

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

2969

HSA

HB 516

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HB 519

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Official Business

Alaska State Legislature

House of Representatives

Al Adams
Chairman
Committee on Finance

January 16, 1984

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

MEMORANDUM

TO: Members of the House State Affairs Committee

FROM: Representative Al Adams *APA*

SUBJ: HBs 478 and 516: Extension of application period for 1983 permanent fund dividends

I have introduced the above captioned bills because many of my constituents contacted me during the interim to let me know that they were unable to file for their 1983 dividend checks because of the nature of their seasonal employment. Because the original deadline was June 30th, many of my constituents were out fishing or otherwise involved with activities away from home in isolated areas, and therefore they were not aware of the deadline.

Since I have worked closely with the Department of Revenue in the development of this legislation, I do not anticipate that this problem will occur every year, necessitating similar legislation each session. I am confident that the Department will make every effort to insure that Alaskans who leave home for work for part or all of the summer will have adequate opportunity to file for their yearly dividend check.

HB 478

HB 478 is the bill that actually changes the language of the statute to extend the deadline to May 15, 1984. However, an applicant must have been a resident of the state for six months before March 31, 1983, the date that establishes residency for those who have already received a 1983 dividend. Thus, the application period is extended but not the period for establishing residency in 1983.

The bill also provides that only funding appropriated or allocated for 1983 dividends can be used to pay the

dividend checks of new applicants. Further, it states that dividends will not be paid out until after March 1, 1984 (so as not to conflict with the schedule for paying dividends for other years) and gives the Department the authority to promulgate regulations to implement the bill. The bill has an immediate effective date.

HB 516

HB 516 makes the necessary appropriations to pay 1983 dividends to late filers. The funding provided comes from interest earned on the permanent fund principal during FY 83. This is the source of funding established in statute for payment of permanent fund dividends (see AS 43.23.045(b)). As you know, 50% of the interest earned on the permanent fund each year is earmarked for payment of permanent fund dividends. This past year, the Department of Revenue underestimated how much the interest earnings would be. Therefore, the legislature appropriated approximately \$19 million less for dividends than what has actually turned out to be 50% of interest earnings. The funding provided in this bill comes from that \$19 million.

\$11,584,500 is the amount estimated as necessary to pay the dividends of late filers. Obviously, it is difficult for the Department to estimate exactly how many people will file during the extended deadline period. This represents their best guess at this time. Any funding not used for this purpose would lapse at the end of FY 85.

\$347,600 is appropriated for processing the dividend applications. I have instructed the Division of Legislative Finance to review the Department's cost estimates for processing and plan to look very carefully at this figure if the bill passes from your committee to the House Finance Committee. Again, the caveat regarding estimating the number of late filers applies here. And again, any funding not used would lapse at the end of FY 85.

The bill would become effective on the same date that a bill extending the deadline becomes effective.

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Position Paper

HB 517

This bill would remove employment applications from the listing of confidential personnel records. It would include not only employment applications, but resumes and other information submitted by an applicant to demonstrate qualifications and prior employment history as information available for public inspection.

This bill would force disclosure of applications and resumes of appointees and even applicants for positions below the Cabinet level, i.e., beyond those currently subject to Legislative confirmation. In doing so, it goes far beyond a reasonable distinction implicit in the Alaska Supreme Court decision in City of Kenai v. Kenai Peninsula Newspapers, Inc. In that case, the Supreme Court used terms such as "high public officials," "substantial discretionary power," "substantial discretionary authority," "high government position" and "high public office" to distinguish which applications should be subject to public inspection. The court implied that an individual's right to privacy, as guaranteed by Article I Paragraph 22 of the Alaska Constitution, was an overriding interest for other public employees. The bill in its present form would subject the 40,000 applications received annually by the Division of Personnel to public inspection. It would also subject applications and resumes submitted to the Governor's Office and all Commissioners, whether solicited or not, to public inspection.

The Department of Administration opposes this bill in its current form.

If public inspection of applications for "high public office" is to be required of the State, as it is for the State's political subdivisions, the bill should be amended to specifically identify the appropriate group of positions that would be covered. While there are several approaches that would accomplish this, we recommend the following as a basis for discussion:

* Section 1. AS 39.25.080(a) is amended to read:

(a) State personnel records, including employment applications for classified positions and examination materials, are confidential and are not open to public inspection except as provided in this section.

* Section 2. AS 39.25.080(b) is amended to read:

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

- (1) the names and position titles of all State employees;
- (2) the position held by a State employees;
- (3) prior positions held by a State employee;

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

(5) the dates of appointment and separation of a State employee; [AND]

(6) the compensation authorized for a State employee; and

(7) employment histories and educational background submitted by an applicant for an exempt or partially exempt position.

Michael P. DuRullen
for Frank Raye, Director of Personnel

Jan. 23, 1984
Date

Lisa S. Rudd
Commissioner Lisa Rudd
Department of Administration

1/23/84
Date

POUCH V
JLINEAU, ALASKA 99811
465-4990

P.O. Box 4-1325
ANCHORAGE, ALASKA 99509
248-1515



COPY

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

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resisted
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MEMORANDUM

TO: Representative Mitch Abood
Chairman, House State Affairs Committee

FROM: Representative Charlie Bussell *[Signature]*

99B RE: *SS* HB 517 - "An Act relating to the confidentiality of state personnel records."

DATE: March 14, 1984

As sponsor of this legislation, I am respectfully requesting that you complete hearings and move this bill from committee. As I understand the present status, there has been very little opposition to the idea that persons who seek state positions should be willing that their background and qualifications for the position they seek be open to scrutiny. The lack of such openness has resulted in situations where applicants have been able to gain an unfair advantage in their attempt to be hired by either misrepresenting their experience and background or even fraudulently misstating such information.

The State Ombudsman, Mr. Chenoweth, has suggested adding language that would enable his office to have access to certification lists and registers to aid in investigations of improper hire allegations. Although I certainly support the concept of the Ombudsman being able to do this, it is my opinion that such an amendment in HB 517 would mix up the addressing of a function of one of the agencies of state government with the addressing of an issue of confidentiality that relates to access by the public at large and newspapers in particular to a portion of the personnel files. Said another way, there is quite a difference between the important considerations concerned when dealing with the right of the public to know and when dealing with the right of one department of government to have access to another department's records. In addition, the problem is addressed in Section 5 of SB 321, which adds a subsection to AS 24.55.160 allowing the Ombudsman access to records of state agencies.

The Department of Administration, through the Personnel Director, Mr. Frank Raye, opposes this bill in its present form. As I understand it, the basis of this opposition is twofold: (1) that access to information submitted by applicants as to their background and experience should be limited to those who apply for unclassified positions because the requirements for classified positions are already public knowledge and because the right of access only needs to be available where high

Representative Abood

March 13, 1984

Page 2

public officials who would be in a position to set policy are concerned; and (2) that including the actual application for state employment as one of the items open to inspection would allow access to information required by other laws to be held confidential.

With regard to the first basis for opposition, the fact that standards are set forth with which an applicant must comply does not provide information as to how a particular applicant meets that standard. For example, if the requirement is for two years of college education, just knowing of the requirement would not enable an interested person to determine which college and at which time a person supposedly attended. That information would be in his resume or on the application for employment. Therefore, I don't see why classified applicants background and experience should not also be available. Likewise, I don't believe that the public interest in knowing what an applicant's background and experience and qualification for state employment may be, is any less strong for so-called non-high office than it is for those who hold high public office. Often times those who are in positions that don't formally involve the making of policy decisions nevertheless exert a strong influence on those who do make such decisions. It should be obvious that such decisions are based on input from staff and the quality of that input will determine how valid or knowledgeable the policy decision will be.

With regard to the contention that making the application available would allow access to information required to be held confidential by other laws, there is nothing magic about the format of the application. These forms are changed and up-dated whenever necessary and if there is certain information the state needs should not be disclosed because the Federal Government or some other law-making body so desires, then that part of the application can be segregated and held confidential. Frankly, I really can't see why there is any need for such information. Does the question of race or religion really go to qualification for state employment? Isn't such information usually asked for on a voluntary basis only?

~~Based on these considerations, I would like the committee to take action on the bill as originally submitted.~~

Thank you.

*Joe Brewster
for Rep Russell*

cc: Mr. Frank Raye
Mr. Jack Chenoweth

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

MF

Revision Date: _____

Page 1 of 8

REQUEST

Bill/Resolution No.: SSHB 517
 Title: An act relating to confidentiality
of State personnel records
 Sponsor: Bussell
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: Centralized
Administrative Services
 BRU, Program of Subprogram(s) Affected: Personnel

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	43.6	174.4	174.4	174.4	174.4	174.4
200 TRAVEL						
300 CONTRACTUAL	29.7	43.9	43.9	43.9	43.9	43.9
400 SUPPLIES	1.1	4.2	4.2	4.2	4.2	4.2
500 EQUIPMENT	62.6					
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	137.0	222.5	222.5	222.5	222.5	222.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	137.0	222.5	222.5	222.5	222.5	222.5
FEDERAL FUNDS						
OTHER						
TOTAL	137.0	222.5	222.5	222.5	222.5	222.5

POSITIONS:

FULL-TIME	6 (18)	6 (72)	6 (72)	6 (72)	6 (72)	6 (72)
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

None identified.

ANALYSIS: Attach a separate page for any analysis

Prepared By: Frank Raye *Frank Raye* Phone: 465-4430
 Division: Personnel Date: February 6, 1984

Approved by Commissioner: Lisa Rudd *Lisa Rudd* Date: 2/10/84
 Department: ADMINISTRATION

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

1.	POSITION TITLE Clerk III				RANGE/STEP 8B	BARG. UNIT K	FORM 12 PACE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION FT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION AWA	ELECTION DISTRICT 4	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				<p>Opening applicant and employee records that have been confidential to public inspection will require staff to receive requests and to locate, copy and refile the requested material. Four full time positions are projected in order to copy 100,000 pages of documents per month through our three offices. Two positions will be located in Juneau (which is the sole location of employee files) and one in each regional office in Anchorage and Fairbanks.</p>					
	1		2	3						
	PERSONAL SERVICES									
5.	Salary		19,284							
6.	Benefits		3,300							
7.	Supplemental Benefits		1,182							
8.	Fixed Benefits		2,789							
9.	TOTAL PERSONAL SERVICES	01		26.6						
10.	Travel	02		0.						
11.	Contractual	03		1.8						
12.	Commodities	04		.3						
13.	Equipment	05		.8						
14.	Other									
15.	TOTAL COST			29.5						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		C.F. Match 1003								
18.		General Funds 1004		29.5						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR BSM USE ONLY										
4A KEY NUMBER										

5/4D1/0203-08/1

13 REQUEST FOR
NEW POSITION

AGENCY Administration

PROGRAM Centralized Admin. Services

BRU Personnel

COMPONENT _____

FY 85

Page 3 of 8
Revised Date _____

House Bill 517
Fiscal Note Analysis
Prepared by Division of Personnel
Department of Administration
February 6, 1984

Analysis: This bill will make employment applications, resumes, and other applicant information public. Currently this information is confidential under AS 39.25.080. To implement the proposed change the Division of Personnel will be required to revise and reprint the State Employment Application form at a cost of \$7,000. All persons currently on eligible lists will be notified by letter of the change and given the opportunity to withdraw their eligibility. The cost of the letter, envelope and mailing is approximately \$9,000. The cost to create the letters from the Division's computer files is approximately \$270. A similar letter to all State employees will cost \$2,400. In addition, newspaper ads will be placed state-wide to notify current and prospective applicants of the change. The ads will cost approximately \$1450. These are all one time costs.

Finally, staff will need to be added in each Division office to respond to requests from the public for applicant information. The Division maintains files on approximately 11,000 current employees and 40,000 former employees. The Division also maintains files on nearly 200,000 applications (50,000 per year for four years). Requests for records can be expected regarding high public officials and potentially any employee by anyone and everyone who is dissatisfied or just curious about qualifications. Applicants can be expected to request copies of applications submitted by their competition. Employees, directly, or through their union representative, can be expected to request copies of applications submitted by others. This access to information about others will likely raise questions on how one's own application was evaluated. We estimate the need for four full time clerical positions to respond to requests for copies of applications and two technical positions to answer ensuing questions on how applications were evaluated. Photocopy equipment and supplies will also be needed, as well as envelopes and postage beyond what is budgeted in Central Mailroom.

This fiscal note assumes an effective date of April 1. It also assumes no inflation in future years.

1.	POSITION TITLE Clerk III			RANGE/STEP 8B	BARG. UNIT K	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION FT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT 7-15	LEG.	
3.	CONTINUATION LEVEL	ADDITION	XX	JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	19,284							
6.	Benefits	3,300							
7.	Supplemental Benefits	1,182							
8.	Fixed Benefits	2,789							
9.	TOTAL PERSONAL SERVICES	01	26.6						
10.	Travel	02	0.						
11.	Contractual	03	1.8						
12.	Commodities	04	.3						
13.	Equipment	05	.8						
14.	Other								
15.	TOTAL COST		29.5						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 100%							
17.		G.F. Match 10J3							
18.		General Funds 1004		29.5					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR BSM USE ONLY									
4A KEY NUMBER _____									

Opening applicant and employee records that have been confidential to public inspection will require staff to receive requests and to locate, copy and refile the requested material. Four full time positions are projected in order to copy 100,000 pages of documents per month through our three offices. Two positions will be located in Juneau (which is the sole location of employee files) and one in each regional office in Anchorage and Fairbanks.

5/4D1/0203-08/2

13 REQUEST FOR
NEW POSITION

AGENCY Administration

PROGRAM Centralized Admin. Services

BRU Personnel

COMPONENT _____

Page 5 of 8
Revised Date _____

FY 85

1.	POSITION TITLE Clerk III			RANGE/STEP 8B	BARG. UNIT K	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION FT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION JBA	ELECTION DISTRICT 18-21	LEC.	
3.	CONTINUATION LEVEL			ADDITION	AA	JUSTIFICATION			
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2		3					
	PERSONAL SERVICES								
5.	Salary	21,744							
6.	Benefits	3,721							
7.	Supplemental Benefits	1,333							
8.	Fixed Benefits	2,789							
9.	TOTAL PERSONAL SERVICES	01		29.6					
10.	Travel	02		0.					
11.	Contractual	03		1.8					
12.	Commodities	04		.3					
13.	Equipment	05		.8					
14.	Other								
15.	TOTAL COST			32.5					
16.	RECEIPT CODE	FUNDING SOURCE							
17.		Federal Receipts 1002							
18.		G.F. Match 1003							
19.		General Funds 1004		32.5					
20.		I-A Receipts 1005							
21.		Program Receipts 1028							
		Other							
FOR B&M USE ONLY 4A KEY NUMBER _____									

Opening applicant and employee records that have been confidential to public inspection will require staff to receive requests and to locate, copy and refile the requested material. Four full time positions are projected in order to copy 100,000 pages of documents per month through our three offices. Two positions will be located in Juneau (which is the sole location of employee files) and one in each regional office in Anchorage and Fairbanks.

5/4D1/0203-08/3

13 REQUEST FOR
NEW POSITION

AGENCY Administration

PROGRAM Centralized Admin. Services

BRU Personnel

COMPONENT _____

FY 85

Page 6 of 8

Revised Date _____

1.	POSITION TITLE Clerk III			RANGE/STEP 8B	BARG. UNIT K	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION FT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION AMA	ELECTION DISTRICT 4	LEG.	
3.	CONTINUATION LEVEL	ADDITION	XX	JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	19,284							
6.	Benefits	3,300							
7.	Supplemental Benefits	1,182							
8.	Fixed Benefits	2,789							
9.	TOTAL PERSONAL SERVICES	01	26.6						
10.	Travel	02	0.						
11.	Contractual	03	1.8						
12.	Commodities	04	.3						
13.	Equipment	05	.8						
14.	Other								
15.	TOTAL COST		29.5						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts	1002						
17.		G.F. Match	1003						
18.		General Funds	1004	29.5					
19.		I-A Receipts	1005						
20.		Program Receipts	1028						
21.		Other							
FOR BSM USE ONLY 4A KEY NUMBER _____									

Opening applicant and employee records that have been confidential to public inspection will require staff to receive requests and to locate, copy and refile the requested material. Four full time positions are projected in order to copy 100,000 pages of documents per month through our three offices. Two positions will be located in Juneau (which is the sole location of employee files) and one in each regional office in Anchorage and Fairbanks.

5/4D1/0203-08/4

13 REQUEST FOR
NEW POSITION

AGENCY Administration
 PROGRAM Centralized Admin. Services
 BRU Personnel
 COMPONENT _____

FY 85

Page 4 of 8
 Revised Date _____

1.	POSITION TITLE Personnel Technician I				RANGE/STEP 12B	BARG. UNIT K	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION FT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BPU PRIORITY	LOCATION AWA	ELECTION DISTRICT 4	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	ADDITION				XX					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1			2			3			
	PERSONAL SERVICES									
5.	Salary			24,516						
6.	Benefits			4,196						
7.	Supplemental Benefits			1,503						
8.	Fixed Benefits			2,789						
9.	TOTAL PERSONAL SERVICES			01			32.5			
10.	Travel			02			0			
11.	Contractual			03			1.8			
12.	Commodities			04			3			
13.	Equipment			05			8			
14.	Other									
15.	TOTAL COST						35.4			
	REC'PT CODE			FUNDING SOURCE						
16.				Federal Receipts			1002			
17.				G.F. Match			1003			
18.				General Funds			1004			
19.				I-A Receipts			1005			
20.				Program Receipts			1028			
21.				Other						
FOR B&M USE ONLY 4A KEY NUMBER _____										

Applicant access to copies of applications of competitors is expected to increase the number of requests to explain how individual applications were evaluated. One additional technical staff will be added in the two largest offices--Juneau and Anchorage--to answer these inquiries.

5/4D1/0203-08/5

13 REQUEST FOR
NEW POSITION

AGENCY Administration
 PROGRAM Centralized Admin. Services
 BPU Personnel
 COMPONENT _____

Page 7 of 8
 Revised Date _____

FY 85

1.	POSITION TITLE Personnel Technician I				RANGE/STEP 12B	BARG. UNIT K	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION FT	STAFF MONTHS 12	RP NUMBER	PCW NUMBER	BRU PRIORITY	LOCATION FRA	ELECTION DISTRICT 7-15	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE									
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		24,516							
6.	Benefits		4,195							
7.	Supplemental Benefits		1,503							
8.	Fixed Benefits		2,789							
9.	TOTAL PERSONAL SERVICES		01		32.5					
10.	Travel		02		0					
11.	Contractual		03		1.8					
12.	Commodities		04		3					
13.	Equipment		05		8					
14.	Other									
15.	TOTAL COST				35.4					
	RECEIPT CODE				FUNDING SOURCE					
16.					Federal Receipts 1002					
17.					G.F. Match 1003					
18.					General Funds 1004					
19.					I-A Receipts 1005					
20.					Program Receipts 1028					
21.					Other					
FOR B&M USE ONLY										
4A KEY NUMBER _____										

Applicant access to copies of applications of competitors is expected to increase the number of requests to explain how individual applications were evaluated. One additional technical staff will be added in the two largest offices--Juneau and Anchorage--to answer these inquiries.

