

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3046 SSA SB 317 (FILE 2) - SB 323 8672

after a public hearing whether or not zoning changes would be granted. In an action brought to set aside the zoning change on the ground that the planning commission had improperly met in secret, the court held that the California statute had not been violated, ruling that the law did not apply to subordinate agencies with purely advisory functions.⁴⁷ Previously, the California attorney general had declared that the statute did not apply to committees that "consist of less than a quorum of the members of the . . . body."⁴⁸ Shortly after the *Adler* decision, the California act was amended to cover any group, apparently including committees, which is supported by funds from the parent agency and on which officers of the agency serve in their official capacity; official advisory commissions have also been explicitly included.⁴⁹ Similarly, the Massachusetts legislature recently amended its statute to cover "every board, commission, committee and sub-committee, however elected, appointed or otherwise constituted, of any district, city or town."⁵⁰ Whether the courts will construe less explicit statutes as applying to subordinate committees and agencies is problematical. Since such groups have no power to make governmental decisions and since their recommendations must be considered in open session by the parent body, the need for public meetings is less compelling; indeed, privacy may facilitate the gathering of information as well as preliminary discussion. But if in practice recommendations are adopted with only perfunctory consideration by the parent group, the public will be deprived of information about the actual process of decision. And since there seems to be no particular reason for leaving subordinate groups always free to meet in private, the preponderant interest in informing the public seems sufficient to justify their inclusion.⁵¹

Certain governmental bodies are excluded from the operation of most statutes. The most important exceptions are founded on a determination that the business conducted by the body is such that the interests served by maintaining secrecy are more important than those promoted by informing the public. This is clearly the explanation for excluding juries and grand juries;⁵² even where such an exemption is not explicit it almost certainly would be implied. A similar appraisal

⁴⁷ *Id.* at 771-772, 7 Cal. Rep. at 810-11.

⁴⁸ 32 OPS. CAL. ATT'Y GEN. 240, 242 (1958). Even if the statute were not applicable to committees, permitting closed sessions of a committee of the whole organization would vitiate the purpose of an open meeting law. Such a meeting was held to violate a statute requiring city council meetings to be open to the public. *Acord v. Booth*, 33 Utah 279, 93 Pac. 734 (1908).

⁴⁹ See CAL. GOV'T CODE § 54952. But see Carpenter, Bull. of League of Cal. Cities on the Brown Act—Public Meeting Law, Sept. 19, 1961, p. 5, which concludes that the amendment was intended "to apply only to those publicly supported boards, commissions or committees of private organizations on which public officials served in their official capacity."

⁵⁰ MASS. GEN. LAWS ANN. ch. 30, § 23A (Supp. 1961).

⁵¹ But see Memorandum From Assistant Managing Editor to Publisher of the *St. Louis Post-Dispatch*, copy on file in the office of the Harvard Law Review Association: "[I]t would be nice to be able to attend all committee sessions, but I do not think much would be gained necessarily by doing so."

⁵² See, e.g., ALASKA COMP. LAWS ANN. § 2A-11-01 (Supp. 1959) (exempting juries); N.M. STAT. ANN. § 5-6-17 (Supp. 1961) (exempting grand juries). Most of the statutes, however, do not state these exemptions.

see
Miami
v
Bern

underlies exemptions for parole and pardon boards⁵³ or for meetings "of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it."⁵⁴ State legislatures are also excluded from some statutes,⁵⁵ presumably because their meetings already are open by virtue of custom or a state constitutional requirement;⁵⁶ and other state and local organizations are not covered because the state constitution either explicitly authorizes them to meet in closed session or exempts them from the legislature's control.⁵⁷ A final group of exemptions seemingly has no justification other than political expediency. Both California and Idaho failed to include state governmental organizations within their statutes,⁵⁸ apparently because inclusion would have antagonized interest groups having sufficient influence in the legislature to endanger passage of the statute. A similar explanation has been offered for the Massachusetts statute's exemption of public authorities.⁵⁹

→ or their own
action or lack
thereof
- yes sir! A

B. Notice Provisions

An "open meeting" is open only in theory if the public has no knowledge of the time and place at which it is to be held; yet only six of the open meeting statutes contain provisions requiring public notice.⁶⁰ The effect of such omissions may be serious; in one state there is evidence that "some are evading the statute by merely meeting at times and places unknown to the public and news media. When they are challenged, they explain that it was an 'open meeting.'"⁶¹ While regularly scheduled meetings held at the same time and place would

⁵³ See, e.g., MINN. STAT. § 1-41 (1957); OHIO REV. CODE ANN. § 121.22 (Page Supp. 1961).

⁵⁴ MASS. GEN. LAWS ANN. ch. 30A, § 11A (Supp. 1961). But see ALA. CODE tit. 14, § 393 (1953) ("no executive or secret session shall be held by any . . . body . . . to which is delegated any legislative or judicial function").

⁵⁵ E.g., LA. REV. STAT. § 42.5 (Supp. 1952).

⁵⁶ See p. 1203 *supra*.

⁵⁷ See MASS. GEN. LAWS ANN. ch. 30A, § 11A (Supp. 1961) (excepting the governor's executive council); ILL. REV. STAT. ch. 102, § 42 (1961) (applies "except . . . where the constitution provides that a governmental unit can hold secret meetings").

⁵⁸ In California so many state boards and commissions pressured the legislature for exemption that coverage was not extended beyond local bodies. See PICKERELL & FEDER 40-42. In 1957, however, the California legislature enacted sixty-six bills requiring specific boards and agencies of the state to meet in public, thus reducing an unjustified disparity. See CROSS, THE PEOPLE'S RIGHT TO KNOW (Supp. 1959, at 101).

⁵⁹ See MASS. NEWSPAPER INFORMATION SERVICE, THE MASSACHUSETTS "OPEN MEETING" LAW 9 (1959). Sponsors of the law would like it extended to cover public authorities because the authorities spend vast amounts of public funds. Interview With David Brickman, Editor of the *Malden Evening News* and the *Medford Daily Mercury*, Nov. 1, 1961.

⁶⁰ ARK. STAT. ANN. § 6-603 (Supp. 1961); CAL. GOV'T CODE §§ 54954-56; LA. REV. STAT. § 42.7 (Supp. 1952); MASS. GEN. LAWS ANN. ch. 30A, § 11A, ch. 34, § 9F, ch. 39, § 23A (Supp. 1961); PA. STAT. ANN. tit. 65, § 253 (1959); WASH. REV. CODE § 43.32.010 (Supp. 1958).

⁶¹ Letter From Editor of the *Burlington (Vermont) Free Press* to the *Harvard Law Review*, Nov. 7, 1961; see Bull. of the American Soc'y of Newspaper Editors, March 1, 1958, p. 10: "[I]n tiny Essex Junction, Vt., the town trustees gave the municipal manager strict orders not to tell the press when the trustees were going to meet, and to tell town residents only upon specific request."

seem immune to this objection, it is desirable to enact some notice provision to cover other situations. In states having notice requirements, twenty-four hour's notice is typically required to hold a special meeting or a rescheduled session of a regular one.⁶² Four of the six states are silent with regard to emergency sessions, in Massachusetts they are explicitly exempted from the notice requirements,⁶³ and in Arkansas they can be held only after two hour's advance notice to the press.⁶⁴ The Arkansas approach appears sound. It permits rapid action when necessary while preventing the invocation of trumped-up emergencies which exclude the press from meetings that would otherwise be open.

C. Executive Sessions

All but two of the statutes explicitly recognize the need for closed sessions in certain circumstances.⁶⁵ However, the statutes exhibit two distinct approaches toward determining when such sessions will be allowed.

1. *The Subject-Matter Approach.*—In several states the legislature has explicitly set forth the various subjects that may be discussed behind closed doors.⁶⁶ Most commonly listed is the appointment or discharge of, or the investigation of charges against, governmental employees.⁶⁷ Permitting such matters to be handled in secret surely is sound. Privacy in the screening of potential appointees is often necessary if people of high caliber are to apply for governmental positions. In one instance where a board of regents was seeking a new university chancellor, newspaper publicity of the candidates resulted in several of the prospects withdrawing their names.⁶⁸ When possible disciplinary action or dismissal is being considered, premature publicity can cause great and often unjustified damage to personal reputations. To be sure, secrecy in such matters may increase the likelihood of irresponsible character assassination or political favoritism,⁶⁹ but a number of statutes afford the employee some protection by granting him an option to demand a public hearing.⁷⁰ In any event the danger of such abuses seems outweighed by the need to protect the individual's reputation, and the interest of the public in maintaining efficient personnel management and employee morale. One legislature has apparently considered the interest of the public to be so strong that it has extended the provision for executive sessions beyond hiring and firing to include such matters as promotion, demotion, and compensation as well.⁷¹

⁶² See, e.g., PA. STAT. ANN. tit. 65, § 253 (1959).

⁶³ MASS. GEN. LAWS ANN. ch. 30A, § 11A, ch. 34, § 9F, ch. 39, § 23A (Supp. 1961).

⁶⁴ ARK. STAT. ANN. § 6-604 (Supp. 1961).

⁶⁵ MINN. STAT. §§ 10.41, 471.705 (1957); N.D. CENT. CODE § 44-04-19 (1960).

⁶⁶ See, e.g., NEV. REV. STAT. § 241.030 (Supp. 1960); WIS. STAT. § 14.90(3) (1959).

⁶⁷ E.g., ARK. STAT. ANN. § 6-602 (1956).

⁶⁸ Peterson, *supra* note 23, at 224.

⁶⁹ See WIGGINS 21-22.

⁷⁰ E.g., CAL. GOV'T CODE § 54957.

⁷¹ WIS. STAT. § 14.90(3)(b) (1959).

Some statutes listing the subjects that may be considered in executive session make no reference to personnel matters; they generally include, however, a provision authorizing executive sessions for "matters which if made public might adversely affect . . . the reputation of any person."⁷² While such clauses will probably be construed to include some personnel problems, the failure of these statutes to recognize explicitly a public interest in personnel management may prevent their extension to questions of promotion, demotion, and compensation, where the likelihood of adverse effects on reputation is less clear. At the same time, however, clauses of this type apparently authorize executive sessions not only for discussion of personnel problems but whenever the reputation of any citizen would thereby be protected, as for instance in the processing of welfare claims or the investigation of a businessman charged with violating state regulatory controls.⁷³

Executive sessions are also commonly authorized where premature publicity could be detrimental to the interest of the community, as by revealing information to individuals who might profit at public expense.⁷⁴ Such an exception is particularly necessary when a government body decides to negotiate for the purchase of land. Although the opportunity for officials to make a personal profit at public expense is thus enhanced,⁷⁵ this danger could be minimized by requiring full disclosure of all data once the transaction is completed and full review by an independent auditing agency. Another provision, found in two states, allows executive sessions to discuss questions concerning the "public security"⁷⁶ or "the security of the state."⁷⁷ If limited to problems of subversion or defense, secrecy is clearly justified;⁷⁸ but it is doubtful that state and local governments have much occasion to consider such measures, and the exceptions are stated in ambiguous terms that might be construed to equate public "security" with the public welfare. Finally, some statutes allow private sessions if federal regulations so require.⁷⁹ Since these regulations, intended to ensure privacy in handling welfare cases, must be complied with if the state is to continue receiving federal funds,⁸⁰ the right to deal with such matters in closed session would presumably be implied even where it is not explicitly granted.

2. *The Final-Action Approach.*—The second statutory approach toward executive sessions is to permit them "provided no final or bind-

⁷² E.g., MASS. GEN. LAWS ANN. ch. 30A, § 11A (Supp. 1961).

⁷³ The statutory language appears broad enough to permit executive sessions because an official fears that publicizing his vote would harm his reputation, but such a construction would clearly be unjustified.

⁷⁴ See, e.g., N.J. REV. STAT. § 10:4-4(g) (Supp. 1961); WIS. STAT. § 14.90(3)(f) (1959) (executive sessions authorized when organization confers with an attorney about its legal rights).

⁷⁵ See PICKERELL & FEDER 35-36.

⁷⁶ MASS. GEN. LAWS ANN. ch. 30A, § 11A (Supp. 1961).

⁷⁷ See VT. STAT. ANN. tit. 1, § 313 (1959).

⁷⁸ CAL. GOV'T CODE § 54957 allows executive sessions to consider "matters affecting the national security."

⁷⁹ See, e.g., ILL. REV. STAT. ch. 102, § 42 (1961).

⁸⁰ See 53 Stat. 1397 (1939), as amended, 42 U.S.C. § 1202(a)(9) (1958), 64 Stat. 355 (1950), 42 U.S.C. § 135212(9) (1958).

— Alaska has some of both approaches —

ing action shall be taken,"⁸¹ or alternatively, to provide that "no ordinances, resolutions, rules, regulations, contracts, or appointments shall be finally approved at . . . executive sessions."⁸² On their face these statutes seem to present public officials with an invitation to frustrate the purpose underlying open meeting laws; the body can give full consideration to possible courses of action behind closed doors and then convene in public simply to take formal action on decisions already made.⁸³ And it is difficult to see how the courts could prevent such evasion without resorting to arbitrary distinctions between those executive sessions contemplated by the legislature and those which contravene the statute's policy if not its literal terms. In leaving public officials with broad discretion to decide when their deliberations shall be kept secret, these statutes give salutary recognition to the undesirability of precluding officials from ever meeting privately to gather information or carry on preliminary consultations.⁸⁴ But they fail to ensure the public an open meeting in which the officials conduct full discussions of the issues, resolve any differences, and come to a conclusion.

The two statutory approaches seem to represent fundamentally differing attitudes toward the role of the legislature in prescribing open meeting requirements. In the first type of statute the legislature itself has specified the subject matter which may be considered in closed sessions; in all other situations there is seemingly an absolute requirement to meet openly. Statutes of the second type do not significantly alter the prestatutory situation — where officials are free to determine whether meetings will be open — beyond requiring that all final action be taken in public and expressing a policy in favor of admitting the public. While the specific-listing approach appears the more satisfactory of the two, it would seem desirable to give some recognition to the need for privacy in factfinding and preliminary discussions. The California statute has attempted to do so by providing that no official may be convicted of a misdemeanor for violating the act unless he "knowingly" attends a closed session at which there is "a collective decision made by a majority of the members . . . , a collective commitment or promise by a majority of the members . . . to make a positive or a negative decision, or an actual vote by a majority of the members . . . when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."⁸⁵ This approach is a reason-

Scienter

⁸¹ LA. REV. STAT. § 42.6 (Supp. 1957); see, e.g., OHIO REV. CODE ANN. § 121.22 (Page Supp. 1961).

⁸² UTAH CODE ANN. § 52-4-3 (1960); see, e.g., MD. ANN. CODE art. 23A, § 8, art. 25, § 5, art. 41, § 14 (1957); VT. STAT. ANN. tit. 1, § 313 (1959). The Delaware requirement that the meeting be open if business is transacted, DEL. CODE ANN. tit. 20, § 5109 (Supp. 1960), is probably equivalent to a prohibition against final action. The Connecticut law appears to place no limit on executive sessions. See CONN. GEN. STAT. REV. § 1-21 (1958).

⁸³ Letter From Executive Editor of the Salt Lake Tribune to the Harvard Law Review, Nov. 14, 1961.

⁸⁴ See pp. 1202-03 *supra*.

⁸⁵ CAL. GOV'T CODE § 54952.6. "[W]hen the public interest would not obviously suffer, . . . even these informal sessions should be open to all who want to attend." Carpenter, Bull. of League of California Cities on the Brown Act — Public Meeting Law, Sept. 19, 1961, p. 4.

able attempt whenever no use closed time minimi meeting of g

The most forced are taken at the excluding the specify one dication the clusive.⁸⁷ V burden of upon the co

1. Crimi meeting sta term.⁸⁸ W punishing when crimi Threatened meeting in the governo tended. At sacrificed n tences wou has substar biguities as executive s further en public offic viction in and inapp seem too ir f included violators. a statutory a

⁸⁶ THE I ADMINISTR

⁸⁷ See II provided on

⁸⁸ See, e

(Supp. 1961 no penalty, presumably

⁸⁹ Advan

Report 1961 the governo

than crimin

Harvard La

⁹⁰ See P

able attempt at compromise between permitting executive sessions whenever no final action is taken and completely denying the right to use closed meetings for preliminary consideration, while at the same time minimizing the danger that the closed session will "develop into a meeting of greater importance than the one open to the public."⁸⁶

D. Enforcement and Penalties

The most common methods by which open meeting laws are enforced are provisions for criminal penalties, invalidation of action taken at the closed meeting, and injunctions prohibiting officials from excluding the public. Approximately half the open meeting statutes specify one or a combination of these sanctions, but there is some indication that the courts will not view the statutory sanctions as exclusive.⁸⁷ Where the statute provides no method for enforcement, the burden of developing a means to prevent violations necessarily falls upon the courts.

