

ALASKA LEGISLATURE COMMITTEE REPORTS 1903-1904

3055

SSA

SB

466

8672

STATE OF ALASKA LEASES WITH AN ANNUAL COST OF \$1,000,000.00 OR MORE

LEASE # LESSOR NAME LEASE ADDRESS SQ. FT. ANNUAL COST

1444 CAPITAL OFFICE PARK WEST 8TH STREET JUNEAU, AK. 35,500 \$ 1,020,940.71  
(TRAC Twin Bldg)

1535 FRONTIER BUILDING 3601 2 STREET ANCHORAGE, AK. 135,019 \$ 3,628,318.80

1607 BLOMFIELD CO. 1107 W. 8TH STREET JUNEAU, AK. 59,463 \$ 1,405,419.96

1627 GOLDBELT ENTERPRISE WEST 10TH STREET JUNEAU, AK 40,889 \$ 1,079,469.60  
MGT.

over \$250,000 p/y  
219

# ALASKA STATE LEGISLATURE

## ANCHORAGE CAUCUS

### MEMORANDUM

TO: Members of the Anchorage Caucus

FROM: Representative Charlie Bussell

RE: Legislative Hall in Juneau

DATE: March 15, 1984

#### MEMBERS

##### Senators

Faiks, J.  
Fischer, P.  
Fischer, V.  
Gilman, D.  
Halford, R.  
Josephson, J.  
Kelly, T.  
Pertyjohn, F.  
Rodey, P.  
Sturgulewski, A.

In connection with my assignment as a member of the subcommittee appointed to carry our message to the Governor asking him to cease and desist in the Juneau Legislative Hall project for the reasons outlined in Anchorage Caucus Resolution No. 2, I have asked staff to review the whole situation concerning the appropriation of the funds now being used to acquire the site for the so-called Legislative Hall. The results of that review are attached.

##### Representatives

Abood, M.  
Barnes, R.  
Bussell, C.  
Clocksin, D.  
Cowdery, J.  
Flood, J.  
Furnace, W.  
Hayes, J.  
Lindauer, J.  
Liska, J.  
Martin, T.  
Pestinger, S.  
Phillips, R.  
Szymanski, M.  
Tischer, M.  
Uehling, R.  
Ward, J.

It appears to me that this whole thing has been an elaborate scheme from the beginning to do in a sneaky, underhanded way what the Governor and his supporters in the Legislature could not do in a proper and open manner, namely, use State funds to build a facility for the use of the Legislature in Juneau. Obviously, if this facility is built, there will be a lock-in of the Legislative function to the City of Juneau in spite of our not wanting this to happen and in spite of our never having an opportunity to approve. And this apparently is just what this Governor and this Administration want to happen.

I absolutely can not understand why, if that is what they want, they can't come to the elected representatives of the people and allow the people to express through these representatives what they the people want. Instead, they sneak through an appropriation which doesn't give any notice of what it is really for. They then enter into a conspiracy with the City of Juneau to hatch out the scheme further. They quietly go about acquiring the site and spending funds so that when we find out about it, we will be stuck with a large dollar commitment to what they want.

We have collectively through our resolution and also some of us have individually sought assurances from the Governor that facilities for the Legislature will be approved by the Legislature. Instead of taking a position, the Governor first says he will seek approval, then he says he won't -- just more of his wishy-washy approach to things.

Anchorage Caucus

March 15, 1984

Page 2

In the meantime, his DOT proceeds full bore with the project. Only yesterday, because the Governor knows we may not approve more funds now that we know what is happening, we learn that the City of Juneau is being asked to further the conspiracy by stepping in and providing the necessary funds to buy the last parcel needed for the site. Likewise, the planning and design work is going ahead full bore using one of the Governor's slush funds to provide the dollars. So here we sit, watching the project become a reality based upon probably illegal procedures so that we will eventually be faced with a fait accompli.

It doesn't appear the Governor intends to stop. It doesn't appear he intends to seek our approval. It does appear we need to take a very strong stand if we want to stop this project. I recommend that this Caucus discuss immediately what measures should be taken including possible legislation and possibly litigation.