5/4D1/0203-08/6

13 REQUEST FOR
NEW POSITION

AGENCY Administration

PROGRAM Centralized Admin. Services

BRU Personnel

COMPONENT _____

FY 85

Page 8 of 8
Revised Date _____



Alaska Public
Employees Association **APEA**

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

TO: Representative Mitch Abood, Chairman
House State Affairs Committee

FROM: Cherie Shelley *CS*
Executive Director

SUBJECT: HB 517

DATE: March 21, 1984

The Alaska Public Employees Association opposes HB 517 as it applies to the classified employees of the State of Alaska. The Division of Personnel is responsible for the review and certification of employment applications, resumes, and other evidence of education or experience for the classified service. The Division examines all materials and verifies the qualifications of prospective employees before they are listed on the employment registers.

We believe this legislation would be appropriate for all exempt and partially-exempt personnel. These positions are filled by political appointees not subject to the review or jurisdiction of the Division of Personnel. The applications and resumes of exempt and partially exempt employees are not subject to the scrutiny of anyone but the appointing authority.

This legislation is inappropriate for the classified service because the positions are filled by competitive evaluation of the candidate's education and experience. The personnel system establishes minimum requirements for each position and ranks all applicants according to ability.

Public access to employment applications would be detrimental to the merit system by allowing job candidates to inspect the applications of other candidates. This would provide an unfair advantage to new applicants who could phrase their resumes to outscore other job candidates. In addition, some persons may be unwilling to write letters of recommendation if the letters would be made public.

Fairbanks Field Office
825-D College Road
Fairbanks, AK 99701
Telephone: (907) 456-5412

Anchorage Field Office
833 Gambell Street, Suite A
Anchorage, AK 99501
Telephone: (907) 274-1688

Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-6305

would be public under bill

The Associated Press

JUNEAU — Rep. Charlie Bussell on Monday introduced a bill in the House to make the personnel records of state employees available for public scrutiny.

Bussell said he was prompted by the difficulties lawmakers had last year obtaining the personnel records of Sheffield administration employees.

"With this law, the public will have the ability to get the information it needs," Bussell, R-Anchorage, said in a press release.

Anchorage Reps. Mae Tischer, Mitch Abood, Jerry Ward and Terry Martin are co-sponsors of the measure (HB 517).

If approved, the bill would require salaries of state employees to be disclosed. Resumes, job applications and state employment histories would also be available for

citizens to examine, he said. Alaska Attorney General Norm Gorsuch in November said it is up to the employee to decide whether to honor requests for job information. Only an employee's name, job, salary, employment history and union status were matters of public record, he said.

Sheffield later urged employees to make the information available to the public, press and lawmakers. But the governor said state employees would not be required to make the information available, and they would not be punished for withholding their records.

"NEVER CRY WO
IF YOU HAVE KE... THE BOOK,
SEEN THE MOVIE OR SIMPLY
HAVE AN INTEREST IN

Open records bill would violate privacy — official

The Associated Press

Only the state's "high officials and policy-makers" should have their employee records scrutinized by the press and public, a House committee was told Monday.

A legislative proposal which would make all state employee records accessible to the public violates the privacy rights of the majority of state workers not in policy-making positions, said Cherie Shelley, executive director of the Alaska Public Employees Association.

Shelley's comments were made at a House State Affairs hearing on a proposal by Rep. Charlie Bussell to make open

records of the resumes, job applications and employment histories of all state workers.

An alternative proposal, recommended by the state Department of Administration, would strike resumes and applications from the information which could be reviewed. Only an employee's past jobs and education are pertinent to whether they are qualified for their positions, said Frank Raye, director of the state division of personnel.

But one of the bill's sponsors disagrees. "The bill provides the bare minimum" of information which needs to be provided to

Continued on Page 10

*Juneau Empire 11/24/84
HB 517*

Records...

Continued from Page 1

make sure hiring is based on merit, said Rep. Jerry Ward, R-Anchorage.

Ward said it is not as easy as Raye suggests to distinguish between who makes

policy and who carries it out.

"Who makes policy? It's the people who promulgate regulations who have been around since (former Gov.) Egan," Ward said.

Raye proposes only exempt and partially-exempt state employees be covered by the law. Classified employees should be exempt, he said.

Exempt employees are appointed to their jobs. They are commissioners and their deputies, and a few others in policy-making positions, Raye said. Classified employees compete with others through the state personnel system, with jobs supposedly going to those with the highest ranking.



Alaska Public
Employees Association **APEA**

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

MEMORANDUM

TO: Representative Mitch Abood, Chairman
House State Affairs Committee

FROM: Cherie Shelley *CS*
Executive Director

SUBJECT: HB 517

DATE: January 23, 1984

APEA opposes HB 517 as it applies to the classified employees of the State of Alaska. The Division of Personnel is responsible for the review and verification of employment applications, resumes, and other evidence of education or experience for the classified service. The Division examines all materials and verifies the qualifications of prospective employees before they are listed on the employment registers.

Persons filling exempt and partially exempt positions are political appointees not under the review or jurisdiction of the Division of Personnel. HB 517 could properly be applied to these employees because their applications and resumes are not subject to the review and scrutiny of anyone but the appointing authority.

CS/rm

Fairbanks Field Office
825-D College Road
Fairbanks, AK 99701
Telephone: (907) 456-5412

Anchorage Field Office
833 Gambell Street, Suite A
Anchorage, AK 99501
Telephone: (907) 274-1688

Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-6305

Sec. 39.25.070. Powers and duties of personnel board. In addition to the other duties imposed by this chapter, the personnel board shall

(1) approve or disapprove amendments to the personnel rules in accordance with AS 39.25.140;

(2) consider and act upon recommendations for the extension of the partially exempt service and the classified service as provided in AS 39.25.130;

(3) hear and determine appeals by employees in the classified service as provided in AS 39.25.170;

(4) establish its own rules of procedure (two members constitute a quorum for the transaction of business and two affirmative votes are required for final action on matters acted upon by the board);

(5) elect a chairman from its membership;

(6) have the power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to a hearing authorized by this chapter.

(7) employ staff members, who shall be in the classified service. (§ 15 ch 144 SLA 1960; am §§ 3, 4 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote paragraph (1), which formerly read "approve or disapprove the original rules or a part of them within 60 days of their submission to the board and approve or disapprove amendment to the

rules within 30 days of submission to the board, and in carrying out this duty, the board, if requested, may hold the public hearings it considers necessary," and added paragraph (7).

Sec. 39.25.080. Public records. — (a) State personnel records, including employment applications and examination materials, are confidential and are not open to public inspection except as provided in this section.

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

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

(2) the position held by a state employee;

(3) prior positions held by a state employee;

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

(5) the dates of appointment and separation of a state employee; and

(6) the compensation authorized for a state employee.

(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) An applicant for state employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations. (§ 18 ch 144 SLA 1960; am § 5 ch 112 SLA 1982)

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Effect of amendments. — The 1982 amendment substituted the present provisions of this section for the provisions set out in the main pamphlet.

Editor's notes. — This section was

redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Article 2. Coverage of Personnel.

Section

- 90. Coverage of chapter
- 110. Exempt service
- 120. Partially exempt service

Section

- 130. Extension of partially exempt and classified services

Sec. 39.25.090. Coverage of chapter. This chapter and the rules adopted under it apply to all positions in (1) the classified service, and (2) the exempt and partially exempt service as specifically provided. (§ 3 ch 144 SLA 1960; am § 6 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "exempt and" in item (2).

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

- (1) persons elected to public office by popular vote or appointed to fill vacancies in elected offices;
- (2) justices, judges, magistrates, and employees of the judicial branch including employees of the Judicial Council;
- (3) employees of the state legislature and its agencies;
- (4) the head of each principal department in the executive branch;
- (5) officers and employees of the University of Alaska;
- (6) certificated teachers and noncertificated employees employed by a regional educational attendance area established and organized under AS 14.08.031 — 14.08.041 to teach in, administer, or operate schools under the control of a regional educational attendance area school board;
- (7) certificated teachers employed by the Department of Education as correspondence teachers or teachers in skill centers operated by the Department of Education;
- (8) patients and inmates employed in state institutions;
- (9) persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor;
- (10) members of boards, commissions, or authorities;
- (11) the officers and employees of the following boards, commissions, and authorities:
 - (A) Alaska Gas Pipeline Financing Authority;

Statutes to conform with chapter 58,

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- (B) Alaska Permanent Fund Corporation;
- (C) Alaska Energy Center;
- (D) Alaska Industrial Development Authority;
- (E) Alaska Commercial Fisheries Entry Commission;
- (F) Alaska Commission on Postsecondary Education;
- (12) the executive secretary and legal counsel of the Alaska Municipal Bond Bank Authority;
- (13) Physicians licensed to practice in this state and employed by the division of mental health and developmental disabilities, Department of Health and Social Services;
- (14) petroleum engineers and petroleum geologists employed in a professional capacity by the Department of Natural Resources and by the Oil and Gas Conservation Commission, except for those employed in the division of geological and geophysical surveys in the Department of Natural Resources;
- (15) officers, agents, and employees of the Alcoholic Beverage Control Board granted limited peace officer powers by the Alcoholic Beverage Control Board under AS 04.06.110;
- (16) persons employed by the division of marine transportation as masters and members of the crews of vessels who operate the state ferry system and who are covered by a collective bargaining agreement provided in AS 23.40.040;
- (17) officers and employees of the state who reside in foreign countries;
- (18) employees of the Alaska Seafood Marketing Institute;
- (19) firefighters employed by the Department of Natural Resources for a fire emergency;
- (20) employees of the Office of the Governor and the office of the lieutenant governor, including the staff of the governor's mansion;
- (21) ~~Employees of the Citizens' Advisory Commission on Federal Areas in Alaska (AS 41.37.010). (§ 5 ch 144 SLA 1960; am § 1 ch 48 SLA 1961; am § 1 ch 133 SLA 1961; am § 3 ch 93 SLA 1962; am § 3 ch 24 SLA 1966; am § 31 ch 46 SLA 1970; am § 65 ch 69 SLA 1970; am § 13 ch 113 SLA 1970; am § 3 ch 78 SLA 1971; am § 18 ch 78 SLA 1974; am § 42 ch 127 SLA 1974; am § 2 ch 32 SLA 1975; am § 2 ch 79 SLA 1975; am § 37 ch 124 SLA 1975; am § 1 ch 157 SLA 1976; am § 3 ch 90 SLA 1978; am § 7 ch 18 SLA 1980; am § 43 ch 106 SLA 1980; am § 10 ch 131 SLA 1980; am § 4 ch 148 SLA 1980; am § 4 ch 106 SLA 1981; am §§ 2, 3 ch 37 SLA 1982; am § 7 ch 112 SLA 1982; am § 1 ch 11 SLA 1983)~~

Effect of amendments. — The 1981 amendment added a paragraph (26), relating to employees of the Alaska Seafood Marketing Institute. These provisions are now contained in paragraph (18) of this section as amended by ch. 112, SLA 1982.

Section 2 of the first 1982 amendatory act, ch. 37, SLA 1982 added a paragraph (27), relating to employees of the Citizens' Advisory Commission on Federal Areas in Alaska. Section 3 of chapter 37, effective June 30, 1988, repealed paragraph (27). These provisions are now contained in

paragraph (21) of this section as amended by ch. 112, SLA 1982.

The second 1982 amendment rewrote this section.

The 1983 amendment rewrote paragraph (13).

Editor's notes. — AS 17.30.340, referred to in paragraph (13) was repealed by § 7, ch. 84, SLA 1981.

Sec. 39.25.120. Partially exempt service. (a) Positions in the partially exempt service are included in the position classification plan established under this chapter and are compensated according to the pay plan (AS 39.27.011).

(b) A person holding a position in the partially exempt service is not required to take an examination or qualify or earn a place on a register, and is not eligible for a hearing by the personnel board in case of dismissal, demotion, or suspension. Positions in the partially exempt service are specifically exempt from the rules established under AS 39.25.150(3) — (10), (13), (14), and (17).

(c) The following positions in the state service constitute the partially exempt service:

(1) deputy and assistant commissioners of the principal departments of the executive branch, including the assistant adjutant general of the Department of Military Affairs;

(2) the directors of the major divisions of the principal departments of the executive branch and the regional directors of the Department of Transportation and Public Facilities;

(3) attorney members of the staff of the Department of Law and of the public defender agency;

(4) one private secretary for each head of a principal department in the executive branch;

(5) employees of councils, boards, or commissions established by statute in the Office of the Governor or the office of the lieutenant governor, unless a different classification is provided by statute;

(6) the executive director, deputy director, hearing officers, and administrative law judges of the Alaska Public Utilities Commission;

(7) the director, deputy director, staff legal counsel, and hearing officers of the Alaska Transportation Commission;

(8) not more than two special assistants to the commissioner of each of the principal departments of the executive branch, but the number may be increased if the partially exempt service is extended under AS 39.25.130 to include the additional special assistants;

(9) the principal executive officer of the following boards, councils, or commissions:

(A) Alaska Public Broadcasting Commission;

(B) Professional Teaching Practices Commission;

(C) Parole Board;

(D) Board of Nursing;

(E) Real Estate Commission;

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- (F) Alaska Royalty Oil and Gas Development Advisory Board;
 (G) Alaska Historical Commission;
 (H) Alaska State Council on the Arts;
 (I) Alaska Police Standards Council;
 (J) Council on Science and Technology;
 (K) Older Alaskans Commission;
 (10) Alaska Pioneers' Home managers;
 (11) hearing examiners in the Department of Revenue;
 (12) the comptroller in the division of treasury, Department of Revenue;
 (13) investment officers in the Department of Revenue;
 (14) airport managers in the Department of Transportation and Public Facilities employed at the Anchorage and Fairbanks International Airports;
 (15) the deputy director of the division of tourism and the deputy director of the division of insurance in the Department of Commerce and Economic Development;
 (16) the executive director and staff of the Alaska Public Offices Commission;
 (17) the director, deputy director, personnel analyst II, labor relations analysts I, labor relations analysts II, senior negotiators, and research directors of the division of labor relations in the Department of Administration;
 (18) the rehabilitation administrator of the Workers' Compensation Board. (§ 6 ch 144 SLA 1960; am § 2 ch 48 SLA 1961; am § 2 ch 133 SLA 1961; am § 4 ch 5 SLA 1966; am § 3 ch 104 SLA 1969; am § 2 ch 109 SLA 1969; am § 4 ch 78 SLA 1971; am § 9 ch 47 SLA 1974; am § 4 ch 82 SLA 1975; am § 10 ch 207 SLA 1975; am § 2 ch 157 SLA 1976; am § 19 ch 263 SLA 1976; am Executive Order No. 39 § 6 (1977); am § 1 ch 103 SLA 1978; am § 2 ch 108 SLA 1978; am Executive Order No. 41 § 3 (1980); am Executive Order No. 42 §§ 3, 4 (1980); am Executive Order No. 43 § 4 (1980); am Executive Order No. 44 § 5 (1980); am Executive Order No. 45 § 3 (1980); am Executive Order No. 46 § 4 (1980); am § 18 ch 115 SLA 1980; am § 3 ch 79 SLA 1981; am § 4 ch 110 SLA 1981; am Executive Order No. 48 § 3 (1981); am § 4 ch 50 SLA 1982; am § 26 ch 93 SLA 1982; am § 8 ch 112 SLA 1982)

Effect of amendments. — The first 1981 amendment added a paragraph (19) to this section as it existed prior to the third 1982 amendment. These provisions are now contained in subparagraph (e)(9)(K).

The second 1981 amendment substituted a comma for "and" preceding "deputy director" and added "hearing officers, and administrative law judges" following "deputy director" in present paragraph (e)(6).

The third 1981 amendment substituted "Department of Administration" for "Department of Environmental Conservation" in paragraph (17) of this section as it existed prior to the third 1982 amendment of this section. The provisions of that paragraph are now contained in subparagraph (e)(9)(J).

The first 1982 amendment added paragraph (e)(17).

The second 1982 amendment added paragraph (e)(18).

The third 1982 amendment rewrote this section.

Sec. 39.25.130. Extension of partially exempt and classified services. (a) The personnel board, upon written recommendation of the commissioner of administration, may extend the partially exempt service to include any position in the classified service which, in the judgment of the board:

- (1) involves principal responsibility for the determination of policy;
- (2) involves principal responsibility for the way in which policies are carried out; or
- (3) involves responsibilities and duties of a type not susceptible to the ordinary recruiting and examining procedures.

(b) No positions may be included in the partially exempt service under this section if the inclusion is inconsistent with federal requirements for state agencies supported in whole or in part by federal funds.

(c) The personnel board, upon written recommendation of the commissioner of administration, may extend the classified service to include any position in the partially exempt service. (§ 7 ch 144 SLA 1960; am §§ 9, 10 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment: "After June 30, 1961" from the beginning of subsections (a) and (c); deleted "which was" following "include any position" both in the introductory paragraph of subsection (a) and in subsec-

tion (c); and deleted "on April 19, 1960" following "in the classified service" in the introductory paragraph of subsection (a) and following "partially exempt service" in subsection (c).

Article 3. Personnel Rules.

Section
 140. Amendment of personnel rules
 150. Scope of the rules

Section
 153. Departmental personnel officers
 155. Vocational substitution program

Sec. 39.25.140. Amendment of personnel rules. (a) The director of personnel shall prepare and submit to the commissioner of administration any proposed amendments to the personnel rules for all positions and employees subject to this chapter.

(b) The commissioner of administration shall review the amendments and submit them to the personnel board.

(c) At least 30 days before the adoption, amendment, or repeal of a personnel rule, the secretary to the personnel board shall provide notice that the personnel board has the proposed action under consideration. The notice shall be

- (1) posted in public buildings throughout the state;
- (2) published in one or more newspapers of general circulation throughout the state;
- (3) mailed to each person or group that filed a request for notice of proposed action with the secretary to the personnel board;

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Decision denies the public interest

Alaskans have seen a long string of court cases in recent years establish the principle that the public has a right to examine the credentials and qualifications of applicants for public employment, and so there is more than a little consternation behind an attorney general's interpretation saying that a state employee's resume should be kept confidential unless the employee grants permission to release it. That interpretation flies in the face of both public accountability and legal precedent: if the governor persists with such a view he surely will be challenged, in court and in the public forum.

