as amended. Therefore, unless the Ranch is held to be exempt under the "family setting" guidelines, it will be required to pay the statutory minimum wage to clients engaged in work therapy which results in any economic benefit to the facility, unless a certificate to pay a subminimum wage is issued to the Ranch pursuant to 29 C.F.R. 529.

Possible Solutions

As a first step, I believe that your request for an Attorney General's opinion on the issue is appropriate. At the very least, this will give your office and the program some idea of how the State Department of Labor will react to the problem. I am also anxious to see if an Attorney General more familiar with labor law than myself reaches the same conclusions.

Secondly, I believe we should begin an immediate planning process for legislative or other programmatic solutions to the problem on the assumption that either State or federal law, or both, will require some form of payment for the work therapy. I use the pronoun "we" for two reasons: (1) I believe that this is an issue which affects both SOADA and the program equally and, (2) I also believe that a solution can be better achieved if we work jointly toward a resolution. I also don't feel it is appropriate to scrap the work therapy concept just because of the wage

problem. At its most recent Board meeting, the Board of Directors of ASHS (now Alaska Alcoholism Rehabilitation Services, Inc.) unanimously reaffirmed the importance of the work therapy program to the concept of and future success of Nugens Ranch. We must at least attempt some legislative solution to lessen the impact on the program before we decide to discard a concept so central to the theme of the Ranch.

Some suggestions are as follows:

1. Seek legislation which would amend the Alaska Wage and Hour Act to provide a specific exemption for work therapy programs at residential drug and alcoholism centers. Ideally, this legislation would affirm that the operation of drug and alcohol treatment centers by non-profit organizations serves an "integral governmental function", thus also giving the Ranch protection from the application of the FLSA by virtue of the ruling in National League of Cities v. Usery.

2. Seek a revision of 8 AAC 15.120(f) so that drug and alcoholism treatment facilities can pay a subminimum wage to patient-workers pursuant to A.S. 23.10.070.

3. Seek a formal Administrative Opinion from the Wage and Hour Division, U.S. Department of Labor in an attempt to get a ruling that the Ranch is exempt from FLSA coverage under the "family setting" principles of WH Adm Op-317.

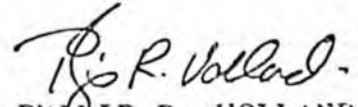
4. Restructure the work therapy program to exclude the repair and renovation work on the facility and minimize the economic impact of the farming activity. Add new forms of "work therapy" that can occur during the winter months to replace the renovation activities. Torrence, Inc., the architects drafting the current renovation plans have already been asked to estimate the additional costs attributable to complete renovation of the building by outside contractors.

5. Retain the work therapy plan as drafted, obtain the necessary funds to pay the clients for the farming and renovation activities, but draft appropriate procedures which permit the program to retain the clients' wages in trust until their release from treatment. At that time, the clients can be billed a cost of care based on their increased earnings during treatment. This plan might eliminate some of the accounting and payroll problems, and ease the economic impact on the program. It does, however, present a new problem of collecting the fee charged from the client.

Finally, I anticipate that this problem will not be resolved prior to the time that the program is required to submit a final budget for FY '83, and possibly even not resolved before the program opens its doors to clients. I ask that you and Loyd give us some direction on how to approach the budget planning with this issue unresolved.

Feel free to call me if you have any questions.

Sincerely,


PHILIP R. VOLLAND

PRV:mjm

cc: Leonard Nugen
Henritta Nugen
Ruth Eilen Anderson
Loyd Gathman
Bruce Botelho
Board of Directors

Offered: 5/17/83
Referred: Rules

Original sponsors: Barnes, Clocksin,
Bussell, et al

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 182 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act exempting participants in residential drug
7 abuse and alcoholism treatment programs from Alaska's
8 minimum wage provisions, and providing a wage scale."

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

10 * Section 1. AS 23.10 is amended by adding a new section to read:

11 Sec. 23.10.071. WAGES FOR WORK THERAPY. (a) For work therapy,
12 as defined in AS 47.37.270, a participant in a residential drug abuse
13 or alcoholism treatment program designed to extend more than 120 days
14 may be paid less than the minimum wage prescribed in AS 23.10.050 -
15 23.10.150 if the rate has been approved by the commissioner under this
16 section and is in compliance with federal law.

17 (b) The commissioner shall adopt regulations regarding the
18 payment of wages for work therapy. In adopting the regulations, the
19 commissioner shall consider whether the work performed by the patient

20 (1) is solely for the benefit of the patient and is that
21 which is ordinarily carried on by patients in a residential treatment
22 program;

23 (2) would ordinarily be performed by full-time employees of
24 the program;

25 (3) is work that may produce income to the patient, other
26 than wages;

27 (4) produces goods or services the proceeds of which will
28 economically or otherwise benefit the owners, operators, or businesses
29 of the rehabilitation program; and

1 (5) creates an unfair competition with private enterprise
2 because of lower wage standards.

3 * Sec. 2. AS 47.37 is amended by adding a new section to read:

4 Sec. 47.37.245. WAGES OF PATIENTS. (a) A participant in a
5 residential drug abuse or alcoholism treatment program may be paid
6 wages for work therapy. The payment of wages for work therapy by a
7 drug or alcoholism treatment program shall be considered an allowable
8 cost under the department's regulations governing costs a grantee may
9 pay with money received from a grant.

10 (b) No part of the wage earned by the patient worker may be
11 deducted for the cost of room, board or services. The program, how-
12 ever, after the payment of wages, may assess and collect the reason-
13 able cost of treatment according to rates established under AS 47.37.-
14 240, and on the same basis it assesses and collects from non-working
15 patients.

16 (c) Wages earned by the patient worker ^{will} may be held in trust by
17 ~~the program~~ for the benefit of the patient, and, except as provided in
18 (d) of this section, may be disbursed by the program only with the
19 patient's consent

- 20 (1) for the support of the patient's dependents;
21 (2) to pay a civil judgment;
22 (3) for the purchase of gifts, clothing, and items of
23 personal use;
24 (4) to pay restitution or a fine;
25 (5) for other purposes considered appropriate by the treat-
26 ment program.

27 (d) Wages earned by the patient worker may be disbursed without
28 the patient's consent in accordance with a final court order ^{or for child support.}

29 * Sec. 3. AS 47.37.270 is amended by adding a new paragraph to read:

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(14) "work therapy"

(A) means an activity that involves a patient in basic employment skills and assists the patient in reintegration into a community;

(B) does not include

(i) activities such as personal housekeeping chores or cooperative responsibilities expected of each patient in the program; or

(ii) work that produces goods or services for sale or distribution, the proceeds of which would be returned to the owners, operators, or businesses of the rehabilitation program.

INFORMATION ON CSHB 182(Fin)

ATTACHED PLEASE FIND A COPY OF THE ORIGINAL BILL AND THREE HOUSE COMMITTEE SUBSTITUTES. THERE FOLLOWS A BRIEF DESCRIPTION OF THE CHANGES IN THE BILL FROM ONE VERSION TO ANOTHER. ESSENTIALLY, EACH VERSION TIGHTENS UP THE BILL A LITTLE MORE TO PREVENT ABUSE BY THE PROGRAM AND TO PROTECT THE RIGHTS OF THE PATIENTS. NANCY G. IS HAVING PROPOSED AMENDMENTS DRAFTED AS MARKED ON THE LATEST VERSION OF THE BILL, AND WILL ASK VIC TO CARRY THEM. I DON'T KNOW WHAT VIC PLANS TO DO.

HB 182

"An Act exempting participants in residential drug abuse and alcoholism treatment programs from Alaska's minimum wage provisions, and providing a wage scale."

Provides that participants in residential drug and alcoholism treatment programs may be paid less than the minimum wage (no less than half the minimum wage) for work therapy.

Defines "work therapy".

CS HB 182(HESS)

Tightened up HB 182, added more oversight by Commissioner of Labor and gave him/her the power to adopt regulations to prevent abuse (protect rights of patients). Also specifies constraints on disposition of money earned by patient. States that "wages may be held in trust" and used only for certain things. Tightens up definition of "work therapy" to exclude housekeeping chores and cooperative responsibilities expected of each patient.

CS HB 182 (L&C)

Adds language (to section outlining things the Commissioner should take into account when promulgating regulations) regarding "creation of unfair competition with private enterprise because of lower wage standards". Removes consideration of "the impact of the wage scale on the program". Adds to definition of "work therapy" the exclusion of goods or services for sale for program/owner profit.

CS HB 182(Fin) VERSION UNDER CONSIDERATION

Adds one new subsection to "wages of patients" stating that wages earned by patient may be disbursed without the patient's consent ONLY "in accordance with a court order".

NAN HAVING AMENDMENTS DRAFTED TO DO THE FOLLOWING:

Change bill to provide that wages will be held in trust (instead of may be held in trust), and that they will be held in trust not by the program, but by a third entity appointed by the patient (?). Also change "wages of patient" section to reflect that wages earned by patients may be disbursed without the patient's consent to pay child support (in addition to "in accordance with a court order").

SENATE LABOR AND COMMERCE HEARING MAY 24

The bill was considered for about five minutes, maximum.

Loren Jones (DHSS) Office of Alcoholism and Drug Abuse testified that the bill "sets up solution to barrier in state statute". The Department of Health and Social Services supports it as it will "permit eligible programs to apply for exemption from the minimum wage while protecting client's rights". ZERO FISCAL IMPACT ON DHSS.

Judy Knight (DoL) said "we have worked hard to produce a committee substitute" and the Department has no objection. Dept. of Labor offered fiscal note (\$41.2, FY 84) for additional Clerk Typist III for Wage and Hour Division. Their fiscal note states that currently only Akeela House in Anchorage and Nugen's Ranch in Kerttula's district offer long term treatment programs.

Rodey moved to pass out bill with individual recommendations.

Nancy G., across the hall, says Akeela House (one of the only two programs affected in the state) does not support the bill. That leaves Nugen's Ranch. She also said the Nugens used to run a program for the Municipality of Anchorage, but they were so sleazy the Municipality severed the arrangement. Also please note that in a letter from the Nugens to Jalmar Kerttula date January 5, 1983, they say paying the minimum wage "ties their hand for treatment". (The patients do all the chores in the kitchen and greenhouse, and garden.) AND I QUOTE "THESE FOLKS WE WORK WITH DO NOT NEED MONEY. IT IS ONE OF THEIR WORST ENEMIES. PERHAPS IT WOULD MAKE SENSE TO PAY THEM 30¢ AN HOUR, BUT \$3.85 AN HOUR---NO WAY!...WE NEED YOUR HELP". Lovely.