1. *Criminal Penalties.*—In eleven states a violation of the open meeting statute is punishable by fine and/or imprisonment for a short term.⁸⁸ While such misdemeanor penalties are a typical means of punishing minor infractions of the law, caution should be exercised when criminal sanctions are imposed in the open meeting context. Threatened with a criminal prosecution for violating the statute by meeting in closed session with members of the state highway board, the governor of Nevada, who had believed the act inapplicable, contended that "the deprivation of human liberty is too important to be sacrificed merely for a test."⁸⁹ Even though it is likely that prison sentences would be suspended and fines remitted in "test" cases, this view has substantial merit. Open meeting laws in general abound with ambiguities as to the scope of coverage and the privilege of meeting in executive session, and in some states complicated provisions for notice further enhance the probability of unwitting violations. To submit public officials to the risk of the moral opprobrium of a criminal conviction in order to get clarification of the statute seems both unjust and inappropriate. On the other hand, in many statutes the penalties seem too inconsequential to deter willful violators.⁹⁰ A criminal penalty, if included at all, should be restricted to "knowing" or "intentional" violators, and some other procedure should be available for resolving statutory ambiguities.

⁸⁶ THE INTERNATIONAL CITY MANAGERS' ASS'N, *THE TECHNIQUE OF MUNICIPAL ADMINISTRATION* 23 (4th ed. 1958).

⁸⁷ See *Hamrick v. Town of Albertville*, 219 Ala. 465, 122 So. 448 (1929) (statute provided only for a fine, but the court utilized invalidation as a sanction).

⁸⁸ See, e.g., ILL. REV. STAT. ch. 102, § 44 (1961); OKLA. STAT. ANN. tit. 25, § 202 (Supp. 1961). Where the statute makes a violation a misdemeanor but prescribes no penalty, see, e.g., CAL. GOV'T CODE § 54959, the normal penalty for misdemeanors presumably applies.

⁸⁹ *Advancement of Freedom of Information Comm. of Sigma Delta Chi, Annual Report 1961*, at 22-23. At least one Nevada newspaperman apparently agrees with the governor: "Probably the law should have been entered in the civil code rather than criminal." Letter From Editor of the *Nevada State Journal* (Reno) to the *Harvard Law Review*, Nov. 16, 1961.

⁹⁰ See PA. STAT. ANN. tit. 65, § 254 (1959) (\$10 to \$25 fine; no jail sentence).

Alaska

2. *Invalidation*. — Only two of the statutes reflect any legislative consideration of, as a sanction for violation, invalidation of action taken. New Jersey provides that any official determination made by vote at a meeting held in violation of the open meeting law shall be voidable in a court proceeding.⁹¹ The Massachusetts statute, previously silent on the question of invalidation, was recently amended to provide that action otherwise duly taken at a meeting shall not be invalidated for failure to fulfill the statutory requirements of public notice.⁹² Adopted to ensure that important measures, such as bond issues, would not be held invalid for an infraction of the detailed notice requirements, the amendment seemingly was not intended to foreclose invalidation as a possible sanction for improperly closing a meeting to the public.⁹³ In *Elmer v. Board of Zoning Adjustment*,⁹⁴ however, the amendment was held to preclude invalidation of zoning modifications granted at a meeting for which proper statutory notice had not been given and which the defendants admitted was "not open to the public or to the press."⁹⁵ The court reasoned that "it would be unlikely that any of the public would be in attendance at a meeting of which no notice was given; [hence] it would be arbitrary to let the validity of [such] a meeting . . . depend upon whether the meeting was declared 'open.'"⁹⁶ Such reasoning appears to overlook the real possibility that members of the public may still be aware of a meeting and seek to attend even though the statutory requirements for notice have not been satisfied. Moreover, in so far as the decision rests solely on the amendment, it leaves the sanction of invalidation available in Massachusetts where a meeting is illegally closed but proper notice has in fact been given. Yet it seems highly unlikely that the Massachusetts court, faced with such a situation, would apply the invalidation remedy, since to do so would tend to encourage officials not to comply with the notice requirements. Thus *Elmer* in effect seems to represent a judicial determination — without statutory authorization — to foreclose the sanction of invalidation for all improperly closed meetings, regardless of compliance with the notice requirements. That the *Elmer* court in fact contemplated this result is suggested by its statement that "there are enough prospective difficulties in the implementation of [the open meeting law] . . . without putting otherwise valid action at the risk of subsequent determination that the particular deliberations were required to be held under public scrutiny."⁹⁷

In other states where the statutes are silent on invalidation, the courts might permit a person affected by a measure adopted at a closed meeting to contest the measure's validity.⁹⁸ In *Hamrick v. Town of*

⁹¹ N.J. REV. STAT. § 10:4-5 (Supp. 1961).

⁹² See MASS. GEN. LAWS ANN. ch. 30, § 23C (Supp. 1961).

⁹³ Interview With William A. Waldron, 1958-1961 Chairman of the Boston Bar Ass'n's Comm. on Administrative Law, Nov. 2, 1961.

⁹⁴ 176 N.E.2d 16 (Mass. 1961).

⁹⁵ Record, pp. 119, 128.

⁹⁶ 176 N.E.2d at 18.

⁹⁷ *Ibid.*

⁹⁸ A person clearly has standing to contest the validity of official action that affects him directly, such as termination of his employment or imposition of a tax

*Albertville*⁹⁹ the court held that a city council assessment for street improvements would be null and void if considered at a meeting held in violation of the open meeting statute. Apparently there are no other cases in which this approach has been taken under a generally applicable open meeting law,¹⁰⁰ but under older statutes directing a specific body to meet in public the courts have invalidated such measures as a licensing tax ordinance¹⁰¹ and a zoning determination¹⁰² solely because adopted in closed session. The rationale of these cases is exemplified by *Green v. Beste*,¹⁰³ where the court, enjoining the city from entering into a contract authorized at a city council meeting in violation of the statute establishing the date of city council meetings and requiring that they be open, declared: "If the council were allowed to adjourn the regular meeting without a date certain then it could meet in secret The public then would be deprived of the protection guaranteed by the statute. It would leave the door wide open for fraud" ¹⁰⁴

But the use of invalidation as a sanction is open to serious question. Its effectiveness appears limited to meetings at which final official action is taken. While the courts could invalidate measures formally approved in public on the ground that previous consideration had taken place at meetings improperly closed, it seems unlikely that they will do so.¹⁰⁵ In *Adele W. Kramer*,¹⁰⁶ for example, where the plaintiff contended that a school board decision to cease its practice of admitting children to kindergarten at mid-year was void because discussed at an execu-

assessment. Many actions by public bodies, though not touching a property interest peculiar to the plaintiff, will require expenditure of public funds, thus providing the basis for a taxpayer's suit to challenge the legality of the measure. These actions are available in most jurisdictions, but in some cases a court may find no standing because the allegedly illegal act has no adverse effect on the treasury. See Jaffe, *Standing to Secure Judicial Review: Public Actions*, 74 HARV. L. REV. 1265, 1293 (1961). But see *Adler v. City Council*, 184 Cal. App. 2d 763, 7 Cal. Rep. 805 (Dist. Ct. App. 1960) (the court did not question the right of a taxpayer seemingly unaffected by a zoning change to challenge its validity).

⁹⁹ 119 Ala. 465, 474, 122 So. 448, 456 (1929).

¹⁰⁰ The failure to do so in *Campbell v. Commissioners of the Town of Bethany Beach*, 139 A.2d 493 (Del. 1958), seems inexplicable. Seeking an injunction against the construction of a highway, plaintiff alleged that the consent of the town commissioners to the proposal of the state highway department was in bad faith because given in a closed meeting. The court rejected this argument: "It is true that the formal action of the Commission as a Board was done in executive session from which the public was excluded, but there is no requirement in the Charter of the Town of Bethany Beach that proposed action by the Commissioners within their admitted powers should be . . . acted upon in public." *Id.* at 497. The court did not advert to the Delaware statute requiring that action by such boards be taken in public. See DEL. CODE ANN. tit. 29, § 5109 (Supp. 1960).

¹⁰¹ See *City of Lexington v. Davis*, 310 Ky. 751, 221 S.W.2d 659 (1949).

¹⁰² See *Blum v. Board of Zoning & App.*, 1 Misc. 2d 668, 149 N.Y.S.2d 5 (Sup. Ct. 1956): "Action taken by the board while in executive session with the public excluded is illegal and void." *Id.* at 671, 149 N.Y.S.2d at 8.

¹⁰³ 76 N.W.2d 165 (N.D. 1956).

¹⁰⁴ *Id.* at 168.

¹⁰⁵ See *Barnes v. City of New Haven*, 140 Conn. 3, 98 A.2d 523 (1953). But see *Cullum v. Board of Educ.*, 15 N.J. 285, 104 A.2d 641 (1954) ("the open meeting they held was nothing more than a sham and . . . ought be dealt with, as if it had never occurred"); *Hamrick v. Town of Albertville*, 219 Ala. 465, 122 So. 448 (1929) (semble).

¹⁰⁶ 72 N.Y. Dep't R. 114 (Educ. Dep't 1951).

tive session in violation of the statute, the court refused to grant relief on the ground that an open session had been convened for final determination. Even in California, where the statute explicitly calls for open deliberations as well as open actions,¹⁰⁷ the court has indicated that a violation at some early stage of the proceedings will not justify invalidation of action formally taken in public.¹⁰⁸ The strongest objection to using invalidation as a sanction is that its salutary effect does not seem worth its heavy costs.¹⁰⁹ Both citizens and officials rely on governmental decisions in planning their everyday affairs, and to allow the subsequent invalidation of such decisions simply because they were made in violation of ambiguously drawn open meeting laws would create a substantial amount of undesirable uncertainty.¹¹⁰ Moreover, the deterrent effect of invalidation may seriously be doubted, for the officials who violate the statute will seldom be affected by the consequences of such a remedy.¹¹¹

3. *Injunctions.* — Three statutes explicitly authorize the courts to issue injunctions or writs of mandamus to enforce their provisions.¹¹² In both Massachusetts and Illinois proof of a prior violation is required before an order can issue. California merely authorizes "an action either by mandamus or injunction for . . . preventing violations or threatened violations,"¹¹³ but the practical difficulties of proving a threat of violation would seem in most instances to require a showing that the defendants had committed at least one violation in the past. If a violation is proved, issuance of an order is mandatory in Massachusetts, whereas in Illinois, and presumably also in California, the granting of relief is discretionary. The availability of injunctive relief where not authorized by statute is somewhat uncertain. No case has been reported in which an injunction was granted,¹¹⁴ but *State ex rel. Adams*

¹⁰⁷ CAL. GOV'T CODE § 54950.

¹⁰⁸ *Adler v. City Council*, 184 Cal. App. 2d 763, 775, 7 Cal. Rep. 805, 815 (Dist. Ct. App. 1960).

¹⁰⁹ "In one case, a school district submitted a bond issue to the electorate, receiving an affirmative vote; later the validity of the bond issue was overturned because of a legal decision that the prior notice specification had not been met." Letter From Editorial Page Editor of the *Seattle Times* to the *Harvard Law Review*, Nov. 10, 1961.

¹¹⁰ See *Elmer v. Board of Zoning Adjustment*, 176 N.E.2d 16, 18 (Mass. 1961).

¹¹¹ But see CROSS, *THE PEOPLE'S RIGHT TO KNOW* (Supp. 1959, at 45-46); Letter From Editor of the *Times-Picayune* (New Orleans) to the *Harvard Law Review*, Nov. 9, 1961: "I believe that the fear of nullification of official actions taken in closed sessions is the greatest deterrent to violation of the Louisiana law." The Louisiana statute does not authorize invalidation but simply provides that "it shall be unlawful for [covered organizations] . . . to hold meetings under any conditions contravening the provisions of . . . [this act]." LA. REV. STAT. § 42:8 (Supp. 1952).

¹¹² See CAL. GOV'T CODE § 54960; ILL. REV. STAT. ch. 102, § 43 (1961); MASS. GEN. LAWS ANN. ch. 39, § 23C (Supp. 1961).

¹¹³ CAL. GOV'T CODE § 54960.

¹¹⁴ PICKRETT & FEDER 19, refers to an unreported and unnamed case in which a lower California court, at the behest of a taxpayer excluded from meetings of the county planning commission, issued a permanent order that future sessions be conducted in public. At the time the California statute did not contain its present provision authorizing injunction or mandamus.

It is arguable that the standing requirement in suits for injunctions or mandamus should be less stringent than in actions for invalidation, since less drastic relief is sought. See note 95 *supra*.

*v. Rockwell*¹¹⁵ suggests that closed meetings violative of the statute can be enjoined without an enabling provision. There, electors and residents of a school district, alleging that the school board had willfully ignored the open meeting statute and their requests for public sessions, sought a writ of mandamus; the court sustained a demurrer to the petition on the sole ground that there was an adequate ordinary remedy available by injunction.

The weakness of the injunction procedure lies in the necessity of proving a prior violation and hence of enduring at least one instance of illegality. One school board chairman reports that he held an executive session in contravention of the statute -- no exemption was provided for a discussion of wage scales, which he thought might adversely affect teacher morale if publicized prematurely -- upon advice of counsel that the worst that could happen would be the issuance of a court order forbidding him to hold such a meeting in private again; in fact no court order was sought.¹¹⁶ On the other hand, the prospective operation of the injunction procedure is also its great advantage. It recognizes that violations are often likely to occur through inadvertence or ignorance, and provides a gentler means of obtaining judicial clarification; at the same time the severe penalties for contempt ensure future compliance. Perhaps supplemented by some provision for criminal penalties in the event of "knowing" or "intentional" violation, the injunction appears the most satisfactory method of enforcing an open meeting policy.

4. *Other Remedies* — In addition to the more common sanctions, several other means of enforcement have on occasion been adopted or suggested. One is dismissal of violators from public office. The Arkansas statute formerly provided that public officials whose appointments must be confirmed by the state senate are subject to dismissal for participating in an improperly closed meeting;¹¹⁷ recent amendments have modified the act so that all officials are subject to dismissal, but only if they are responsible for giving notice to the public and willfully fail to do so.¹¹⁸ The change presumably reflects a feeling that dismissal is too severe a penalty for illegally meeting in private. Another possibility is to permit an action for damages against the public officials. In *Acord v. Booth* the court awarded a citizen one cent damages for deprivation of his right to be present at a city council meeting in order to effect the legislative purpose "that the public might know what the councilmen thought about the matters in case they expressed an opinion upon them."¹¹⁹ Since substantial damages will rarely be recoverable, the effectiveness of this sanction is limited to the publicity value of the legal proceeding. Brief mention may be made of two other suggestions for penalizing illegal closing of meetings, both dependent upon a person's defiance of an order to leave the meeting. For forcible ejection an action of assault and battery could be brought against the officer doing

¹¹⁵ 167 Ohio St. 15, 145 N.E.2d 665 (1957).

¹¹⁶ Interview With a Massachusetts School Board Chairman, Dec. 1, 1961.

¹¹⁷ Ark. Acts 1949, No. 75, § 2.

¹¹⁸ ARK. STAT. ANN. §§ 6-605 (1956), 6-603 (Supp. 1961).