The case from which the interpretation arose is not an appealing one. The employee in question — Lennie Boston, a special assistant in the governor's office responsible for policy advice concerning natural resources issues — was one of several targets of a shameful, anonymous accusatory memorandum from inside the legislature. The instigator of the attack, later revealed to be state Rep. John Cowdery, is one of those who requested Ms. Boston's resume. In refusing to provide it, the governor probably aims to prevent an irrelevant and politically shabby campaign of harassment against an apparently honorable, competent employee — and, by proxy, against the governor himself. It is an understandable impulse.

Still, there are important public values at stake here. Alaskans have a right to know the qualifications of those who serve in public office, particularly those in sensitive roles so close to the governor himself. And there have been more than enough examples in recent years to support the value of that claim: at the municipal level in Anchorage, a police chief applicant was found to have been dismissed from previous posts for serious indiscretions, while at the state level only this summer, Gov. Sheffield's communications director was found to have falsified his job history.

The issue in this case is accountability to the public, not bad decorum or irresponsibility by legislative actors. The fact that the circumstances of one request are distasteful, at best, does not remove the obligation of openness and accountability from the administration -- and surely does not justify the blanket extension of confidentiality, against legal precedent, to the resumes of all state employees. The public interest here is in keeping the professional resumes of state employees open for all to see.

Editorial

The right to know

ANYTIME the press — or anyone, for that matter — is denied information or documents from a public office or official, the door is open to strong suspicion that there's something to hide.

Such is the case with efforts by an Anchorage legislator and members of the Alaska press corps who have been trying for months to obtain the personnel records of a member of the governor's staff.

The matter came to light during the last session of the legislature. Rep. John Cowdery, a freshman lawmaker from Anchorage, is chairman of the House Oil and Gas Committee. He requested the resume of the governor's special assistant for natural resources issues. His request was denied.

THE INCIDENT aroused the curiosity of the press, whose request to see the resume was also turned down. Since that time, the attorney general has advised the governor's office that a state statute requires an employee's permission before such information can be made public.

If that law gets in the way of proper performance of duty by legislators and reporters, then legislators have the prerogative to

change or eliminate it.

Regardless of the law, it would appear that common sense would prevail in the matter. What might at one time have been mere public curiosity about the employee's background has grown to serious concern that a person close to the governor, who gives him advice in the critical area of natural resources, has something to hide.

ALREADY, one member of the governor's staff has been found to have lied about his credentials. It's not too uncommon for that to happen in Alaska, with its geographical distance from the rest of the country. There are those who think they can come here and get away with putting false information on their job applications.

Perhaps the special assistant's credentials are sound. Perhaps she has no dark side. Perhaps she is the most qualified person in the state to fill the job she holds.

But she will remain a mysterious figure in the governor's inner circle until she voluntarily tells the people she serves and the people who pay her salary — all Alaskans — who she is and what her qualifications are.

Legislator says request for resume not answered

The Associated Press

10-23-83
News

Despite administration claims to the contrary, an Anchorage lawmaker says he never received the resume of one of Gov. Bill Sheffield's top assistants.

A recent letter to the editor in an Anchorage newspaper suggested that Republican Rep. John Cowdery was due an apology after another administration official had to resign because he had fabricated his resume.

Last March, Cowdery requested the resume of Lennie Boston, a special assistant to the governor. He was turned down by the governor's chief of staff, Larry Crawford, who said because special assistants are not policy makers, the administration thought it unnecessary to release the information.

Crawford Tuesday the reason the administration hesitated to release Boston's resume was that it contained "personal information like her telephone number."

The current Juneau telephone directory lists Boston's home telephone number and address.

Crawford said Tuesday the staff prepared a summary of Boston's professional qualifications and gave it to Cowdery before the legislative session ended.

"I think he got it. I think we made those available," Crawford said.

"That's not true," Cowdery

said Wednesday. "I have never received a resume for Lennie Boston."

Cowdery said he sought the resume because of a constituent request. He co-chairs the Joint Oil and Gas Committee. Boston is listed as the governor's special assistant in charge of oil and gas matters.

Cowdery did not identify the constituent who sought the information, but said he was not in the petroleum industry.

NEWS - 11-17-83
For a "policy" practically guaranteed to be both politically damaging and substantively counterproductive, look no further than Gov. Sheffield's exhortations to state employees this week to provide their resumes voluntarily to members of the press or public who ask for them.

The governor stood by an attorney general's interpretation that resumes should be considered confidential — which is actually to say that the public has no right to inspect them — but this week encouraged employees to release resumes on their own. This is cant, and no one should be taken in by it.

The governor says he believes the public has a right to know that individuals hired in public jobs are qualified, but his policy belies the words. If the public has such a right, then the employees themselves have no discretion over release of their resumes. If the employees hold the power of decision — as the governor and attorney general maintain — then the public has no guarantee of accountability. The administration cannot have it both ways.

What the Sheffield administration apparently wants is for the press and public to gain resume information about employees who are willing to have it released. Since such information can be expected to be positive, on the whole, the administration might reasonably hope to bask in a favorable light for making it known.

What the Sheffield administration apparently does not want, however, is to be forced by law to release information that employees — or the administration — would rather have kept quiet. The employees themselves could have any number of reasons for preferring privacy, but it is a sure bet that those with something to hide — such as falsifications on their resume — will be most likely to stand firm against releasing their resumes.

Thus we are left with a policy that refuses to require release of important public information, but encourages voluntary selectivity by those most directly affected. What it means is that those with an attitude of openness will be subject to scrutiny — or political harassment — even as those with something to hide gain a hitherto unrecognized shield in state law.

That is ludicrous. The point of the exercise is to allow independent public verification of the qualifications of state employees — but that would be highly unlikely under this setup. The governor's encouragement is no substitute for state law. The attorney general's interpretation is no service to public accountability.

What's needed is a recognition by this administration similar to that consistently provided by Alaska courts, including the Supreme Court of Alaska: that the names, backgrounds and qualifications of applicants for important public jobs are to be considered public records.

Governor urges staff to make resumes public

By JOHN LINDBACK
Daily News reporter

JUNEAU — Gov. Bill Sheffield Tuesday encouraged his employees to furnish their resumes to members of the public who request them.

At his Tuesday morning cabinet meeting, the governor said his employee request should not be viewed as "a change of heart" on the legal stand Attorney General Norman Gorsuch took last week, regarding the confidentiality of state employee resumes.

The state will continue to follow Gorsuch's advice that the decision on whether to honor a request for a resume still rests with the employee, Sheffield said. Anyone who refuses to furnish their resume to the press and other members of the public will not suffer any retribution for the decision, he said.

The governor said he was asking his employees to honor requests for resumes because he believes the public has a right to know that individuals hired for public jobs are qualified.

"I am proud of the people who work for me and I have no fear of controversy if your resumes are made public," Sheffield told his employees in a Monday memo. The notice said he would announce the new policy at the

Tuesday morning cabinet meeting.

The resume issue first surfaced during this year's legislative session. Rep. John Cowdery, R-Anchorage, and co-chairman of a joint House-Senate Committee on Oil and Gas, complained that the governor's office would not furnish him with a resume for Lennie Boston, a special assistant to Sheffield on natural resource issues.

Gorsuch, in response last week to a request by The Daily News for the resumes of special assistants to the governor, advised Sheffield that only the employees themselves can decide whether this information should be released.

Tom Jahnke, assistant attorney general who prepared Gorsuch's memo in the issue, interprets the state statute governing the confidentiality of state personnel records as saying that only an employee's name, job, salary, union or non-union status and employment history with the state are a matter of public record.

The statute is written more vaguely than Jahnke interprets it, in regards to employment history. According to Alaska Statute 39.25.080, "prior positions held by a state employee are public. Jahnke interprets that passage to mean that only the employee's job

Quinto is not in section.

history with the state is open to public scrutiny.

The statute states that employment applications and examination materials are among the state personnel records that should be considered confidential. Jahnke said he interprets that passage to mean that resumes would be included.

Both Boston, the special assistant whose resume is sought by Cowdery, and another assistant to the governor, Carol Derfner, said Tuesday they would furnish The Daily News with copies of their resumes.

Boston also said she would give her resume to Cowdery if he requests it.

Both Derfner and Boston said the issue was a source of concern to governor's office employees during the flight last session with the legislature over confirmation of Sheffield's appointees. Mass requests for resumes were made by legislators and there was a fear that witchhunts would be conducted because anonymous lists of state employees considered unacceptable to the oil industry were floating around the Capitol, they said.

Derfner said she will ask people who want her resume for the purpose behind their request.

"I was surprised when I started working in state government at how public everything was," she said.

Gorsuch said after the cabinet meeting that his legal position is not changed by the governor's announcement. The administration is attempting to balance the "public's right to know" that qualified people are hired for public jobs with the employee's right to privacy, he said.

Cowdery said he is encouraged and hopes Boston will send him her resume in accordance with what he considers an unanswered request.

He also said he will research the possibility of pressing for a change in the statute during the next legislative session to make it clear that employee resumes are public.

During the past few years, Alaska newspapers have won several court decisions, including one from the state Supreme Court, stipulating that the names, backgrounds and qualifications of applicants for important public jobs are to be considered public records.

Jahnke said last week that since those suits were lodged by newspapers against municipalities, there is nothing to suggest that they apply to state employees and the statute that governs their personnel records.

Governor's office told to reject requests for resumes

By JOHN LINDBACK

Daily News reporter

JUNEAU — Attorney General Norm Gorsuch told the governor's office Wednesday to deny requests from the press and other members of the public for resumes of state employees.

In a memorandum forwarded to the governor's office, Gorsuch said a statute on state personnel records prohibits release of resumes to the public without the employee's permission.

The attorney general's office interprets the statute as saying a resume, which is submitted by an applicant before being hired, is part of a state employee's confidential personnel file, said Tom Jahnke, an assistant attorney general who prepared the memorandum.

Gorsuch's advice to the governor's office was prompted by a request from The Daily News for the resumes of some of the employ-

ees of the governor's office. The request was filed to test state freedom-of-information regulations.

The matter was first raised during the last legislative session by Rep. John Cowdery, II, Anchorage and a co-chairman of the legislative Oil and Gas Committee. The governor's office denied Cowdery's request for the resume of Lennie Boston, a special assistant to the governor on natural resource issues.

The Daily News last summer asked for the resume of Victor Jorge, Gov. Sheffield's former communications director, and the request was denied. Jorge voluntarily gave his resume to the paper, and a subsequent investigation revealed that he had lied about his job history.

Jorge resigned his \$88,000-a-year post when the paper challenged the accuracy of his resume.

The statute on which the Department of

Law based its decision says "state personnel records, including employment applications and examination materials, are confidential and are not open to public inspection . . ."

Anyone who argues that resumes are not covered by the statute is guilty of splitting hairs, Jahnke said.

Information available to the public about a person hired for a job in the governor's office or elsewhere in state government is limited by the statute to the employee's name, job, previous jobs with the state, their union or non-union status, the length of employment with the state and their salary, Jahnke said.

The person seeking the information should be informed that it is the employee alone who has the right to allow public or press access to their personnel records; if the employee permits it, resumes or employment applications may be disclosed," according to the memo.

Cowdery said Wednesday that any member

of the public ought to be able to request background information about a state employee, even if the employee doesn't want it released.

He asked for Boston's resume because he was interested in her professional background. Cowdery said the request prompted charges from the administration that he was "fishing" for information to engage in "green-bashing," a term that refers to an effort to discredit someone because of an environmentalist background.

Alaska newspapers during the past few years have won a series of court cases against municipal governments that refused to disclose the names, backgrounds and qualifications of applicants for important public jobs.

The courts ruled it was in the public interest to know that qualified persons are hired for public jobs.

Bill would open personnel records

The Associated Press

Rep. Charlie Bussell has introduced a bill in the House to make the personnel records of state employees available for public scrutiny.

Bussell said Monday he was prompted by the difficulties lawmakers had last year obtaining the personnel records of Sheffield administration employees.

"With this law, the public will have the ability to get the information it needs," Bussell, R-Anchorage, said in a press release.

Anchorage Reps. Mae Tischer, Mitch Abood, Jerry Ward and Terry Martin are co-sponsors of the measure (HB 517).

If approved, the bill would require salaries of state employees to be disclosed. Resumes, job applications and state employment histories would also be available for citizens to examine, he said.

Alaska Attorney General Norm Gorsuch in November said it is up to the employee to decide whether to honor requests for job information. Only an employee's name, job, salary, employment history and union status were matters of public record, he said.

Sheffield later urged employees to make the information available to the public, press, and lawmakers. But the governor said state employees would not be re-

quired to make the information available, and they would not be punished for withholding their records.

Alaska's newspapers in recent years have won several court cases stipulating that the names and qualifications of applicants for public jobs are public records.

The attorney general argued that the court rulings involved municipalities and therefore shouldn't be interpreted to apply to the state.

To support his decision to submit the bill, Bussell cited the case of a Sheffield appointee who resigned last year after newspaper disclosures that he falsified his resume.

Privacy, accountability

Having argued firmly — and sometimes without sufficient legal support — that state employees' job resumes must be open to public inspection, we feel compelled now to support efforts by Rep. John Cowdery, R-Anchorage, to modify state law for that purpose.

The state's open-records law currently provides that resumes of employees and prospective employees of local governments must be open to public inspection, but privacy statutes adopted in 1982 apparently exempt state employees from that requirement. Rep. Cowdery and four other legislators have introduced a bill requiring that resumes, job applications and state employment histories be made available for public inspection — so that the fitness and credentials of public employees can be verified forthrightly.

The legislature, of course, must examine Rep. Cowdery's measure carefully, and craft it carefully to define the balance between employees' privacy and public accountability. But as a matter of policy, job resumes and professional qualifications surely belong in the realm of public information. Gov. Bill Sheffield, among others, has supported that policy in the past, and plenty of Alaska experience proves its worth. The legislature should act accordingly.

Daily News Jan. 18, 1984

Opinion

JUNEAU EMPIRE

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State, local governments should be open

Rep. Charlie Bussell, R-Anchorage, is leading the charge in the House to open the personnel records of state employees. He and the co-sponsors of his bill say the public has a right to know who is working for it.

We agree, as far as policy-making employees are concerned, but we can't really say there's a legitimate interest in every clerk-typist's background.

A parallel major concern for the public is openness in municipal government. We urge Rep. Bussell to assure that high municipal employees are included in his disclosure bill. During the past five years, there has been a spree of problems with applicants for high municipal post being less than accurate in recounting their job histories and qualifications. One such case happened in Rep. Bussell's home district when a police chief applicant failed to mention he had been let go.

Not only that, but the folks in charge of the hiring failed to do their homework. It wasn't until the public — through their local newspapers — did a little checking that the truth was discovered.

In the meantime, newspapers in Anchorage, Kenai, Ketchikan and Juneau all found themselves in court, pointing to a state law that says the papers of "state agencies" are public record. The municipalities unsuccessfully argued they weren't state agencies under the legal definition. The outcome: applications for top municipal office — city manager, police chief and fire chief — are public record.

Last year, Rep. Bussell and others got the urge to do a little poking around checking the qualifications of top administration officials. We're not sure of his motives, but in our mind such questions were within his rights, as a matter of policy, if not law.

The state attorney general says they are not, and the governor has compromised, saying that while he encourages the folks in his administration to tell their qualifications, they are not required to under law.

We're no lawyers, but it just seems that the public has a legitimate right to know the background of who is working for it, whether as a city manager of a municipality or as a top staffer in the governor's office — or, for that matter, as a staffer for the legislature.

Any persons in a policy-making position, in state or municipal government, should be required to disclose their qualifications and educational background.

TO: Rep. Cowdery

FROM: J.J. BrewerTOPIC: City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1316
(See pages 1323 & 24) (1982)

This opinion was issued in March, 1982. The City of Kenai was seeking a city manager in 1979 and had many applicants. The City of Anchorage was seeking applicants for Chief of Police in 1980 and had some 80 or 90 applicants. The two cases were consolidated for hearing before the Supreme Court.

In Kenai, the newspapers wanted the information on applicants and so did a newspaperman in Anchorage (Daily News) want the information from the City of Anchorage on who was applying for police chief. (If you recall, one of them withdrew, after Sullivan had appointed him, because of some bad things in the record back east somewhere--after that, Sullivan appointed Brian Porter, which he should have done in the first place!)

Anyway, this decision goes on at length as to whether the state statutes apply to city ordinances and finally concludes that they do. Much of the decision (Attached) is concerned with the history of the development of the statutes (two attached) that we have today. Also, it is wound up with AS 42.62.310, the state's "open-meeting statute", so-called which incidentally sets forth also the circumstances of executive sessions:

While the statutes go to the copying and release of public records involving real estate, etc. (and to a lesser extent, reference to other statutes as to medical records, for example), the statutes themselves do not specify personnel records. So, the cities involved were aware of that and, I suspect, arguing that personnel records were not in the category of "public records" as if one were abstracting a title to real property, for example. However, the court decision seems to knock down such arguments and indicate that the reporters should have been able to obtain the information. Thus, it would certainly seem that a Legislator could obtain the information !!!!!

Armed with these statutes and the case law, I think you should get somewhere in your request !! (My humble opinion--it's impact is negligible, compared with Dept. of Law and all the attorneys they have there!)

CITY OF KENAI, Charles A. Brown, Acting City Manager, Sue C. Peters, City Clerk, and all current members of the council of the City of Kenai, Vincent O'Reilly, Edward Ambarian, Ronald A. Malston, Betty Glick, Phillip Aber, Charles Bailie and Michael Seaman, Appellants,

v.

KENAI PENINSULA NEWSPAPERS, INC., Appellee.

The MUNICIPALITY OF ANCHORAGE, George M. Sullivan, Mayor, Ruby Smith, Municipal Clerk, Jane Angvik, Paul Baer, Fred Chieci, Ben Marsh, Carol Maser, Rick Mystrom, Gerry O'Connor, Dave Rose, Lydia Selkregg, Don Smith, and Dave Walsh, all current members of the Anchorage Municipal Assembly, Appellants,

v.

ANCHORAGE DAILY NEWS, INC., Appellee.

Nos. 4954, 5433.

Supreme Court of Alaska.

March 26, 1982

Appeals were taken from decisions of the Superior Court, Third Judicial District, Kenai and Anchorage, James A. Hanson and Karl S. Johnstone, J.J., which, inter alia, ordered the municipalities involved to disclose information concerning the applicants for positions of city manager and police chief. After consolidation, the Supreme Court, Matthews, J., held that: (1) records in possession of municipalities are available for public inspection, subject to exceptions based on need; (2) with the exception of those who withdrew their applications rather than have them disclosed, employment applications for positions of city manager and police chief were subject to disclosure pursuant to public records disclosure statute; (3) to extent that city's public records ordinance prohibited disclosure of applications of those seeking position of police

chief, it was in irreconcilable conflict with public records disclosure statute and could not be accorded substantive effect; however, remainder of the ordinance was valid; and (4) city council was authorized by public meetings law to meet in executive session while discussing personal characteristics of the applicants for city manager position.