RENDED TITLE: CSMB 182(FIN)
 AN ACT EXEMPTING PARTICIPANTS IN RESIDENTIAL DRUG ABUSE
 AND ALCOHOLISM TREATMENT PROGRAMS FROM ALASKA'S
 MINIMUM WAGE PROVISIONS, AND PROVIDING A WAGE SCALE
 GENERAL DOLLARS: \$41,200 (F. NOTE)

PRIME SPONSOR: BARNES. OTHER DOLLARS: \$0

CO-SPONSORS: CLOCKSIN, RUSSELL, LISKA, LARSON, LACHER, LINDAUER.
 CURRENT STATUS: 7/14/83 CHAPTER 0058 SLA 03

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/09/83	01	0214	FIRST READING -- COMMITTEE REPORTS
04/28/83	02	1087	HESS -- CS02, HR04
04/28/83	03	1087	HESS F/NOTE HSE SUPPL #48
05/11/83	04	1280	L&C -- CS04, HR02
05/11/83	05	1280	L&C F/NOTE HSE SUPPL #57
05/17/83	06	1306	FIN -- CS06
05/17/83	07	1306	FIN F/NOTE EQUALS ZERO
05/18/83	08	1410	SECOND READING
05/18/83	09	1410	FIN CS ADOPTED BY UNAN CONSENT
05/18/83	10	1410	ADVANCED TO 3RD READING BY UNAN CONSENT
05/19/83	11	1410	THIRD READING
05/19/83	12	1411	PASSED BY DIV 20-01-01
06/23/83	22	1247	TRANSMITTED TO GOVERNOR
07/14/83	23	2147	SIGNED BY GOVERNOR-20058, EFF 02/12/83
XXX	XX	XX	XXX XXX XXX

DATE	SEQ	PAGE	LEGISLATIVE ACTION
05/19/83	13	1034	FIRST READING -- COMMITTEE REPORTS
05/25/83	14	1109	L&C -- DP03, HR01
06/07/83	15	1222	FIN -- DP05, HR02
06/20/83	16	1387	BLE -- OTHER03
06/20/83	17	1392	TAKEN UP IMMEDIATELY
06/21/83	18	1419	POSTPONED UNTIL 06/21/83 BY UNAN CONSENT
06/21/83	19	1419	SECOND READING
06/21/83	19	1419	ADVANCED TO 3RD READING BY UNAN CONSENT
06/21/83	20	1419	THIRD READING
06/21/83	21	1419	PASSED BY DIV 20-00-00
XXX	XX	XX	XXX XXX XXX

COMMITTEE REPORT

SENATE

FURTHER: 73000

3/12/83

Date: 5/29/83

Mr. President:

The Committee on LABOR - DISCIPLINE has had CSRB 787 (11.)

Examining participants in the incident for abuse and violation of the contract provisions from Alaska's minimum wage provisions - C. 849.

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

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

CHAIRMAN

LAW OFFICES OF
REESE, RICE AND VOLLAND

A PROFESSIONAL CORPORATION

JOHN REESE
WILSON A. RICE -
PHILIP R. VOLLAND
VIRGINIA BONNIE LEMBO

211 H STREET
ANCHORAGE, ALASKA 99501
(907) 276-5231

May 6, 1983

via Express Mail

Ms. Judy G. Knight
Special Assistant to the Commissioner
Department of Labor
State of Alaska
P.O. Box 1149
Juneau, Alaska 99811

Re: CSHB 182

Dear Ms. Knight:

As you know, I currently represent Alaska Alcoholism Rehabilitation Services, the non-profit corporation which owns and operates a long-term residential alcoholism treatment center in Wasilla, Alaska known as Nugen's Ranch. I testified in favor of CSHB 182 before the House Committee on Health, Education and Social Services because Nugen's Ranch, as one of the treatment programs in the state which hopes to implement a work therapy program, will benefit from the legislation. With this letter I hope to clear up a few misconceptions that may have developed as a result of certain comments I made during my testimony.

The residents at Nugen's Ranch are most likely to be individuals who have a life-long history of alcoholism. A good number of these individuals will be skid-row alcoholics and public inebriates who have spent many years on the street drifting from one detoxification facility to another. They have few life management skills and, practically speaking, are unemployable. Their treatment will require institutionalization for as long as two years.

The Ranch hopes to engage these individuals in "work therapy" as part of their treatment. Work therapy is activity of a constructive nature which may be supervised or unsupervised, and which will require the resident to assume certain responsibilities. The work will involve housekeeping chores, agricultural work, and unskilled labor associated with minor renovation and maintenance at the facility.

Ms. Judy G. Knight
May 6, 1983
Page Two

You indicated a concern on the part of the Department based on the fact that during my testimony before the HESS Committee I referred to residents at the facility performing certain maintenance tasks that might involve electrical or mechanical skills. My comments were only for the purpose of explaining to committee members that residents would regularly perform work that was non-agricultural in nature. I certainly did not intend to give the impression that Nugen's Ranch planned to displace existing employee positions through work therapy, or that the Ranch planned to have residents engage in work such as might be done by an electrician or mechanic and which would require specialized skills and training. I am sure you realize that it would be foolish for the corporation to do so, and I would never recommend such a course of action. The potential liability of the corporation as a result of any negligent work performed by a resident working beyond his skill level is itself a sufficient deterrent that the Ranch would never consider engaging residents in such activity.

To be more specific, the following tasks are those likely to be performed by residents involved in work therapy. I have listed the activities without regard to whether 29 CFR 529 requires the payment of wages for the activity.

1. Personal housekeeping chores (making beds, cleaning rooms);
2. General housekeeping chores (sweeping floors, trash removal, etc.);
3. Kitchen detail (setting and clearing tables, etc.);
4. Feeding livestock (poultry and swine);
5. Cleaning animal pens and sheds;
6. Planting and cultivating vegetable crops;
7. Planting and tending to bedding plants grown in the greenhouse;
8. Assisting in the slaughtering of livestock and the harvesting of crops;
9. Minor maintenance (e.g., painting);
10. Care of the grounds;
11. Snow removal during winter;
12. General labor, such as erecting fences, tearing down sheds, hauling trash, stacking lumber, cutting firewood, etc.

Ms. Judy G. Knight
May 6, 1983
Page Three

In some cases I anticipate that residents will watch qualified personnel perform regular maintenance tasks which require specific training and skills. In all cases, the "work" performed by the resident would not involve activity requiring a special skill, but nonetheless will allow the resident patient to learn some basic aspects of the skill.

For example, the Ranch might have the need to build a small tool shed adjacent to one of the existing buildings. This is work for which the Ranch would use the services of one of its regular maintenance personnel, or contract with someone to do the construction. This work, however, also would present an excellent opportunity to prepare a work therapy program which involves training in some carpentry skills. Residents could be asked to stack and haul lumber while observing how framing is done and receiving instruction in the proper use of power tools. Similarly, the residents could watch how electrical conduit is laid, learn how to lay shingle on a roof, learn how windows and doors are hung, and how steps and railings are made, etc. Throughout all of this "work therapy" the residents may do nothing more than stack lumber and paint the building. Nonetheless, the experience will have taught them some basic lessons of carpentry and electrical work.

I want to make it clear that the work therapy program designed for the Ranch will not displace any employment positions that are filled from the private sector and which are paid at a rate considerably higher than the prevailing minimum wage. If you examine the grant-in-aid documents for Nugen's Ranch available at the State Office of Alcoholism and Drug Abuse, you will see that the Ranch has, and intends to keep, fully paid and qualified maintenance, kitchen, and night attendant positions. Work therapy is designed for the benefit of the patient; it is not a concept which will result in the displacement of regular employees at the Ranch.

I do not believe it is unreasonable for the Ranch to expect that the quality of "work" they will receive from an individual during the initial stages of treatment is work for which something less than the minimum wage is still fair compensation. I am sure you can appreciate that someone who has been unable to work in five or six years because of

daily intoxication has a productive capacity that is, at best, minimal, even with constant supervision. Although I understand that the Department is concerned because even the most basic entry level positions in the private sector pay at least the minimum wage, I hope that the Department appreciates the fact that residents who will be referred to Nugen's Ranch are individuals who are presently not even counted among the labor force because of their inability to work.

It is the intention of the Ranch to base the wage scale on the disability of the patient worker, as is required by federal regulation. It seems clear to me that the federal regulations concerning patient workers at 29 CFR part 529 contemplate wage scales between 50 percent of the minimum wage and the full minimum wage, or higher, depending on the disabilities of the various clients. I have anticipated that in the process of applying for a certificate under 29 CFR 529 the Ranch would seek approval for a number of classes of wage scales between the minimum permitted under the regulations (50 percent of the minimum wage) and the minimum wage itself. This would enable the Ranch to automatically move a patient worker into a higher paying classification as his treatment progressed. It also seems to me that it is entirely possible in the future for the Ranch to budget itself for certain positions (such as dishwasher or kitchen helper) which would be paid at a prevailing wage rate and which would be filled by patient workers who are no longer under a disability.

The Ranch is not intending, nor does it expect, to pay patient workers less than is required under federal regulations or law. Both the federal regulations and the leading federal court cases in the field make it clear that if a patient worker is not suffering from any disability, he must be paid a wage comparable to the wage paid in the private sector for the equivalent work. I have advised my clients of this fact and they recognize that for any non-disabled patient worker they may be required to pay the patient a wage comparable to that in the private sector. At this time, however, the Ranch does not anticipate treating patients who are not already suffering from a considerable disability.

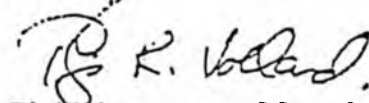
Ms. Judy G. Knight
May 6, 1983
Page Five

I hope this letter answers some of your concerns. I hope to be able to work with you and other representatives of the Department in order to ensure that you clearly understand what the Ranch intends to do through the work therapy program, and what is hoped to be accomplished by CSHB 182.

Please call me if you have any questions.

Sincerely,

REESE, RICE AND VOLLAND, P.C.

A handwritten signature in dark ink, appearing to read "P. R. Volland". The signature is written in a cursive style with a large initial "P" and "R".

Philip R. Volland

LAW OFFICES OF
REESE, RICE AND VOLLAND

A PROFESSIONAL CORPORATION

JOHN REESE
WILSON A. RICE
PHILIP R. VOLLAND
VIRGINIA BONNIE LEMBO

211 H STREET
ANCHORAGE, ALASKA 99501
(907) 276-5231

February 18, 1983

Representative Barbara Lacher
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: House Bill 182

Dear Representative Lacher:

I would like to take this opportunity to comment on H.B. 182 and, in particular, address the issue of possible conflict between the proposed legislation and the federal Fair Labor Standards Act.

As you may recall, I represent Alaska Alcoholism Rehabilitation Services, Inc., the nonprofit corporation which owns and operates a long-term residential treatment center for alcoholics in Wasilla, Alaska. Last year, on behalf of my client, I advised the State Office of Alcoholism and Drug Abuse of my opinion that state and federal law required the payment of a minimum wage to patients at residential treatment centers who are engaged in work therapy. I suggested that legislation be adopted to lessen the economic impact of this problem, and sought the assistance of various legislators last year; however, the session was too far along to yield results. I presume that you have copies of my original opinion letter to SOADA, dated February 23, 1982, and my letters to Representatives Donald E. Clocksin, Patrick J. Carney, and Senator Jalmar Kerttula, dated April 2, 1982.

Since the session began this year, I have been in frequent contact with Russ Josephson of the Law Division, and this week with your aide, Joan Matthews. I am aware of your concern about possible conflict between H.B. 182 and the Fair Labor Standards Act and hope that my comments may assist you in evaluating the proposed legislation. You may feel free to share this letter with the named sponsors of the bill.

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Let me begin by saying there are certain defects in H.B. 182 that I feel need correction, and that my opinion about possible solutions has changed since last year as a result of recent developments in case law. I have also proposed changes in H.B. 182 to address some problems which are not covered by the bill. Before explaining these issues in detail, let me first discuss my prior recommendations and the somewhat confusing legal principles that are involved in the state law/federal law conflict.