¹¹⁹ 33 Utah 279, 284, 93 Pac. 734, 735-36 (1908).

the ejecting or the board itself if it authorized the action; a determination by the court that the closing was illegal would remove privilege as a defense.¹²⁰ Similarly, if resistance led to arrest, a suit for false imprisonment would lie.¹²¹

Finally, it is notable that many newspaper editors do not regard the penalties for violation as "too important" open meeting legislation is considered desirable for "its educational effect, rather than its effect as a legal weapon."¹²² The statutes are viewed primarily as serving "to exemplify a public attitude," to tell "the politicians that the moral sentiments of the people are for open meetings. . . . [They are] a tool for the public—and the press on behalf of the public—to use in prying open doors, not to use in punishing public officials."¹²³ In the opinion of most editors compliance depends largely on the "good faith of public officials, or their fear of political consequences of bad faith, and the vigilance of the press and the public."¹²⁴

IV. ASSESSMENT OF THE STATUTES

A. The Press

The overwhelming consensus of newspaper editors in states in which open meeting laws have been adopted is that the statutes are "effective" in that they have "made it easier for reporters to be admitted to meetings, particularly when a controversial issue was to be discussed."¹²⁵ Some papers reported that "arming" reporters with a copy of the statute "to flourish when needed" had enabled them to gain admittance to meetings of agencies that had formerly met behind closed doors.¹²⁶ Such visual aids may be dispensable, however, for some editors indicated that "the simple statement that a reporter believed a closed meeting would violate the law has resulted in it being opened to the public and the press."¹²⁷ In the few instances where such warnings have not proved sufficient, the law is used as a "club" in editorial attacks that

¹²⁰ See Garner, *The Public Bodies (Admission to Meetings) Act, 1960*, 105 *SOL. J.* 191 (1960).

¹²¹ See CROSS, *THE PEOPLE'S RIGHT TO KNOW* (Supp. 1959, at 47).

¹²² E.g., Letter From Chairman of the Maine Comm. on Freedom of Information to Managing Editor of the *Portland Press Herald*, quoted in Letter From Managing Editor to the *Harvard Law Review*, Nov. 30, 1961.

¹²³ Letter From Chief Editorial Writer of the *Chicago Sun-Times* to the *Harvard Law Review*, Nov. 28, 1961.

¹²⁴ E.g., Letter From Editor of the *Milwaukee Journal* to the *Harvard Law Review*, Nov. 9, 1961.

¹²⁵ E.g., Letter From Executive Editor of the *Cincinnati Enquirer* to the *Harvard Law Review*, Nov. 24, 1961. In addition to "effective," the laws were described as "useful," "very helpful," or having a "wholesome effect."

A few editors, while expressing no opposition, were rather noncommittal about the statutes, apparently because they had had no difficulty in gaining access to meetings prior to enactment. See Letter From Editor of the *Bismarck (North Dakota) Tribune* to the *Harvard Law Review*, Jan. 10, 1962; Letter From Editorial Page Director of the *Philadelphia Inquirer* to the *Harvard Law Review*, Nov. 14, 1961; Letter From Executive Editor of the *World-Herald (Omaha)* to the *Harvard Law Review*, Nov. 15, 1961.

¹²⁶ E.g., Letter From Editor of the *Milwaukee Journal* to the *Harvard Law Review*, Nov. 9, 1961.

¹²⁷ Letter From Managing Editor of the *Indianapolis News* to the *Harvard Law Review*, Nov. 10, 1961; see Letter From Assistant Managing Editor of the *Oklahoma City Times* to the *Harvard Law Review*, Dec. 12, 1961 ("usually, all

apparent
meeting
of spec
boards
ments,
regardin
only on
to the
express
proves
and the

Most
"execut
"serious
where
no disc
private
be only
and acc
compell
that "n
meeting

Desp
two ed
provisi
hasn't
have r

that has
law").

128 S
Editoria
of the H
129 J

as to be
Harvard
130 J

nature
News to
131 S

Times t
Editor
Dec. 11
through
132 J

Harvard
133 S

the pres
the pres
Jord C
learn th
of the

"Some
feel its
to driv
134

ward L

apparently have been successful in eliminating practices of closed meetings.¹²⁸ The editors give credit to the law for opening the meetings of specific city, local, and state organizations ranging from school boards and city councils to state boards of health, state highway departments, and university boards of trustees. In response to a query regarding scope of coverage, most editors thought it was "adequate"; only one complained of the failure to cover committees.¹²⁹ With regard to the conduct of public officials at open sessions, every editor who expressed an opinion echoed the view that "our experience . . . disproves the contention that officials are unwilling to express their views and that they are likely to 'grandstand' excessively."¹³⁰

Most editors agreed that there was at least "some evasion" by "executive sessions or informal meetings," but felt it was neither "serious" nor "substantial."¹³¹ Most complaints referred to instances where "votes have been taken in public meetings . . . with little or no discussion of measures which have been agreed on previously in private."¹³² There were some indications that this situation might be only temporary, for if the press demonstrates its capacity for fair and accurate reporting at open meetings, public officials will feel less compelled to meet in secret;¹³³ but all editors concurred in the view that "no law will ever do away with sneak executive sessions or informal meetings of public officials who don't want to work in public."¹³⁴

Despite the general feeling that evasion is not a serious problem, two editors voiced dissatisfaction with the statutes because of their provisions allowing executive sessions. One reported that the "law hasn't been too effective . . . because . . . both City and State boards have used . . . secret meetings quite frequently in order to discuss

that has been necessary is for the reporter to call the attention of officials to the law").

¹²⁸ See, e.g., Letter From Paul Simon, Sponsor of the Illinois Act, to Chief Editorial Writer of the *Chicago Sun-Times*, Nov. 20, 1961, copy on file in the office of the Harvard Law Review Association.

¹²⁹ *Ibid.* A few editors felt the law should be "stronger" but were not explicit as to how. E.g., Letter From Editor of the *Burlington (Vermont) Free Press* to the *Harvard Law Review*, Nov. 7, 1961.

¹³⁰ *Ibid.* One editor observed: "I don't think the law has changed human nature or even affected it." Letter From Managing Editor of the *Indianapolis News* to the *Harvard Law Review*, Nov. 10, 1961.

¹³¹ See, e.g., Letter From Assistant Managing Editor of the *Oklahoma City Times* to the *Harvard Law Review*, Dec. 12, 1961. But see Letter From Managing Editor of the *Arkansas Democrat* (Little Rock) to the *Harvard Law Review*, Dec. 11, 1961: "[T]here are reasons to believe that there has been serious evasion through use of . . . informal meetings . . ."

¹³² Letter From President of the *Wilmington (Delaware) News-Journal* to the *Harvard Law Review*, Nov. 6, 1961.

¹³³ "As a result of the open-door policy the confidence of public officials in the press has measurably increased and their uneasiness over opening meetings to the press has largely disappeared." *Ibid.* See, e.g., Letter From Editor of the *Hartford Courant* to the *Harvard Law Review*, Nov. 8, 1961 ("government authorities learn that the newspapers do have a serious interest"). But see Letter From Editor of the *Nevada State Journal* (Reno) to the *Harvard Law Review*, Nov. 16, 1961: "Some newsmen think it has also created an antagonism on the part of officials who feel its passage implies distrust of them . . . [The law] has also tended, perhaps, to drive officials to more sub rosa sessions."

¹³⁴ Letter From Editor of the *Bismarck (North Dakota) Tribune* to the *Harvard Law Review*, Nov. 11, 1961.

'hot' topics."¹³⁵ The other felt that the statute was "meaningless and in fact . . . a step backward" because "the contest to open the doors [prior to the statute] . . . was less formidable than at present when closed meetings are authorized by law."¹³⁶ A similar view was taken by one editor who approved the governor's veto of recently enacted open meeting legislation.¹³⁷ The legislator who introduced the Illinois statute, a newspaperman himself, also found newsmen "cool to the idea" at first because they feared "the law would become a stumbling block rather than an acid"; but he reports that since passage in 1957 "there has been no adverse effect."¹³⁸

The editors divided on the question whether open meeting laws are necessary. One editor from a state which presently has no statute thought legislation desirable "to eliminate certain 'blind spots' that have been retained over the years, sometimes through custom and tradition."¹³⁹ Another, though stating no law "is needed at this time" in his city, felt that "every state should have a . . . [law to] give an editor a sense of protection should the situation suddenly change."¹⁴⁰ Most editors in states which do have open meeting statutes seemed to agree with this view.¹⁴¹ On the other hand, a surprising number of editors seemed to feel that statutes were not necessary because "resourceful, energetic reporters need not be seriously inconvenienced or hampered by any closed-door policy on the part of public officials."¹⁴²

B. Public Officials

Any effort to ascertain the reaction of public officials is hampered by the fact that an open meeting law "is a little like motherhood; no one wants to express himself against it publicly."¹⁴³ All officials seem

¹³⁵ Letter From a Retired Editor of the *Honolulu Star-Bulletin* to the *Harvard Law Review*, Nov. 11, 1961.

¹³⁶ Letter From Executive Editor of the *Salt Lake Tribune* to the *Harvard Law Review*, Nov. 13, 1961.

¹³⁷ Letter From Executive Editor of the *Courier-Journal* (Louisville) to the *Harvard Law Review*, Dec. 8, 1961: "I'd rather fight my way into a meeting, or dig the news about it out from someone there, than have secret meetings become sanctioned specifically by law."

¹³⁸ Letter From Paul Simon to the Chief Editorial Writer of the *Chicago Sun-Times*, Nov. 20, 1961, copy on file in the office of the Harvard Law Review Association.

¹³⁹ Letter From State Capitol Correspondent of the *Houston Post* to Frank H. King, Dec. 14, 1961, copy on file in the office of the Harvard Law Review Association.

¹⁴⁰ Letter From Managing Editor of the *Miami Herald* to the *Harvard Law Review*, Feb. 10, 1962.

¹⁴¹ See, e.g., Letter From Editor of the *Hartford Courant* to the *Harvard Law Review*, Nov. 8, 1961: "[I]t is important to get the principle of the right to know onto the statute books. Then it is there to appeal to."

¹⁴² Letter From Managing Editor of the *New York Times* to the *Harvard Law Review*, Dec. 27, 1961: "It is up to the newspapers to force open doors that are closed . . . and expose what goes on behind those doors . . ." See Letter From Editorial Page Editor of the *Seattle Times* to the *Harvard Law Review*, Nov. 10, 1961: "It is my observation that if news-gatherers engaged more often in energetic, tactful reporting, such laws would be largely unnecessary." See Letter From Editor of the *Bismarck* (North Dakota) *Tribune* to the *Harvard Law Review*, Jan. 10, 1962: "I have the feeling that aggressive digging by reporters is always more effective in opening . . . meetings . . . than any laws we might put on the books."

¹⁴³ Letter From Chairman of the Maine Comm. on Freedom of Information

to agree that final decisions on policy matters ought to be reached only after discussion and votes in public and that private sessions of government agencies should be kept to a minimum. Yet a substantial number "consider 'closed' meetings . . . essential for informal discussion of controversial topics without pressure from members of the public or the press."¹⁴⁴ A city manager from California, which has one of the most stringent open meeting laws enacted, declared that in his city the law "has interfered with the preliminary stages of consideration," and that a "thorough discussion of a problem is sometimes sacrificed to obtain a decision."¹⁴⁵ Another source from the same state reports that "numerous" officials complain that "the law has had a tendency to curtail the free exchange of ideas and to hamstring the operation of city legislative bodies," but this is termed a "minority viewpoint."¹⁴⁶ In general, the officials who responded agreed that the law "does not interfere with the efficient operation of city government."¹⁴⁷ One suggested that "governmental bodies have accommodated to these statutes by some use of executive sessions,"¹⁴⁸ and elsewhere it was indicated that the statute "has made little if any difference," largely because past practices have been continued.¹⁴⁹

C. Conclusion

Open meeting legislation has neither revolutionized the conduct of state and local government nor brought it grinding to a halt. Despite some evasion, the statutes have operated to break down past practices of closed meetings by making officials realize that open meetings represent not just a demand of the press but a legitimate public interest and now a legal requirement. Some disadvantages are unavoidable in any such requirement; but the presence of an audience has not in most cases restrained officials from giving full expression to their views, the problems concededly created by an irresponsible press have not been intensified where open meeting laws are in effect, and the fear that officials would waste time making speeches has proved largely unfounded. A more serious problem is that of accommodating the valid interest in secrecy for the consideration of certain subject matter or

to Managing Editor of the *Portland Press Herald*, quoted in Letter From Managing Editor to the *Harvard Law Review*, No. 30, 1961.

¹⁴⁴ Letter From Executive Editor of The International City Managers' Ass'n to the *Harvard Law Review*, Nov. 10, 1961. The International City Managers' Association, the American Municipal Association, and the National Association of County Officials have taken no position on open meeting legislation.

¹⁴⁵ Letter From City Manager of Nevada City, California, to the *Harvard Law Review*, Nov. 20, 1961; see Letter From City Manager of Glendale, California, to the *Harvard Law Review*, Jan. 31, 1962: "[The law] has . . . definitely . . . interfered with the preliminary stages of consideration of a problem . . ."

¹⁴⁶ Letter From Richard Carpenter, Executive Director & General Counsel of the League of California Cities, to the *Harvard Law Review*, Nov. 16, 1961.

¹⁴⁷ E.g., Letter From City Manager of Cincinnati, Ohio, to the *Harvard Law Review*, Dec. 5, 1961.

¹⁴⁸ Letter From City Solicitor of Pittsburgh, Pennsylvania, to the *Harvard Law Review*, Nov. 10, 1961.

¹⁴⁹ See Letter From City Attorney of Enid, Oklahoma, to the *Harvard Law Review*, Nov. 13, 1961; Letter From City Manager of a California city, population 50,000, to the *Harvard Law Review*, Dec. 4, 1961.

for preliminary fact gathering and consultation, while preserving the informative values of open discussion. Press reports of evasion by secret sessions, together with officials' statements that they have had to skirt the law or occasionally sacrifice thorough discussion, make apparent the difficulties of the legal requirements. To some extent this problem is inherent in the open meeting concept, but it may stem largely from the presently inadequate statutory treatment of executive sessions, which ranges from total prohibition to virtually carte blanche approbation. Furthermore, many problems have been created solely through bad draftsmanship, resulting in ambiguities and incompleteness in many statutes. That fewer than one fourth of the statutes contain a notice provision and that only three have even attempted to establish a reasonable and workable enforcement procedure indicates the haphazard nature of the legislative approach to date. Ensuring the people access to the greatest possible amount of information about governmental activities is an unimpeachably sound concept and, as a basic tenet of democratic government, merits legislative recognition. If the limits and operation of the open meeting principle are defined with the greatest possible precision, many of the difficulties will be resolved, and both press and officials will have a more workable standard for their conduct.

APPENDIX

PROPOSED OPEN MEETING STATUTE

1. *Coverage.*—This act shall apply to any legislative or administrative body of the state or any subdivision thereof, including any board, commission, authority, council, agency, committee, or other organization supported in whole or in part by public funds or authorized to spend public funds, and also including subcommittees or other subordinate groups of the above bodies. Except as otherwise provided by law or specified in this act, all meetings of bodies subject to this act at which there is a collective decision by a majority of the members of the body, a collective commitment or promise by a majority of the members of the body to make a decision, or an actual vote by a majority of the members of the body upon a motion, proposed resolution, order, or ordinance, shall be open to the public.

2. *Exemptions.*—The following are exempted from the provisions of this act:

- (a) Grand and petit juries.
- (b) Parole and pardon boards.
- (c) Meetings of quasi-judicial bodies, including but not limited to state licensing boards, held for the sole purpose of making a decision in an adjudicatory proceeding.

3. *Executive Sessions.*—A body may exclude the public when it is considering or acting upon any of the following matters:

- (a) The dismissal, promotion, demotion, or compensation of any public employee, or the disciplining of such employee or investigating of charges against him, unless the employee affected shall have requested an open meeting.
- (b) The hiring of any person as a public employee.

(c) versely
itself.

(d) party
provisi
of land

(e) public
Provid

(1)

(a). (E
not co
section
meetin

(2)

suant

4. P
be hel
as follo

(a)

of reg
shall s
notice

be giv

(b)

princip
at the
copies

resche

radio

(c)

notice
held p
of suc
circul

5. M

meetin

violat

than S

(b)

the bu

preve

calenc

(c)

lation

(c) Matters which, if discussed in public, would be likely to affect adversely the reputation of any person, other than a member of the body itself.