Order in Anchorage case affirmed; order in Kenai case affirmed in part and reversed in part.

Connor, J., filed separate opinion dissenting in part.

1. Records \approx 30

Records in possession of municipalities are available for public inspection, subject to exceptions based on need. AS 09.25.110, 09.25.120.

2. Records \approx 54

With the exception of those who withdrew their applications rather than have them disclosed, employment applications for positions of city manager and police chief were subject to disclosure pursuant to public records disclosure statute. AS 09.25.110, 09.25.120.

3. Municipal Corporations \approx 111(4), 592(1)

To extent that city's public records ordinance prohibited disclosure of applications of those seeking position of police chief, it was in irreconcilable conflict with public records disclosure statute and could not be accorded substantive effect; however, remainder of the ordinance was valid since those provisions of the ordinance were plainly meant to be severable and since existing state law was neither so detailed nor comprehensive as to permit an inference that the legislature intends to occupy the field to the exclusion of municipalities. AS 09.25.110, 09.25.120.

4. Municipal Corporations \approx 92

City council was authorized by public meetings law to meet in executive session while discussing personal characteristics of the applicants for city manager position. AS 44.62.310(c)(2).

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Richard W. Garnett, III, Garnett, Klinkner & Bendell, Anchorage, for appellant, City of Kenai.

Steven H. Morrisett, Julie A. Garfield, Asst. Municipal Attys., Theodore D. Berns, Municipal Atty., Anchorage, for appellants, Municipality of Anchorage.

C. R. Baldwin, Kenai, for appellee, Kenai Peninsula Newspapers.

A. Robert Hahn, Jr., Kevin F. McCoy, Hahn, Jewell & Stanfill, Anchorage, for appellee, Anchorage Daily News.

Before RABINOWITZ, C. J., CONNOR and MATTHEWS, JJ., and VAN HOOMISSEN and TAYLOR, Superior Court Judges.*

OPINION

MATTHEWS, Justice.

These consolidated cases have as their common issue the question whether our public records disclosure statute, AS (09.25)-110-120, applies to municipalities. In both cases the superior court ruled that the statute does apply and, for the reasons expressed below, we agree. Each case also raises issues not present in the other, and these will be separately discussed.

CITY OF KENAI

During June of 1979, the City of Kenai began soliciting applications for city manager. Subsequently, the City Council met, without notice to the public and without keeping minutes, to review applications and interview applicants. Max Swearingen, the publisher of the Peninsula Clarion, a daily publication of Kenai Peninsula Newspapers, Inc., asked the City to release a list of names and a summary of credentials of the applicants. This request was considered by the City Council on August 2, 1979, and rejected. In a letter written to Swearingen, the mayor voiced a concern that such disclosures would jeopardize the applicants' personal privacy, deter future applications from qualified people concerned about pub-

* Van Hoornissen and Taylor, Superior Court Judges, sitting by assignment made pursuant to

lic exposure, and compromise the council's moral obligation to respect the privacy interests of individual applicants.

Kenai Peninsula Newspapers filed suit to require the City to allow inspection of the applications and to enjoin the City Council from further review and action upon the applications except at a public meeting. The superior court issued a temporary restraining order enjoining "further deliberations toward the appointment of a City Manager for the City of Kenai from which the public is excluded. . . ." After briefing and a second hearing, the superior court entered a decision which concluded that the applications were public records and that the deliberations of the city council concerning appointment of a city manager must be held in public meetings. The court thereupon ordered the city to permit the inspection and copying of the applications and to refrain from any closed deliberations concerning the selection of the new city manager.

The superior court stayed, pending appeal, that portion of its order requiring the immediate release of the applications for employment. The parties then stipulated that the order should be considered a final judgment and that the city would "deliver over to the Plaintiff copies of all resumes and applications of all applicants for city manager who do not choose to withdraw their application upon being notified of the [city's] agreement to release the same." The agreed upon release was made without prejudice to the city's right to appeal the order requiring it. Ten of the thirty-two applicants for the position withdrew their applications upon learning of the possibility of disclosure. Kenai Peninsula Newspapers subsequently moved for disclosure of the names and information concerning the withdrawn applicants. This motion was denied.

MUNICIPALITY OF ANCHORAGE

In February of 1980, the Municipality of Anchorage began soliciting applications for

article IV, section 16 of the Constitution of Alaska.

police chief. The nationwide search was conducted through written advertisements which promised that applications would be held in confidence.

From June 1, 1980, through July 8, 1980, Don G. Hunter, a reporter for the Anchorage Daily News, sought access to the names and qualifications of the applicants. The Municipality refused to honor these requests on the grounds that disclosure was prohibited by municipal ordinance, and because confidentiality had been promised to all applicants. The Anchorage Daily News filed suit on July 9, 1980 alleging that the applications and resumes were public documents subject to disclosure and requesting injunctive relief and a temporary restraining order restraining the Municipality from appointing a police chief until a hearing on the merits. Mayor Sullivan appointed a new police chief the next day before the hearing on the temporary restraining order. After the hearing, the court ordered the Municipality to refrain from any action confirming the appointment until a hearing on the merits. The appointee subsequently declined the appointment after disclosures reflecting adversely on his qualifications were made.

The Daily News then learned that Mayor Sullivan had appointed a review committee to assist in evaluating the eighty-nine applications received by the Municipality. The review committee was comprised of local citizens and several municipal employees.

1. AS 09.25.110 provides:

Inspection and copies of public records. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record.

2. AS 09.25.120 provides:

Inspection and copying of public records. Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50.010-18.50.380; (2) records pertaining to juveniles;

The Daily News amended its complaint to allege that the selection process was in violation of Alaska's open meeting law, AS 44.62.310-.312. Following a hearing, the court entered an order for preliminary injunction, supported by findings of fact and conclusions of law, requiring the Municipality to provide the Daily News with the applicants' names and resumes.

Subsequently, the preliminary injunction was modified by stipulation of the parties to provide that the Municipality would contact all applicants to determine whether they wished to withdraw their applications rather than have them made public. The names and information concerning those applicants choosing to withdraw their applications would remain confidential. The parties also stipulated that the preliminary injunction would be considered as a final judgment so that an appeal could be taken to this court. Of the 89 original applicants, 8 withdrew their names. An additional 19 could not be reached within the time frame prescribed by the stipulation and their names were also considered to have been withdrawn.

APPLICATION OF THE PUBLIC RECORDS DISCLOSURE STATUTE TO MUNICIPALITIES

[1] The first question is whether the provisions of AS 09.25.110¹ and AS 09.25.120² are applicable to municipalities.

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the legal fees therefor a certified copy of the writing or record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public writings and records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public writings and records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public writings and records for those pur-

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Title

A. The parties' arguments focus on the terms of the statute without regard to its historical context. That historical context is illuminating.

At common law, every interested person was entitled to the inspection of public records, including those of municipal corporations. *Mushet v. Department of Public Service of City of Los Angeles*, 35 Cal.App. 630, 170 P. 653 (1917); *Clement v. Graham*, 78 Vt. 290, 63 A. 146, 153 (1906); *State ex rel. Wellford v. Williams*, 110 Tenn. 549, 75 S.W. 948 (1903); *State ex rel. Coleseott v. King*, 154 Ind. 62, 57 N.E. 535 (1900).

The history of §§ .110 and .120 demonstrates that the coverage of the common law has consistently been accepted by the legislators of this state. The operative language of § .120 was first enacted by Congress for the District of Alaska as section 1039 of the Act of June 6, 1900, 31 Stat. 321. It read:

poses, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

3. § 1039, pt. IV (Code of Civil Procedure), Carter's Ann. Alaska Code (1900).
4. The two sections were §§ 717 and 718 Hill's, Title V Ann. Laws of Oregon which read:

Section 717. Every citizen of this state has a right to inspect any public writing of this state, except as otherwise expressly provided by this code or some other statute.

Section 718. Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is primary evidence of the original writing.

The Oregon statute also contained four other sections which were not enacted by Congress for the District of Alaska. These sections are: Title IV.

714. Writings are of two kinds:—(1) public; and (2) private.

715. Public writings are:—(1) the written acts, or records of the acts, of the sovereign authority of official bodies and tribunals and of public officers, legislative, judicial, and executive, whether of this state, of the United States, or a sister state, or a foreign country.

716. All other writings are private.

Title V

Every person has a right to inspect any public writing or record in said district, and every public officer having the custody thereof is bound to permit such inspection, and to give on demand and on payment of the legal fees therefor, a certified copy of such writing or record, and such copy shall in all cases be evidence of the original.²

The language of this section was similar to two sections in the laws of Oregon⁴ which in turn had counterparts in the laws of California,⁵ Montana,⁶ Utah,⁷ and Idaho.⁸ Decisions in these jurisdictions construing their acts indicate that it has never been doubted that such acts cover municipal as well as state officials.⁹

Enactment of § 1039 seems to have been meant as a codification of the common law rule with the added intent, perhaps, of eliminating the requirement that the person

719. Public writings are divided into four classes:—(1) Laws; (2) Judicial records; (3) Other official documents; (4) Public records kept in this state, of private writings.

5. California Code of Civil Procedure §§ 1892, 1893 (Deering's California Codes, 1967).
6. Montana R.C. § 10541; 3170-3182 Code of Civil Procedure of 1895, now codified as §§ 2-6-101, 2-6-102 Montana Revised Statutes.
7. Utah Code Section 78-26-1 through 3.
8. Idaho C.C.P. of 1881 §§ 902, 903, currently 9-301, 9-302 Idaho Code (1979).
9. *Gallagher v. Boller*, 231 Cal.App.2d 482, 41 Cal.Rptr. 880 (1964); *Whelan v. Superior Court*, 114 Cal. 548, 46 P. 468 (1896); *Mushet v. Dept. of Public Service of City of Los Angeles*, 35 Cal.App. 630, 170 P. 653 (1917); *Harrison v. Powers*, 19 Cal.App. 762, 127 P. 818 (1912); *San Francisco v. Superior Court*, 38 Cal.2d 156, 238 P.2d 581 (1951); *Coldwell v. Board of Public Works*, 187 Cal. 510, 202 P. 879 (1921); *Miller v. Murphy*, 78 Cal.App. 751, 248 P. 934 (1926); *Jessup v. Superior Court*, 151 Cal.App.2d 102, 311 P.2d 177 (1957); *Santa Monica v. Superior Court*, 204 Cal.App.2d 68, 21 Cal.Rptr. 896 (1962); *Conover v. Board of Education of Nebo School District*, 1 Utah 2d 375, 267 P.2d 768 (1954); *State v. Keller*, 143 Or. 589, 21 P.2d 807 (1933); *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P.2d 838 (1937).

seeking inspection have an interest. When Congress imposed a statutory duty of disclosure in § 1039 on "every public officer" it clearly intended to encompass both district and municipal officials; any contention that municipal officials were meant to be relieved of their pre-statutory disclosure duties would plainly be frivolous in view of this language.

Section 1039 continued in effect until 1962, unchanged except for two additions. In 1955 the reference to public writings in recorders' offices was added,¹⁰ followed in 1957 by the addition of the exceptions relating to medical records, those of juveniles, and those records required to be kept confidential by federal or territorial law.¹¹

By 1931 the District of Alaska had become an organized territory. In that year the territorial legislature enacted the forerunner of § .110. This enactment, Ch. 107, § 2 SLA 1931,¹² provided:

The books, records, papers, files, accounts and transactions of every officer, board or institution in the territory are public records, and subject to such reasonable rules as the officer in charge may prescribe, shall be open to inspection by the

10. Ch. 32, § 1, SLA 1955.

11. Ch. 54, § 1, SLA 1957.

12. Codified initially as § 2935, CLA 1933.

13. In 1947, language concerning information in the possession of the tax commissioner was adopted. Also added at that time was the phrase "except where otherwise specified or declared." Ch. 46, § 1, SLA 1947. As a result the statute read:

**WHAT ARE PUBLIC RECORDS;
INSPECTION.**

Except where otherwise specified or declared, the books, records, papers, files, accounts, writings and transactions of every officer, board or institution in this Territory are public records and subject to such reasonable rules as the officer in charge may prescribe, and shall be open to inspection by the public during all the time the respective offices shall be open for business. Any information in the possession of the Tax Commissioner which discloses the particulars of the business or affairs of a taxpayer, or other person, is not matter of public record, except for purposes of law enforcement and the investigation by any person of law compliance,

public during all the time the respective offices shall be open for business.

Except for the addition of language not relevant here, this section, too, remained unchanged until 1962.¹³ Since it can hardly be questioned that municipal officers were encompassed within the meaning of the language "every officer . . . in this territory," municipalities were included within the provisions of the predecessor of § .110.

In 1959 Alaska became a state. By that time the predecessors of §§ .110 and .120 had been recodified respectively as §§ 58-1-1 and 58-1-2 ACLA 1949. In 1962 these sections were repealed and re-enacted in their present form. Ch. 101, §§ 3.22, 3.23, SLA 1962. The 1962 re-enactment was accomplished as a part of a comprehensive revision of the entire territorial statutory code of civil procedure. This process was necessitated by statehood. The primary objective of the legislature was to delete procedural provisions from the Alaska statutes in deference to this court's power under the state constitution to promulgate rules of procedure governing proceedings in all courts.¹⁴

and shall be kept confidential except when production thereof is required in an official investigation or court proceeding; provided, that nothing herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports and items thereof, or of the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which may assist in the collection of such delinquent taxes.

14. Alaska Const. Art. IV, § 15 provides:

Rule-Making Power. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

The process of revision is alluded to in *Silverton v. Marler*, 389 P.2d 3, 5 (Alaska 1964) and is fully described in the Forward to the Alaska Rules of Court, Volume 1, pp. i-vi.

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The report of the Alaska House Judiciary Committee¹⁵ makes it clear that no substantive changes in pre-existing law were intended, except in certain enumerated areas not including the inspection and copying of public records.¹⁶ In fact the House Judiciary Committee corrected an error in the Senate Bill concerning the right to inspect records. Existing law read:

Every person has a right to inspect any public writing or record in said Territory, including public writings and records in recorders' offices. . . .

§ 58-1-2 ACLA (Supp.1958). The initial Senate Bill revised this to read:

Every person has the right to inspect any public writing or record in the office of any recorder. . . .

SB 105 § 3.25, p. 18, 2d Leg., 1st Sess. (1961). The House Committee changed this to its present form:

Every person has a right to inspect any public writing or record in the state, including public writings and records in recorders' offices. . . .

§ 3.22 HCS SB 105, p. 18, 2d Leg., 1st Sess. (1961) which differs from preexisting law only in that the term "the state" is substituted for "said Territory." The House Committee noted concerning this change: "Material re inspection and copying of public records is restored because incorrectly revised."¹⁷

It is therefore evident that the legislature had no intention of changing the scope of the public records law in the 1962 recodification. The common law view that municipalities are required to make their records available to the public was adopted by statute in 1900 and has not been changed.

B. Even without the evidence provided by legislative history, the municipalities' arguments on the language of the statutes could not prevail.

In arguing that §§ .110 and .120 are not applicable, appellants focus on the phrase "all agencies and departments" in the first sentence of § .110. They contend, first,

15. 62 House Journal 390-397 (1962).

16. *Ibid.* at 393-397.

that this phrase refers only to agencies and departments of the state government. There is no language in §§ .110 or .120 so limiting "agencies and departments." We will not read such a limitation into this language without evidence that it was intended.

Appellants also argue that a municipality as such is not an agency or department and is therefore not covered by § .110. This argument, too, has little to commend it. Conceding, for the purposes of argument, that the legislature would not describe a municipality as an agency or department, it is equally true that the legislature would not describe the state government taken as a whole by using those terms. Municipal governments, as well as the government of the state, encompass agencies and departments. The "agencies and departments" language used in § .110 must be read as referring to the agencies and departments of the governments to which the statute applies, but that language itself does not define what the applicable level of government is.

The adjective used in §§ .110 and .120 which does define the levels of government to which these sections apply is the word "public." Thus, § .110 commands "the public officer" to make available certified copies on request. Similarly, § .120 directs "every public officer" to make unexcepted records available for inspection and copying. We construe the word public as used in these sections to refer both to state and local officials. This construction is in accordance with the ordinary meaning of the term "public" which is that the word refers to all levels of government:

Having a civil, or official, character, authority, status, or the like; authoritatively serving or representing the public; as, a *public* official, prosecutor, or legislative body; to hold *public* office; also, as in titles of departments, agencies, etc., of the civic or state government; as, *public*

17. 62 House Journal 395 (1962).

health, relief, welfare or safety.¹⁸ [Emphasis in original]

It would be a corruption of the generally accepted meaning of the term "public" to argue, for example, that the mayor of the municipality of Anchorage is not a public officer. Again, the dictionary agrees, defining the term "public office" as

An office or position in the service of a nation, state, city, etc.¹⁹

The first sentence of § .120 provides that:

Every person has a right to inspect a public writing or record in the state. . . . [Emphasis added].

The legislature chose to say "in the state," not "of the state." The boundaries of a statute are commonly sought and found within its terms. We think that the legislature was conscious of the fact that it was defining scope here. Had the legislature intended to limit the application of § .120 to state agencies and departments, it could easily and clearly have done so.

A more recent legislature's reading of §§ .110 and .120 is apparent in the enactment in 1977 of AS 39.51.020, which provides that no public employee may be disciplined "for communicating matters of public record or information under AS 09.25.110 and AS 09.25.120." "Public employee" was defined in Section (b) of that enactment to include any employee of any state or local government.²⁰

The municipalities argue that this section was enacted not because of any legislative belief that AS 09.25.110 and .120 applied to local governments but because local govern-

ment employees often come into possession of state records which are public and may wish to allow the inspection of these records and need protection from discipline by their employers in so doing. We find this to be a very strained and unnatural reading of the statute. It is far more logical to conclude that the 1977 legislature assumed that §§ .110 and .120 apply to municipalities as well as to the state and concluded that municipal as well as state employees were deserving of protection.

The strongest argument made by the appellants is that the inclusion of municipalities would lead to absurd results since there is no exception for records required to be kept confidential under a municipal ordinance while such an exception does exist for state law.²¹ This exception, added by the territorial legislature in 1957, must be viewed in context. The public records disclosure statute had existed without any expressed exceptions for more than 50 years. There was no basis under the statute for distinguishing its application between territorial and municipal governments. As discussed *supra*, prior to the enactment of the statute the common law also required disclosure of public records at both the state and municipal levels. However, under the statute prior to the 1957 amendment, as under the common law, exceptions would have been permitted where there was a good reason for them.²² While it is possible that the 1957 legislature may have committed an oversight in not including an express exception for municipal ordinances, the failure to include such an exception can hardly

cluding the University of Alaska) or any political subdivision of the state.

(c) A violation of this section is a misdemeanor.