In my letter to SOADA of last year, I suggested that the application of the Fair Labor Standards Act (hereafter F.L.S.A.) to state-funded residential treatment centers could be avoided by adding language to state legislation which was keyed to the decision of the U.S. Supreme Court in National League of Cities v. Usery, 426 U.S. 833 (1976) (hereafter National League). This was because the National League decision held that the F.L.S.A. did not apply to wage and hour determinations which involve functions which state and local governments are created to provide, including those services which the states have traditionally afforded to their citizens. Among the services enumerated by the Supreme Court in National League was the field of "health care." The holding in National League was based on the application of the Tenth Amendment to the Constitution -- the constitutional provision which prohibits federal control over functions traditionally reserved to the states. Although the decision in National League was limited to states and their political subdivisions, the broad language used by the court suggested that the decision might also apply to state-funded, private organizations which deliver state services such as health care, and which are heavily regulated by the state.

Subsequent to the decision in National League, two federal courts specifically addressed the applicability of the holding in National League to local health care programs involving private nonprofit residential treatment centers funded by states. These two cases, Williams v. Eastside Mental Health Center, Inc., 509 F.Supp. 579 (N.D. Ala., S.D., 1980), and Richland County Assn. for Retarded Citizens v. Marshall, 660 F.2d 388 (9th Cir. 1981), were divided on the issue. Although the Richland County decision held that National League did not prohibit the application

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of the Fair Labor Standards Act to a private nonprofit corporation which operated a residential home for mentally retarded adults, the Williams case reached the opposite conclusion under nearly identical circumstances. When I originally wrote my opinion letter, it appeared possible that well drafted legislation, which recognized the state's interest in treating drug addicts and alcoholics as an essential state function and which met this function through the provision of funding to private nonprofit corporations, could provide the necessary protection established under the National League decision, and therefore render such treatment centers exempt from the minimum wage requirement of the F.L.S.A.

However, after speaking with Russ Josephson last month, I updated my research on the subject. Decisions issued during the last year in federal district courts as well as the United States Supreme Court now indicate that the protection originally thought available under the National League decision is no longer applicable to private nonprofit organizations which receive state funding, regardless of whether or not they are involved in administering services otherwise provided by the state.

Since my original letter to SOADA last February, two decisions were rendered by the United States Supreme Court which involved the application of National League. These cases, Hodel v. Virginia Surface Mining and Reclamation Association, ___ U.S. ___, 101 S.Ct. 2352 (1981), and United Transportation Union v. Long Island Railroad Company, ___ U.S. ___, 102 S.Ct. 1349 (1982), set out a three-pronged test to be applied in evaluating the Tenth Amendment protection announced in National League. To claim that a federal statute would not apply under the National League principle, the challenging party would have to establish that: (1) the challenged statute regulates the "states as states"; (2) the federal regulation addresses matters that are indisputably "attributes of state sovereignty"; and (3) the states' compliance with the federal law would directly impair their ability "to structure integral operations in areas of traditional functions."

Although in National League the Supreme Court first cited fire protection, police protection, sanitation, public health, and parks and recreation as examples of services that are within the area of traditional operations of state and local governments, subsequent decisions of the U.S. district courts have refined these areas in far greater detail. See, e.g., N.L.R.B. v. Highview, Inc.; 590 F.2d 174 (5th Cir. 1979) enforcement modified, 595 F.2d 339 (1979) (the care of the aged, sick and indigent); Enrique Molina-Estrada v. Puerto Rico Hwy. Auth., 680 F.2d 841 (1st Cir. 1982) (highway construction); Bonnette v. California Health & Welfare Agency, 525 F.Supp. 128 (N.D. Cal. 1981) (in-home support services for the blind, aged and disabled); Amersbach v. City of Cleveland, 598 F.2d 1033 (6th Cir. 1979) (operation of a municipal airport); and Alewine v. City Council of Augusta, 505 F.Supp. 880 (S.D. Georgia 1981) (operation of a municipal transit system). The most significant development, however, has been the result of appeals in Williams v. Eastside Mental Health Center, supra, and Richland County Assn. for Retarded Citizens v. Marshall, supra, the two cases on which I based my earlier opinion.

The original Ninth Circuit decision in Richland County, which held that the Fair Labor Standards Act was applicable to private nonprofit residential treatment centers, was vacated by the Supreme Court on jurisdictional grounds in January of 1982, sub nom. Donovan v. Richland County Assn. for Retarded Citizens, _____ U.S. _____, 102 S.Ct. 713 (1982). Although the practical effect of the vacated judgment was to restore the district court's decision apparently holding the F.L.S.A. inapplicable to the treatment center, that opinion is unpublished and has little legal significance.

Of importance, however, is the chain of appeals on Williams. As you will recall, that decision held that the Fair Labor Standards Act was not applicable to a nonprofit treatment center because of its close relationship to the state via funding and regulations, and because the center served an essential state function in providing health care to citizens. The district court decision was reversed by the Eleventh Circuit on March 5, 1982 in a well-reasoned

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decision. Williams v. Eastside Mental Health Center, 669 F.2d 671 (1982) (copy enclosed). The court held that the protection accorded by National League was not available to nonprofit corporations receiving funding from the state, even though they may provide health care services on behalf of the state. I encourage you to read this decision thoroughly because of the very close analogy it presents to nonprofit corporations in Alaska which provide services through state funding in the health care, drug abuse, and alcoholism fields. In August of 1982 the decision was appealed to the United States Supreme Court, and on November 2, 1982 the petition for certiorari was denied by the Supreme Court, Eastside Mental Health Center v. Williams, ___ U.S. ___, 51 U.S.L.W. 3340. The effect of the denial of certiorari is to uphold the Eleventh Circuit's decision. It is therefore clear that the Fair Labor Standards Act does apply to private nonprofit residential treatment centers in Alaska, even though those programs receive state funding, are regulated by the state and deliver services the state might otherwise choose to provide on its own. Thus, I recommend that it is futile to try to adopt legislation stating that the treatment of alcoholics and drug addicts through private nonprofit corporations serves an important state function in an attempt to pass valid legislation that will enable those programs to pay a minimum wage less than that provided under the F.L.S.A. Because it is now clear that federal law will apply to residential treatment centers, H.B. 182 must be drafted in such a way that it is consistent with the Fair Labor Standards Act.

To fully understand the issue of conflict between state and federal law, let me briefly explain two legal doctrines that come into play in this area -- "supremacy" and "preemption."

Supremacy is a constitutional principle, based on Article IV of the U.S. Constitution, that state laws are void to the extent that they actually conflict with a valid federal statute, that is, they present an obstacle to the purposes and objectives of the federal statute. It is a doctrine often confused with a similar principle based on the supremacy clause, the doctrine of preemption.

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Preemption is a legal doctrine that prohibits the application of state statutes (whether in conflict with or consistent with federal statutes), if the federal legislative scheme evidences a congressional purpose to "occupy the field." Supremacy and preemption should not be confused. The preemption principle prohibits the states from legislating in a particular area; the principle of supremacy only prohibits the states from adopting legislation in conflict with federal legislation.

In the labor law area, the distinction between these two doctrines can be easily understood. The Fair Labor Standards Act did not preempt the field of labor law, Webster v. Bechtel, 621 P.2d 890 (Alaska 1980); see also 29 U.S.C. §218(a) (1975). Thus Alaska can adopt (and has adopted) its own laws governing the rates of pay for workers in the state. Nonetheless, the doctrine of supremacy prohibits this legislation from being in conflict with the Fair Labor Standards Act. Thus, Alaska cannot adopt a law that sets a lower rate of pay for workers in the state than is established under federal law. Therefore, the provisions of H.B. 182 cannot conflict with analagous provisions of the Fair Labor Standards Act.

This brings me to my analysis of H.B. 182 as presently drafted.

I have no problems with Section 1 insofar as it amends AS 23.10.070. The effect of the proposed amendment is to invalidate 8 AAC 15.120(f) which presently states that drug addicts and alcoholics are not handicapped workers with respect to AS 23.10.070. Because of problems with Section 2 of H.B. 182, however, and because of the need to address problems not covered by the proposed legislation, I have suggested some major additions to Section 1 of H.B. 182 (see discussion below).

AS 23.10.070 is analogous to Section 14 of the Fair Labor Standards Act, 29 U.S.C. 214, the "handicapped worker" provisions of the act. Thus it will be interpreted consistent with the F.L.S.A. and the regulations adopted thereunder. These regulations, codified at 29 C.F.R. 529 (copy enclosed), already provide a mechanism for the approval of the payment of subminimum wages to patient workers at "intermediate care facilities ... halfway houses, residential centers for drug addicts or alcoholics and the like whether licensed or not licensed." The practical effect

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of amending AS 23.10.070 will be that affected treatment programs will have to apply for and obtain a certificate authorizing the payment of subminimum wages pursuant to the procedure set forth in 29 CFR 529.

Section 14 of the F.L.S.A. only permits the payment of subminimum wages, upon application and approval by the Department of labor, of not less than 50 percent of the prevailing minimum wage. In other words, the provision of federal law analogous to the amendment to AS 23.10.070 proposed by H.B. 182 does not allow the payment of any wage less than 50 percent of the prevailing minimum wage in Alaska, which is now \$3.85 per hour.

Because of this fact, there is a conflict between H.B. 182 and the F.L.S.A. Section 2 of H.B. 182 sets the wages for work therapy "at the rates established under AS 33.32.050." If you refer to AS 33.32.050 you will note that the wage rate authorized therein may not exceed 50 percent of the minimum wage established under AS 23.10.065. In other words the bill, as presently written, authorizes the payment of wages less than what is required by federal law. This difference is fatal to the proposed legislation; if passed as presently written it will not survive a legal challenge based on the conflict with Section 14 of the Fair Labor Standards Act.

Another problem created by tying the wage rate to AS 33.32.050 is that AS 33.32.050 will automatically repeal in 1987. I suggest that it is imprudent to tie H.B. 182 to a law that will automatically expire four years from now. This will only mean that AS 47.37.245 would have to be amended again in 1987.

I have suggested additional amendments to Section 2 regarding the assessment of treatment fees to patient workers. My proposed subsection (b) is consistent with 29 C.F.R. 529.4(i). I have also added as subsection (c), somewhat similar to AS 33.83.50(c), clarifying a program's authority to hold wages in trust and disburse funds for appropriate purposes. As a practical matter, most residential treatment programs must hold money in trust in order to control the likelihood of intra-institutional

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theft, and allocate money to the client consistent with his or her financial needs and other obligations.

I have no major problems with the definition of work therapy as defined in Section 3 of H.B. 182. I feel, however, that the present definition implies that work therapy will involve more formal "training" than actually occurs. I have suggested some minor changes in language which, I believe, more accurately reflect the concept of work therapy.