(d) Matters which, if discussed in public, would be likely to benefit a party whose interests are adverse to those of the general community. This provision shall include but not be limited to consideration of the acquisition of land.

(e) Welfare matters where federal grant-in-aid requirements prohibit publicity.

Provided that:

(1) When a meeting is held at which matters covered by subsections (a), (b), (c), (d), or (e) are considered or acted upon, and at which matters not covered by those subsections are also considered or acted upon, this section shall not authorize exclusion of the public from any portion of the meeting devoted to matters not so covered.

(2) The results of any final action taken in executive session held pursuant to subsections (a), (b), (c), or (d) shall be made public.

4. *Public Notice.*—All meetings required to be open under this act shall be held at specified times and places of which public notice shall be given as follows:

(a) Every body subject to this act shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and places of such meetings. Public notice of any special meeting, or of any rescheduled regular meeting, shall be given at least twenty-four hours before such meeting.

(b) Public notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. The body shall supply copies of the notice of its regular meetings, and of the notice of any special or rescheduled meeting, to any local newspaper of general circulation or local radio or television station that has filed an annual request for such notice.

(c) When an emergency exists requiring immediate action, the foregoing notice requirements shall not apply, and an emergency meeting may be held provided that at least two hours' advance notice of the time and place of such meeting shall have been given to every local newspaper of general circulation, and to every local radio and television station.

5. *Enforcement.*—(a) Any member of a body who participates in any meeting which violates this act, knowing the meeting to constitute such a violation, shall be guilty of a misdemeanor punishable by a fine of not more than \$——.

(b) Any —— registered voters of the political subdivision over which the body has jurisdiction may petition the —— court for an injunction to prevent violation of this act. Such petition shall be given priority on the calendar of the court.

(c) Action otherwise duly taken shall not be invalidated because of a violation of any provision of this act.



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 Chiei, 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, JJ., 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 ⇌ 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 ⇌ 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 ⇌ 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 ⇌ 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).

CITY OF KENAI v. KENAI PENINSULA NEWSPAPERS Alaska 1317

Cite as, Alaska, 642 P.2d 1316

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-

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

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

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

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.

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;

(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-

Public
Records
Statute

CITY OF KENAI v. KENAI PENINSULA NEWSPAPERS Alaska 1319

Cite as, Alaska, 642 P.2d 1316

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. *Musket 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. Colescott 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.³

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 1861 §§ 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); *Musket 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.

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,

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*

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

16. *Ibid.* at 393-397.

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 that 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. 1950).

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).

mean that the elude, by imp the basic disc had been the at the least, h lic office." in 1949 to "te rit

In light of t tive history, an we will constr would have cor strong legis in the possess available for 2 exceptions base

ARE EMPLO OFFEN

[2] We turn er the appellan to disclose th volved in the such as these between the the one hand tion interest and the go tiality, on the ing has be

In de should be any part balance knowin ment tary the in business cient The tion res! An to cir car m

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. I, § 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."

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-

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

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.

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.

T
[3]
publi
of th
dinar
fulles
recor
discl
those
040..
§ 3.9
discl
lease
ranted
tion
applic
persor
The
that
nance
tions
of Pol
with A
this de
As v
permit
to the
need.
neces
which
having
26. Se
1130.
27. AM
TI
es a
if ar
sect
tion
cou
stitu
mai
grap
28. AS
A
of a
of i
sion
cou
clu-
gro
sub
nic
othe
dep

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*, 584 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, commis-

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.

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.

Before analyzing the language at issue, it is helpful to first set out some general rules of statutory construction. The common and approved usage of words and phrases is to be given effect, "unless such words and phrases have acquired peculiar meaning by virtue of statutory definition or judicial construction." *Lynch v. McCann*, 478 P.2d 835, 837 (Alaska 1970); 2A C. Sands, *Sutherland Statutory Construction* § 46.01, at 48-9 (4th ed. 1974).¹ "[W]here the legislative branch has expressed its intent . . . in language so unambiguous as to leave no doubt as to the meaning or scope of the result dictated, the function of the courts is simply to apply that language." *State v. City of Anchorage*, 513 P.2d 1104, 1109 (Alaska 1973). Every word of a statute should be accorded meaning, 2A C. Sands, *supra*, § 46.06, at 63; but constructions leading to absurd results are to be avoided. *Sherman v. Holiday Construction Co.*, 435 P.2d 16, 19 (Alaska 1967).

My conclusion that AS 09.25.110 does not apply to municipalities is based on four considerations: (a) the terms "agency" and "department" have acquired a particular meaning by legislative definition which is inconsistent with the majority's conclusion; (b) the legislature has always used clear language whenever it has intended a statute to apply to local governments; (c) the majority's construction can lead to absurd results in other areas; and (d) the protective provisions of AS 39.51.020 can be construed consistently with my position.

The legislature always has defined "agency" or "department" as encompassing only state agencies or departments. An example

1. This rule is codified in AS 01.10.040.

"Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning."

2. For example, AS 09.50.250(1) and AS 09.65-070(d)(2) (separate provisions for state and municipal immunity from suit); AS 09.55.240(a)(2) and (3) (eminent domain powers granted separately to state and political subdivisions). Other provisions in AS 09.25 distinguish between

is found in AS 40.21, pertaining to the management and preservation of public records:

"(1) 'agency' or 'state agency' means a department, office, agency, state board, commission, public corporation or other organizational unit of or created under the executive branch of the state government; the term does not include the University of Alaska; . . ." (emphasis added).

AS 40.21.150. Or, in AS 44.62, pertaining to adjudication procedures:

"(1) 'agency' includes the state boards, commissions and officers listed in AS 44-62.330 and those to which this chapter is made applicable by law or executive order involving reorganization under the constitution; . . ." (emphasis added).

AS 44.62.640(b). Again, in AS 37.05, pertaining to fiscal procedures:

"(2) 'state agency,' 'agency,' 'department,' or similar term means a department, officer, institution, board, commission, bureau, division, or other administrative unit forming the state government, and includes the Alaska Pioneers' Home and the University of Alaska; . . ." (emphasis added).

AS 37.05.320.

On the other hand, whenever local application has been intended, clear language has been utilized. Legislative enactments distinguish between state departments or agencies and political subdivisions by expressly providing for application to both, or by articulating either parallel or contrasting powers or duties in separate sections.² Adopting the majority's construction makes

state and local "agencies," specifying each when a statute is intended to apply to both. For example, AS 09.25.170(a)(4), concerning the assertion of certain privileges, refers to "an agency or representative of an agency of the state, borough, city or other municipal corporation. . . ."

Further, as Kenai argues, matters directly pertaining to municipal operations tend to be collected in Title 29, even though they often appear in other titles as well. (Title 29 is entitled "Municipal Government"; Title 9, the source of the asserted public disclosure requirement, is entitled "Code of Civil Procedure.") For example, AS 29.23.580 specifies that the open meetings requirement of AS 44.

such modifying language redundant and thus fails to accord all terms a definite meaning.

A review of other statutes illustrates this point. For example, when addressing records management by governmental units, the legislature delineated local and non-local application. Enacted in 1970, one purpose of AS 40.21 was "to provide for the orderly management of current state and local public records. . . ." AS 40.21.01C. The statute distinguishes between "local record," "record," and "state record,"³ and explicitly addresses management of local records in a separate section.⁴ Further, the statute limits the term "agency" to state agencies.⁵

Of greater significance is AS 44.62.310, pertaining to the analogous issue of access to governmental meetings. Enacted sub-

62.310 applies to home rule and general law municipalities, even though AS 44.62.310 makes this clear by its own terms. Another example is AS 14.12.020(a), which is substantially reiterated in AS 29.33.050.

3. AS 40.21.150 states, in part:
"Definitions. In this chapter, unless the context otherwise requires,

(4) 'local record' means a public record of a city or borough of any class, villages, district, authority or other political subdivision unless the record is designated or treated as a state record under state law;

(5) 'record' means any document, [etc.] . . . developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by an agency or political subdivision, as evidence of the organization, function, policies, decisions, procedures, operations or other activities of the state or political subdivision or because of the informational value in them; . . .

(7) 'state record' means a record of a department, office, commission, board, public corporation, or other agency of the state government, including a record of the legislature or a court and any other record designated or treated as a public record under state law."

4. AS 40.21.070 states:
"Records management for local records. The governing body of each political subdivision of the state shall promote the principles of efficient records management for local public records kept in accordance with state law. The governing body shall, as far as practical,

substantially in its present form in 1959,⁶ the open meeting requirement explicitly was made applicable to the:

"governing bodies of all State and local government agencies, including municipalities, boroughs, school boards and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations (advisory or otherwise) of the State or local government . . . except juries and such other agencies as shall be expressly exempt by the Legislature. . . ."

Ch. 143 (Ch. 1, art. VI, § 1) SLA 1959. The legislature certainly knew in 1959 how to make a statute applicable to local government; yet when it enacted AS 09.25.110-120 three years later, language evidencing such an intent was, and remains, conspicuously absent.⁷

follow the program established for the management of state records. The department shall, upon request of the governing body of a political subdivision, provide advice and assistance in the establishment of a local records management program."

5. AS 40.21.150(1) states:

"'agency' or 'state agency' means a department, office, agency, state board, commission, public corporation or other organizational unit of or created under the executive branch of the state government; the term does not include the University of Alaska; . . ."

6. Although the section has been amended numerous times, it has remained applicable to local governments.

7. Although not dispositive, it is interesting to note the repeated legislative efforts to enact a comprehensive public access-to-records act. Those bills always address whether the act should apply to municipalities. See CSHB 131 (Judiciary), 10th Legislature, First Session (1977) (making disclosure applicable to "governmental units," subsequently defined to include political subdivisions). Compare HB75, 11th Legislature, First Session (1979) ("governmental unit" includes political subdivisions) with SCS CSHB 75, 11th Legislature, First Session (1979) ("governmental units" restricted to executive branch agencies). If the current statute applies to local governments, such subsequent legislation would be unnecessary. Inferentially, the legislature has never believed that AS 09.25.110-120 applies to municipalities.

CITY OF KENAI v. KENAI PENINSULA NEWSPAPERS Alaska 1329

Cite as, Alaska, 62 P.2d 1316

The majority's interpretation of "agencies and departments" also has the potential of leading to absurd results. For example, AS 09.25.120 authorizes the state to exempt certain records from disclosure, which the state has done,⁸ but does not grant municipalities the same power.⁹ Thus, while state personnel records might not be public, municipal personnel records may be.

The strongest argument that AS 09.25.110 was intended to apply to municipalities is based on the language of AS 39.51.020. Enacted in 1977, that statute states:

"(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 AS 09.25.120.

(b) As used in this section, 'public employee' means any employee receiving compensation for services provided to the state (including the University of Alaska) or any political subdivision of the state.

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

The statute clearly protects local government employees who release information under AS 09.25.110-120. Although the newspapers argue that this evinces a legislative intent that AS 09.25.120 applies to local governments, I believe that the statute's purpose is to protect municipal employees who come into possession of state agency records and subsequently release them.

Municipal employees may come into possession of state records which are public under state law, but which are confidential under, for example, Anchorage's freedom of

information ordinance. See AMC 3.90.010 *et seq*. Anchorage asserts that municipal employees possess state records pertaining to labor agreements, personnel classification and pay scales, demographic and workforce statistics, and financial audits of state funded programs. Without the protection of AS 39.51.020, it argues, a municipal employee may be reluctant to release such information, even though public under AS 09.25.110-120. Thus, the intent of AS 39.51.020 can be construed as that of precluding the transmutation of a document's public character due solely to a change in governmental hands. Absent a clearer legislative expression that AS 09.25.110-120 applies to local government, I believe this argument adequately explains the intent of AS 39.51.020.

In light of the constitutional requirement that "[a] liberal construction shall be given to the powers of local government,"¹⁰ I do not believe that AS 09.25.110 should govern access to local governmental records unless the legislative intent to do so is clear. As the City of Kenai argues, "state foreclosure of local policymaking [regarding records] should not occur unless there is (1) an overriding need for a uniform state policy, or (2) reason to believe that local decisions might be unfair to a particular group which is unable to protect itself through the local political process." There is no evidence that such considerations apply here. Thus I believe that the ambiguous provisions of AS 09.25.110-120 should be limited in application to state agencies or departments, and would, therefore, reverse the superior court's contrary conclusion.

8. See AS 39.25.080; State Personnel Rule § 14.07.0.

9. The cities provide another example. If "agencies and departments" in AS 09.25.110 encompasses them, it should similarly do so with respect to AS 44.62.320(a):

"The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department." (emphasis added).

(Originally enacted in 1959 as ch. 143, § 1, SLA; held unconstitutional on unrelated

grounds in *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).) No one, Kenai argues, would contend that the legislature reasonably intended this provision to encompass regulations of local governmental agencies.

10. Alaska Const. art. X, sec. 1. See *Bookey v. Kenai Peninsula Borough*, 618 P.2d 567, 569 (Alaska 1980); *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1123 (Alaska 1978); *Jefferson v. State*, 527 P.2d 37, 42 (Alaska 1974). See also AS 29.48.310; *Municipality of Anchorage v. Frohne*, 568 P.2d 3 (Alaska 1977).

Press barred from meeting of budget review committee

By DEAN FOSDICK
The Associated Press

JUNEAU — Reporters were turned away from a budget review presentation today between members of the Public Safety Department and Gov. Bill Sheffield's staff on the grounds that such a session was not covered under the state's open meetings law.

Sheffield press aide Pete Spivey told the reporters that the week-long series of Legislation and Budget Review Committee (LBR) sessions did not constitute the meeting of a full committee, that no votes would be taken and that its members were those of an advisory group.

"The attorney general's office disagrees with your interpretation of the statute," Spivey said.

Under the statute (AS 44.62.310 and 44.62.312), any meetings of publicly-financed organizations or their subordinate units — including advisory groups — are open to the public except as otherwise provided.

If excepted subjects are to be discussed at a meeting, the session first must be convened as a public meeting and the question of holding an executive session must be made. Reporters were not allowed to determine if that was done.

Organizations not required to make their meetings open to the public include judicial or quasi-judicial bodies, juries, parole or pardon boards, meetings of a hospital medical staff, or meetings of a hospital committee or governing board taking action on qualifications, privileges or discipline.

The law says that governmental units "exist to aid in the conduct of the people's business," and that the ac-

tions of those units be taken openly and their deliberations be conducted openly.

The committee, chaired by Sheffield, has been listening to budget presentations since last week when the governor's Office of Management and Budget completed its reviews of proposed budgets by the state's 19 major agencies. The meetings are to continue into next week.

Sheffield was not present when today's meeting opened and was not available for comment, Spivey said.

Ronald Lorensen, deputy attorney general, said today that it was up to the governor to make the meetings open.

"In my view, if the governor believes that in order for him to make certain decisions he needs the advice of key government officials, then he can get it," Lorensen said.

Lorensen said he was preparing a similar response in writing to The Anchorage Times, whose legislative reporter had requested permission — but was barred — from attending the meetings.

The open meetings issue also surfaced last spring when members of the Senate Finance Committee abruptly ordered everyone out of a session scheduled to discuss social programs. That also drew loud protests from reporters.

04. 16. 175 amended to provide an
exception for activities
under ASOS. 15. ~~030~~ 1006)

←
sec 1 delete

S

B

3

2

3

September 9, 1983

Honorable Bill Sheffield
Governor, State of Alaska
Juneau, Alaska 99801

Dear Governor Sheffield:

As of this date, the residents of the Anchorage Pioneer Home have been notified the rent will raise from \$225 a month to \$425 a month. Nursing wing rent will go from \$275 to \$525 a month. This raise is effective, according to the letter, on October 1, 1983.

The residents have expected a raise. However, we don't quite understand the "Pioneer Advisory Board's" being blamed for the raise and also the quote that it was "legislative intent" when both the Senate and House representatives from our district say they know nothing of it. Why is it that it appears it was known in Juneau in July and we did not get notice until September 9, 1983?