18. Webster's New International Dictionary (2d ed. 1960).

19. *Id.*

20. AS 39.51.020 provides:

Obstruction of access to public information. (a) No public employee may be dismissed, demoted or suspended, laid off or otherwise made subject to any disciplinary action for communicating matters of public record or information under AS 09.25.110 and 09.25.120.

(b) As used in this section, "public employee" means any employee receiving compensation for services provided to the state (in-

21. AS 09.25.120(4) excepts from the disclosure requirement "records required to be kept confidential by a federal law or regulation or by state law."

22. See *State ex rel. Wellford v. Williams*, 110 Tenn. 549, 75 S.W. 948 (1903); cf. *State ex rel. Colecott v. King*, 154 Ind. 621, 57 N.E. 535 (1900); *Clement v. Graham*, 78 Vt. 290, 63 A. 146 (1906).

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23. Art. 1
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mean that the legislature intended to exclude, by implication, municipalities from the basic disclosure requirement. If that had been the legislature's intent, it would, at the least, have changed the words "public officer" in §§ 58-1-1 and 58-1-2 ACLA 1949 to "territorial officer."

In light of the common law rule, legislative history, and our reading of the sections, we will construe §§ .110 and .120, as we would have construed them prior to 1957, as a strong legislative declaration that records in the possession of municipalities shall be available for public inspection, subject to exceptions based on need.

ARE EMPLOYMENT APPLICATIONS OPEN TO INSPECTION?

[2] We turn next to the question whether the appellants were justified in refusing to disclose the employment applications involved in these cases. In general, questions such as these require a balance to be struck between the public interest in disclosure on the one hand and the privacy and reputation interests of the affected individuals and the government's interest in confidentiality, on the other. The process of balancing has been described as follows:

In determining whether the records should be made available for inspection in any particular instance, the court must balance the interest of the citizen in knowing what the servants of government are doing and the citizen's proprietary interest in public property, against the interest of the public in having the business of government carried on efficiently and without undue interference. The initial decision as to whether inspection will be permitted must, of course, rest with the custodian of the records. And since the justification for a refusal to permit inspection will depend upon the circumstances of the particular case, we can offer no specific guide for that administrative decision.

....

23. Art. 1, § 22 of the Alaska Const. states in part: "The right of the people to privacy is

In balancing the interests referred to above, the scales must reflect the fundamental right of a citizen to have access to the public records as contrasted with the incidental right of the agency to be free from unreasonable interference. The citizen's predominant interest may be expressed in terms of the burden of proof which is applicable in this class of cases; the burden is cast upon the agency to explain why the records sought should not be furnished. Ultimately, of course, it is for the courts to decide whether the explanation is reasonable and to weigh the benefits accruing to the agency from non-disclosure against the harm which may result to the public if such records are not made available for inspection. [Citation omitted].

MacEwan v. Holm, 226 Or. 27, 359 P.2d 413, 421-22 (1961) (In Banc).

In striking a proper balance the custodian of the records in the first instance, and the court in the next, should bear in mind that the legislature has expressed a bias in favor of public disclosure. Doubtful cases should be resolved by permitting public inspection.

Appellants argue that they have an interest in "attracting the largest and most qualified applicant pool . . ." and that this can best be accomplished by not disclosing the names and resumes of applicants. Further, they argue that applicants have a constitutionally protected privacy interest²³ in keeping confidential the fact that they have applied, and the contents of their applications. They argue that this interest is especially strong under the circumstances of these cases where the applications were made with the expectation that they would remain confidential.

There is a strong public interest in disclosure of the affairs of government generally, and in an open selection process for high public officials in particular. AS 44.62-312(a) powerfully expresses the philosophy underlying this:

recognized and shall not be infringed."

1. Best Apple
2. Privacy

ADJUTANT

It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

In addition, §§ .110 and .120 articulate a broad policy of open records.

Public officials such as City Managers, and Chiefs of Police have substantial discretionary authority. The qualifications of the occupants of such offices are of legitimate public concern. Disclosing the names and applications of applicants allows interested members of the public, such as the newspapers here, to verify the accuracy of the representations made by the applicants, and to seek additional information which may be relevant to the selection process.

The applicants' claim that revealing the names and applications of office seekers will narrow the field of applicants and ultimately prejudice the interests of good government is not sufficiently compelling to overcome the public's interest in disclosure. In each of these cases a majority of the applicants did not seek to withdraw their applications rather than make them public. It is not intuitively obvious that most well qualified potential applicants for positions of authority in municipal govern-

ments will be deterred from applying by a public selection process, and we have been referred to no studies tending to prove that point.

The applicants' individual privacy interests in having their names and applications not revealed are also not of an order sufficient to overcome the public's interest. The applicants are seeking high government positions. "Public officials must recognize their official capacities often expose their private lives to public scrutiny."²⁴ Further, the information sought is that which has been voluntarily provided by the applicants to the municipalities. It is unlikely to be particularly embarrassing if publicly revealed.²⁵

It may be that in some cases an individual will not wish his current employer to know that he has applied for another job. That desire is one which cannot be accommodated where the job sought is a high public office. Even if the law did not compel disclosure of each application, at some point before the final selection, as both appellants acknowledge, prudence would require the municipality to contact the employers of those applicants whose applications are being seriously considered.

Nonetheless, in *Anchorage*, the applicants were promised confidentiality, and in *Kenai* several applicants at least assumed that their names and applications would not be divulged. Since the law does not permit a confidential application, we believe that both courts acted properly in allowing those applicants who desired confidentiality to withdraw their applications without public disclosure. There is little or no public interest in the names of withdrawn candidates. On the other hand, those candidates obviously believed that public disclosure would prejudice them in their current positions. With respect to the applicants who withdrew their names, the balance was properly struck in favor of non-disclosure.

named private individual had visited a doctor was not protected private information, but protection did attach if there was a basis for an inference that the person had a potentially embarrassing mental or medical condition.

24. Advisory Opinion on Constitutionality of 1975 PA 227, 242 N.W.2d 3, 19 (Mich.1976); quoted in *Falcon v. Alaska Public Offices Com'n*, 570 P.2d 469, 474 n.15 (Alaska 1977).

25. *Cf. Falcon v. APOC*, 570 P.2d at 479-80, where we noted that the mere fact that a

Did "applicants" ever include them?

Requires Resume

THE
[3] The public records of the Anchorage... disclosure of those specifications... § 3.90.040 disclosure of information of the application personnel... The trial court... that the... nance pro... tions of th... of Police... with AS 0... this deter... As we... permits m... to the rule... need. Ev... necessarily... which in t... having su...
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THE ANCHORAGE ORDINANCE

[3] The Municipality of Anchorage has a public records ordinance codified in § 3.90 of the Anchorage Municipal Code. The ordinance announces a general policy of "the fullest and most rapid access to municipal records and information" requiring "full disclosure of all public records ... except those specifically exempted under § 3.90.040...." AMC § 3.90.010. Part (B) of § 3.90.040 exempts from the requirement of disclosure "personnel ... files ... the release of which would constitute an unwarranted invasion of privacy." Another section of the Code includes an employee's application for employment as a part of his personnel file. AMC § 3.30.016A.1.

The trial court held that to the extent that the Anchorage public records ordinance prohibits disclosure of the applications of those seeking the position of Chief of Police it was in irreconcilable conflict with AS 09.25.110 and .120. We agree with this determination.

As we have explained above, state law permits municipalities to make exceptions to the rule of disclosure only on the basis of need. Evaluation of the question of need necessarily involves a balancing process which in the case of applications for a post having substantial discretionary authority

26. See *City of Kodiak v. Jackson*, 564 P.2d 1130, 1132 (Alaska 1978).

27. AMC § 1.05.040 provides:

The sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code.

28. AS 44.62.310 provides:

Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, comm's-

Alaska Rep 638-642 P.2d-10

results in the balance being struck in favor of public disclosure. To the extent that the Anchorage ordinance prohibits such disclosure it is directly inconsistent with state law and cannot be accorded substantive effect. It is therefore invalid.²⁶

This does not mean that the remainder of AMC § 3.90 must fall. That result would be unwarranted, for the provisions of the ordinance are plainly meant to be severable.²⁷ Nor does this conclusion call into question the power of Anchorage to enact an ordinance dealing with the disclosure of public records which is consistent with state law. Existing state law is neither so detailed nor comprehensive as to permit an inference that the legislature intended to occupy this field to the exclusion of municipalities. See *Webster v. Bechtel, Inc.*, 621 P.2d 890, 897 (Alaska 1980). *Alaska Board of Fish & Game v. Thomas*, 635 P.2d 1191 (Alaska 1981).

DELIBERATIONS IN EXECUTIVE SESSION

[4] In *Kenai* the court enjoined the City from "any deliberations toward appointment of a city manager unless those deliberations are held in compliance" with the public meetings law, AS 44.62.310-.312.²⁸ The court held that such deliberations "are not within any of the exemptions of AS

sions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

44.62.310(c)" relating to subjects which may be discussed in executive session. The City of Kenai appeals from this ruling, contending that § .310(c)(2) which permits the discussion in executive session of "subjects that tend to prejudice the reputation and character of any person" is applicable.

The appellee does not contend that the City Council may never go into executive session when discussing city manager applicants. It argues that generally such discussions do not have a tendency to damage the reputation of the applicants, and that the City erred in routinely convening executive sessions.

Appellee's reading of the statute is not without a degree of merit. Ordinarily an applicant's reputation will not be damaged by a public discussion of his or her qualifications relating to experience, education and background or by a comparison of them with those of other candidates. However, a discussion of personal characteristics and

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body of any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void.

AS 44.62.312 provides:

State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

habits may well carry a risk that the applicant's reputation will be compromised. Such a risk is especially acute where the qualities of several applicants are being compared. We believe therefore that the City Council was authorized by § .310(c)(2) to meet in executive session while discussing the personal characteristics of the applicants.²⁹ To the extent that the order of the court prohibits this, it must be reversed.³⁰

Accordingly, in *Anchorage*, the order of the superior court is AFFIRMED; in *Kenai*, the order of the superior court is AFFIRMED in part and REVERSED in part.

CONNOR, J., dissents in part.

BURKE and COMPTON, JJ., not participating.

CONNOR, Justice, dissenting in part.

I dissent from the majority opinion. In my view the phrase "all agencies and departments" does not encompass municipal agencies.

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions.

29. Care should be taken, of course, to observe the procedures for convening executive sessions set out in § .310(b): The meeting must first be convened as public; the question of holding an executive session concerning excepted subjects must be determined by majority vote; only excepted subjects, and only those mentioned in the motion calling for the executive session, may be considered in the executive session; and no action may be taken at the executive session.

30. In *Anchorage* we are asked to review the trial court's conclusion that the selection committee of the mayor was a committee covered by AS 44.62.310. We decline to do so because no part of the order issued by the court was based on that conclusion and review would be merely advisory.

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MEMORANDUM

State of Alaska

TO: Pete Spivey, Press Secretary
Office of the Governor

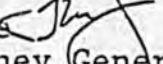
DATE: November 9, 1983

FILE NO: 366-250-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Disclosure of re-
sumes of state offi-
cers and employees

By: Thomas M. Jahnke 
Assistant Attorney General
Governmental Affairs-Juneau

You have inquired whether the Governor's Office is au-
thorized to release copies of resumes of its officers and employ-
ees upon request of a private citizen or a member of the press.
The answer is no.

AS 39.25.080 provides:

PUBLIC RECORDS. (a) State personnel rec-
ords, including employment applications and exam-
ination materials, are confidential and are not
open to public inspection except as provided in
this section.

(b) The following information is available
for public inspection, subject to reasonable regu-
lations on the time and manner of inspection:

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

(2) the position held by a state em-
ployee;

(3) prior positions held by a state
employee;

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

(5) the dates of appointment and sepa-
ration of a state employee; and

(6) the compensation authorized for a
state employee.

(c) A state employee has the right to exam-
ine the employee's own personnel files and may
authorize others to examine those files.

Pete Spivey, Press Secretary
Office of the Governor
366-250-84

November 9, 1983
Page #2

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

Thus, from the records your office maintains on employees, you may disclose only the items enumerated in AS 39.25.080(b).

You should note that AS 39.25.080(c) provides that the employee may choose to disclose personnel records pertaining to him or her. The person seeking the information should be informed that it is the employee alone who has the right to allow public or press access to their personnel records; if the employee permits it, resumes or employment applications may be disclosed.

TMJ/pjg

HB

519

funds from individuals, foundations, corporations, and other organizations or institutions for the purpose of furthering the educational objectives of the council's programs; to make and sign agreements and to do and perform any acts necessary to carry out the purposes of AS 44.27.040 — 44.27.058. The council may request and is entitled to receive from any department, division, board, bureau, commission, or agency of the state the assistance and data which will enable it properly to carry out its powers and duties. The council is authorized to receive state funds made available for its purposes. (Executive Order No. 44 § 4 (1980))

Sec. 44.27.054. Powers of chairman. Subject to available appropriations the chairman may, with the concurrence of a majority of the council, employ necessary personnel and may contract for the services of experts and other persons who may be needed. (Executive Order No. 44 § 4 (1980))

Sec. 44.27.056. Reports. The council shall report to the governor and the legislature not later than November 1, 1966, and from time to time thereafter. (Executive Order No. 44 § 4 (1980))

Sec. 44.27.058. National endowment funds. The council is the official agency of this state to receive and disburse funds made available by the National Endowment for the Arts. (Executive Order No. 44 § 4 (1980))

Sec. 44.27.060. Art in public places fund. (a) The art in public places fund is established. The council shall manage the fund.

(b) The commissioner of a department responsible for the design and construction of a building or facility shall deposit into the art in public places fund one percent of the construction cost of a building or facility which is exempt from the requirements of AS 35.27 and the exemption is because

(1) the estimated construction cost of the building or facility is less than \$250,000; or

(2) the building or facility is not designed for substantial public use.

(c) The council may use the money in the art in public places fund

(1) to commission or purchase a work of art which is to be made a permanent part of, or placed on loan in, a building or facility owned or leased by the state which has substantial public use; and

(2) to meet expenses for a commissioned work of art for a building or facility which has substantial public use if the cost of the work of art exceeds the amount reserved under AS 35.27.020(c).

(d) In (c) of this section, "building" or "facility" means

(1) a building or facility of the state, as defined by AS 35.27.030(2), which is designed for and which is subject to substantial public use; and

(2) a building or facility which is leased by the state and subject to substantial public use. (§ 8 ch 176 SLA 1980)

INTERIM OFFICE:
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4963

Alaska State Legislature



Representative Mitch Aboud
CHAIRMAN

House Committee on State Affairs AGENDA

DATE: 1/24/84 TUES

TIME: 1:00 P.M., ROOM 102

- I. CALL THE MEETING TO ORDER
 - A. NOTE THE COMMITTEE MEMBERS PRESENT AND WELCOME THOSE OBSERVING THE MEETING.
 - B. REMIND THOSE WHO HAVE NOT SIGNED-IN TO DO WHO WISH TO TESTIFY, AND REMIND THOSE GIVING TESTIMONY TO SPEAK UP AND STATE THEIR NAME, ADDRESS AND PHONE NUMBER BEFORE TALKING.

II. ANNOUNCE LEGISLATION UNDER CONSIDERATION:

HB 519: AN ACT relating to art works
in schools & P.F.

OTHER NOTES OR REMINDERS:

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 519
Title: Art work in public buildings

Sponsor: Adams, Ward, Szymanski
Requestor: House State Affairs
Date of Request: 1-23-84

FISCAL DETAIL

Agency Affected: DOT&PF
Program Category Affected: _____

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL		-0-	-0-	-0-	-0-	-0-
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: R. Snell Phone: 266-1462
Division: Director, P&P, - Central Region Date: 1-24-83

Approved by Commissioner: *Don Hall* Date: 1-24-83
Agency: Acting Deputy Commissioner - Statewide

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

FISCAL NOTE BACKUP
TO
HB 519

Under AS 35.27.020, the Department of Transportation and Public Facilities is required to allocate either one half of one percent of construction costs for artwork in the case of school construction, or one percent of construction costs for all other facilities.

Under AS 44.27.060, the Department of Transportation and Public Facilities is required to deposit in the Art In Public Places Fund, either one half of one percent, or one percent of construction costs, to the fund in the event a facility is exempt from artwork under AS 35.27.

SECTION 13 - ARTWORK FOR PUBLIC BUILDINGS AND FACILITIES

NOTE: The following section is based on DOT/PF Policy and Procedure #28-8002 entitled "Procurement of Artwork for Public Buildings and Facilities". Copies of this Policy and Procedure are available upon request.

13.0 PURPOSE

13.0.1 To promulgate standard departmental procedures for the selection of Artists and Artwork for public buildings and facilities.

13.2 POLICY

13.2.1 To select Artists and Artwork for public buildings and facilities in an objective manner resulting in the acquisition of Artwork consistent with A.S. 35.27, and 44.27.

13.3 DISTRIBUTION

13.3.1 All holders of the Policy and Procedures Manual and the Alaska State Council on the Arts (ASCA).

13.4 DEFINITIONS

13.4.1 Artwork - All original forms of visual art objects created by an artist which may include paintings, drawings, ceramics, fiberwork, sculpture, graphics (not signage), murals, photographs, metalwork, mixed media work, limited edition original prints (not reproductions) and Native crafts objects.

13.4.2 Artist - A practitioner in the visual arts, generally recognized by critics and peers. A project Architect or member of the Architect's firm will not be considered an eligible artist.

13.4.3 Agreement - A legal document that prescribes legal, regulatory and administrative provisions affecting the rights and obligations of the parties and the work or services (of Artwork) to be provided.

13.4.4 Architect - The project designer engaged by DOT/PF.

13.4.5 Project Manager - DOT/PF representative and Artist's primary point of contact with DOT/PF.

13.4.6 Client Agency - The Department, Division, School District, Municipality, etc., that generated the project for which funds are designated for Artwork.

13.4.7 Construction Cost - The cost of building or facility construction approved by the State Legislature, exclusive of the cost of land acquisition, site investigation, design services, administration, equipment and any other costs not specifically incurred within

the construction contract. Participatory construction funding by a Federal Agency or by the Division of Risk Management is not included in such cost as used within this procedure.

13.4.8 Public Buildings and Facilities - Schools, office buildings, court buildings, and other facilities designed for substantial public use and vessels of the State ferry system.

13.5 DIAGRAM OF PROCEDURE

13.5.1 Page 6 contains a summary diagram of this procedure. Each activity is identified by two numbers (eg 19-20) which are referenced in the procedural discussion herein.

13.6 PROCEDURE

13.6.1 (Activity 1-2) Following each legislative session, DOT/PF (Planning and Programming) provides ASCA with an informal summary of capital projects which identifies proposed buildings and facilities for which Artwork may be required.