Any statutory definition of work therapy will, however, be incomplete. Litigation about this issue over the years, as well as opinions generated by the Wage and Hour Division of the Department of Labor, have only indicated the complexity of the concept. [See, e.g., Wyatt v. Stickney, 344 F.Supp. 373 (M.D. Ala. 1972), aff'd sub nom. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974); Opinion WH-375, signed by Wage Hour Administrator Ronald J. Jones, March 1, 1976; Opinion WH-334, signed by Acting Wage Hour Administrator Warren D. Landes, April 18, 1975. For instance, personal housekeeping chores are not considered work therapy under any definition, but regular building maintenance responsibilities would be considered work requiring compensation. There remains a question of whether wages need be paid for work therapy which produces saleable items from which the patients themselves profit.] Lest AS 47.37.270(14) itself be subject to future litigation, I suggest that H.B. 182 mandate the Department of Labor to adopt regulations implementing H.B. 182. Presumably, these regulations will be consistent with 29 C.F.R. 529, and reflect input from programs utilizing work therapy concepts for their clients. The end result will give programs better guidance on when wages are required to be paid.

My proposed changes in Section 1 of H.B. 182 include a mandate for the development of regulations. The guidelines I have suggested are consistent with case law as it has developed under Section 14 of the F.L.S.A.

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Finally, the impact of having to pay patients engaged in work therapy at least 50 percent of the minimum wage will be a slightly higher cost to the state than presently exists under the proposed terms of H.B. 182. Although it is now clear that the law requires the payment of wages, I am not convinced that influential members of SOADA and the legislature will meet this responsibility by budgeting sufficient funds for programs to meet this obligation without curtailing services. Last year, for instance, the Governor's Review Board on Alcoholism -- fully aware that clients would have to be paid wages for work therapy -- recommended a cut in the Nugen's Ranch budget exactly equivalent to the funds budgeted for client wages. It would be anomalous if the Legislature adopted H.B. 182, but residential treatment programs were not awarded sufficient increases in grant funds to pay even the subminimum wage. I have therefore proposed amendments in Section 2 to meet this concern.

In summary, I therefore make the following recommendations:

1. There is no need to add a purpose clause to H.B. 182, as I originally suggested, since it is now clear that the Fair Labor Standards Act, as amended, 29 U.S.C. 201, et seq., will apply to residential drug and alcohol treatment programs in light of the U.S. Supreme Court's denial of certiorari in Williams v. Eastside Mental Health Center, 669 F.2d 671 (11th Cir. 1982), cert. den., ___ U.S. ___, 51 U.S.L.W. 3340 (Nov. 2, 1982).

2. Amend Section 1 of H.B. 182 to read as follows:

(b) (1) Participants in residential drug and alcoholism treatment programs may be paid less than the minimum wage prescribed in AS 23.10.050 - 23.10.150 for work therapy, as defined in AS 47.37.270, and at rates approved by the commission pursuant to this section.

(2) The commissioner shall promulgate regulations regarding the payment of wages for work therapy. In establishing these regulations, the commissioner shall be guided by the following standards:

(A) Whether the work performed by the patient is that which is ordinarily carried on by patients in a residential treatment program and is not for the economic benefit of the program, but solely for the mutual benefit of the participants;

(B) Whether the work performed by the patient would ordinarily be performed by full-time employees of the program;

(C) Whether the work performed by the patient is work which may produce income to the patient, other than wages;

(D) The therapeutic benefit of the work to the patient, the skill required to perform the work, and the role work therapy plays in the patient's treatment plan;

(E) The impact of the wage scale on the program, considering its size, level of funding, and the therapeutic treatment services to be provided.

3. Amend Section 2 of H.B. 182 so that it reads:

Sec. 47.37.245 WAGES OF PATIENTS.

(a) Participants in residential drug abuse and alcoholism treatment programs shall be paid wages for work therapy, as defined in AS 47.37.270. The coordinator shall make sufficient grant-in-aid funds available to programs for this purpose.

(b) No part of the wage earned by the patient worker can be deducted for the cost of room, board or services. The program, however, after the payment of wages, may assess and collect the reasonable cost of treatment according to rates established in accordance with AS 47.37.240, and on the same basis as it assesses and collects from non-working patients.

(c) Wages earned by the patient worker may be held in trust by the program for the benefit of the patient, and disbursed by the program, with the patient's consent

(1) for the support of the patient's dependents,

(2) to pay a civil judgment,

(3) for the purchase of gifts, clothing, and items of personal use,

(4) to pay restitution or a fine,

(5) for other purposes deemed appropriate by the treatment program.

4. Amend Section 3 of H.B. 182 to read as follows:

Work therapy means an activity that involves a patient in basic employment skills and assists the patient in reintegration into a community, but does not include such activities as personal housekeeping chores or cooperative responsibilities expected of each patient in the program.

Representative Barbara Lacher
February 18, 1983
Page Twelve

Finally, on behalf of my clients I want to thank you for all of your efforts in getting the legislation introduced. Your attention to the problems faced by many drug and alcohol treatment programs reflects your conscientious attitude toward your constituents.

I hope that my comments have been helpful. Please keep me apprised of developments with H.B. 182 and feel free to call if I can be of further assistance.

Sincerely,

REESE, RICE AND VOLLAND, P.C.

Philip R. Volland

Enclosures

cc: Board of Directors, AARS
Mr. and Mrs. Leonard Nugen

Of significant importance is an administrative opinion on the Act's applicability to a residential drug abuse treatment program. The Wage and Hour Division held that a residential care program which seeks to establish a "family setting" for treatment of persons with drug problems would not be considered to involve an employment relationship under the Act between the residents and the institution where:

- (1) the work performed by the resident is that which is ordinarily carried on on a daily basis in a private home and is not for the economic benefit of the state or local government entity, but solely for the mutual benefit of the occupants of the home (institution);
- (2) residents do not perform work activities which would ordinarily be performed by full time employees of the institution so that there is no displacement of regular full time employees through substitution of resident workers;
- (3) residence in the institution and performance of activities by the occupants is short term (usually no more than a year) as opposed to generally long term occupancy in such institutions as those concerned with the mentally ill, the mentally retarded, the aged, or the terminally ill;
- (4) the institution is relatively small, houses a limited number of residents and has no paid staff other than counselors.

Opinion WH-317, signed by Acting Wage Hour Administrator Warren D. Landis, March 28, 1975.

In that Opinion, the Wage and Hour Division determined that many of the institutions involved in drug abuse treatment may well be outside the purview of the Fair Labor Standards Act in so far as application of the law to patient workers is concerned. However, the Division reaffirmed its principle of deciding each case on a case by case basis.

In light of these standards, particularly those discussed in WH Adm Op-317, I do not believe the Ranch is under any obligation to pay clients for general housekeeping chores, provided that the work does not displace regular custodial employees. Both the federal regulations, and the interpretative opinions of the Wage and Hour Division, indicate that personal housekeeping chores are not covered by the Act. See, e.g., 29 C.F.R. 529.2(d).

HB

202

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 202 Date on Bill: 2/15/83
 Title: An act increasing the liquor tax.
 Sponsor: Adams
 Requestor: House State Affairs

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total				

b. Revenues:

Revenue	-0-	2.1 mill	3.9 mill
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

The analysis assumes the new tax rates become effective July 1, 1983.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: M. Ann Puleo Phone: 465-2300
 Division: Comm. Office Date: 2/28/83
 Approved by Commissioner: Robert C. Hart Date: 2/28/83
 Department: Revenue

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

S43.60.010 DOCUMENT= 1 OF 1 PAGE = 1 OF 1
CHAPTER = 43.60
SECTION = 43.60.010
TITLE = 43

HEADINGS TITLE 43.
REVENUE AND TAXATION.
CHAPTER 60.
EXCISE TAX ON INTOXICATING LIQUORS.
CITATION SEC. 43.60.010.

ATCH LINE
LIQUOR TAX.

EXT (A) EVERY BREWER, DISTILLER, BOTTLER, JOBBER, RETAILER,
WHOLESALE, OR MANUFACTURER WHO SELLS INTOXICATING LIQUORS IN THE
STATE OR WHO CONSIGNS SHIPMENTS OF INTOXICATING LIQUORS INTO THE
STATE, WHETHER OR NOT THE LIQUORS ARE BREWED, DISTILLED, BOTTLED,
OR MANUFACTURED IN THE STATE, SHALL PAY ON ALL MALT BEVERAGES
(ALCOHOLIC CONTENT OF ONE PER CENT OR MORE BY VOLUME), WINES, AND
HARD OR DISTILLED LIQUORS, THE FOLLOWING TAXES: (1) MALT
BEVERAGES AT THE RATE OF 25 CENTS A GALLON OR FRACTION OF A
GALLON; (2) WINE OR OTHER LIQUOR OF 21 PER CENT ALCOHOL BY VOLUME
OR LESS, AT THE RATE OF 60 CENTS A GALLON OR FRACTION OF A
GALLON; AND (3) OTHER LIQUORS HAVING A CONTENT OF MORE THAN 21
PER CENT ALCOHOL BY VOLUME AT THE RATE OF \$4 A GALLON.

ISTORY (B) REPEALED BY SEC. 3 CH 235 SLA 1976.
(SEC. 35-4-31 ACLA 1949; AM SEC. 1 CH 73 SLA 1957; AM SEC. 1 CH
61 SLA 1961; AM SEC. 28 CH 70 SLA 1964; AM SEC. 1 CH 61 SLA 1971;
AM SEC. 3 CH 235 SLA 1976)

0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

HB 202

The question being: "Shall HB 202 be returned to second reading for the purpose of specific amendment?" The roll was taken with the following result:

HB 202 MOTION

Yeas: 14 Clocksin, Davis, Goll, Hayes,
Hurlbert, Koponen, Lacher, Martin,
McBride, Miller, M.M., Miller, M.W.,
Vaska, Wendte, Zharoff

Nays: 23 Abood, Adams, Barnes, Bettisworth,
Bussell, Cowdery, Duncan, Flood,
Fritz, Fuller, Furnace, Grussendorf,
Herrmann, Lindauer, Liska, Pestinger,
Phillips, Ringstad, Shultz,
Szymanaki, Tischer, Uehling, Ward

Excused: 3 Cato, Larson, Malone

Absent: 0

Representative Hurlbert changed his vote from "Nay" to "Yea."

And so, the motion failed.

The question to be reconsidered: "Shall HB 202 pass the House?" The roll was taken with the following result:

HB 202

Yeas: 33 Abood, Adams, Barnes, Bettisworth,
Bussell, Clocksin, Cowdery, Davis,
Duncan, Flood, Fritz, Fuller, Goll,
Hayes, Herrmann, Hurlbert, Koponen,
Lacher, Lindauer, Liska, Martin,
McBride, Miller, M.M., Miller, M.W.,
Pestinger, Phillips, Ringstad,
Tischer, Uehling, Vaska, Ward,
Wendte, Zharoff

Nays: 4 Furnace, Grussendorf, Shultz,
Szymanaki

Excused: 3 Cato, Larson, Malone

Absent: 0

And so, HB 202 passed the House on reconsideration.

HB 202

Representative Barnes moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

HB 202 was referred to the Chief Clerk for engrossment.

HB 202UNFINISHED BUSINESS

202

Representative M. M. Miller brought up the reconsideration of the vote on HOUSE BILL NO. 202 (increasing the liquor tax; effective date).

THIRD READING OF HOUSE BILLS

HB 202 was automatically before the House in third reading and read the third time.

Representative M. M. Miller moved and asked unanimous consent that HB 202 be returned to second reading for the purpose of specific amendment.

Representative Uehling objected.