1. We feel that there should be a postponement of the effective date. After all, notice of effective date is only 21 days away. Doesn't the law require a landlord to give 30-days notice of a raise?
2. If we are to pay more, we feel there should be a great improvement in the food. It is now low institutional food. The contractor should have a raise immediately in daily dollar allowance.
3. There should be an increase in salary for a supervisor of Physical Therapy so we can have a good certified Head Therapist. We have been since May without a supervisor, and the service is very poor.
4. We feel the budget cut should be restored. After all, nearly 200 residents will be paying an additional \$200 a month.
5. The Anchorage Pioneer Home is now over five years old and has had hard use. Some things must be done soon to keep it from becoming a run down old building.
6. The residents feel there should be an adjustment immediately to the \$35 allowance for those who have had all their money taken to apply to rent. \$35 hardly does much these days toward expenses such as a permanent, haircut, shampoo, shoes, clothes, cigarettes, drug costs, etc.

We hope you will give these things serious thought.

cc: Commissioner Lisa Rudd
E. Louis Keller
Louis Odsather

Handwritten signatures and notes:
- *Handwritten signature: E. Louis Keller*
- *Handwritten signature: Louis Odsather*
- *Handwritten signature: C. N. Scott*
- *Handwritten note: "in Book"*

Demetrios (Jim) Status
Willie Sessiona
Sadie Beavers
Luelle Kusman
Jean Peckie
Opal M. Everette
Aachy Gunch
Grace Payne
Madge Wiley
Erica Westgard
Otto A. Schneider
Norman Johnson
May Tibbons
Lyle Redisko
M. Enay
S. W. Meyer
D. W. Palmer
Mary M. Harvey
George R. Ramstad
Paul A. Mitchell
Donna C. Devidy
Annie S. Jones
Escher S. Holt
Margaret Hafemeister

Pauline Maxwell
Harold L. Maxwell
Ethel A. Petty
George Lamb (1101)
Belle Burnett
Margaret Strand
Betty Barrett
Rose Womack
Walter Parker
Ray W. W. W.
William Baird
Wm Casey
Kunth Weaver
Evelia V. Haynes
Beth Schneider
Glen Hafemeister
Celia Wellington
Marquette Gallup
R. S. Bradley
Earl Cook
Adelle Smith
Evelyn Snitzler
Lynn Whitley
John Smith
Virginia Blanchard
Kurt E. Baskin
Thomas M. Donhue
Francis M. Schumacher

Opinion

Placing the blame

Doubling the room rates at the Pioneers' Homes was a shock to pioneers and their friends. Many pioneers acknowledge that the rates are low and it's been 12 years since the rates were changed. The state administration is taking heat and being criticized for the boost. But let's put the blame where it belongs.

If the rates have remained unchanged for 12 years, we can assume that the previous administrations were negligent about keeping up with the times and gradually increasing rates with inflation. Or, we can assume that the administration 12 years ago ripped off the pioneers by setting artificially high rates. We doubt that is the case. Charging \$275 a month for a room that includes nursing care was as good a bargain 12 years ago as the charge of \$525 a month for a room and nursing care this Oct. 1, after the rates have almost doubled. That charge includes meals and everything except prescription drugs.

No one is denied admission to the homes if he or she lacks the \$525 a month. What happens is that each pioneer is guaranteed by law \$35 a month for personal spending money and the rest of the pioneer's income, if it is only the \$250 a month in the longevity bonus, goes toward the monthly rent. The state collects the balance from the pioneer's estate on death if there is an estate, which usually doesn't exist.

Our complaint is that suddenly doubling the rates is unfair to those who are paying their own way at the home. It's a shock to those on budgets. The rate should have been increased gradually. We also believe the \$35 a month given each pioneer for personal expenses is way out of date. It's been much longer than 12 years since that was raised.

Who do we blame for this and how is some relief attained? We complain to our legislators. They are the ones who raised the rates, not the state administration. It's the lawmakers who have kept the monthly spending money at an artificially low \$35 a month.

When the Alaska Legislature passed the operating budget in June they included this message of legislative intent for the Division of Pioneers' Benefits:

"No new positions authorized. General funds have been reduced \$1,200,000 and program receipts increased \$1,200,000 in anticipation of an increase in residents' fees."

There it is, straight from the boys and girls who voted themselves a pay increase this year and granted each house leader \$2 million to play with as he sees fit.

It's the same bunch of boys and girls who, for the past two sessions, have failed to pass legislation recommended by the Division of Pioneers' Benefits to raise the \$35 limit on personal expenses to \$70 a month, but collected \$80 a day per diem for themselves.

Grace Dillon
Pouch 7-027
Anchorage, Alaska 99510

Honorable Bill Sheffield
Governor, State of Alaska
Juneau, Alaska 99801

Sept. 1983

Dear Governor Sheffield,

In regard to the Anchorage Pioneer Home:

A \$200 and \$250 per month raise was given (From 225 to 425 for able residents & 275 to \$525 for nursing care)

This brings many of the residents into the not able to pay category, and others into a bare existence.

A paupers \$35 is returned to the penniless for personal necessities. Welfare does not have to be paid back, but these accounts are built up against the resident at a 6% charge. This is a disgrace to the State of Alaska. Why shouldn't the State continue to subsidize these Senior Citizens living on small Social Security and Longevity when they subsidize less worthy causes. This home had given most residents self respect by being able to pay their own way. They worry now about the probability of losing Longevity. Expecting them to pay their own way at this inflated raise is too great a financial burden. They came in here under conditions promised that would help them. The State should honor these promises. Many sold their homes. If they had not sold their home they would now be better off, as the \$900 it will now cost would buy their food and utilities. The State is wronging many of these old mental and physical disables by going into the rental business demanding full restitution.

Why should the present residents be so penalized anyway, when the new residents coming in will pay nothing at all. The new ruling gives destitutes preference. There will always be a destitute to absorb the new vacancy, many of which have drank and gambled their money away. In a very short time this home becomes a poor-house and not the original intent. Since no one will be paying in the near future, why are they so reluctant to help old people now trying to help themselves?

It seems as though all subsidies go to the younger generation and their needs.. Old people do not have parents, teachers, unions and everyone else fighting for them. Most are not any more able to fight for themselves than your small child. They need your help.

Respectfully,

cc: Commissioner Lisa Ridd
E. Louis Keller
Louis Olsathor
Others

Grace Dillon

Editor's note. — As to the purpose of ch. 126, SLA 1977, see editor's note to AS 47.23.010.

Sec. 47.23.280. Severability: Alternative when method of notification held invalid. If any provision of this chapter or the application of it to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. If any method of notification provided for in this chapter is held invalid, service as provided for by the laws of the state for service of process in a civil action shall be substituted for the method held invalid. (§ 29 ch 126 SLA 1977)

Editor's note. — As to the purpose of ch. 126, SLA 1977, see editor's note to AS 47.23.010.

Chapter 25. Destitute and Needy Persons.

Article

1. Pioneers' Home (§§ 47.25.010 — 47.25.110)
2. General Relief Assistance (§§ 47.25.120 — 47.25.300)
3. Aid to Families with Dependent Children Act (§§ 47.25.310 — 47.25.420)
4. Old Age Assistance (§§ 47.25.430 — 47.25.610)
5. Aid to the Blind (§§ 47.25.620 — 47.25.780)
6. Aid to the Permanently and Totally Disabled Act (§§ 47.25.790 — 47.25.970)
7. Food Stamp Program (§§ 47.25.975 — 47.25.990)

Article 1. Pioneers' Home.

Section	Section
10. Maintenance of Alaska Pioneers' Home	60. Trust fund.
20. Admission to home	70. Indebtedness of beneficiary to state
30. Admission on payment	80. Enforcement against estate
35. Exception to admission criteria	90. Enforcement against property outside state
40. Transfer of insane inmates to asylum or sanitarium	100. Certificate as evidence
50. Maintenance funds	110. [Repealed]

Sec. 47.25.010. Maintenance of Alaska Pioneers' Home. (a) The state shall maintain an institution for the care of needy persons, known as the Alaska Pioneers' Home. The principal home shall be maintained at Sitka, and a branch may be maintained at a site or sites designated by the commissioner of administration.

(b) The Department of Administration shall formulate general policies, but has no administrative or executive functions other than those set out in AS 47.25.010 — 47.25.110. It may hold hearings and subpoena witnesses and documents and may administer oaths in connection with them.

§ 47.25.010

method of
chapter or the
invalid, the
of this chapter
or application,
table. If any
invalid, service
cess in a civil
9 ch 126 SLA

ns.

(20)

(25,970)

ficiary to state
estate
property outside

me. (a) The
sons, known
e maintained
s designated

ate general
s other than
hearings and
or oaths in

§ 47.25.020 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.25.020

(c) The Department of Administration shall

(1) cooperate with the federal government in matters pertaining to the welfare of Alaskan pioneers, make the reports in the form and containing the information the federal government from time to time desires, and accepts funds allotted by the federal government, its agencies or instrumentalities, in establishing, extending and strengthening services for pioneers of Alaska;

(2) adopt regulations necessary for the conduct of the business of the Pioneers' Home and for carrying out the provisions of AS 47.25.010 — 47.25.110, require bonds and undertakings from persons employed by it as in its judgment are necessary, and pay the premiums on them, and establish regional and local offices and the advisory groups which are necessary or considered expedient to carry out or assist in carrying out a duty or authority assigned to it;

(3) perform all executive or administrative duties necessary and advisable to carry out the purpose of AS 47.25.010 — 47.25.110, including the power to make contracts and to make disbursements on vouchers against funds for the purpose of AS 47.25.010 — 47.25.110, within the limit of funds available;

(4) study the needs of Alaska's pioneers and submit recommendations for new rules, regulations and proposed legislation;

(5) prepare an annual report to the legislature.

(d) The Department of Administration may employ the necessary subordinate officers and employees, and shall prescribe methods for operation of the Pioneers' Home, standards of care and service to residents, and rules governing personnel and rewarding employees on a merit basis. (§ 51-2-11(a) (c) ACLA 1949; § 51-2-12 ACLA 1949; am § 1 ch 71 SLA 1963; am Executive Order No. 30 (1968); am §§ 1, 2 ch 11 SLA 1979)

Effect of amendment. — The 1979 substituted "residents" for "inmates" in amendment deleted "north and west of subsection (d). Yakutat" from the end of subsection (a) and

Sec. 47.25.020. Admission to home. (a) Every worthy person residing in the state who has been a resident of the state continuously for more than 15 years immediately preceding his application for admission, and who is destitute and in need of the aid or benefit of the home because of physical disability or other cause, is entitled to admission to the home under the conditions, limitations and penalties prescribed by the regulations of the Department of Administration. No person may be admitted as a resident of the Alaska Pioneers' Home under the provisions of AS 47.25.010 — 47.25.110, if the support and maintenance of the person is imposed by law upon a relative or member of the family of the person.

(b) Every person admitted to the Pioneers' Home, except a person admitted under AS 47.25.030, who receives income from any source in

excess of \$35 a month may be required by the Department of Administration to pay the excess to the Department of Administration immediately upon receipt of the money in payment, or part payment, of the cost of his maintenance.

(c) At the end of each month the payments made under (b) of this section shall be transmitted to the commissioner of revenue together with the names of the persons making them and the amount paid by each. The Department of Administration may pay the sum of \$35 a month to a resident without funds.

(d) The money received by the commissioner of revenue shall be deposited in the general fund. (§ 51-2-13 ACLA 1949; am § 1 ch 158 SLA 1955; am § 1 ch 118 SLA 1957; am § 1 ch 89 SLA 1961; am § 1 ch 63 SLA 1965; am Executive Order No. 30 (1968); am §§ 1, 2 ch 7 SLA 1971; am § 3 ch 11 SLA 1979)

The 1979 amendment substituted "resident of" for "guest to" in the second sentence of subsection (a). Legislative history report. — For report on ch. 7, SLA 1971 (SB 70), see 1971 House Journal, p. 217.

Sec. 47.25.030. Admission on payment. A citizen of the United States over 65 years of age who is a resident of the state and has been a resident for not less than 15 years continuously immediately preceding his application, but who is not destitute, may on application be admitted to the home upon his agreement to pay to the state a sum for each day as the Department of Administration considers sufficient to compensate the state for the cost of care and support of the person at the home. When this agreement is entered into the Department of Administration may receive the security for the payments, which it considers expedient. (§ 51-2-14 ACLA 1949; am § 2 ch 89 SLA 1961; am Executive Order No. 30 (1968))

Sec. 47.25.035. Exception to admission criteria. An applicant for admission to the home who has been a resident of the state for 30 years and is otherwise qualified for admission under AS 47.25.020 or 47.25.030 may not be disqualified for admission because of absence from the state if the commissioner of administration determines the absence was reasonable, and admission is consistent with the intent of this chapter. (§ 2 ch 89 SLA 1978)

Sec. 47.25.040. Transfer of insane inmates to asylum or sanitarium. A person regularly admitted into the home who is found to be insane may be transferred to an institution provided for the care and custody of insane persons for the state in the manner provided by law for the admission of other persons to the institution. (§ 51-2-15 ACLA 1949)

Sec. 47.25.050. Maintenance funds. The legislature shall each session appropriate the necessary funds for the maintenance of the

§ 47.25.050

Department of Administration
payment, of

er (b) of this
ue together
ourt paid by
am of \$35 a

ue shall be
1 ch 158 SLA
1 ch 63 SLA
LA 1971; am

rt. — For report
see 1971 House

the United
nd has been
ly preceding
be admitted
for each day
compensate
of the home.
Administration
es expedient.
e Order No.

applicant for
for 30 years
or 47.25.030
on the state
absence was
his chapter.

asylum or
is found to
be care and
led by law
2-15 ACLA

shall each
nce of the

§ 47.25.060 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.25.080

home to be expended by the Department of Administration, and that department may receive funds, donations and bequests from private individuals, societies or organizations, and funds from the federal government for the support and maintenance of the home. (§ 51-2-16 ACLA 1949; am Executive Order No. 30 (1968))

Sec. 47.25.060. Trust fund. Unless otherwise provided by the donor, all money bequeathed to the Alaska Pioneers' Home constitutes a special trust, and shall be deposited in a special fund designated the "Alaska Pioneers' Home Trust Fund." Unless otherwise provided by the donor, interest from this fund is under the control, and at the disposal of the Department of Administration, and expenditure from it is limited to the benefit and comfort of the residents of the home. (§ 51-2-17 ACLA 1949; am Executive Order No. 30 (1968))

Sec. 47.25.070. Indebtedness of beneficiary to state. (a) An expense incurred for a person under AS 47.25.010 — 47.25.110 with interest at a rate of six per cent a year from date of payment, is a debt to the state and may be recovered during the life of the beneficiary. The debt is a first, prior and preferred claim against the estate of the beneficiary after his death, and after all claims for food, clothing, fuel, shelter, medical aid or burial expenses are paid.

(b) Money left in charge of the Department of Administration by a deceased resident of the Pioneers' Home may be used for the burial and funeral expenses of the deceased resident and for the improvement of the burial plot of the Alaska Pioneers' Home.

(c) The clothing and other personal effects left by a deceased resident of the home may be used for the benefit of other residents, or may be given to relatives or sold and the proceeds applied in the manner provided for money left by a deceased resident. (§ 51-2-101 ACLA 1949; am Executive Order No. 30 (1968); am §§ 4, 5 ch 11 SLA 1979)

Effect of amendment. — The 1979 amendment substituted "deceased resident" for "deceased inmate" in two places in subsections (b) and (c) and substituted "other residents" for "other inmates" in subsection (c).

Conduct of decedent entitling claim of state to priority. — Where (1) the decedent swears initially and annually thereafter

that she owns no property, although during all that time she has approximately \$10,000 in cash; and (2) the transfer thereof is without consideration, the claim of the state is entitled to priority in conformity with the provisions of this section. In re Jackson's Estate, 15 Alaska 116, 123 F. Supp. 143 (D. Alaska, 1954).

Sec. 47.25.080. Enforcement against estate. If a beneficiary under AS 47.25.010 — 47.25.116 dies leaving an estate in the state, the attorney general, or the Department of Administration, shall file with the executor or administrator, or with the probate court, the claim of the state against the estate, and the attorney general shall take the steps necessary to enforce and collect the claim. Money collected shall be paid into the treasury of the state. (§ 51-2-102 ACLA 1949; am § 1 ch 46 SLA 1957; am Executive Order No. 30 (1968))

Applied in *In re Jackson's Estate*, 15 Alaska 116, 123 F. Supp. 143 (D. Alas. 1954).