13.6.2 (Activity 2-3) DOT/PF (Design and Construction Regions) assigns a Project Manager for each building and facility, who will concurrently initiate this procedure for procurement of Artwork and the selection procedure (P & P 28-8000) for architectural services.

13.6.3 (Activity 3-4) Project Manager and the designated Client's representative for the project decide if a percentage (amount) for public Artwork is required in accordance with A35.17.020 and 44.27.060. The amount for public Artwork shall be at least one percent of the construction cost.

- A. If a project consists of new construction or remodel/renovation of existing building or facility, the amount for public Artwork is required. However, remodel/renovation does not include maintenance, repair, code upgrade, heating renovation, etc.
- B. If the estimated construction cost is \$250,000 or less or if the building or facility is not for substantial public use, the amount for public Artwork shall be deposited in the Art in Public Places Fund after final acceptance of the facility (paragraph 6.14).
- C. If the estimated construction cost is greater than \$250,000, the amount for public Artwork shall be expended only for the actual costs of design (which may include engineering for the Artwork itself, exclusive of the architectural engineering design of the facility or site where the Artwork will be displayed), production and mounting of Artwork and direct administrative costs of Artists. Administrative costs of DOT/PF, ASCA and the Architect related to Artwork, costs related to a dedication or "unveiling" of Artwork, and

the Client Agency's maintenance and recurring operational utility costs shall not be charged to the amount for public Artwork.

13.6.4 (Activity 4-5) Project Manager establishes in writing an Artwork Selection Committee consisting of the Project Manager (Chairperson) and a designated Individual from ASCA, the Client and the Architect. If the amount for public Artwork exceeds \$50,000 for a building or facility, the Commissioner may appoint one additional member and the five designated persons may elect to add one community representative to the Committee. Project Manager must notify the Commissioner if Artwork will exceed \$50,000 to determine if such additional committee members will be designated. These individuals may receive assistance from facility users, community representatives, public art panel members or the ASCA Visual Arts Council; however, the Artwork Selection Committee shall consist only of the designated (4-6) individuals.

13.6.5 (Activity 5-6) Architect (or Committee if an Architect is not engaged) develops Artwork criteria (architectural and engineering constraints) during schematic and design development phases, in coordination with the Committee, and includes provisions in the Construction Documents to integrate selected Artwork.

A. The Architect's agreement with DOT/FF may require the above services only or it may include additional provisions for the Architect to manage Artwork procurement by directly entering into contracts with Artists approved by the Committee; the latter is preferred.

B. The Architect's compensation should be a negotiated fixed fee or fixed hourly rates for the Architect's direct labor plus any allowable reimbursable expenses plus the Architect's direct cost of any approved subcontracts with Artists. If an amount equal to 110% of the amount for public Artwork plus an estimated amount for associated reimbursable expenses is established in the Architect's Agreement, an Amendment to the Architect's Agreement (reference paragraph 6.10) may not be necessary after Artwork is selected.

13.6.6 (Activity 10-11) Option for purchase of existing Artwork. Committee may, without or after soliciting and evaluation Artists' proposals, select existing Artwork for the project. In such cases, the Project Manager shall arrange for procurement, delivery and installation. Purchase shall not be made prior to award of a construction contract for the facility.

13.6.7 (Activity 6-7) If existing Artwork is not selected, Project Manager prepares an advertisement for Artist's proposals incorporating the Architect's criteria and the desires of the Committee. ASCA distributes the advertisement, receives all Artist's proposals, eliminates inappropriate submittals to the Selection Committee. Each advertisement must include the following:

- A. Instructions for submittal (format, content, time, date, place) and an explanation of the selection process to be used (eg Design Construction - paragraph 6.8A)
- B. Identification of the project, generally desired form of Artwork, architectural and engineering constraints, anticipated engineering support (eg structural analysis of a sculpture) which the Artist may be required to obtain and insurance coverages which will be required.
- C. Any information and/or assistance to be furnished by others and by whom.
- D. Maximum amount of funding for Artwork with a statement that actual price to be paid the Artist(s) shall be negotiated.
- E. Information for obtaining a copy of the Agreement to be used.

13.6.8

(Activities 8-13 & 9-12) Following review and evaluation of Artist's proposals, the Committee may select existing Artworks (paragraph 6.6), select Artist(s) or elect to conduct a Design Competition among several designated Artists based on their conceptual design submitted with proposals.

- A. If a Design Competitions is to be held, the Architect or the Project Manager shall contract with each designated Artist in accordance with paragraph 6.10 and shall include a provision addressing the Design Competition and stating that the Agreement given a Notice to Proceed for production of the Artwork contingent upon the results of the Design Competition. The Selection Committee shall establish requirements and procedures for the Design Competition.
- B. Alaska resident Artists shall be selected where they are available and qualified, in accordance with AS.35.020(g) and 35.10.010.

13.6.9

(Activity 13-14) Project Manager shall obtain Negotiation Authority for the selected Artist(s) in accordance with Delegation of Authority P & P 10-0017. Approval for Negotiations (AFN), DOE/FP Form 25A251, shall be used.

13.6.10

(Activities 14-15 & 16-17) If existing Artwork is not selected, the Architect or Project Manager shall contract with designated Artist(s). Architect-Artist Agreements must contain provisions required by the Selection Committee and must contain provisions required by the Selection Committee and must be approved by the Project Manager prior to execution. DOE/FP - Artist Agreements must be executed using DOE/FP standard forms consisting of the Basic Agreement (Form 25A261), Appendix A - General Conditions for Artwork (Form 24A263), Appendix B - Statement of Services for Artwork (Form 25A264), Appendix C - Basis of Compensation for Artwork (Form 25A265) and Appendix D - Catalogue Worksheet (Form 25A266).

- 13.6.11 (Activity 17-18) Project Manager shall withhold Notice to Proceed to the Architect of the Artist(s) for Artwork production until a construction contract for the building or facility is awarded and shall attempt to insure that Artwork design is completed and approved by the Committee prior to bidding for the construction contract.
- 13.6.12 (Activity 18-19) Following receipt of Notice to Proceed, Artist(s) will produce, deliver and install Artwork in accordance with Agreement(s). The Architect or Project Manager shall coordinate delivery/installation with construction progress of the building or facility.
- 13.6.13 (Activity 19-20) Committee or its designated representative shall view the completed Artwork(s) installed within the building or facility and provide written approval and acceptance to the Project Manager. The Artist(s) may then receive final payment contingent upon receipt by the Project Manager of the documentation required for the public Artwork program in accordance with the Artwork Agreement(s). Client Agency owns Artwork after installation and final acceptance of the building or facility.
- 13.6.14 (Activity 20-21) Upon final acceptance of the building or facility, the unused amount for public Artwork shall be placed in the Art in Public Places Fund (amount not to exceed one percent of the sum of the original construction contract plus construction contingency, unless construction change orders changed the original program of the major activities for which the building or facility was constructed in which case the amount shall equal one percent of the construction contract plus the applicable change orders.)

13.7 IMPLEMENTATION

- 13.7.1 Regional Directors are responsible for coordinating with ASCA and establishing any supplementary procedures necessary to augment this Department procedure as applicable to each region's functions.

POLICY AND PROCEDURES

28-0002

1 OF 6

Effective Date

December 1, 1981

SUBJECT

Procurement of Artwork for Public Buildings and Facilities

Supersedes P & P No.

N/A

Dated

N/A

APPROVED BY

James Bates

DIVISION

Support Services

SECTION

Contracts Administration

CHAPTER TITLE

Procedure

1.0 PURPOSE

1.1 To promulgate standard departmental procedures for the selection of Artists and Artwork for public buildings and facilities.

2.0 POLICY

2.1 To select Artists and Artwork for public buildings and facilities in an objective manner resulting in the acquisition of Artwork consistent with A.S. 35.27, and 44.27.

3.0 DISTRIBUTION

3.1 All holders of the Policy and Procedures Manual and the Alaska State Council on the Arts (ASCA).

4.0 DEFINITIONS

4.1 Artwork - All original forms of visual art objects created by an Artist which may include paintings, drawings, ceramics, fiberwork, sculpture, graphics (not signage), murals, photographs, metalwork, mixed media work, limited edition original prints (not reproductions) and Native crafts objects.

4.2 Artist - A practitioner in the visual arts, generally recognized by critics and peers. A project Architect or a member of the Architect's firm will not be considered an eligible artist.

4.3 Agreement - A legal document that prescribes legal, regulatory and administrative provisions affecting the rights and obligations of the parties and the work or services (eg Artwork) to be provided.

4.4 Architect - The project designer engaged by DOT/PF.

4.5 Project Manager - DOT/PF representative and Artist's primary point of contact with DOT/PF.

4.6 Client Agency - The Department, Division, School District, Municipality, etc., that generated the project for which funds are designated for Artwork.

4.7 Construction Cost - The cost of building or facility construction approved by the State legislature, exclusive of the cost of land acquisition, site investigation, design services, administration, equipment and any other costs not specifically incurred within the construction contract. Participatory construction funding by a Federal Agency or by the Division of Risk Management is not included in such cost as used within this procedure.

4.8 Public Buildings and Facilities - Schools, office buildings, court buildings and other facilities designed for substantial public use and vessels of the State ferry system.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POLICY AND PROCEDURES

Effective Date

December 1, 1981

SUBJECT

Procurement of Artwork for Public Buildings and Facilities

Supersedes P & P No.

Dated

N/A

N/A

APPROVED BY



DIVISION

Support Services

SECTION

Contracts Administration

CHAPTER TITLE

Procedure

5.0 DIAGRAM OF PROCEDURE

5.1 Page 6 contains a summary diagram of this procedure. Each activity is identified by two numbers (eg 19-20) which are referenced in the procedural discussion herein.

6.0 PROCEDURE

- 6.1 (Activity 1-2) Following each legislative session, DOT/PF (Planning and Programming) provides ASCA with an informal summary of capital projects which identifies proposed buildings and facilities for which Artwork may be required.
- 6.2 (Activity 2-3) DOT/PF (Design and Construction Regions) assigns a Project Manager for each building and facility, who will concurrently initiate this procedure for procurement of Artwork and the selection procedure (P&P 28-8000) for architectural services.
- 6.3 (Activity 3-4) Project Manager and the designated Client's representative for the project decide if a percentage (amount) for public Artwork is required in accordance with AS 35.17.020 and 44.27.050. The amount for public Artwork shall be at least one percent of the construction cost.
- A. If a project consists of new construction or remodel/renovation of existing building or facility, the amount for public Artwork is required. However, remodel/renovation does not include maintenance, repair, code upgrade, heating renovation, etc.
- B. If the estimated construction cost is \$250,000 or less or if the building or facility is not for substantial public use, the amount for public Artwork shall be deposited in the Art in Public Places Fund after final acceptance of the facility (paragraph 6.14).
- C. If the estimated construction cost is greater than \$250,000, the amount for public Artwork shall be expended only for the actual costs of design (which may include engineering for the Artwork itself, exclusive of the architectural engineering design of the facility or site where the Artwork will be displayed), production and mounting of Artwork and direct administrative costs of Artists. Administrative costs of DOT/PF, ASCA and the Architect related to Artwork, costs related to a dedication or "unveiling" of Artwork, and the Client Agency's maintenance and recurring operational utility costs shall not be charged to the amount for public Artwork.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

28-8002

3 OF 6

Effective Date

December 1, 1981

SUBJECT

Procurement of Artwork for Public Buildings and
Facilities

Supersedees P & P No.

N/A

Dated

N/A

APPROVED BY

Procedure

DIVISION

Support Services

SECTION

Contracts Administration

CHAPTER TITLE

- 6.4 (Activity 4-5) Project Manager establishes in writing an Artwork Selection Committee consisting of the Project Manager (Chairperson) and a designated Individual from ASCA, the Client and the Architect. If the amount for public Artwork exceeds \$50,000 for a building or facility, the Commissioner may appoint one additional member and the five designated persons may elect to add one community representative to the Committee. Project Manager must notify the Commissioner if Artwork will exceed \$50,000 to determine if such additional committee members will be designated. These individuals may receive assistance from facility users, community representatives, public art panel members or the ASCA Visual Arts Council; however, the Artwork Selection Committee shall consist only of the designated (4-6) individuals.
- 6.5 (Activity 5-6) Architect (or Committee if an Architect is not engaged) develops Artwork criteria (architectural and engineering constraints) during schematic and design development phases, in coordination with the Committee, and includes provisions in the Construction Documents to integrate selected Artwork.
- A. The Architect's agreement with DOT/PF may require the above services only or it may include additional provisions for the Architect to manage Artwork procurement by directly entering into contracts with Artists approved by the Committee; the latter is preferred.
- B. The Architect's compensation should be a negotiated fixed fee or fixed hourly rates for the Architect's direct labor plus any allowable reimbursable expenses plus the Architect's direct cost of any approved subcontracts with Artists. If an amount equal to 110% of the amount for public Artwork plus an estimated amount for associated reimbursable expenses is established in the Architect's Agreement, an Amendment to the Architect's Agreement (reference paragraph 6.10) may not be necessary after Artwork is selected.
- 6.6 (Activity 10-11) Option for purchase of existing Artwork. Committee may, without or after soliciting and evaluating Artists' proposals, select existing Artwork for the project. In such cases, the Project Manager shall arrange for procurement, delivery and installation. Purchase shall not be made prior to award of a construction contract for the facility.
- 6.7 (Activity 6-7) If existing Artwork is not selected, Project Manager prepares an advertisement for Artist's proposals incorporating the Architect's criteria and the desires of the Committee. ASCA distributes advertisement, receives all Artist's proposals, eliminates inappropriate submittals and presents acceptable proposals and a summary of the eliminated submittals to the Selection Committee. Each advertisement must include the following:
- A. Instructions for submittal (format, content, time, date, place) and an explanation of the selection process to be used (e.g. Design Competition - paragraph 6.8A).

STATE OF ALASKA
 DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

28-8002 4 OF 6

Effective Date
 December 1, 1981

SUBJECT
 Procurement of Artwork for Public Buildings and Facilities

Supersedes P & P No. N/A
 Dated N/A

AFFIRMED BY


DIVISION SECTION CHAPTER TITLE
 Support Services Contracts Administration Procedure

- B. Identification of the project, generally desired form of Artwork, architectural and engineering constraints, anticipated engineering support (eg. structural analysis of a sculpture) which the Artist may be required to obtain and insurance coverages which will be required.
- C. Any information and/or assistance to be furnished by others and by whom.
- D. Maximum amount of funding for Artwork with a statement that actual price to be paid the Artist(s) shall be negotiated.
- E. Information for obtaining a copy of the Agreement to be used.
- 6.8 (Activities 8-13 & 9-12) Following review and evaluation of Artists' proposals, the Committee may select existing Artworks (paragraph 6.6), select Artist(s) or elect to conduct a Design Competition among several designated Artists based on their conceptual design submitted with proposals.
- A. If a Design Competition is to be held, the Architect or the Project Manager shall contract with each designated Artist in accordance with paragraph 6.10 and shall include a provision addressing the Design Competition and stating that the Agreement may be terminated following completion of the design phase or the Artist given a Notice to Proceed for production of the Artwork contingent upon the results of the Design Competition. The Selection Committee shall establish requirements and procedures for the Design Competition.
- B. Alaska resident Artists shall be selected where they are available and qualified, in accordance with AS.35.27.020(g) and 36.10.010.
- 6.9 (Activity 13-14) Project Manager shall obtain negotiation Authority for the selected Artist(s) in accordance with Delegation of Authority P&P '0-0017. Approval for Negotiations (AFK), DOT/PP Form 25A251, shall be used.
- 6.10 (Activities 14-15 & 16-17) If existing Artwork is not selected, the Architect or Project Manager shall contract with designated Artist(s). Architect-Artist Agreements must contain provisions required by the Selection Committee and must be approved by the Project Manager prior to execution. DOT/PP - Artist Agreements must be executed using DOT/PP standard forms consisting of the Basic Agreement (Form 25A261), Appendix A - General Conditions for Artwork (Form 25A263), Appendix B - Statement of Services for Artwork (Form 25A264), Appendix C - Basis of Compensation for Artwork (Form 25A265) and Appendix D - Catalogue Worksheet (Form 25A266).

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
 POLICY AND PROCEDURES

Effective Date

December 1, 1981

SUBJECT

Procurement of Artwork for Public Buildings and Facilities

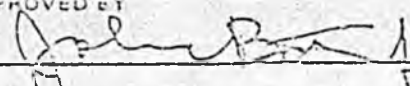
Supersedes P & P No.

N/A

Dated

N/A

APPROVED BY



DIVISION

Support Services

SECTION

Contracts Administration

CHAPTER TITLE

Procedure

6.11 (Activity 17-18) Project Manager shall withhold Notice to Proceed to the Architect or the Artist(s) for Artwork production until a construction contract for the building or facility is awarded and shall attempt to insure that Artwork design is completed and approved by the Committee prior to bidding for the construction contract.

6.12 (Activity 18-19) Following receipt of Notice to Proceed, Artist(s) will produce, deliver and install Artwork in accordance with Agreement(s). The Architect or Project Manager shall coordinate delivery/installation with construction progress of the building or facility.

6.13 (Activity 19-20) Committee or its designated representative shall view the completed Artwork(s) installed within the building or facility and provide written approval and acceptance to the Project Manager. The Artist(s) may then receive final payment contingent upon receipt by the Project Manager of the documentation required for the public Artwork program in accordance with the Artwork Agreement(s). Client Agency owns Artwork after installation and final acceptance of the building or facility.

6.14 (Activity 20-21) Upon final acceptance of the building or facility, the unused amount for public Artwork shall be placed in the Art in Public Places Fund (amount not to exceed one percent of the sum of the original construction contract plus construction contingency, unless construction change orders changed the original program of the major activities for which the building or facility was constructed in which case the amount shall equal one percent of the construction contract plus the applicable change orders.)

7.0 IMPLEMENTATION

7.1 Regional Directors are responsible for coordinating with ASCA and establishing any supplementary procedures necessary to augment this Department procedure as applicable to each region's functions.

MEMORANDUM

State of Alaska

TO: The Honorable Marshall L. Lind
Commissioner
Department of Education

DATE: September 22, 1982

FILE NO: J66-511-82

TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Applicability of
AS 35.27 to Public
Schools

By: *THK*
Thomas H. Robertson
Assistant Attorney General

You have asked whether AS 35.27, which mandates the acquisition of art works for use in state buildings and facilities, applies to the following school facilities: (1) school facilities financed and constructed by the State of Alaska, but owned by school districts; (2) school facilities financed by the State of Alaska, but constructed and owned by school districts; (3) school facilities financed, constructed and owned by municipalities; and (4) school facilities constructed and owned by municipalities, but partially financed under AS 43.18.105-135.