Amendment No. 1 by M. M. Miller:

Page 1, line 6:

Delete: "increasing"
Insert: "relating to"

Page 1, following line 22:

Insert:

"* Sec. 2. AS 43.60 is amended by adding a new section to read:
Sec. 43.60.050. ADJUSTMENT OF DOLLAR AMOUNTS. (a) For each state fiscal year beginning after June 30,

1984, the Department of Revenue shall recompute the dollar amount of the taxes under AS 43.60.010(a) and announce new dollar amounts to take effect on July 1 of that year.

(b) The computation shall be made by determining the percentage of change between the Consumer Price Index for all Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index) for January of the current calendar year and the index for January 1983 (the reference base index). If the percentage of change between the index for January of the current calendar year and the reference base is less than 10 percent, the dollar amount of the taxes does not change. If the percentage of change is 10 percent or more, the percentage shall be rounded off to the next lower multiple of 10. The rounded percentage is then multiplied by the dollar amount of the taxes set forth in AS 43.60.010(a) to determine the increase or decrease in the dollar amount of the taxes.

(c) If the index is revised by the United States Bureau of Labor Statistics, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The Department of Revenue shall announce promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index."

Renumber subsequent sections.

RENDED TITLE: SCSHB 202(JUD)
ACT INCREASING THE LIQUOR TAX, AND PROVIDING FOR AN
EFFECTIVE DATE

PRIME SPONSOR: ADAMS. GENERAL DOLLARS: \$0 (F. NOTE)
OTHER DOLLARS: \$0

CO-SPONSORS: LISKA.
CURRENT STATUS: 7/09/83 CHAPTER 0046 SLA 83

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/15/83	01	0254	FIRST READING -- COMMITTEE REPORTS
03/16/83	02	0503	S.A. -- DP02, NR05
03/16/83	03	0503	S.A. F/NOTE HSC SUPPL #25
03/25/83	04	0625	FIN -- DP07, NR02
04/11/83	05	0810	SECOND READING
04/11/83	06	0810	ADVANCED TO 3RD READING BY UNAN CONSENT
04/11/83	07	0810	THIRD READING
04/11/83	08	0811	PASSED BY DIV 32-04-04
04/11/83	09	0811	EFFECTIVE DATE VOTE SAME AS PASSAGE
04/11/83	10	0811	NOTICE OF RECONSIDERATION GIVEN
04/12/83	11	0832	FAILED TO RETN 2ND READING BY DIV 14-23-03
04/12/83	12	0832	PASSED ON RECONSIDERATION BY DIV 33-04-03
04/12/83	13	0833	EFFECTIVE DATE VOTE SAME AS PASSAGE
06/16/83	34	1741	CONCURRED IN SENATE AHS BY DIV 36-01-01
06/16/83	35	1742	EFFECTIVE DATE VOTE SAME AS PASSAGE
06/17/83	36	1772	TRANSMITTED TO GOVERNOR
07/08/83	37	2141	SIGNED BY GOVERNOR-CH0046, EFF 07/09/83

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/13/83	14	0601	FIRST READING -- COMMITTEE REPORTS
04/22/83	15	0703	L&C -- DP01, NR01, OTHER01
			REFERRAL RECOMMENDED TO JUDICIARY
04/27/83	16	0821	JUD -- DP02, NR03
05/19/83	17	1041	FIN -- JUD CS(AM)03, NR01
06/03/83	18	1193	RLS -- JUD DP03, NR01, OTHER03
			TAKEN UP IMMEDIATELY
06/03/83	19	1200	SECOND READING
06/03/83	20	1200	JUD CS ADOPTED BY UNAN CONSENT
06/03/83	21	1200	POSTPONED UNTIL 06/06/83 BY UNAN CONSENT
06/06/83	22	1213	POSTPONED UNTIL 06/07/83 BY UNAN CONSENT
06/07/83	23	1223	POSTPONED UNTIL 06/08/83 BY UNAN CONSENT
06/08/83	24	1230	POSTPONED UNTIL 06/09/83 BY UNAN CONSENT
06/09/83	25	1233	POSTPONED UNTIL 06/10/83 BY UNAN CONSENT
06/10/83	26	1241	POSTPONED UNTIL 06/14/83 BY UNAN CONSENT
06/14/83	27	1304	POSTPONED UNTIL 06/15/83 BY UNAN CONSENT
06/15/83	28	1323	AM01 NOT ADOPTED BY DIV 32 7:00
06/15/83	29	1324	AM02 NOT ADOPTED BY DIV 33 7:00
06/15/83	30	1334	ADVANCED TO 3RD READING BY UNAN CONSENT
06/15/83	31	1334	THIRD READING

DATE	SEQ	PAGE	LEGISLATIVE ACTION
06/15/83	32	1334	PASSED BY DIV 14-04-00
06/15/83	33	1335	EFFECTIVE DATE VOTE SAME AS PASSAGE

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

4/17/73

Date: 4/17/73

Mr. President:

The Committee on LABOR & COMMERCE has had 23 bills

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

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
[Signature]

[Signature]
 CHAIRMAN

Alaska State Legislature

House of Representatives

Al Adams

Chairman

Committee on Finance

WHILE IN SESSION

Pouch V

State Capitol

Juneau, Alaska 99811

(907) 465-3706

OUT OF SESSION

P.O. Box 333

Kotzebue, Alaska 99752

(907) 442-3320

1024 W. 6th

Anchorage, Alaska 99501

(907) 274-0615

Official Business

April 15, 1983

MEMORANDUM

TO: Senator Dick Eliason, Chairman
Senate Labor & Commerce Committee

FROM: Representative Al Adams *APA*

RE: House Bill 202 - Increasing the Liquor Tax

I appreciate your prompt scheduling of House Bill 202 and wanted to take this opportunity to provide you with a few explanatory details.

HB 202 increases the state liquor tax, which has not been raised since 1961, as follows:

- * malt beverages from 25¢ per gallon to 32½¢ (a 30% increase amounting to approximately a 4¢ increase per six pack of beer);
- * wine from 60¢ to \$1.00 (a 66% increase which will amount to approximately 32¢ per three liter of bottle of wine); and
- * hard liquor from \$4.00 per gallon to \$5.75 (a 44% increase amounting to about 23¢ on a half liter of whiskey.)

According to the Department of Revenue, the additional taxes generated from this legislation is estimated at \$2,100,000 in FY 84 and \$3,900,000 in FY 85, resulting in total revenues of \$14,600,000 and \$16,900,000 respectively.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 202 Date on Bill: 2/15/83

Title: An act increasing the liquor tax.

Sponsor: Adams

Requestor: House State Affairs

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total				

b. Revenues:

Revenue	-0-	2.1 mill	3.9 mill
---------	-----	----------	----------

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

The analysis assumes the new tax rates become effective July 1, 1983.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It the fore does not represent the final estimate of fiscal impact.

Prepared By: Mary Belcher

Division: Comm. Office

Phone: 465-2300

Date: 2/28/83

Approved by Commissioner: Robert E. Hest

Department: Revenue

Date: 2/28/83

5. Distribution:

Original to Legislative Finance

Copy to OMB

Copy to Sponsor

Copy to Requestor

2/15/83

In Thousands of Current Dollars

	FY 1982 Actual January	FY 1983 Estimate January	FY 1984 Estimate January	FY 1985 Estimate January
<u>Taxes</u>				
<u>Income</u>				
Corporate-General	34,800	-0-	-0-	-0-
Corporate-Petroleum	668,900	-0-	-0-	-0-
Corporate (1)	-0-	235,000	272,000	295,000
<u>Gross Receipts</u>				
Alaska Business License	5,500	5,800	6,000	6,300
Fish-Canned Salmon	8,600	5,000	5,000	5,000
Fish-Shorebased	8,700	9,000	9,000	9,000
Fish-Floating	5,500	5,500	5,500	5,500
Seafood Marketing (2)	-0-	1,000	1,000	1,000
Salmon Enhancement	2,400	2,400	2,400	2,400
Insurance Companies	12,500	14,500	17,000	20,000
Electric and Telephone Co-ops	1,200	1,300	1,300	1,300
Mining License Tax	200	200	200	300
<u>Severance</u>				
Oil & Gas Production(3)(4)	1,581,100	1,528,800	1,197,300	1,219,700
Oil & Gas Conservation	600	800	700	700
<u>Property</u>				
Oil & Gas(5)(6)	142,700	148,600	153,200	158,000
<u>Sale/Use</u>				
Alcoholic Beverages	9,000	12,000	12,500	13,000
Fuel Taxes-Aviation	6,300	5,100	5,400	5,500
Fuel Taxes-Highway	20,300	21,000	22,000	23,000
Fuel Taxes-Marine	3,700	3,800	4,000	4,200
Tobacco Products	1,900	2,000	2,000	2,000
<u>Other</u>				
Estate	300	500	500	500
Total Taxes	<u>2,514,200</u>	<u>2,002,300</u>	<u>1,717,000</u>	<u>1,772,400</u>
<u>Licenses & Permits</u>				
<u>Business</u>	10,800	11,000	12,000	12,500
<u>Non-Business</u>	13,000	13,000	13,500	14,000
Total Licenses & Permits	<u>23,800</u>	<u>24,000</u>	<u>25,500</u>	<u>26,500</u>
<u>Intergovernmental Receipts</u>				
<u>Federal Shared Revenues(7)(8)(9)</u>	<u>21,700</u>	<u>26,600</u>	<u>10,000</u>	<u>10,000</u>
<u>State Resource Revenue</u>				
<u>Sale/Use</u>				
Bonus Sales(7)(10)(11)	5,000	26,100	-0-	-0-
Investment Earnings(12)	324,700	300,000	100,000	100,000
Rents(7)(10)(11)	3,500	4,000	4,000	4,000
Royalties(4)(7)(13)	1,157,300	1,119,400	883,500	912,000
Sale of State Property	5,200	5,500	5,500	5,500
Gravel, Timber, etc.(14)	1,200	5,500	2,000	2,000

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

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

April 19, 1983

The Honorable Richard Eliason
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

RE: HB 202 "An Act increasing
the liquor tax"

Dear Senator Eliason:

You requested of Mr. Kessel of our Audit Division some information regarding increased "final user" cost resulting from an increase in the Liquor Tax as proposed in HB 202. You wanted this information so that you could have it for testimony for Tuesday morning, April 19, 1983.

From best available information we provide you with the following statistics:

A. At the bar:

1. The malt beverage tax will be increased from 25¢ a gallon to 32 1/2¢ a gallon. This would mean an increase of 17¢ tax per one case of twelve ounce bottles of beer. Therefore, the increase per bottle would be .7¢.
2. The tax on wine would be increased from 60¢ a gallon to \$1 a gallon. This would result in an increase of about 2 1/2¢ increase per four ounce glass of wine.
3. The tax on hard liquor would increase from \$4 to \$5.75 a gallon or \$1.75 per gallon. Assuming that a mixed drink contains one ounce of liquor, the actual increase per drink would be about 3¢ a drink.

B. At the liquor store:

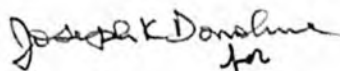
1. Beer would cost 17¢ more per case per customer which would equate to about .7¢ per bottle.

The Honorable Richard Eliason
April 19, 1983
Page 2

2. The increase for wine would be about 11¢ more per liter. That means that a liter of wine now costing \$5.50 would increase to about \$5.61.
3. The increased cost per liter of hard liquor would be about 46¢. That means a liter of whiskey now costing \$9.48 would increase to \$9.94.

The above all assumes that the seller would not attempt to build in a profit in addition to the increased taxes.