Sec. 47.25.090. Enforcement against property outside state. If a beneficiary under AS 47.25.010 -- 47.25.110 dies leaving property outside the state, the attorney general on direction of the governor shall take the steps with respect to the property which will protect and secure the rights of the state as a creditor. (§ 51-2-103 ACLA 1949)

Sec. 47.25.100. Certificate as evidence. A certificate by the attorney general to the effect that a decedent was a beneficiary under AS 47.25.010 -- 47.25.110 and that the state has a claim against his estate, is prima facie evidence of these facts in a proceeding in the courts of the state. (§ 51-2-104 ACLA 1949; am § 2 ch 46 SLA 1957)

Sec. 47.25.110. When not applicable to Indians and Eskimos.
Repealed by § 1 ch 118 SLA 1968.

Editor's note. — The repealed section derived from § 51-2-1, ACLA 1949.

Article 2. General Relief Assistance.

<p>Section 120. Eligibility for assistance 130. Amount of assistance 140. Residence in institution 150. Application for assistance 160. Investigation of applicant 170. Granting of assistance 180. Appeal 190. Payment to guardians 200. Review of eligibility 210. Alienation and attachment 220. State's claim for assistance 230. Persons liable for support and burial</p>	<p>Section 240. Action against person liable for care of recipient 250. Temporary relief 255. [Repealed] 260. Recovery and disposition of allowances improperly granted 265. Cancellation of warrants 270. Agreements with federal government 280. Obtaining assistance by fraud 290. Penalty for violation 300. Definitions</p>
--	---

Sec. 47.25.120. Eligibility for assistance. Financial assistance may be given under AS 47.25.120 -- 47.25.300, so far as practicable under the conditions in this state, to a needy person who is eligible under the regulations of the department. (§ 2 ch 110 SLA 1953; am § 1 ch 38 SLA 1957)

A statutory prohibition of welfare benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying such residents equal protection of the laws. *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

Am. Jur. and ALR references. — 41 Am. Jur., Poor and Poor Laws, § 1 et seq.

Liability of governmental agency for medical or surgical services rendered to poor person in emergency, without expressed authority, 93 ALR 900.

Status of one as poor person for purpose of statute entitling him to relief as affected by extent of his financial resources, 98 ALR 870.

POSITION PAPER

SB 323

This bill would increase the monthly stipend paid to certain residents (who are otherwise without funds) of Alaska's Pioneers' Homes from the current \$35 to \$100, and would also cause that sum (\$100) to be adjusted annually in accordance with the consumer price index for Anchorage. The current \$35 stipend is clearly too little. An increase is indicated.

Sixty-one residents, or just under 10% of all the residents of the Pioneers' Home system presently receive the \$35 stipend. However, the full effect of the recent monthly rate increase has not yet been felt, and it is anticipated that the estimates of stipend needed for FY 85 are more accurately reflected in the operating budget which includes funds for 154 persons (\$65,000). The Division of Pioneers' Benefits estimates that should this bill become law, the number of residents who would qualify for the monthly stipend would be increased to as many as 165 residents, due to more people having less than \$100 in monthly income.

It would be more difficult to prepare annual budgets if the annual adjustment clause of this bill should become law. Also with each adjustment more residents would qualify for the stipend.

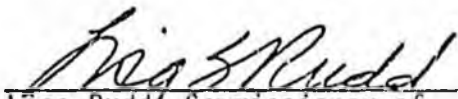
The department supports an increase in the monthly stipend, but cautions that \$100 is a 286% increase over the current \$35, and there is uncertainty about how many more residents will be eligible. The department does, however, support increasing the stipend to somewhere between \$75 and \$100.



E. Louis Keller, Director
Division of Pioneers' Benefits

January 10, 1984

Date



Lisa Rudd, Commissioner of
Administration

1/19/84

Date

Revision Date: _____

REQUEST

Bill/Resolution No.: S.B. 323
Title: Income of Pioneers' Homes Residents

Sponsor: Fischer
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
Program Category Affected: Social Servcs

BRU, Program of Subprogram(s) Affected:
Pioneers' Homes

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		133.0	139.1	145.5	152.2	159.2
800 MISCELLANEOUS						
TOTAL OPERATING		133.0	139.1	145.5	152.2	159.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		133.0	139.1	145.5	152.2	159.2
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL		133.0	139.1	145.5	152.2	159.2

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not indicated by sponsor.

ANALYSIS: Attach ~~separate~~ ^{page} for any analysis

Prepared By: George W. Michael
Division: Pioneers' Benefits

Phone: 465-4401
Date: January 13, 1984

Approved by Commissioner: Lisa Rudd
Department: ADMINISTRATION

Date: 1/19/84

FISCAL NOTE/BDGSF2

Distribution:
Legislative Finance
Legislative Sponsor
Registor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ASSUMPTIONS

1. The bill will become effective on July 1, 1984.
2. The Pioneers' Home populations will remain stable, but the total number of residents receiving the stipend will increase from 154 to 165 due to inclusion of the persons who have less than \$100 monthly income.
3. The amount of the monthly stipend will increase by 4.6% each year after FY 85. This rate of increase is the average of the last 3 years' increase in the Consumer Price Index for the Anchorage area for "all urban consumers," as determined by the United States Department of Labor, Bureau of Labor Statistics. It is assumed, (for lack of better indicators) that this average rate of increase will continue.
4. The stipend payments will continue to be paid from the General Fund.
5. The rates for cost of care will remain at the present level of \$425 per month for residential care and \$525 per month for skilled nursing care.

Stipend (FY85)

FY85 Budget (Gov's. Allowance)		S.B. 323 ④ \$100/mo.		Amount of Increase	
No. Persons	Amount	No. Persons	Amount		
Auch.	56	\$ 23,700	60	\$ 72,000	\$48,300
Ebx.	25	10,500	27	32,400	21,900
Ketch.	8	3,500	9	10,800	7,300
Palmer	40	16,800	42	50,400	33,600
Sitka	25	10,500	27	32,400	21,900

Totals	154	\$ 65,000	165	\$198,000	\$133,000 + inflation @ 4.6% per year for FY86-88
--------	-----	-----------	-----	-----------	---

2 CS FOR SENATE BILL NO. 323 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Pioneers' Home."

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

8 * Section 1. AS 47.25.020(b) is amended to read:

9 (b) Every person admitted to the Pioneers' Home, except a person
10 admitted under AS 47.25.030, who receives income from any source in
11 excess of \$100 per [\$35 A] month may be required by the Department of
12 Administration to pay the excess to the Department of Administration
13 immediately upon receipt of the money in payment, or part payment, of
14 the cost of the person's [HIS] maintenance.

15 * Sec. 2. AS 47.25.020(c) is amended to read:

16 (c) At the end of each month the payments made under (b) of this
17 section shall be transmitted to the commissioner of revenue together
18 with the names of the persons making them and the amount paid by each.
19 The Department of Administration may pay [THE SUM OF \$35 A MONTH] to a
20 resident without funds the sum of \$100 per month.

21 * Sec. 3. AS 47.25.030 is amended by adding a new subsection to read:

22 (b) The Department of Administration shall adopt regulations
23 establishing a daily or monthly rate for the compensation a resident
24 is to be charged under (a) of this section. The commissioner of
25 administration shall review this rate not less than ^{every other} ~~twice~~ per year.

26 * Sec. 4. AS 47.25.070 is repealed and reenacted to read:

27 Sec. 47.25.070. INDEBTEDNESS OF BENEFICIARY TO STATE. (a) The
28 following expenses incurred for a person under AS 47.25.010 - 47.25.-
29 110 are a debt to the state and may be recovered during the life of

1 the beneficiary^{ies};

2 (1) allowances paid under AS 47.25.020(c);

3 (2) costs of standard or nursing care provided each month
4 to the beneficiary in the Pioneers' Home not exceeding the rate estab-
5 lished by the Department of Administration under AS 47.25.030, with
6 credit given for any amounts paid by or collected from the benefi-
7 ciary;

8 (3) ~~costs of hospitalization and medical treatment provided~~
9 ~~outside the Pioneers' Home;~~

10 (4) arrearages in fees for television ^{services} and ~~telephone ser-~~
11 ~~vices~~ provided in the Pioneers' Home;

12 (5) prescription medicine; and

13 (6) burial and related expenses.

14 (b) The debt is a first, prior and preferred claim against the
15 estate of the beneficiary after the beneficiary's death, and after all
16 claims for food, clothing, fuel, shelter, medical aid, or burial
17 expenses are paid. Heirlooms without regard to value are exempt from
18 a claim by the state under this section.

19 (c) Money left in charge of the Department of Administration by
20 a deceased resident of the Pioneers' Home may be used for the burial
21 and funeral expenses of the deceased resident and for the improvement
22 of the burial plot of the Alaska Pioneers' Home.

23 (d) The clothing and other personal effects left by a deceased
24 resident of the home may be used for the benefit of other residents,
25 or may be given to relatives or sold and the proceeds applied in the
26 manner provided for money left by a deceased resident. ^{(od after being}
_{noted}

27 (e) For purposes of this section, "heirloom" means personal
28 property of sentimental value to a beneficiary that

29 (1) has been in the possession of the beneficiary's family

Strickland
6/20/19

1 for 10 years or more or was a gift to the beneficiary; and

2 (2) the beneficiary intends to give[↑] to another member of
3 the beneficiary's family.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Hein
2/7/84 ✓

Original sponsors: V.Fischer, Ziegler,
Kerttula, et al

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 323 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Pioneers' Home."

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

8 * Section 1. AS 47.25.020(b) is amended to read:

9 (b) Every person admitted to the Pioneers' Home, except a person
10 admitted under AS 47.25.030, who receives income from any source in
11 excess of \$100 per [\$35 A] month may be required by the Department of
12 Administration to pay the excess to the Department of Administration
13 immediately upon receipt of the money in payment, or part payment, of
14 the cost of the person's [HIS] maintenance.

15 * Sec. 2. AS 47.25.020(c) is amended to read:

16 (c) At the end of each month the payments made under (b) of this
17 section shall be transmitted to the commissioner of revenue together
18 with the names of the persons making them and the amount paid by each.
19 The Department of Administration may pay [THE SUM OF \$35 A MONTH] to a
20 resident without funds the sum of \$100 per month.

21 * Sec. 3. AS 47.25.030 is amended by adding a new subsection to read:

22 (b) The Department of Administration shall adopt regulations
23 establishing a daily or monthly rate for the compensation a resident
24 is to be charged under (a) of this section. The commissioner of
25 administration shall review this rate not less than once every two
26 years.

27 * Sec. 4. AS 47.25.070 is repealed and reenacted to read:

28 Sec. 47.25.070. INDEBTEDNESS OF PIONEERS' HOME RESIDENT TO
29 STATE. (a) The following expenses incurred for a Pioneers' Home

1 resident under AS 47.25.010 - 47.25.110 are a debt to the state and
2 may be recovered during the life of the resident:

3 (1) allowances paid under AS 47.25.020(c);

4 (2) costs of standard or nursing care provided in the
5 Pioneers' Home each month to the resident not exceeding the rate
6 established by the Department of Administration under AS 47.25.030,
7 with credit given for any amounts paid by or collected from the
8 resident;

9 (3) arrearages in fees for television services provided in
10 the Pioneers' Home;

11 (4) prescription medicine; and

12 (5) burial and related expenses.

13 (b) The debt is a first, prior and preferred claim against the
14 estate of the Pioneers' Home resident after the resident's death, and
15 after all claims for food, clothing, fuel, shelter, medical aid, or
16 burial expenses are paid. Heirlooms without regard to value are
17 exempt from a claim by the state under this section.

18 (c) Money left in charge of the Department of Administration by
19 a deceased Pioneers' Home resident may be used for the burial and
20 funeral expenses of the resident and for the improvement of the burial
21 plot of the Pioneers' Home.

22 (d) If the clothing and other personal effects of a deceased
23 Pioneers' Home resident are not claimed within 60 days after the resi-
24 dent's death by a person designated by the resident, or by a relative
25 of the resident if no designee survives, then the clothing and effects
26 may be used for the benefit of other residents, or they may be sold
27 and the proceeds applied in the manner provided for money left by a
28 deceased resident.

29 (e) For purposes of this section, "heirloom" means personal

1 property of sentimental value to a Pioneers' Home resident that
2 (1) has been in the possession of the resident's family for
3 10 years or more or was a gift to the resident; and
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

COMMITTEE REPORT
SENATE

FURTHER: FINANCE

1/9/84

Date: 2/9/84

Mr. President:

The Committee on State Affairs has had SB 323
Relating to income of Alaska Pioneers' Home residents.

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 323 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Tim Kelly

Mike Kelly
Joe Long

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

CHAIRMAN



Official Business

Alaska State Legislature

Senate Committee on State Affairs

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

COMMITTEE REPORT

February 9, 1984
3:00 pm

Butrovich room
Capitol building

Members Present:

Senator Vic Fischer, Chair
Senator Bill Ray
Senator Tim Kelly
Senator Pat Rodey
Senator Arliss Sturgulewski

EO 56 Transferring the distribution of session laws from the Department of Administration to the Department of Education.

The meeting was brought to order at 3:00 by Senator Vic Fischer.
Senator Vic Fischer introduced Dick Engen from the Department of Education.

Dick Engen testified in favor of EO 56.

Senator Arliss Sturgulewski moved that EO 56 be approved.

EO 56 was moved from committee with no objections.

HB 110 Relating to fire weather and avalanche forecasting.

Ned Fahrquhar testified in favor of HB 110. He said the Department of Natural Resources was a good department to handle the forecasting because they also do avalanche training. Ned Fahrquhar made a few points about the avalanche forecasting.

Senator Bill Ray said that the Alpine Ski Club was opposed to the way the Division of Parks was using their avalanche training money.

The committee decided to hold the bill over.

SB 386 Displaced homemakers

Karen Perdue from the Department of Community and Regional Affairs explained the displaced homemaker program. She said that 36% of those who seek assistance from the displaced homemaker's programs are ineligible under the state statutes. She also added that the bill had no fiscal note.

The committee members discussed the fiscal note.

SB 386 was moved out of committee with individual recommendations.

File ✓
SB 323 relating to the Pioneers' homes

Lou Keller, Director of the Division of Pioneer home benefits, testified in favor of the proposed committee substitute.

Senator Vic Fischer suggested an additional change on page 2 of the proposed committee substitute allowing persons designated by the resident an extended amount of time to retrieve the belongings of a deceased resident.

Senator Rodey suggested they re-word the title on the proposed committee substitute.

There was discussion on possible options for a new title. The title on the proposed committee substitute was not changed.

Senator Rodey made a motion to adopt the CS and move it out of committee.

CSSB 323 was moved out of committee with individual recommendations.

SB 387 Relating to working hours of state employees

Mike McMullen from the Division of Personnel testified in favor of the bill. He said that the employees covered under section 1 should be able to take 5 days of personal leave a year as an option. He said the provision should not be mandatory. He explained and also spoke in favor of the dispersement of the banked medical leave to the beneficiaries of a state employee who has died.

Discussion occurred on the number of people the above provision would affect.

The committee decided to request a new fiscal note from the Department of Administration.

The bill was moved out of committee with a new fiscal note.

The committee meeting was adjourned at 3:50 pm.

[Handwritten signature]

SENATE STATE AFFAIRS COMMITTEE

Date received _____

Bill Number SB323 Title _____

Fiscal Note	Position Paper	Date requested	From	Amount	Date Note	Rec'd Paper

CONTACTS

Backup list

Lau Keller (testify)

HEARING INFORMATION

NOTES:

FINAL ACTION _____ DATE _____

Original sponsors: V.Fischer, Ziegler,
Kerttula, et al

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 323 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Pioneers' Home."

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

8 * Section 1. AS 47.25.020(b) is amended to read:

9 (b) Every person admitted to the Pioneers' Home, except a person
10 admitted under AS 47.25.030, who receives income from any source in
11 excess of \$100 per [\$35 A] month may be required by the Department of
12 Administration to pay the excess to the Department of Administration
13 immediately upon receipt of the money in payment, or part payment, of
14 the cost of the person's [HIS] maintenance.