The answer to your question is readily apparent from the relevant statutes. Although AS 35.27.010 broadly refers to the use of "a portion of appropriations for capital expenditures", the operative language of AS 35.27.020 and AS 35.27.030 is more limited. AS 35.27.020 provides:

Sec. 35.27.020. ART REQUIREMENTS FOR PUBLIC BUILDINGS AND FACILITIES. (a) A building or facility constructed after June 30, 1975, shall include works of art, including but not limited to sculptures, paintings, murals or objects relating to Native art.

(b) The department, before preparing plans and specifications for buildings and facilities, shall consult with the Alaska State Council on the Arts regarding the desirability of inclusion of works of art.

(c) At least one percent or, in the case of a rural school facility, at least one-half of one percent of the construction cost of a building or facility approved for construction by the legislature after September 1, 1977, will be reserved for the following purposes: the design, construction, mounting and administration of works of art in a

school, office building, vessel of the marine highway system, or other building or facility which is subject to substantial public use.

(d) A building or facility with an estimated construction cost of less than \$250,000 is exempt from the requirements of this chapter unless inclusion of works of art in the design and construction of the building or facility is specifically authorized by the department.

(e) The artist who executes these works of art shall be selected by the architect for the department with the approval of the department, after consultation with the Alaska State Council on the Arts and the principal user of the public buildings or facilities.

(f) The artist who executes these works of art in the public schools shall be selected by the superintendent of a school district in which a public school is to be built with the approval of the school board. Should the department find in the best interest of the state that the selection of the artist who executes these works of art by the superintendent may result in a cost overrun to the state or delay of construction, the department shall make the selection of the artist in consultation with the superintendent.

(g) The architect, superintendent, department, and the Alaska State Council on the Arts shall encourage the use of state cultural resources in these art works and the selection of Alaska resident artists for the commission of these art works.

AS 35.27.030 provides, in relevant part:

Sec. 35.27.030. DEFINITIONS. In this chapter

(1) "department" means the Department of Transportation and Public Facilities;

(2) "building" or "facility" means a permanent improvement constructed by the department; the term

(A) includes, but is not limited to,

(i) schools, office buildings, and court buildings;

(ii) other buildings which the commissioner determines are designed for substantial public use;

(iii) boats and vessels of the marine highway system;

(iv) transportation facilities which accommodate traveling passengers;

(B) excludes other transportation facilities.

The first statute addresses the acquisition of art works for state "buildings" and "facilities". The second limits the scope of those terms to improvements "constructed by" the Department of Transportation and Public Facilities.

In light of the foregoing, we conclude that AS 35.27 applies only to school facilities constructed by the Department of Transportation and Public Facilities. We wish to emphasize, however, that nothing in AS 35.27 precludes the acquisition of art works for use in other structures. Incorporating art works into schools not constructed by the Department of Transportation and Public Facilities would, moreover, appear to promote the policy articulated in AS 35.27.010.

If you have any questions, or wish to seek amendment of AS 35.27, please do not hesitate to contact this office.

THR/jal

cc: Alaska State Council
on the Arts



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Perch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 10, 1983

MEMORANDUM

TO: Representative Al Adams

FROM: Nancy Pease *Nancy Pease*
Legislative Analyst

RE: Art in Public Places Program
Research Request 83-228

Louann Cutler of your staff requested that we provide records of the artwork purchased by the State under its Percent for Art in Public Places Program. She asked for a description of each individual work of art, the building and city where it is located, the cost, and the name of the artist.

As you may know, the Art in Public Places Program originated in 1975 with the State requirement that a percent of State capital expenditures for public buildings and facilities be set aside for the acquisition of works of art to be displayed in those facilities (AS 35.27). The percent reserved must be at least one percent of the facility's cost of construction as approved by the State legislature, or in the case of rural school facilities, at least one-half of one percent. If the facility will cost less than \$250,000 or will not receive substantial public use, the amount for art is deposited in the Art in Public Places Fund. Since the program's inception, the State has spent at least \$1,811,659.20 on art for public places.

We forwarded to you on November 7 a record of individual art acquisitions provided to us by Christine D'Arcy, Executive Director of the Alaska State Council on the Arts. This list, categorizing individual acquisitions by the school district or city where each is displayed, appears to be the most current and complete information available. The State agency responsible for administering the program (the Department of Transportation and Public Facilities) provided us with identical information on non-school facilities along with a copy of departmental procedures for approving and selecting acquisitions under the program (see attachment).

You may notice that the list doesn't mention any artwork acquired for the Juneau or Sitka School Districts or for Municipal public facilities in Anchorage. According to Ms. D'Arcy, the Juneau and Sitka School Districts have apparently not complied with the State requirement. On

Representative Adams
November 10, 1983
Page 2

the other hand, the Municipality of Anchorage is very active in promoting art in public places under its own Municipal percent for art program. This program is similar to the State's, requiring that one percent of the cost of public facilities go to the purchase of artworks, but the City's selection procedure is designed to incorporate a high level of community participation. Molly Jones, Director of Fine Arts for the Municipality of Anchorage, can provide more information on the operation of the program or its acquisitions, if you are interested.

I hope this information is useful. Please let us know if you have any questions or if we can be of further assistance.

NP
Attachment

Artwork in Public Facilities Constructed or Renovated by
the Department of Transportation and Public Facilities

Central Region

<u>Location</u> Project Name/Project Number	<u>Artwork</u>	<u>Artist/Address</u>	<u>Contract Price</u>
<u>Anchorage:</u>			
Anchorage Int'l Terminal/ H60004	Descending Flight Plane, sculpture	Gary Marx, Anchorage	\$46,000
	Sculpture	Seth Seiderman, San Francisco	\$46,000
	Fiber	Dana Boussard, Montana	\$46,000
Anchorage Oil & Gas Addition H60001	Painting	Marvin Mangus, Anchorage	\$1,950
Cook Inlet Pre-Trial Facility H90619	Ceramic Sculpture Supergraphics	Alex Combs, Halibut Cove	\$55,000
		Clark Mishler, Anchorage/ Mark Hoffman, Seattle	\$30,000
	Ceramic Relief	Michelle Corder, Joint Venture w/Michael Sheppard, Soldotna	\$19,786
	Wall Painting	Gary O. Utermohle, College	\$20,000
Fort Richardson Fish Hatchery/H80364	Limestone Relief Carved Panels	Keith Appel, Anchorage	\$18,000
		Jim Schoppert, Carnation, WA	\$20,000
McLaughlin Youth Center Gym H90626	Wall Sculpture	Allan Crawford, San Francisco	\$13,000
Pioneer Home Nursing Wing H90629	Fireweed, fiber Wildflowers, Painting Tapestry Stained Glass Wood Panels Photo Piece Portable Works Collection	Jeanne Leffingwell, Anchorage	\$15,000
		Gail Parsons, Homer	\$15,000
		Charlotte Van Zant, Fairbanks	\$10,000
		Michael Kennedy, Seattle	\$10,000
		Victor Hiles, Homer	\$10,000
		Tony Rubey, Anchorage	\$10,000
		Susan Ogle, Anchorage	\$7,700
		Majorie Leavens, Anchorage	
		Nancy Taylor, Idaho	
		Arthur Higgins, Wasilla	
		Clark Mishler, Anchorage	
		Ed Nolde, Anchorage	
		Janis Carty Neill, Eagle River	
Marvin Mangus, Anchorage			
Lynn Saupe, Kodiak			
M.A. Mullins, Anchorage			
Gary Lyon, Homer			

Artwork continuedCentral Region

<u>Location</u> Project Name/Project Number	<u>Artwork</u>	<u>Artist/Address</u>	<u>Contract Price</u>
<u>Eagle River:</u>			
Alaska Women's Facility H60043	Parrotgrass, fiber	Jeanne Leffingwell, Anchorage	\$8,000
	untitled, bronze	Karen Olanna, Shishmaref	\$10,000
	Mountain Pod, welded, sculpture	Arthur Higgins, Wasilla	\$10,000
Hiland Mountain Correctional Center/H60076	An Eagles View,	Celia Anderson, Eagle River	\$17,500
	Fiber, assemblage	Lorraine Alba, Anchorage	\$5,000
	Aluminum Panels	Ike Hay, Pennsylvania	\$12,400
	Porcelain enamel on steel panels	Keith Appel, Anchorage	\$7,500
<u>Kasilof:</u>			
Kasilof Fish Hatchery H60052	Crooked Creek Allegory, limestone	Keith Appel, Anchorage	\$25,000
<u>Kenai/Soldotna:</u>			
Soldotna Public Safety H90621	Tapestry Copper Panels	Charlotte Van Zant, Anchorage	\$9,300
		Harold Balazs, Washington	\$2,000
Trail Lake Fish Hatchery H80331	Steel Sculpture Enamel on Steel	Carson Boyson, Petersburg	\$30,000
		Harold Balazs, Washington	\$30,000
<u>Palmer:</u>			
Palmer Correctional Center H60084	Carpet (collage) Sculpture Enamel on Steel Wall Graphics	Nancy Stonington, Idaho	\$14,400
		Harold Balazs, Washington	\$20,000
		Harold Balazs, Washington	\$4,500
		Kay Slusarenko, Oregon	\$4,475
<u>Seward:</u>			
Seward Armory Reconstruction H60077	Fiber Art	Carolyn Strand, Anchorage	\$4,000

Artwork continued

Northern Region

<u>Location</u> Project Name/Project Number	<u>Artwork</u>	<u>Artist/Address</u>	<u>Contract Price</u>
<u>Fairbanks:</u>			
Fairbanks Airport/Customs H79028	Ceramic Tile Canvas	Polly Lee, Petersburg Jane Brodrick, Fairbanks	\$4,000 — \$5,000
Fairbanks Airport Expansion H79352	Camera Photomural Exterior	Ron Klein, Juneau 4 finalists - no award	\$27,000 \$80,000
Fairbanks Correctional Center Expansion/H60071	Sculpture Fiber Wall Painting	Melvin Olanna, Shishmaref Carolyn Strand, Anchorage Kay Slusarenko, Oregon	\$30,000 \$10,000 \$15,000
Fairbanks Int'l Airport H80053	Fibers Fiber Panels	Charlotte Van Zant, Fairbanks Jeanne Leffingwell, Anchorage	\$8,285 — \$4,152 —
Fairbanks Public Safety Building/H90620	Sculpture Watercolor Series Canvas Series Works Collection	Gerald, Conaway, Anchorage Dot Bardarson, Seward William Kimura, Anchorage Fairbanks Artists	\$20,000 \$5,250 \$5,250 \$5,000
Fairbanks Youth Facility H90624	Tapestry Wood/Copper Relief Cedar Relief Panels (Batik) Portable Works	Charlotte Van Zant, Fairbanks Robert Harper, Washington James Schoppert, Fairbanks Jennifer Bellingher, Idaho (formerly Ketchikan) Fairbanks Artists	\$6,000 \$6,000 \$3,500 \$2,400 \$2,500
<u>Kotzebue:</u>			
Kotzebue Court Facility H60011	Carved Panels	Sandra Stolle, Selawik	\$1,200
Nome:			
Nome Youth Facility/H90627	Drawing Series	Bill Ray, Juneau	\$8,000
<u>Tok:</u>			
Tok Facility Upgrade/H60114		Wanda Chin, Fairbanks	\$8,250
<u>Valdez:</u>			
Harborview Developmental Center/H79359	Sculpture	Lloyd Hamrol, California	\$34,000

Artwork continued

Southeastern Region

<u>Location</u> Project Name/Project Number	<u>Artwork</u>	<u>Artist/Address</u>	<u>Contract Price</u>
<u>Alaska Marine Highway:</u>			
M/V Matanuska (ferry)	Collected Works	Various Artists	\$10,000
M/V Taku (ferry)	Collected Works	Various Artists	\$14,000
<u>Juneau:</u>			
Auke Bay Marine Terminal H78002	Alaska Seascape	Nancy Stonington, Idaho	\$5,300
Juneau Data Processing Ctr. H60115	Sculpture	Paul Sisko, New Jersey	\$4,200
Juneau Woman/Child Detention H80340	Tapestry	Bridgette Cooper, Palmer	\$2,400
<u>Ketchikan:</u>			
Ketchikan Regional Jail H90628	Northern Harmony	Judith Aiello, Oregon	\$10,000
	Bronze Panels	Nathan Jackson, Ketchikan	\$16,000
	Wall Piece	Polly Lee, Petersburg	\$5,000
	"To the Oyster/ Pearl Remains a Grain of Sand"	James Schoppert, Fairbanks	\$4,000
	Arctic Sentinels	Carolyn Strand, Anchorage	\$4,000
Ketchikan Pioneer Home H90630	Wall Hanging	Jennifer Bellinger, Idaho	\$5,000
	Painting	Kenneth DeRoux, Juneau	\$5,000
	Stained Glass	Michael Kennedy, Washington	\$5,000
	Wood Carving	James Schoppert, Washington	\$5,000
	Tapestry	Charlotte Van Zant, Fairbanks	\$9,000
<u>Petersburg:</u>			
Petersburg Marine Terminal H78004	Devils Thumb	Polly Lee, Petersburg	\$1,700
<u>Skagway:</u>			
Skagway Marine Terminal H78016	Chilkoot Pass	Carson Boyson, Petersburg	\$6,000

SECTION 13 - ARTWORK FOR PUBLIC BUILDINGS AND FACILITIES

NOTE: The following section is based on DOT/PF Policy and Procedure #28-8002 entitled "Procurement of Artwork for Public Buildings and Facilities". Copies of this Policy and Procedure are available upon request.

- 13.0 PURPOSE
- 13.0.1 To promulgate standard departmental procedures for the selection of Artists and Artwork for public buildings and facilities.
- 13.2 POLICY
- 13.2.1 To select Artists and Artwork for public buildings and facilities in an objective manner resulting in the acquisition of Artwork consistent with A.S. 35.27, and 44.27.
- 13.3 DISTRIBUTION
- 13.3.1 All holders of the Policy and Procedures Manual and the Alaska State Council on the Arts (ASCA).
- 13.4 DEFINITIONS
- 13.4.1 Artwork - All original forms of visual art objects created by an Artist which may include paintings, drawings, ceramics, fiberwork, sculpture, graphics (not signage), murals, photographs, metalwork, mixed media work, limited edition original prints (not reproductions) and Native crafts objects.
- 13.4.2 Artist - A practitioner in the visual arts, generally recognized by critics and peers. A project Architect or member of the Architect's firm will not be considered an eligible artist.
- 13.4.3 Agreement - A legal document that prescribes legal, regulatory and administrative provisions affecting the rights and obligations of the parties and the work or services (eg Artwork) to be provided.
- 13.4.4 Architect - The project designer engaged by DOT/PF.
- 13.4.5 Project Manager - DOT/PF representative and Artist's primary point of contact with DOT/PF.
- 13.4.6 Client Agency - The Department, Division, School District, Municipality, etc., that generated the project for which funds are designated for Artwork.
- 13.4.7 Construction Cost - The cost of building or facility construction approved by the State legislature, exclusive of the cost of land acquisition, site investigation, design services, administration, equipment and any other costs not specifically incurred within

the construction contract. Participatory construction funding by a Federal Agency or by the Division of Risk Management is not included in such cost as used within this procedure.

13.4.8 Public Buildings and Facilities - Schools, office buildings, court buildings, and other facilities designed for substantial public use and vessels of the State ferry system.

13.5 DIAGRAM OF PROCEDURE

13.5.1 Page 6 contains a summary diagram of this procedure. Each activity is identified by two numbers (eg 19-20) which are referenced in the procedural discussion herein.

13.6 PROCEDURE

13.6.1 (Activity 1-2) Following each legislative session, DOT/PF (Planning and Programming) provides ASCA with an informal summary of capital projects which identifies proposed buildings and facilities for which Artwork may be required.

13.6.2 (Activity 2-3) DOT/PF (Design and Construction Regions) assigns a Project Manager for each building and facility, who will concurrently initiate this procedure for procurement of Artwork and the selection procedure (P & P 28-8000) for architectural services.

13.6.3 (Activity 3-4) Project Manager and the designated Client's representative for the project decide if a percentage (amount) for public Artwork is required in accordance with A35.17.020 and 44.27.060. The amount for public Artwork shall be at least one percent of the construction cost.

- A. If a project consists of new construction or remodel/renovation of existing building or facility, the amount for public Artwork is required. However, remodel/renovation does not include maintenance, repair, code upgrade, heating renovation, etc.
- B. If the estimated construction cost is \$250,000 or less or if the building or facility is not for substantial public use, the amount for public Artwork shall be deposited in the Art in Public Places Fund after final acceptance of the facility (paragraph 6.14).
- C. If the estimated construction cost is greater than \$250,000, the amount for public Artwork shall be expended only for the actual costs of design (which may include engineering for the Artwork itself, exclusive of the architectural engineering design of the facility or site where the Artwork will be displayed), production and mounting of Artwork and direct administrative costs of Artists. Administrative costs of DOT/PF, ASCA and the Architect related to Artwork, costs related to a dedication or "unveiling" of Artwork, and

the Client Agency's maintenance and recurring operational utility costs shall not be charged to the amount for public Artwork.

13.6.4 (Activity 4-5) Project Manager establishes in writing an Artwork Selection Committee consisting of the Project Manager (Chairperson) and a designated Individual from ASCA, the Client and the Architect. If the amount for public Artwork exceeds \$50,000 for a building or facility, the Commissioner may appoint one additional member and the five designated persons may elect to add one community representative to the Committee. Project Manager must notify the Commissioner if Artwork will exceed \$50,000 to determine if such additional committee members will be designated. These individuals may receive assistance from facility users, community representatives, public art panel members or the ASCA Visual Arts Council; however, the Artwork Selection Committee shall consist only of the designated (4-6) individuals.

13.6.5 (Activity 5-6) Architect (or Committee if an Architect is not engaged) develops Artwork criteria (architectural and engineering constraints) during schematic and design development phases, in coordination with the Committee, and includes provisions in the Construction Documents to intergrade selected Artwork.

A. The Architect's agreement with DOT/FF may require the above services only or it may include additional provisions for the Architect to manage Artwork procurement by directly entering into contracts with Artists approved by the Committee; the latter is preferred.

B. The Architect's compensation should be a negotiated fixed fee or fixed hourly rates for the Architect's direct labor plus any allowable reimbursable expenses plus the Architect's direct cost of any approved subcontracts with Artists. If an amount equal to 110% of the amount for public Artwork plus an estimated amount for associated reimbursable expenses is established in the Architect's Agreement, an Amendment to the Architect's Agreement (reference paragraph 6.10) may not be necessary after Artwork is selected.

13.6.6 (Activity 10-11) Option for purchase of existing Artwork. Committee may, without or after soliciting and evaluation Artists' proposals, select existing Artwork for the project. In such cases, the Project Manager shall arrange for procurement, delivery and installation. Purchase shall not be made prior to award of a construction contract for the facility.