Sincerely,



Robert D. Heath
Commissioner of Revenue

RDH/RRK/gb

JAN 27 1983

Rural Alaska Community Action Program, Inc.

January 24, 1983

Howard Scammon, Consultant
Alaska Council
7521 Old Seward Hwy
Anchorage, Alaska 99502

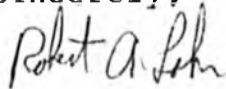
Dear Mr. Scammon:

Enclosed is a copy of Resolution 82-19, endorsed by RurAL
CAP's Board of Directors on December 10, 1982.

This Resolution expresses our Board's continuing support
of positive action to alleviate alcohol and drug abuse,
expecially by young people.

We encourage you to take whatever steps you can to put
into effect the actions suggested in this Resolution.
Please call if we can work with you in any way.

Sincerely,



Robert A. Lohr
Executive Director

RAL/mm
Enclosure

Rural Alaska Community Action Program, Inc.

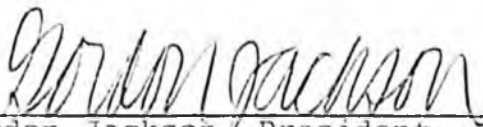
RESOLUTION NO. 82 - 19

- ENTITLED: In support of reducing alcohol-related accidents among young people.
- WHEREAS, the accident rate among young people in Alaska as elsewhere is disproportionately high, and
- WHEREAS, the majority of accidents in Alaska are alcohol-related, and
- WHEREAS, research indicates that when the legal minimum drinking age is lowered, automobile accidents involving young people increase significantly and when the age is raised, accidents involving young people decrease significantly, and
- WHEREAS, laws designed to deter drinking and driving appear to be consistently under-enforced and do not appear to have a long-term effect on drinking and driving behavior, and
- WHEREAS, use of a punitive approach appears to outweigh approaches designed to effect behavioral change,
- now, therefore, be it
- RESOLVED: That the Rural CAP Board of Directors go on record as:
1. supporting moderation measures such as raising the legal minimum drinking age, increasing excise taxes on alcohol, and limiting the number of liquor licenses issued;
 2. supporting consistent enforcement of existing laws concerning drinking and driving;
 3. supporting education as to the relationship between alcohol and accidents in school curriculums, for the general public, and for individuals convicted of drinking and driving;
 4. supporting treatment and counseling for convicted offenders which endeavors to change their behavior;
 5. supporting an accurate assessment of the degree of the problem among young people and possible alternative solutions;

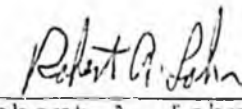
and, be it further

RESOLVED: that the RurAL CAP Board direct the staff to forward copies of this resolution to other organizations in the state which also support moderation measures, education and assessment of the problem among young people.

ADOPTED this date, December 10, 1982 at the RurAL CAP Board of Directors Meeting, Anchorage, Alaska.



Gordon Jackson, President



Robert A. Lohr, Executive Director

STATE OF ALASKA THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 11, 1983

SUBJECT: Dedication of liquor tax receipts to alcohol rehabilitation programs
(Work Order No. 13-1017)

TO: Representative Mitchell E. Abood, Jr.
Chairman, House State Affairs Committee

FROM:  Russ Josephson
Legislative Counsel

You have asked whether liquor tax receipts may be retained in the communities where they are collected and be used there for funding alcohol rehabilitation programs.

The "earmarking" of revenues in this way creates a dedicated fund. Under the Alaska Constitution, Article IX, section 7, as interpreted by the Alaska Supreme Court in State v. Alex, 646 P.2d 203 (Alaska 1982), the prohibition against dedicated funds extends to all sources of public revenues and not just "proceeds of any state tax or license". The attorney general recently rendered an opinion (Op. Atty. Gen. File Nos. J66-785-81 and J66-649-80) clarifying what the Supreme Court holding might be with regard to several specific funds and accounts and declared that certain exceptions might be implied by the Alaska Supreme Court. However, none of those implied exceptions includes liquor tax receipts. Therefore, liquor tax receipts may not be dedicated constitutionally and the question of retention of liquor tax receipts in the communities where they are collected need not be addressed here.

Although a dedicated fund is prohibited constitutionally, there is another way to assure that there is a relationship between the liquor tax and the alcohol rehabilitation programs. The same attorney general's opinion mentioned above outlines a method of appropriating in this type of situation that ensures effective legislative control over state finances while providing for budgeting flexibility for programs like this with needs that are unpredictable. That

Representative Mitchell E. Abood, Jr.

Page 2

March 11, 1983

method involves an appropriation to a separate fund in an amount to be ascertained by reference to receipts from a specified source (e.g., liquor tax receipts) during a definite period (annually or for the two fiscal years over which the present legislature has control).

RJ:ljb

1/034

APPENDIX B

SELECTED COMPUTATIONS ON
ALCOHOL/DRUG RELATED COSTS

AIDC:	Aid to disabled Medicaid	7,611,707
SOCIAL SERVICES:	Foster Care, Institutional care for children, Daycare, Protective Services, Homemakers *(Some Drug costs included)	5,662,500
MOTOR VEHICLE:	Accidents, Fatalities, Injuries, Property Damage	22,532,206
CRIMINAL JUSTICE SYSTEM:	Prosecution, enforcement, courts, corrections, Public defender, criminal justice planning, violent crime compensation, child court	<u>51,839,000</u>
		87,645,413
SOADA:		<u>16,115,581</u>
		103,760,994
Estimated Wholesale and Retail Sales of Alcohol		
	Wholesale:	115,300,000
	Retail:	280,000,000
Estimated Loss of Income to Alaska Families		
		77,100,000
Net Revenue to State from Regulation and Sale of Alcohol		
		9,241,369

***Supporting calculations on following pages.

180 million

William BOEHL, Bill Ray, and Ernest Parsons, constituting the Alcoholic Beverage Control Board; Department of Revenue; John L. Rader, Attorney General; James Martin Fitzgerald, Commissioner of Public Safety; and Jack Davis, Executive Director of the Alcoholic Beverage Control Board. Appellants,

v.

SABRE JET ROOM, INC., Pruhs and Fivey, Inc., and Morry Shkolnik, Appellees.

No. 17.

Supreme Court of Alaska.

Feb. 2, 1960.

Suit was brought against members of the Alcoholic Beverage Control Board and others for injunction and declaratory relief with respect to 12 regulations adopted by the board. The District Court for the District of Alaska, Fourth Judicial Division, rendered summary judgment adverse to the members of the board and others, and they appealed. The Supreme Court, Dimond, A. J., held that regulation prescribing standard closing hours for 1 hour establishments was within scope of authority conferred on board by statute permitting sale of intoxicating liquors but imposing conditions, and that statute by authorizing board to adopt regulations did not violate constitutional provision that the legislative power of the State is vested in a Legislature, and that statute was not required to set forth the details of specific regulations that board would be permitted to make.

Judgment reversed.

Judge A. J. dissented.

1. Judgment \Rightarrow 107

In suit for injunctive and declaratory relief with respect to 12 regulations adopted by the Alcoholic Beverage Control Board under the Administrative Procedures Act, summary judgment holding that all of the regulations were validly adopted and would not be enjoined, where affidavits in support of motion for preliminary injunction and for summary judgment, which constituted the

only evidence in the case, related solely to alleged damage if closing hour regulation was enforced, and there was nothing in record indicating that the other 11 regulations had any effect on status of plaintiffs or the conduct of their business, since the other 11 regulations were not subject to challenge. A.C.L.A.Supp. §§ 35-4-1 et seq., 35-4-2, 35-4-3; Laws 1959, c. 143.

2. Intoxicating Liquors \Rightarrow 129

The Alcoholic Beverage Control Board had authority under statute to adopt regulation prescribing standard closing hours for liquor dispensaries. A.C.L.A.Supp. §§ 35-4-1 et seq., 35-4-1(A), 35-4-2, 35-4-3 (A, E); Laws 1959, c. 143.

3. Intoxicating Liquors \Rightarrow 121

Regulation of the Alcoholic Beverage Control Board prescribing standard closing hours for liquor dispensaries as between 3 a. m. and 8 a. m. on weekdays, and 4 a. m. to 2 p. m. on Sundays, and 4 a. m. to 8 a. m. on holidays is not inconsistent with regulatory statute. A.C.L.A.Supp. §§ 35-4-1 et seq., 35-4-1(A), 35-4-2, 35-4-3(A, E); Laws 1959, c. 143.

4. Intoxicating Liquors \Rightarrow 7

Provision of Constitution that legislative power of state is vested in a Legislature does not prevent Legislature from delegating to the Alcoholic Beverage Control Board power to adopt regulations. A.C.L.A.Supp. §§ 35-4-1 et seq., 35-4-1(A), 35-4-2, 35-4-3(A, E); Laws 1959, c. 143; Const. art. 2, § 1; art. 3, §§ 22, 24, 26.

5. Evidence \Rightarrow 20(1)

It is common knowledge that lack of restraint in sale of intoxicating liquor is almost invariably damaging to the community.

6. Intoxicating Liquors \Rightarrow 6

Since lack of restraint in sale of intoxicating liquor is almost invariably damaging to community, there may be either complete prohibition, if the Legislature chooses to follow that course, or, if not, there may be conditions imposed which will have the tendency to afford greatest degree

In Thousands of Current Dollars

	FY 1982 Actual January	FY 1983 Estimate January	FY 1984 Estimate January	FY 1985 Estimate January
<u>Taxes</u>				
<u>Income</u>				
Corporate-General	34,800	-0-	-0-	-0-
Corporate-Petroleum	668,900	-0-	-0-	-0-
Corporate (1)	-0-	235,000	272,000	295,000
<u>Gross Receipts</u>				
Alaska Business License	5,500	5,800	6,000	6,300
Fish-Canned Salmon	8,600	5,000	5,000	5,000
Fish-Shorebased	8,700	9,000	9,000	9,000
Fish-Floating	5,500	5,500	5,500	5,500
Seafood Marketing (2)	-0-	7,000	7,000	7,000
Salmon Enhancement	2,400	2,400	2,400	2,400
Insurance Companies	12,500	14,500	17,000	20,000
Electric and Telephone Co-ops	1,200	1,300	1,300	1,300
Mining License Tax	200	200	200	300
<u>Severance</u>				
Oil & Gas Production(3)(4)	1,581,100	1,528,800	1,197,300	1,219,700
Oil & Gas Conservation	600	800	700	700
<u>Property</u>				
Oil & Gas(5)(6)	142,700	148,600	153,200	158,000
<u>Sale/Use</u>				
Alcoholic Beverages	9,000	12,000	12,500	13,000
Fuel Taxes-Aviation	6,300	5,100	5,400	5,500
Fuel Taxes-Highway	20,300	21,000	22,000	23,000
Fuel Taxes-Marine	3,700	3,800	4,000	4,200
Tobacco Products	1,900	2,000	2,000	2,000
<u>Other</u>				
Estate	300	500	500	500
Total Taxes	2,514,200	2,002,300	1,717,000	1,772,400
<u>Licenses & Permits</u>				
<u>Business</u>	10,800	11,000	12,000	12,500
<u>Non-Business</u>	13,000	13,000	13,500	14,000
Total Licenses & Permits	23,800	24,000	25,500	26,500
<u>Intergovernmental Receipts</u>				
Federal Shared Revenues(7)(8)(9)	21,700	26,600	10,000	10,000
<u>State Resource Revenue</u>				
<u>Sale/Use</u>				
Bonus Sales(7)(10)(11)	5,000	26,100	-0-	-0-
Investment Earnings(12)	324,700	300,000	100,000	100,000
Rents(7)(10)(11)	3,500	4,000	4,000	4,000
Royalties(4)(7)(13)	1,157,300	1,119,400	883,500	912,000
Sale of State Property	5,200	5,500	5,500	5,500
Gravel, Timber, etc.(14)	1,200	5,500	2,000	2,000