15 * Sec. 2. AS 47.25.020(c) is amended to read:

16 (c) At the end of each month the payments made under (b) of this
17 section shall be transmitted to the commissioner of revenue together
18 with the names of the persons making them and the amount paid by each.
19 The Department of Administration may pay [THE SUM OF \$35 A MONTH] to a
20 resident without funds the sum of \$100 per month.

21 * Sec. 3. AS 47.25.030 is amended by adding a new subsection to read:

22 (b) The Department of Administration shall adopt regulations
23 establishing a daily or monthly rate for the compensation a resident
24 is to be charged under (a) of this section. The commissioner of
25 administration shall review this rate not less than once every two
26 years.

27 * Sec. 4. AS 47.25.070 is repealed and reenacted to read:

28 Sec. 47.25.070. INDEBTEDNESS OF PIONEERS' HOME RESIDENT TO
29 STATE. (a) The following expenses incurred for a Pioneers' Home

1 resident under AS 47.25.010 - 47.25.110 are a debt to the state and
2 may be recovered during the life of the resident:

3 (1) allowances paid under AS 47.25.020(c);

4 (2) costs of standard or nursing care provided in the
5 Pioneers' Home each month to the resident not exceeding the rate
6 established by the Department of Administration under AS 47.25.030,
7 with credit given for any amounts paid by or collected from the
8 resident;

9 (3) arrearages in fees for *auxiliary charges* ~~television services provided in~~
10 ~~the Pioneers' Home;~~

11 (4) prescription medicine; and

12 (5) burial and related expenses.

13 (b) The debt is a first, prior and preferred claim against the
14 estate of the Pioneers' Home resident after the resident's death, and
15 after all claims for food, clothing, fuel, shelter, medical aid, or
16 burial expenses are paid. Heirlooms without regard to value are
17 exempt from a claim by the state under this section.

18 (c) Money left in charge of the Department of Administration by
19 a deceased Pioneers' Home resident may be used for the burial and
20 funeral expenses of the resident and for the improvement of the burial
21 plot of the Pioneers' Home.

22 (d) If the clothing and other personal effects of a deceased
23 Pioneers' Home resident are not claimed within 60 days after ^{NOTIFICATION OF} the resi-
24 dent's death ~~by a~~ person designated by the resident, or by a relative
25 of the resident if no designee survives, then the clothing and effects
26 may be used for the benefit of other residents, or they may be sold
27 and the proceeds applied in the manner provided for money left by a
28 deceased resident.

29 (e) For purposes of this section, "heirloom" means personal

1 property of sentimental value to a Pioneers' Home resident that has
2 been in the possession of the resident's family for 10 years or more
3 or was a gift to the resident.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

1 IN THE SENATE

BY V.FISCHER, ZIEGLER, KERTTULA,
RODEY AND JOSEPHSON

2 SENATE BILL NO. 323

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to income of Alaska Pioneers' Home
7 residents."

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

9 * Section 1. AS 47.25.020(b) is amended to read:

10 (b) Every person admitted to the Pioneers' Home, except a person
11 admitted under AS 47.25.030, who receives income from any source in
12 excess of \$100 per [\$35 A] month, adjusted annually in accordance with
13 the consumer price index for Anchorage, published by the United States
14 Department of Labor, Bureau of Labor Statistics, may be required by
15 the Department of Administration to pay the excess to the Department
16 of Administration immediately upon receipt of the money in payment, or
17 part payment, of the cost of the person's [HIS] maintenance.

18 * Sec. 2. AS 47.25.020(c) is amended to read:

19 (c) At the end of each month the payments made under (b) of this
20 section shall be transmitted to the commissioner of revenue together
21 with the names of the persons making them and the amount paid by each.
22 The Department of Administration may pay [THE SUM OF \$35 A MONTH] to a
23 resident without funds the sum of \$100 per month, adjusted annually in
24 accordance with the consumer price index for Anchorage, published by
25 the United States Department of Labor, Bureau of Labor Statistics.

21 (5) prescription medicine; and

22 (6) burial and related expenses.

23 (b) The debt is a first, prior and preferred claim against the
24 estate of the beneficiary after the beneficiary's death, and after all
25 claims for food, clothing, fuel, shelter, medical aid, or burial
expenses are paid.

Heirlooms are exempt from a claim by the state under this section.

*Sec 4. Monthly rates charged by the department of Administration shall be put in regulation in accordance with the Administrative Procedure Act. The regulations shall be reviewed biannually, or more frequently upon request of the Commissioner of Administration.

Definition:

An Heirloom is a piece of personal property of sentimental value to the resident that has been in the possession of the resident of the resident's family for 10 or more years, or was given to the resident.

DRAFT

1 IN THE HOUSE

BY UEHLING, FURNACE, RINGSTAD,
BARNES AND GOLL

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 503

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to income, allowances and debts of
7 residents of the Alaska Pioneers' Home."

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

9 * Section 1. AS 47.25.020(b) is amended to read:

10 (b) A [EVERY] person admitted to the Pioneers' Home, except a
11 person admitted under AS 47.25.030, who receives income from any
12 source in excess of \$100 per [\$35 A] month may be required by the
13 Department of Administration to pay the excess to the Department of
14 Administration immediately upon receipt of the money in payment, or
15 part payment, of the cost of the person's [HIS] maintenance.

16 * Sec. 3. AS 47.25.030 is amended to read:

17 Sec. 47.25.030. ADMISSION ON PAYMENT. A citizen of the United
18 States over 65 years of age who is a resident of the state and has
19 been a resident for not less than 15 years continuously immediately
20 preceding submission of an [HIS] application, but who is not desti-
21 tute, may on application be admitted to the home upon agreeing [HIS
22 AGREEMENT] to pay to the state a cost-of-care fee at a daily rate [SUM
23 FOR EACH DAY AS] the Department of Administration considers sufficient

1 to compensate the state for the cost of care and support of the person
2 at the home. When this agreement is entered into the Department of
3 Administration may receive the security for the payments, which it
4 considers expedient.

5 * Sec. 4. AS 47.25.070 is repealed and reenacted to read.

6 Sec. 47.25.070. INDEBTEDNESS OF BENEFICIARY TO STATE. (a) The
7 following expenses incurred for a person under AS 47.25.010 - 47.25.-
8 110 are a debt to the state and may be recovered during the life of
9 the beneficiary:

10 (1) allowances paid under AS 47.25.020(c);

11 (2) arrearages in cost-of-care fees required under AS 47.-
12 25.030 or, for a destitute person admitted under AS 47.25.020 or
13 47.25.035, an amount equal to the cost-of-care fees the person would
14 have been required to pay if not destitute minus money collected from
15 the person under AS 47.25.020(b);

*amnt
Do A charges
Resident*

(Destitute)

1 a deceased resident of the Pioneers' Home may be used for the burial
2 and funeral expenses of the deceased resident and for the improvement
3 of the burial plot of the Alaska Pioneers' Home.

4 (d) If the clothing and other personal effects of a deceased
5 resident of the home are not claimed within 90 days after the resi-
6 dent's death by a person designated by the resident, or by a relative
7 of the resident if no designee survives, then the clothing and effects
8 may be used for the benefit of other residents, or they may be sold
9 and the proceeds applied in the manner provided for money left by a
10 deceased resident. *by the*

Introduced: 1/9/84
Referred: State Affairs and
Finance

BY V. FISCHER, ZIEGLER, KERTTULA,
RODEY, JOSEPHSON, RAY AND
STURGULEWSKI

1 IN THE SENATE

2

SENATE BILL NO. 323

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to income of Alaska Pioneers' Home
7 residents."

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

9 * Section 1. AS 47.25.020(b) is amended to read:

10 (b) Every person admitted to the Pioneers' Home, except a person
11 admitted under AS 47.25.030, who receives income from any source in
12 excess of \$100 per [\$35 A] month may be required by the Department of
13 Administration to pay the excess to the Department of Administration
14 immediately upon receipt of the money in payment, or part payment, of
15 the cost of the person's [HIS] maintenance.

16 * Sec. 2. AS 47.25.020(c) is amended to read:

17 (c) At the end of each month the payments made under (b) of this
18 section shall be transmitted to the commissioner of revenue together
19 with the names of the persons making them and the amount paid by each.
20 The Department of Administration may pay an allowance [THE SUM] of
21 \$100 per [\$35 A] month to a resident without funds.

*Sec. 3. AS 47.25.070(a) is amended to read:

(a) A person is admitted under AS 47.25.010-47.25.110 incurs
a debt to the state for the difference between the amount charged
by the state and the amount paid by or on behalf of the resident.
Services in addition to the monthly amount charged by the
Department of Administration for which a resident may accrue a debt to the
state are:

(1) allowances paid under AS 47.25.020(c).

16 (3) costs of hospitalization and medical treatment provided
17 outside the Pioneers' Home;

18 (4) arrearages in fees for television and telephone ser-
19 vices provided in the Pioneers' Home;
20

Department
of
Administration



Alaska State Legislature

Senate Committee on State Affairs

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

Official Business

January 27, 1984

Senior Voice
C/o Becky Goodman
P.O. Box 102240
Anchorage, Alaska 99510

Dear Becky;

Enclosed are copies of the position papers for SB 323 and SB 325, both dealing with Pioneer Home residents, that you requested from this office. We appreciate your interest in this legislation. Please let us know if there is any other way we can be of assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Suzanne Tryck".

Suzanne Tryck
Aide to Senate State Affairs
Committee

nh
encls: Position Papers SB 323,325



Official Business

Alaska State Legislature

Senate Committee on State Affairs

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

Senator Kelly

MEMORANDUM

TO: Senate State Affairs Committee
FROM: Senate State Affairs Staff
RE: Committee meeting of January 19, 1983
DATE: January 19, 1983

Enclosed is the back-up information for today's committee meeting.

1/13/84

R E V I S E D
SENATE STATE AFFAIRS COMMITTEE
MEETING SCHEDULE

Butrovich Room, Capitol Building

January 17, Tuesday 3:00pm

SB 310	Establishing April 20 as Bob Bartlett day
SB 311	Establishing February 6 as Ernest H. Gruening Day
SB 341	Amending statutory references to the Pacific time zone
SB 353	Repealing the Presidential primary
SCR 32	Requesting the Governor to designate October 16 as World Food Day

January 19, Thursday 3:00pm

SB 323	Changing income limits of residents of Pioneer Homes--TELECONFERENCE
SB 325	Changing income limits of residents of Pioneer Homes--TELECONFERENCE

January 24, Tuesday 3:00pm

Overview of Department of Administration: Personnel, Equal Employment Opportunity, Retirement, Labor Relations



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-1954

Official Business

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Committee Staff

RE: SB 323 Income of Pioneer's Home Residents

DATE: January 19, 1984

There is a proposed committee substitute for SB 323 that would annually adjust the \$100 per month stipend in Section 1 to parallel the adjusted cost of living increase provided for in Section 2.

Sectional Analysis of SB 323

- Section 1: Increases the allowance of qualifying Pioneer Home residents from 35 dollars to 100 dollars; states that any money in excess of the stipend may be required by the Department of Administration.
- Section 2: States that the money collected by the Department of Administration shall be transferred to the Commissioner of Revenue; raises from 35 dollars to 100 dollars the amount paid to Pioneer Home residents without funds, and adjusts that amount annually in accordance with the CPI of Anchorage.

Fiscal information:

In FY 85, the costs due to the increase will be 133,000 dollars.

Comparison of SB 323 and SB 325

- Section 1: Same for both bills
- Section 2: Same except that SB 323 will annually adjust the payments to residents in accordance to the Anchorage CPI.
- Section 3: SB 323 does not include this section. This section of SB 325 outlines the process for releasing the personal effects of deceased residents.

Back-up information included

Proposed Senate State Affairs committee substitute
Position paper by the Division of Pioneers' Benefits
Fiscal note by the Division of Pioneers' Benefits
Letter from Anchorage Pioneers' Home residents
Newspaper article
Letter concerning Pioneers' Home cost to residents
Statutes affected by SB 323
HB 451, Alaska Pioneers' Home
HB 453, Alaska Pioneers' Home
HB 503 income, allowances and debts of residents of the
Alaska Pioneers' Home

POSITION PAPER

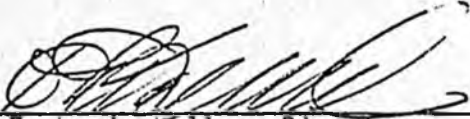
SB 323

This bill would increase the monthly stipend paid to certain residents (who are otherwise without funds) of Alaska's Pioneers' Homes from the current \$35 to \$100, and would also cause that sum (\$100) to be adjusted annually in accordance with the consumer price index for Anchorage. The current \$35 stipend is clearly too little. An increase is indicated.

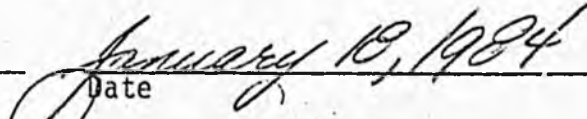
Sixty-one residents, or just under 10% of all the residents of the Pioneers' Home system presently receive the \$35 stipend. However, the full effect of the recent monthly rate increase has not yet been felt, and it is anticipated that the estimates of stipend needed for FY 85 are more accurately reflected in the operating budget which includes funds for 154 persons (\$65,000). The Division of Pioneers' Benefits estimates that should this bill become law, the number of residents who would qualify for the monthly stipend would be increased to as many as 165 residents, due to more people having less than \$100 in monthly income.

It would be more difficult to prepare annual budgets if the annual adjustment clause of this bill should become law. Also with each adjustment more residents would qualify for the stipend.

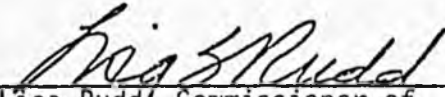
The department supports an increase in the monthly stipend, but cautions that \$100 is a 286% increase over the current \$35, and there is uncertainty about how many more residents will be eligible. The department does, however, support increasing the stipend to somewhere between \$75 and \$100.




E. Louis Keller, Director
Division of Pioneers' Benefits



Date



Lisa Rudd, Commissioner of
Administration



Date

Revision Date: _____

REQUEST
Bill/Resolution No.: S.B. 323
Title: Income of Pioneers' Homes Residents

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Social Servcs

Sponsor: Fischer
Requestor: _____
Date of Request: _____

BRU, Program of Subprogram(s) Affected:
Pioneers' Homes

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		133.0	139.1	145.5	152.2	159.2
800 MISCELLANEOUS						
TOTAL OPERATING		133.0	139.1	145.5	152.2	159.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		133.0	139.1	145.5	152.2	159.2
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL		133.0	139.1	145.5	152.2	159.2

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not indicated by sponsor.

ANALYSIS: Attach ~~separate page for any analysis~~

Prepared By: George L. Richard *Michael*
Division: Pioneers' Benefits *William Anderson*

Phone: 465-4401
Date: January 13, 1984

Approved by Commissioner: Lisa Rudd *JSP*
Department: ADMINISTRATION

Date: 1/19/84

FISCAL NOTE/BDGSF2

- Distribution:
- Legislative Finance
 - Legislative Sponsor
 - Registrar
 - Office of Management and Budget
 - Impacted Agency(ies)

12/1/83

ASSUMPTIONS

1. The bill will become effective on July 1, 1984.
2. The Pioneers' Home populations will remain stable, but the total number of residents receiving the stipend will increase from 154 to 165 due to inclusion of the persons who have less than \$100 monthly income.
3. The amount of the monthly stipend will increase by 4.6% each year after FY 85. This rate of increase is the average of the last 3 years' increase in the Consumer Price Index for the Anchorage area for "all urban consumers," as determined by the United States Department of Labor, Bureau of Labor Statistics. It is assumed, (for lack of better indicators) that this average rate of increase will continue.
4. The stipend payments will continue to be paid from the General Fund.
5. The rates for cost of care will remain at the present level of \$425 per month for residential care and \$525 per month for skilled nursing care.