13.6.7 (Activity 6-7) If existing Artwork is not selected, Project Manager prepares an advertisement for Artist's proposals incorporating the Architect's criteria and the desires of the Committee. ASCA distributes the advertisement, receives all Artist's proposals, eliminates inappropriate submittals to the Selection Committee. Each advertisement must include the following:

- A. Instructions for submittal (format, content, time, date, place) and an explanation of the selection process to be used (eg Design Construction - paragraph 6.8A)
- B. Identification of the project, generally desired form of Artwork, architectural and engineering constraints, anticipated engineering support (eg structural analysis of a sculpture) which the Artist may be required to obtain and insurance coverages which will be required.
- C. Any information and/or assistance to be furnished by others and by whom.
- D. Maximum amount of funding for Artwork with a statement that actual price to be paid the Artist(s) shall be negotiated.
- E. Information for obtaining a copy of the Agreement to be used.

13.6.8 (Activities 8-13 & 9-12) Following review and evaluation of Artist's proposals, the Committee may select existing Artworks (paragraph 6.6), select Artist(s) or elect to conduct a Design Competition among several designated Artists based on their conceptual design submitted with proposals.

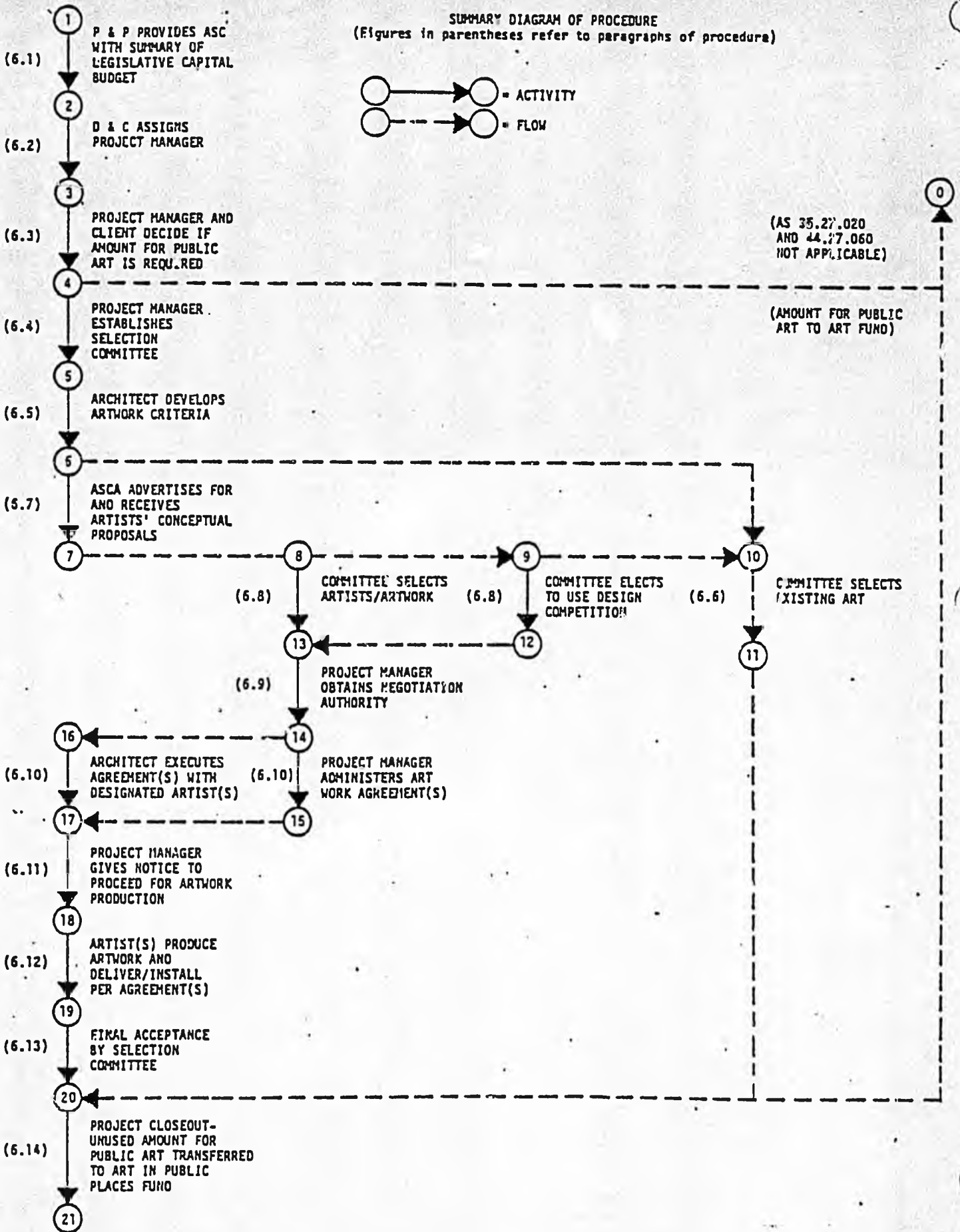
- A. If a Design Competitions if to be held, the Architect or the Project Manger shall contract with each designated Artist in accordance with paragraph 6.10 and shall include a provision addressing the Design Competition and stating that the Agreement given a Notice to Proceed for production of the Artwork contingent upon the results of the Design Competition. The Selection Committee shall establish requirements and procedures for the Design Competition.
- B. Alaska resident Artists shall be selected where they are available and qualified, in accordance with AS.35.020(g) and 36.10.010.

13.6.9 (Activity 13-14) Project Manager shall obtain Negotiation Authority for the selected Artist(s) in accordance with Delegation of Authority P & P 10-0017. Approval for Negotiations (AFN), DOT/PF Form 25A251, shall be used.

13.6.10 (Activities 14-15 & 16-17) If existing Artwork is not selected, the Architect or Project Manager shall contract with designated Artist(s). Architect-Artist Agreements must contain provisions required by the Selection Committee and must contain provisions required by the Selection Committee and must be approved by the Project Manager prior to execution. DOT/PF - Artist Agreements must be executed using DOT/PF standard forms consisting of the Basic Agreement (Form 25A261), Appendix A - General Conditions for Artwork (Form 24A263), Appendix B - Statement of Services for Artwork (From 25A264), Appendix C - Basis of Compensation for Artwork (Form 25A265) and Appendix D - Catalogue Worksheet (Form 25A266).

- 13.6.11 (Activity 17-18) Project Manager shall withhold Notice to Proceed to the Architect of the Artist(s) for Artwork production until a construction contract for the building or facility is awarded and shall attempt to insure that Artwork design is completed and approved by the Committee prior to bidding for the construction contract.
- 13.6.12 (Activity 18-19) Following receipt of Notice to Proceed, Artist(s) will produce, deliver and install Artwork in accordance with Agreement(s). The Architect or Project Manager shall coordinate delivery/installation with construction progress of the building or facility.
- 13.6.13 (Activity 19-20) Committee or its designated representative shall view the completed Artwork(s) installed within the building or facility and provide written approval and acceptance to the Project Manager. The Artist(s) may then receive final payment contingent upon receipt by the Project Manger of the documentation required for the public Artwork program in accordance with the Artwork Agreement(s). Client Agency owns Artwork after installation and final acceptance of the building or facility.
- 13.6.14 (Activity 20-21) Upon final acceptance of the building or facility, the unused amount for public Artwork shall be placed in the Art in Public Places Fund (amount not to exceed one percent of the sum of the original construction contract plus construction contingency, unless construction change orders changed the original program of the major activities for which the building or facility was constructed in which case the amount shall equal one percent of the construction contract plus the applicable change orders.)
- 13.7 IMPLEMENTATION
- 13.7.1 Regional Directors are responsible for coordinating with ASCA and establishing any supplementary procedures necessary to augment this Department procedure as applicable to each region's functions.

SUMMARY DIAGRAM OF PROCEDURE
(Figures in parentheses refer to paragraphs of procedure)



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

28-0012

Effective Date

December 1, 1981

SUBJECT

Procurement of Artwork for Public Buildings and Facilities

Supersedes P & P No.

N/A

Dated

N/A

APPROVED BY

John Bates

DIVISION

Support Services

SECTION

Contracts Administration

CHAPTER TITLE

Procedure

- 1.0 PURPOSE
 - 1.1 To promulgate standard departmental procedures for the selection of Artists and Artwork for public buildings and facilities.
- 2.0 POLICY
 - 2.1 To select Artists and Artwork for public buildings and facilities in an objective manner resulting in the acquisition of Artwork consistent with A.S. 35.27, and 44.27.
- 3.0 DISTRIBUTION
 - 3.1 All holders of the Policy and Procedures Manual and the Alaska State Council on the Arts (ASCA).
- 4.0 DEFINITIONS
 - 4.1 Artwork - All original forms of visual art objects created by an Artist which may include paintings, drawings, ceramics, fiberwork, sculpture, graphics (not signage), murals, photographs, metalwork, mixed media work, limited edition original prints (not reproductions) and Native crafts objects.
 - 4.2 Artist - A practitioner in the visual arts, generally recognized by critics and peers. A project Architect or a member of the Architect's firm will not be considered an eligible artist.
 - 4.3 Agreement - A legal document that prescribes legal, regulatory and administrative provisions affecting the rights and obligations of the parties and the work or services (eg Artwork) to be provided.
 - 4.4 Architect - The project designer engaged by DOT/PF.
 - 4.5 Project Manager - DOT/PF representative and Artist's primary point of contact with DOT/PF.
 - 4.6 Client Agency - The Department, Division, School District, Municipality, etc., that generated the project for which funds are designated for Artwork.
 - 4.7 Construction Cost - The cost of building or facility construction approved by the State legislature, exclusive of the cost of land acquisition, site investigation, design services, administration, equipment and any other costs not specifically incurred within the construction contract. Participatory construction funding by a Federal Agency or by the Division of Risk Management is not included in such cost as used within this procedure.
 - 4.8 Public Buildings and Facilities - Schools, office buildings, court buildings and other facilities designed for substantial public use and vessels of the State ferry system.

POLICY AND PROCEDURES

28-8002

2 OF 6

Effective Date

December 1, 1981

SUBJECT

Procurement of Artwork for Public Buildings and Facilities

Supersedes P & P No.

Dated

N/A

N/A

APPROVED BY



DIVISION

Support Services

SECTION

Contracts Administration

CHAPTER TITLE

Procedure

5.0 DIAGRAM OF PROCEDURE

5.1 Page 6 contains a summary diagram of this procedure. Each activity is identified by two numbers (eg 19-20) which are referenced in the procedural discussion herein.

6.0 PROCEDURE

- 6.1 (Activity 1-2) Following each legislative session, DOT/PF (Planning and Programming) provides ASCA with an informal summary of capital projects which identifies proposed buildings and facilities for which Artwork may be required.
- 6.2 (Activity 2-3) DOT/PF (Design and Construction Regions) assigns a Project Manager for each building and facility, who will concurrently initiate this procedure for procurement of Artwork and the selection procedure (P&P 28-8000) for architectural services.
- 6.3 (Activity 3-4) Project Manager and the designated Client's representative for the project decide if a percentage (amount) for public Artwork is required in accordance with A35.17.020 and 44.27.060. The amount for public Artwork shall be at least one percent of the construction cost.
- A. If a project consists of new construction or remodel/renovation of existing building or facility, the amount for public Artwork is required. However, remodel/renovation does not include maintenance, repair, code upgrade, heating renovation, etc.
- B. If the estimated construction cost is \$250,000 or less or if the building or facility is not for substantial public use, the amount for public Artwork shall be deposited in the Art in Public Places Fund after final acceptance of the facility (paragraph 6.14).
- C. If the estimated construction cost is greater than \$250,000, the amount for public Artwork shall be expended only for the actual costs of design (which may include engineering for the Artwork itself, exclusive of the architectural engineering design of the facility or site where the Artwork will be displayed), production and mounting of Artwork and direct administrative costs of Artists. Administrative costs of DOT/PF, ASCA and the Architect related to Artwork, costs related to a dedication or "unveiling" of Artwork, and the Client Agency's maintenance and recurring operational utility costs shall not be charged to the amount for public Artwork.

POLICY AND PROCEDURES

28-8002

3 OF 6

Effective Date

December 1, 1981

SUBJECT

Procurement of Artwork for Public Buildings and Facilities

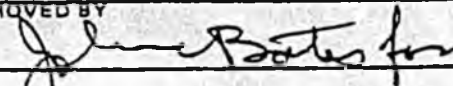
Supersedes P & P No.

N/A

Dated

N/A

APPROVED BY


 Procedure

DIVISION

Support Services

SECTION

Contracts Administration

CHAPTER TITLE

Procedure

- 6.4 (Activity 4-5) Project Manager establishes in writing an Artwork Selection Committee consisting of the Project Manager (Chairperson) and a designated Individual from ASCA, the Client and the Architect. If the amount for public Artwork exceeds \$50,000 for a building or facility, the Commissioner may appoint one additional member and the five designated persons may elect to add one community representative to the Committee. Project Manager must notify the Commissioner if Artwork will exceed \$50,000 to determine if such additional committee members will be designated. These individuals may receive assistance from facility users, community representatives, public art panel members or the ASCA Visual Arts Council; however, the Artwork Selection Committee shall consist only of the designated (4-6) individuals.
- 6.5 (Activity 5-6) Architect (or Committee if an Architect is not engaged) develops Artwork criteria (architectural and engineering constraints) during schematic and design development phases, in coordination with the Committee, and includes provisions in the Construction Documents to integrate selected Artwork.
- A. The Architect's agreement with DOT/PF may require the above services only or it may include additional provisions for the Architect to manage Artwork procurement by directly entering into contracts with Artists approved by the Committee; the latter is preferred.
- B. The Architect's compensation should be a negotiated fixed fee or fixed hourly rates for the Architect's direct labor plus any allowable reimbursable expenses plus the Architect's direct cost of any approved subcontracts with Artists. If an amount equal to 110% of the amount for public Artwork plus an estimated amount for associated reimbursable expenses is established in the Architect's Agreement, an Amendment to the Architect's Agreement (reference paragraph 6.10) may not be necessary after Artwork is selected.
- 6.6 (Activity 10-11) Option for purchase of existing Artwork. Committee may, without or after soliciting and evaluating Artists' proposals, select existing Artwork for the project. In such cases, the Project Manager shall arrange for procurement, delivery and installation. Purchase shall not be made prior to award of a construction contract for the facility.
- 6.7 (Activity 6-7) If existing Artwork is not selected, Project Manager prepares an advertisement for Artist's proposals incorporating the Architect's criteria and the desires of the Committee. ASCA distributes the advertisement, receives all Artist's proposals, eliminates inappropriate submittals and presents acceptable proposals and a summary of the eliminated submittals to the Selection Committee. Each advertisement must include the following:
- A. Instructions for submittal (format, content, time, date, place) and an explanation of the selection process to be used (eg Design Competition - paragraph 6.8A).

POLICY AND PROCEDURES

Effective Date

December 1, 1981

SUBJECT

Procurement of Artwork for Public Buildings and Facilities

Supersedes P & P No.

N/A

Dated

N/A

APPROVED BY

John Bates

DIVISION

Support Services

SECTION

Contracts Administration

CHAPTER TITLE

Procedure

- B. Identification of the project, generally desired form of Artwork, architectural and engineering constraints, anticipated engineering support (eg structural analysis of a sculpture) which the Artist may be required to obtain and insurance coverages which will be required.
- C. Any information and/or assistance to be furnished by others and by whom.
- D. Maximum amount of funding for Artwork with a statement that actual price to be paid the Artist(s) shall be negotiated.
- E. Information for obtaining a copy of the Agreement to be used.
- 6.8 (Activities 8-13 & 9-12) Following review and evaluation of Artists' proposals, the Committee may select existing Artworks (paragraph 6.6), select Artist(s) or elect to conduct a Design Competition among several designated Artists based on their conceptual design submitted with proposals.
- A. If a Design Competition is to be held, the Architect or the Project Manager shall contract with each designated Artist in accordance with paragraph 6.10 and shall include a provision addressing the Design Competition and stating that the Agreement may be terminated following completion of the design phase or the Artist given a Notice to Proceed for production of the Artwork contingent upon the results of the Design Competition. The Selection Committee shall establish requirements and procedures for the Design Competition.
- B. Alaska resident Artists shall be selected where they are available and qualified, in accordance with AS.35.27.020(g) and 36.10.010.
- 6.9 (Activity 13-14) Project Manager shall obtain Negotiation Authority for the selected Artist(s) in accordance with Delegation of Authority P&P 10-0017. Approval for Negotiations (AFN), DOT/PF Form 25A251, shall be used.
- 6.10 (Activities 14-15 & 16-17) If existing Artwork is not selected, the Architect or Project Manager shall contract with designated Artist(s). Architect-Artist Agreements must contain provisions required by the Selection Committee and must be approved by the Project Manager prior to execution. DOT/PF - Artist Agreements must be executed using DOT/PF standard forms consisting of the Basic Agreement (Form 25A261), Appendix A - General Conditions for Artwork (Form 25A263), Appendix B - Statement of Services for Artwork (Form 25A264), Appendix C - Basis of Compensation for Artwork (Form 25A265) and Appendix D - Catalogue Worksheet (Form 25A266).

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

28-0002

5 OF 6

Effective Date

December 1, 1981

SUBJECT

Procurement of Artwork for Public Buildings and Facilities

Supersedes P & P No.

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Dated

N/A

APPROVED BY

DIVISION

Support Services

SECTION

Contracts Administration

CHAPTER TITLE

Procedure

- 6.11 (Activity 17-18) Project Manager shall withhold Notice to Proceed to the Architect or the Artist(s) for Artwork production until a construction contract for the building or facility is awarded and shall attempt to insure that Artwork design is completed and approved by the Committee prior to bidding for the construction contract.
- 6.12 (Activity 18-19) Following receipt of Notice to Proceed, Artist(s) will produce, deliver and install Artwork in accordance with Agreement(s). The Architect or Project Manager shall coordinate delivery/installation with construction progress of the building or facility.
- 6.13 (Activity 19-20) Committee or its designated representative shall view the completed Artwork(s) installed within the building or facility and provide written approval and acceptance to the Project Manager. The Artist(s) may then receive final payment contingent upon receipt by the Project Manager of the documentation required for the public Artwork program in accordance with the Artwork Agreement(s). Client Agency owns Artwork after installation and final acceptance of the building or facility.
- 6.14 (Activity 20-21) Upon final acceptance of the building or facility, the unused amount for public Artwork shall be placed in the Art in Public Places Fund (amount not to exceed one percent of the sum of the original construction contract plus construction contingency, unless construction change orders changed the original program of the major activities for which the building or facility was constructed in which case the amount shall equal one percent of the construction contract plus the applicable change orders.)

7.0 IMPLEMENTATION

- 7.1 Regional Directors are responsible for coordinating with ASCA and establishing any supplementary procedures necessary to augment this Department procedure as applicable to each region's functions.