EXCISE TAX RATES ON SPECIFIED ALCOHOLIC BEVERAGES
 LEVIED BY 32 LICENSE STATES AND THE DISTRICT OF COLUMBIA
 RANKED ACCORDING TO MAGNITUDE AND BY THE FEDERAL GOVERNMENT¹

January 1982

Distilled Spirits		Table Wine		Dessert Wine		Beer	
State	Rate per Gallon	State	Rate per Gallon	State	Rate per Gallon	State	Rate per Gallon
1	2	3	4	5	6	7	8
Florida	\$4.75	Florida	\$1.75	Georgia	\$2.54	South Carolina	.768
South Carolina	4.59	Georgia	1.51	Florida	2.43	Florida	.400
Minnesota	4.39 ²	Tennessee	1.10	South Dakota	1.40	Georgia	.322
Massachusetts	4.05	South Carolina	1.08 ⁵	Nebraska	1.25	Louisiana	.322
Alaska	4.00	South Dakota	.90	Tennessee	1.10	Oklahoma	.322
Oklahoma	4.00	Arkansas	.75	South Carolina	1.08 ⁵	South Dakota	.267
Tennessee	4.00	Nebraska	.65	Oklahoma	1.00	Alaska	.250
South Dakota	3.80	Alaska	.60	Minnesota	.79	Arkansas	.234
Georgia	3.79	Massachusetts	.55	Arkansas	.75	Kansas	.180
New York	3.25	Kentucky	.50	Kansas	.75	Texas	.165
Wisconsin	3.25	North Dakota	.50	Alaska	.60	North Dakota	.160
New Jersey	2.80	Oklahoma	.50	Illinois	.60	Nebraska	.140
Nebraska	2.75	Indiana	.47	North Dakota	.60	Minnesota	.129
Indiana	2.68	New Mexico	.45	Massachusetts	.55	Indiana	.115
Arizona	2.50	Arizona	.42	Kentucky	.50	Tennessee	.110
Arkansas	2.50	Delaware	.40	Nevada	.50	Massachusetts	.106
Connecticut	2.50	Maryland	.40	Indiana	.47	Maryland	.090
Kansas	2.50	Rhode Island	.40	New Mexico	.45	New Mexico	.090
Louisiana	2.50	Kansas	.30	Wisconsin	.45	Connecticut	.081
North Dakota	2.50	Missouri	.30	Arizona	.42	Kentucky	.081
Rhode Island	2.50	Nevada	.30	Delaware	.40	Arizona	.080
Colorado	2.28	New Jersey	.30	Maryland	.40	Colorado	.080
Delaware	2.25	Minnesota	.27	Rhode Island	.40	D. C.	.073
Nevada	2.05	Connecticut	.25	Colorado	.36	Illinois	.070
California	2.00	Wisconsin	.25	Texas	.34	Delaware	.065
Illinois	2.00	Colorado	.24	D. C.	.33	Rhode Island	.065
Missouri	2.00	Illinois	.23	Missouri	.30	Wisconsin	.065
Texas	2.00	Texas	.17	New Jersey	.30	Missouri	.060
Kentucky	1.92	D. C.	.15	Connecticut	.25	Nevada	.060
New Mexico	1.63	Louisiana	.11	Louisiana	.23	New York	.044
D. C.	1.50	New York	.10	New York	.10	California	.040
Maryland	1.50	California	.01	California	.02	New Jersey	.033
Median of State Taxes	2.50		.425		.485		.103
Average of State Taxes	2.84		.497		.667		.158
Federal Tax	10.50 ³		.17		.67		.29 ⁴

¹Hawaii, the only other license state, levies an excise tax on alcoholic beverages of 20 percent of the wholesale price.

²Based on one three-gallon case of spirits and including all "additional" taxes.

³Per proof gallon.

⁴Actual rate of \$9 per 31 gallon barrel.

⁵Includes additional tax 1¢/gal.

U.S. PER CAPITA CONSUMPTION
MALT BEVERAGES
1981

<u>RANK IN CONSUMPTION</u>	<u>STATE OR DISTRICT</u>	<u>GALLONAGE PER CAPITA</u>
1	Nevada	37.1
2	Wisconsin	34.3
3	New Hampshire	33.4
4	Montana	32.8
5	Wyoming	32.0
6	Texas	31.9
7	Arizona	31.3
8	Hawaii	30.2
9	District of Columbia	29.1
10	New Mexico	28.8
11	Colorado	28.6
12	Alaska	28.4
13	Florida	28.3
14	Nebraska	27.7
15	North Dakota	27.0
16	Delaware	26.9
17	Massachusetts	26.7
18	Vermont	26.2
19	California	25.7
20	Pennsylvania	25.6
21	Idaho	25.5
22	Illinois	25.2
23	Louisiana	25.1
24	Iowa	24.9
25	Maryland	24.8
25	Missouri	24.8
27	Rhode Island	24.7
28	Minnesota	24.5
29	Washington	24.4
30	Oregon	24.2
31	Ohio	23.6
32	Michigan	23.2
33	Maine	23.1
34	South Dakota	22.7
35	New York	22.5
36	Indiana	22.4
37	New Jersey	22.2
38	Virginia	21.9
39	Kansas	21.8
40	South Carolina	21.6
41	Oklahoma	20.8
42	Georgia	20.1
42	Mississippi	20.1
42	Tennessee	20.1
45	Kentucky	19.6
46	North Carolina	19.4
47	Connecticut	19.0
48	Arkansas	18.4
48	West Virginia	18.4
50	Alabama	17.5
51	Utah	15.6

Based on 18 years of
age and older

Source: United States Brewers
Association, Inc.

U.S. PER CAPITA CONSUMPTION
DISTILLED SPIRITS
1981

<u>RANK IN CONSUMPTION</u>	<u>STATE OR DISTRICT</u>	<u>GALLONAGE PER CAPITA</u>
1	District of Columbia	5.97
2	Nevada	5.28
3	New Hampshire	4.72
4	Alaska	3.30
5	Delaware	2.74
6	Florida	2.61
7	Maryland	2.57
7	Vermont	2.57
9	Massachusetts	2.47
10	Colorado	2.42
11	Wisconsin	2.37
12	Connecticut	2.34
13	California	2.33
13	Wyoming	2.33
15	Minnesota	2.27
16	New Jersey	2.26
17	New York	2.23
18	Hawaii	2.21
19	North Dakota	2.14
20	Illinois	2.13
21	Rhode Island	2.07
22	Maine	2.02
22	Arizona	2.02
22	Washington	2.02
25	Georgia	1.99
25	South Carolina	1.99
25	Montana	1.99
28	South Dakota	1.98
29	Michigan	1.90
30	Louisiana	1.88
31	Oregon	1.78
32	Virginia	1.74
33	Nebraska	1.65
34	North Carolina	1.66
35	New Mexico	1.61
36	Texas	1.60
37	Oklahoma	1.59
38	Mississippi	1.55
39	Indiana	1.48
40	Idaho	1.45
41	Kentucky	1.43
42	Pennsylvania	1.42
43	Alabama	1.39
43	Missouri	1.39
45	Tennessee	1.38
46	Kansas	1.34
47	Iowa	1.33
48	Arkansas	1.30
48	Ohio	1.30
50	West Virginia	1.25
51	Utah	0.99

ALL AGES PER CAPITA

Source: Economics & Statistics Division
Distilled Spirits Council of
the United States, inc.

William BOEHL, Bill Ray, and Ernest Parsons, constituting the Alcoholic Beverage Control Board; Department of Revenue; John L. Rader, Attorney General; James Martin Fitzgerald, Commissioner of Public Safety; and Jack Davis, Executive Director of the Alcoholic Beverage Control Board, Appellants,

v.

SABRE JET ROOM, INC., Pruhs and Fivey, Inc., and Morry Shkolnik, Appellees.

No. 17.

Supreme Court of Alaska.

Feb. 2, 1960.

Suit was brought against members of the Alcoholic Beverage Control Board and others for injunction and declaratory relief with respect to 12 regulations adopted by the board. The District Court for the District of Alaska, Fourth Judicial Division, rendered summary judgment adverse to the members of the board and others, and they appealed. The Supreme Court, Diamond, A. J., held that regulation prescribing standard closing hours for liquor establishments was within scope of authority conferred on board by statute permitting sale of intoxicating liquors but imposing conditions, and that statute by authorizing board to adopt regulations did not violate constitutional provision that the legislative power of the State is vested in a Legislature, and that statute was not required to set forth the details of specific regulations that board would be permitted to make.

Judgment reversed.

Diamond, A. J., dissented.

1. Judgment \ominus 187

In suit for injunctive and declaratory relief with respect to 12 regulations adopted by the Alcoholic Beverage Control Board under the Administrative Procedures Act, summary judgment holding that all of the regulations were lawful and binding went for the appellants, where affidavits in support of motion for preliminary injunction and for summary judgment, which constituted the

only evidence in the case, related solely to alleged damage if closing hour regulation was enforced, and there was nothing in record indicating that the other 11 regulations had any effect on status of plaintiffs or the conduct of their business, since the other 11 regulations were not subject to challenge. A.C.L.A.Supp. §§ 35-4-1 et seq., 35-4-2, 35-4-3; Laws 1959, c. 143.

2. Intoxicating Liquors \ominus 129

The Alcoholic Beverage Control Board had authority under statute to adopt regulation prescribing standard closing hours for liquor dispensaries. A.C.L.A.Supp. §§ 35-4-1 et seq., 35-4-1(A), 35-4-2, 35-4-3(A, E); Laws 1959, c. 143.

3. Intoxicating Liquors \ominus 121

Regulation of the Alcoholic Beverage Control Board prescribing standard closing hours for liquor dispensaries as between 3 a. m. and 8 a. m. on weekdays, and 4 a. m. to 2 p. m. on Sundays, and 4 a. m. to 8 a. m. on holidays is not inconsistent with regulatory statute. A.C.L.A.Supp. §§ 35-4-1 et seq., 35-4-1(A), 35-4-2, 35-4-3(A, E); Laws 1959, c. 143.

4. Intoxicating Liquors \ominus 7

Provision of Constitution that legislative power of state is vested in a Legislature does not prevent Legislature from delegating to the Alcoholic Beverage Control Board power to adopt regulations. A.C.L.A.Supp. §§ 35-4-1 et seq., 35-4-1(A), 35-4-2, 35-4-3(A, E); Laws 1959, c. 143; Const. art. 2, § 1; art. 3, §§ 22, 24, 26.

5. Evidence \ominus 20(1)

It is common knowledge that lack of restraint in sale of intoxicating liquor is almost invariably damaging to the community.