Stipend (FY85)

FY85 Budget (Gov's. Allowance)		S.B. 323 ④ \$100/mo.		Amount or Increase	
No. Persons	Amount	No. Persons	Amount		
Auch.	56	\$ 23,700	60	\$ 72,000	\$48,300
Ebx.	25	10,500	27	32,400	21,900
Ketch.	8	3,500	9	10,800	7,300
Palmer	40	16,800	42	50,400	33,600
Sitka	25	10,500	27	32,400	21,900
Totals	154	\$ 65,000	165	\$198,000	\$133,000
					+ inflation
					@ 4.6%
					per year
					for FY86-8

Opinion

Placing the blame

Doubling the room rates at the Pioneers' Homes was a shock to pioneers and their friends. Many pioneers acknowledge that the rates are low and it's been 12 years since the rates were changed. The state administration is taking heat and being criticized for the boost. But let's put the blame where it belongs.

If the rates have remained unchanged for 12 years, we can assume that the previous administrations were negligent about keeping up with the times and gradually increasing rates with inflation. Or, we can assume that the administration 12 years ago ripped off the pioneers by setting artificially high rates. We doubt that is the case. Charging \$275 a month for a room that includes nursing care was as good a bargain 12 years ago as the charge of \$525 a month for a room and nursing care this Oct. 1, after the rates have almost doubled. That charge includes meals and everything except prescription drugs.

No one is denied admission to the homes if he or she lacks the \$525 a month. What happens is that each pioneer is guaranteed by law \$35 a month for personal spending money and the rest of the pioneer's income, if it is only the \$250 a month in the longevity bonus, goes toward the monthly rent. The state collects the balance from the pioneer's estate on death if there is an estate, which usually doesn't exist.

Our complaint is that suddenly doubling the rates is unfair to those who are paying their own way at the home. It's a shock to those on budgets. The rate should have been increased gradually. We also believe the \$35 a month given each pioneer for personal expenses is way out of date. It's been much longer than 12 years since that was raised.

Who do we blame for this and how is some relief attained? We complain to our legislators. They are the ones who raised the rates, not the state administration. It's the lawmakers who have kept the monthly spending money at an artificially low \$35 a month.

When the Alaska Legislature passed the operating budget in June they included this message of legislative intent for the Division of Pioneers' Benefits:

"No new positions authorized. General funds have been reduced \$1,200,000 and program receipts increased \$1,200,000 in anticipation of an increase in residents' fees."

There it is, straight from the boys and girls who voted themselves a pay increase this year and granted each house leader \$2 million to play with as he sees fit.

It's the same bunch of boys and girls who, for the past two sessions, have failed to pass legislation recommended by the Division of Pioneers' Benefits to raise the \$35 limit on personal expenses to \$70 a month, but collected \$80 a day per diem for themselves.

Grace Dillon
Pouch 7-027
Anchorage, Alaska 99510

Honorable Bill Sheffield
Governor, State of Alaska
Juneau, Alaska 99301

Sept. 1983

Dear Governor Sheffield,

In regard to the Anchorage Pioneer Home:

A \$200 and \$250 per month raise was given (From 225 to 425 for able residents & 275 to \$525 for nursing care)

This brings many of the residents into the not able to pay category, and others into a bare existence.

A poultry \$35 is returned to the penniless for personal necessities. Welfare does not have to be paid back, but these accounts are built up against the resident at a 6% charge. This is a disgrace to the State of Alaska. Why shouldn't the State continue to subsidize these Senior Citizens living on small Social Security and Longevity when they subsidize less worthy causes. This home had given most residents self respect by being able to pay their own way. They worry now about the probability of losing Longevity. Expecting them to pay their own way at this inflated raise is too great a financial burden. They came in here under conditions promised that would help them. The State should honor these promises. Many sold their homes. If they had not sold their home they would now be better off, as the \$900 it will now cost would buy their food and utilities. The State is wronging many of these old mental and physical disables by going into the rental business demanding full restitution.

Why should the present residents be so penalized anyway, when the new residents coming in will pay nothing at all. The new ruling gives destitutes preference. There will always be a destitute to absorb the new vacancy, many of which have drank and gambled their money away. In a very short time this home becomes a poor-house and not the original intent. Since no one will be paying in the near future, why are they so reluctant to help old people now trying to help themselves?

It seems as though all subsidies go to the younger generation and their needs.. Old people do not have parents, teachers, unions and everyone else fighting for them. Most are not any more able to fight for themselves than your small child. They need your help.

Respectfully,

cc: Commissioner Lisa Rudd
E. Louis Keller
Louis Odsather
Others

Grace Dillon

September 9, 1983

Honorable Bill Sheffield
Governor, State of Alaska
Juneau, Alaska 99801

Dear Governor Sheffield:

As of this date, the residents of the Anchorage Pioneer Home have been notified the rent will raise from \$225 a month to \$425 a month. Nursing wing rent will go from \$275 to \$525 a month. This raise is effective, according to the letter, on October 1, 1983.

The residents have expected a raise. However, we don't quite understand the "Pioneer Advisory Board's" being blamed for the raise and also the quote that it was "legislative intent" when both the Senate and House representatives from our district say they know nothing of it. Why is it that it appears it was known in Juneau in July and we did not get notice until September 9, 1983?

1. We feel that there should be a postponement of the effective date. After all, notice of effective date is only 21 days away. Doesn't the law require a landlord to give 30-days notice of a raise?
2. If we are to pay more, we feel there should be a great improvement in the food. It is now low institutional food. The contractor should have a raise immediately in daily dollar allowance.
3. There should be an increase in salary for a supervisor of Physical Therapy so we can have a good certified Head Therapist. We have been since May without a supervisor, and the service is very poor.
4. We feel the budget cut should be restored. After all, nearly 200 residents will be paying an additional \$200 a month.
5. The Anchorage Pioneer Home is now over five years old and has had hard use. Some things must be done soon to keep it from becoming a run down old building.
6. The residents feel there should be an adjustment immediately to the \$35 allowance for those who have had all their money taken to apply to rent. \$35 hardly does much these days toward expenses such as a permanent, haircut, shampoo, shoes, clothes, cigarettes, drug costs, etc.

We hope you will give these things serious thought.

cc: Commissioner Lisa Rudd
E. Louis Keller
Louis Odsather

Timothy E. Odf *in Book*
E. Louis Keller
Richard L. Odf
C. N. Scott

Demetrios (Jim) Stata
Willie Sessione
Sadie Beavers
Luelle Kusman
Jean Fekie
Opal M. Everett
Achy Gurech
Grace Payne
Madge Shly
Erica Westgard
Otto A. Schneider
Norman Johnson
May Gibbons
-Lyla Redisko
M. C. Enay
G. W. Meyer
D. W. Spalmer
Mary M. Harvey
George R. Ramstad
Paul A. Mitchell
Dora C. Devidt
Annice L. Toopes
Ecker S. Holt
Margaret Hafemeister

Pauline Maxwell
Harold L. Maxwell
Ethel A. Petty
Henry Lamb (1181)
Belle Bennett
Margaret Strand
Betty Barrett
Rose Womack
Mable Parker
Ray Wenz
William Baird
Wm Casey
Kornth Weaver
Catalia V. Haynes
Beth Schneider
Jean Hafemeister
Celia Wellington
Marquette Gallup
Robt. Bradley
Earl Cook
Adelle Smith
Evelyn Snitzler
Lynn Whitley
Jan Kaitt
Bergema Blanchard
Karl E. Baskeler
Thomas M. Dohue
Francis M. Schumacher

47.25.010

of
or the
id, the
chapter
ication,
If any
service
a civil
6 SLA

§ 47.25.020 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.25.020

(c) The Department of Administration shall

(1) cooperate with the federal government in matters pertaining to the welfare of Alaskan pioneers, make the reports in the form and containing the information the federal government from time to time desires, and accepts funds allotted by the federal government, its agencies or instrumentalities, in establishing, extending and strengthening services for pioneers of Alaska;

(2) adopt regulations necessary for the conduct of the business of the Pioneers' Home and for carrying out the provisions of AS 47.25.010 — 47.25.110, require bonds and undertakings from persons employed by it as in its judgment are necessary, and pay the premiums on them, and establish regional and local offices and the advisory groups which are necessary or considered expedient to carry out or assist in carrying out a duty or authority assigned to it;

(3) perform all executive or administrative duties necessary and advisable to carry out the purpose of AS 47.25.010 — 47.25.110, including the power to make contracts and to make disbursements on vouchers against funds for the purpose of AS 47.25.010 — 47.25.110, within the limit of funds available;

(4) study the needs of Alaska's pioneers and submit recommendations for new rules, regulations and proposed legislation;

(5) prepare an annual report to the legislature.

(d) The Department of Administration may employ the necessary subordinate officers and employees, and shall prescribe methods for operation of the Pioneers' Home, standards of care and service to residents, and rules governing personnel and rewarding employees on a merit basis. (§ 51-2-11(a) (c) ACLA 1949; § 51-2-12 ACLA 1949; am § 1 ch 71 SLA 1963; am Executive Order No. 30 (1968); am §§ 1, 2 ch 11 SLA 1979)

Effect of amendment. — The 1979 amendment substituted "residents" for "inmates" in subsection (d).
amendment deleted "north and west of Yakutat" from the end of subsection (a) and

Sec. 47.25.020. Admission to home. (a) Every worthy person residing in the state who has been a resident of the state continuously for more than 15 years immediately preceding his application for admission, and who is destitute and in need of the aid or benefit of the home because of physical disability or other cause, is entitled to admission to the home under the conditions, limitations and penalties prescribed by the regulations of the Department of Administration. No person may be admitted as a resident of the Alaska Pioneers' Home under the provisions of AS 47.25.010 — 47.25.110, if the support and maintenance of the person is imposed by law upon a relative or member of the family of the person.

(b) Every person admitted to the Pioneers' Home, except a person admitted under AS 47.25.030, who receives income from any source in

o state
outside

a) The
known
ained
nated

eneral
e than
s and
hs in

excess of \$35 a month may be required by the Department of Administration to pay the excess to the Department of Administration immediately upon receipt of the money in payment, or part payment, of the cost of his maintenance.

(c) At the end of each month the payments made under (b) of this section shall be transmitted to the commissioner of revenue together with the names of the persons making them and the amount paid by each. The Department of Administration may pay the sum of \$35 a month to a resident without funds.

(d) The money received by the commissioner of revenue shall be deposited in the general fund. (§ 51-2-13 ACLA 1949; am § 1 ch 158 SLA 1955; am § 1 ch 118 SLA 1957; am § 1 ch 89 SLA 1961; am § 1 ch 63 SLA 1965; am Executive Order No. 30 (1968); am §§ 1, 2 ch 7 SLA 1971; am § 3 ch 11 SLA 1979)

The 1979 amendment substituted "resident of" for "guest to" in the second sentence of subsection (a). Legislative history report. — For report on ch. 7, SLA 1971 (SB 70), see 1971 House Journal, p. 217.

Sec. 47.25.030. Admission on payment. A citizen of the United States over 65 years of age who is a resident of the state and has been a resident for not less than 15 years continuously immediately preceding his application, but who is not destitute, may on application be admitted to the home upon his agreement to pay to the state a sum for each day as the Department of Administration considers sufficient to compensate the state for the cost of care and support of the person at the home. When this agreement is entered into the Department of Administration may receive the security for the payments, which it considers expedient. (§ 51-2-14 ACLA 1949; am § 2 ch 89 SLA 1961; am Executive Order No. 30 (1968))

Sec. 47.25.035. Exception to admission criteria. An applicant for admission to the home who has been a resident of the state for 30 years and is otherwise qualified for admission under AS 47.25.020 or 47.25.030 may not be disqualified for admission because of absence from the state if the commissioner of administration determines the absence was reasonable, and admission is consistent with the intent of this chapter. (§ 2 ch 89 SLA 1978)

Sec. 47.25.040. Transfer of insane inmates to asylum or sanitarium. A person regularly admitted into the home who is found to be insane may be transferred to an institution provided for the care and custody of insane persons for the state in the manner provided by law for the admission of other persons to the institution. (§ 51-2-15 ACLA 1949)

Sec. 47.25.050. Maintenance funds. The legislature shall each session appropriate the necessary funds for the maintenance of the

home to department individual government ACLA 1:

Sec. 47 all money trust, an Pioneers interest Department benefit an am Exec

Sec. 47 incurred a rate of and may first, prior his death aid or bur (b) Mon deceased funeral the burial (c) The of the hom given to provided am Execu

Effect of amendment "resident" for places in substituted inmates" in

Conduct of state to prior swears initi.

Sec. 47.2 AS 47.25.01 general, or executor of state again necessary into the tre 1957; am E



Alaska State Legislature

Senate Committee on State Affairs

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

Official Business

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Committee Staff

RE: SB 325 Residents of the Alaska Pioneers' Home

DATE: January 19, 1984

Sectional Analysis

Section 1: increases the allowance of qualifying Pioneer Home residents from 35 dollars to 100 dollars; states that any money in excess of the stipend may be required by the Department of Administration.

Section 2: states that the money collected by the Department of Administration shall be transferred to the Commissioner of Revenue; raises from 35 to 100 dollars the amount paid to Pioneer Home residents without funds.

Section 3: outlines the manner in which the clothing and personal effects of a deceased resident shall be held and released by the Pioneers' Home.

Comparison of SB 323 and SB 325

Section 1: Same for both bills

Section 2: Same except that SB 323 will annually adjust the payments to residents in accordance with the Anchorage CPI.

Section 3: SB 323 does not include this section. This section of SB 325 outlines the process for releasing the personal effects of deceased residents.

Fiscal Information

In FY 85, the costs associated with SB 325 are 133,000 dollars.

Back-up information included

Position paper by the Division of Pioneers' Benefits
Fiscal note by the Division of Pioneers' Benefits
Letter from Anchorage Pioneers' Home residents
Newspaper article
Letter concerning Pioneers' Home cost to residents
Statutes affected by SB 323
HB 451, Alaska Pioneers' Home
HB 453, Alaska Pioneers' Home
HB 503 income, allowances and debts of residents of the
Alaska Pioneers' Home

POSITION PAPER

SB 325


This bill increases the monthly stipend paid to certain qualified residents (who are otherwise without funds) of Alaska's Pioneers' Homes from the current \$35 to \$100. The current \$35 stipend is clearly too little and therefore, an increase is indicated.

This bill also reforms the mechanism for the distribution of clothing and personal effects of deceased residents.

Sixty-one residents or just under 10% of all residents of the Pioneers' Home System presently receive the \$35 stipend. However, the full effect of the recent monthly rate increase to residents has not yet been felt, and it is anticipated that the estimates of stipend costs for FY 85 are more accurately reflected in the operating budget which includes funds for 154 persons (\$63,000). The Division of Pioneers' Benefits estimates that should this bill become-law, the number of residents who would qualify for the monthly stipends would be increased to as many as 165 residents due to more people having less than \$100 in monthly income. \$100 is a 286% increase over the current \$35.

The Department supports increasing the monthly stipend to somewhere between \$75 to \$100.

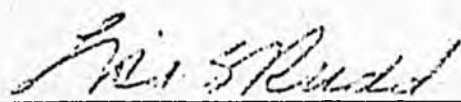
Moreover, the Department supports the reformed language proposed for AS 47.25.070(c), which is generally the existing practice of the Pioneers' Home System.



E. Louis Keller, Director
Division of Pioneers' Benefits

January 18, 1984

Date



Lisa Rudd, Commissioner
Department of Administration

1/19/84

Date

Revisor Date: _____

REQUEST

Bill/Resolution No.: S.B. 325
Title: Residents of the Alaska Pioneers' Homes

Sponsor: Sturglewski
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
Program Category Affected: Social Servcs

BRU, Program of Subprogram(s) Affected:
Pioneers' Homes

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		133.0	133.0	133.0	133.0	133.0
800 MISCELLANEOUS						
TOTAL OPERATING		133.0	133.0	133.0	133.0	133.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		133.0	133.0	133.0	133.0	133.0
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL		133.0	133.0	133.0	133.0	133.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not indicated by sponsor.

ANALYSIS: Attach a separate page for any analysis.

Prepared By: George T. Michael
Division: Pioneers' Benefits

Phone: 465-4401
Date: January 13, 1984

Approved by Commissioner: Lisa Rudd
Department: ADMINISTRATION

Date: 1/19/84

FISCAL NOTE/BDGSF2

Distribution:
Legislative Finance
Legislative Sponsor
Registrar
Office of Management and Budget
Impacted Agency(ies)

12/1/83