6. Intoxicating Liquors \ominus 6

Since lack of restraint in sale of intoxicating liquor is almost invariably damaging to community, there may be either complete prohibition, if the Legislature chooses to follow that course, or, if not, there may be conditions imposed which will have the tendency to afford greatest degree

The Relationship of Availability of Alcoholic Beverages to Per Capita Consumption and Alcoholism Rates

Reginald G. Smart¹

SUMMARY. A study of the relationship between availability of beverage alcohol and per capita consumption and alcoholism rates in the U.S.A. indicates that income and urbanism are more closely related to consumption and alcoholism rates than is availability.

NUMEROUS STUDIES have examined the effect of changes in the availability of alcoholic beverages on consumption (1, 2). Some changes appear to have little effect on consumption, e.g., selling alcohol by the drink (3) and increasing the number of outlets in areas where they already exist (1). On the other hand, large changes in numbers of outlets and lowering the legal alcohol-purchasing age do seem to increase consumption. Bruun et al. (2), in an important review of the field, concluded (p. 83) that "the availability of alcohol is an important factor in the general level of consumption." However, studies examining the total range of variables which may affect availability are difficult to find. Bacon (4) studied nine communities in five states and concluded that variations in availability had little effect on consumption. There appear to be no studies which have examined general availability in a wide variety of jurisdictions for effects on consumption.

The purpose of the present study was to examine the relationship between over-all availability of beverage alcohol and per capita consumption and alcoholism rates in the 50 U.S. states and the District of Columbia. The availability of alcoholic beverages was assessed by giving each state a score on 8 items concerning legal beverage control. These scores had been developed for a study

¹ Addiction Research Foundation, 33 Russell St., Toronto, Ont., Canada M5S 2S1.
Received for publication: 26 April 1970. Revision: 2 December 1970.

of alcohol control laws.² Efforts were made to differentiate the effects of availability on consumption from those related to income and urban-rural differences in the various states.

METHOD

The availability scores were developed to take account of all legal and control factors which might affect the availability of alcoholic beverages. Initially a 22-item list was developed; 8 items were then selected as more important than the others in influencing availability. The selection was made using expert judgments and a "Delphi" panel approach. The final 8 items were (1) minimal legal age for purchase; (2) limitations on availability for off-premise sales; (3) limitations on availability for on-premise sales; (4) density of outlets for on-premise purchase; (5) Sunday retail sales on premise; (6) weekday closing hours for on-premise sale; (7) Sunday retail sales off-premise; and (8) weekday closing hours for off-premise sale.

On each item each state was defined as falling in the high, medium or low category; values of 6, 4 and 2, respectively, were given to each category. Total scores could vary between 16 and 48, the latter indicating the greatest availability. No effort was made to weight any of the 8 factors more than the others.

The data on per capita consumption and alcoholism were taken from Efron et al. (5). Data on average income and percentage of urban population in each state were taken from the Statistical Abstract of the United States (6).

RESULTS

Table 1 shows all of the data by state, while Table 2 illustrates the mean values of these data when the total sample of states is

TABLE 1.—Availability Scores, Per Capita Consumption, Income, Urbanism and Alcoholism Rates in the 51 Jurisdictions

Jurisdiction	Alcohol Availability Score, 1971	Per Capita Consumption, 1972*	Per Capita Personal Income (Dollars) 1972	% Population in Urban Areas, 1970	Rates of Alcoholism, 1970 ^b
Alaska	44	3.80	5102	48.4	31.9
Wyoming	42	2.85	4345	60.5	2300
Nevada	40	0.19	5215	80.0	6770
Arizona	38	3.04	4300	70.0	3110
Hawaii	38	2.48	4005	83.1	1780
Louisiana	38	2.40	3528	66.1	3080
Nebraska	38	2.50	4341	61.5	3087

(continued on following page—)

¹ MEDICINE IN THE PUBLIC INTEREST. A study in the actual effects of alcoholic beverage control laws. [Contract No. ADM 281-75-0002.] Washington, DC; 1970.

TABLE 1.—continued

Jurisdiction	Alcohol Availability Score, 1971	Per Capita Consumption, 1972*	Per Capita Personal Income (Dollars) 1972	% Population in Urban Areas, 1970	Rates of Alcoholism, 1970 ^b
New Jersey	38	2.91	5126	88.9	4930
New Mexico	38	2.81	3656	69.8	3100
Rhode Island	38	3.00	4399	87.1	6070
California	38	3.24	5002	90.9	6610
Delaware	30	3.17	4983	72.2	4040
Michigan	30	2.77	4817	73.8	4460
New Hampshire	30	5.42	4092	50.4	3660
New York	30	2.80	5319	85.6	5500
West Virginia	30	1.75	3574	39.0	3130
Colorado	34	2.98	4449	78.5	4240
Illinois	34	2.91	5126	83.0	5140
Maryland	34	3.04	4897	70.0	4100
Massachusetts	34	2.93	4870	84.0	5850
Minnesota	34	2.50	4332	60.4	3400
South Dakota	34	2.16	3710	44.0	2640
Wisconsin	34	3.37	4207	65.9	5110
District of Columbia	32	6.54	6383	100.0	5430
Indiana	32	1.89	4391	64.9	3940
Iowa	32	1.80	4318	57.2	2800
Maine	32	2.60	3571	50.8	4290
Missouri	32	2.28	4206	70.1	5090
Montana	32	2.81	3897	53.4	3730
Tennessee	32	1.74	3640	58.8	2920
Texas	32	2.41	4045	70.7	2830
Vermont	32	3.02	3805	32.2	4170
Connecticut	30	2.73	5342	77.4	4940
Kentucky	30	1.94	3001	52.3	3290
North Dakota	30	2.69	3718	44.3	3570
Oregon	30	2.07	4290	67.1	2610
Alabama	28	1.65	3333	58.4	1830
Arkansas	28	1.52	3357	50.0	2890
Georgia	28	2.25	3840	60.3	2550
Idaho	28	2.43	3635	54.1	1990
Ohio	28	2.71	4512	75.3	4340
Pennsylvania	28	2.32	4447	71.5	4300
Virginia	28	2.23	4258	63.1	2370
Florida	26	3.23	4188	80.5	3590
Mississippi	26	1.88	3063	44.5	2320
Utah	26	1.56	3745	80.4	2070
Washington	26	2.71	4476	72.6	2910
Kansas	18	1.72	4503	66.1	2490
Oklahoma	18	1.80	3802	68.0	2140
South Carolina	16	2.44	3448	47.6	2700
North Carolina	16	1.93	3721	45.0	2050

* U.S. gallons of absolute alcohol consumed by population aged 15 and over (5, Table 2).

^b Per 100,000 adults aged 20 years and over (6, Table 1).

divided into three subgroups (high, medium and low) according to alcohol availability scores.

To determine whether there were significant intergroup differences, mean scores on each variable were compared and *t*-ratios were calculated (Table 2). The low-availability states had a significantly lower average alcoholism rate and per capita consumption than the high- or middle-availability states. Furthermore, although the three groups did not differ significantly in their average percentage of urban population, the high-availability states did have a significantly higher per capita income than the low-availability states.

Partial correlation analyses were made in which the correlation between availability scores of states was correlated with per capita consumption and alcoholism rates, alone and with the correlation with average income and degree of urbanism controlled or partialled out. Tests for significance of the partial correlations were made with the *t* tests described by McNemar (7).

As shown in Table 3, the correlation between per capita consumption and availability is positive and significant. However, the correlation between per capita consumption and income is even greater, and that with urbanism is also positive.

The partial correlations show that much of the correlation between per capita consumption and availability is accounted for by income and urbanism. When income is controlled, the correlation is nonsignificant; however, with urbanism controlled availability and per capita consumption are still correlated ($r = .362, p < .01$).

TABLE 2.—Average Alcohol Availability Score, Per Capita Consumption and Income, Percentage of Population in Urban Areas and Rates of Alcoholism in States with High, Medium and Low Availability

Availability	Availability Score	Per Capita Consumption	Per Capita Income	% of Population in Urban Areas	Rates of Alcoholism
1. High (N = 10)	38.00	3.21	4553.36	71.40	4100.00
2. Medium (N = 20)	32.30	2.80	4343.50	65.38	4094.50
3. Low (N = 15)	24.53	2.10	3894.93	62.40	2710.67

t ratios:

Groups 1 and 2	8.90*	1.14	0.94	1.14	0.24
Groups 1 and 3	9.83*	3.42*	3.30*	1.80	3.20*
Groups 3 and 2	-0.04*	-2.43*	-2.12	-0.00	-4.10*

* $P < .05$.

TABLE 3.—Correlations Between Availability Scores, Per Capita Consumption, Income, Urbanism and Alcoholism Rates

	1 Availability	2 Consumption	3 Income	4 Urbanism
Availability score		.41†	.39†	.25
Per capita consumption			.60†	.34*
Income				.72†
	$r_{12.3} = .218, t = 1.78.$	$r_{12.4} = .362, t = 2.70.†$	$r_{12.34} = .244, t = 1.74.$	

	1 Availability	2 Alcoholism	3 Income	4 Urbanism
Availability score		.42†	.39†	.25
Alcoholism rate			.50†	.53†
Income				.72†
	$r_{12.3} = .251, t = 1.80.$	$r_{12.4} = .345, t = 2.57.†$	$r_{12.34} = .265, t = 1.93.$	

* $P < .05$. † $P < .01$.

When the correlation is controlled for both urbanism and income, availability and consumption are unrelated.

Similar results are obtained for alcoholism rates, which are also positively related to availability, but more strongly to income and urbanism. When the effects of income, and income and urbanism together, are controlled, availability scores and alcoholism rates are not significantly correlated.

DISCUSSION

It appears that over-all availability of beverage alcohol, as indicated by control laws, has, at best, a spurious correlation with both per capita consumption and alcoholism rates. The positive correlation disappears when the effects of average income and degree of urbanism are partialled out. This suggests that slight changes in availability may have relatively little effect on either consumption or alcohol problems, provided neither income nor urbanism are changed.

Certain cautionary notes are in order. The availability scores are constructed to give each element (e.g., opening hours, legal age) the same score and this may not be the most realistic weighting. Unfortunately, price has not been included as an item in the availability scores since all of the elements relate to laws. Also, the range of per capita consumption is not very great in the 51 jurisdictions studied. Cross-national comparisons of a variety of countries with widely differing availabilities and levels of per capita consumption might give different results.

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Bill Fact Sheet

Date Received 4/13/83

Bill Number HB202 Title Increasing the liquor tax

Fiscal Note - Date Requested _____ Date Received _____

- Of Whom _____

Dept. Position Paper - Date Requested _____ Date Received _____

- Of Whom _____

Resource People

Initial Hearing - Date 4/19/83 postponed 4/19
People Contacted

~~10/1/83~~ Adams - 4/14 (back-up by 4/15) ³⁷⁰⁶ Rep. Miller - 4/15 - re: amendment
Liska - 4/14

~~platform~~ Revenue - (Marcie - 2300) 4/15
Wally Kubley - 4/15 - 6-2660

~~triple~~ Stan Filler - CHAR - 747-8815 - 4/15
Al Beverage Control Bd - 4/18 - 277-8638
Howard Scamgn - Coalition for a Safer Alaska - 349-7911 4/15
6-2660

Follow-up Hearing - Date _____
Ralph Kopansky - CHAR - 694-5166 4/15
Maurice Druni - 503-645-9090 4/15