M E M O R A N D U M

TO: Representative Charlie Bussell

FROM: Robin L. Renner *RLR*

RE: Validity of Appropriation Being Used to  
Acquire Site for Legislative Hall

DATE: March 15, 1984

You have asked me to review and comment on the validity of the appropriation made in Section 95 of the Senate CS for 2nd CS for House Bill No. 309 (3d Finance) am S which is now signed into law as Section 95 Chapter 106 Session Laws of 1983. The funds appropriated in this legislation are now being utilized for acquisition of the land for the site of a new legislative hall or capitol in the City of Juneau. The Sheffield Administration intends to make this site available (after acquisition) to the City of Juneau by long-term lease for the construction of the building which is to house the legislature and presumably the Governor's and Attorney General's offices which are now located in the present State Capitol Building. The City of Juneau intends to issue bonds to provide the funds for construction of the building utilizing the income stream from a lease-back of the completed project to cover the debt service on the bonds. It is expected that funds for the lease payments on the lease (lease-back) of the completed structure will be provided by annual appropriation by the legislature. The Administration apparently intends to continue moving ahead with this project without seeking any approval or other action of the legislature in spite of numerous indications that a substantial number of the legislators either do not want a new legislative hall at all, do not want it to be in Juneau, or at the very least, want an opportunity to approve or disapprove any project that is intended for use as a legislative hall or capitol. The Sheffield Administration contends that the legislature already has provided all the approval necessary for the project on the basis of the appropriation described at the beginning of this memorandum. To determine whether this is so, it is necessary to examine the history of this appropriation.

House Bill 309 in its final form is entitled: "An Act making reappropriations and transfers among appropriations and extending the lapse date of certain appropriations; and providing for an effective date."

Representative Bussell

March 15, 1984

Page 2

Section 95 reads as follows:

"Sec. 95. The sum of \$4,500,000 is appropriated from the general fund and such other funds as may be received from other sources for this project are appropriated to the Department of Transportation and Public Facilities for land acquisition and facilities planning in Juneau."

Apparently, by general assumption, and perhaps fostered by misleading comments made to the press, it is thought that this \$4,500,000 appropriation is a reappropriation of that same sum previously appropriated to the Alaska Power Authority for feasibility studies, preconstruction design, and engineering for the Snettisham Hydroelectric Project in Section 6, Chapter 90, SLA 1981 as amended by Section 83, Chapter 141, SLA 192 which appropriation was deleted by Section 94 of HB 309. However, as can be seen by the language of Section 95 there is absolutely no indication that this is in fact a reappropriation or a transfer of these funds from Snettisham. If the sum involved didn't happen to be the same, there would be no basis whatsoever to believe that the two are in any way related. Therefore, it is my conclusion that the appropriation in Section 95 cannot be considered a reappropriation or transfer of appropriations within the plain wording of the title of the Act. It is in fact just an out-and-out appropriation from the general fund and it is in my opinion improper for it to appear in a reappropriation and transfer bill because to include a general appropriation in a bill titled "reappropriations and transfer of appropriations" does not provide the required notice, i.e., the title of an Act must give notice of what it contains. To reiterate, the deletion of a sum from an already existing appropriation without specifying by amendment where the funds are to go causes the funds to lapse into the general fund. General fund appropriations cannot validly appear in a bill entitled "reappropriations and transfers of appropriations" where no previous appropriation is identified as being reappropriated or transferred.

Leaving that question of legality, and turning to the question of the validity of the wording of this appropriation regardless of where it appears, I am of the opinion that Section 95 is an invalid and illegal appropriation in that it does not adequately describe the purpose for which the funds are to be used.

Article IX, Section 6 of the Alaska Constitution reads as follows:

"No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

Representative Russell  
March 15, 1984  
Page 3

Section 13 of the same Article reads:

"No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void."

AS 24.30.030 reads:

"Appropriation bills. Bills for appropriations shall be confined to appropriations and shall include the amount involved and the purpose, method, manner and other related conditions of payment. (31 ch 157 SLA 1959)"

These provisions make it very clear that under Alaska law funds can be spent or obligated only by a valid (authorized by law) appropriation of the legislature made for a public purpose. Section 95 appropriates (1) \$4,500,000 from the general fund and (2) "such other funds as may be received from other sources FOR THIS PROJECT (emphasis added)... for land acquisition and facilities planning in Juneau." There is no further identification in the appropriation as to what the project is. Since reference is made to land acquisition and facilities, the project could be anything that would have a site and facilities built thereon, private or public. For example, a hotel to be rented to travelers for profit, a strictly private enterprise, would come under this definition. So would a private movie theater. Because of this failure to identify the type of facility, I believe the appropriation is invalid for failure to state a public purpose. And I further believe that if a proper challenge were made in the eminent domain cases to acquire the site, an allegation that the property to be acquired is for "this project" would not stand up under decisions defining what is or is not a public purpose. If, instead of "this project," the words "for a Legislative Hall" had been used, the problem would have been avoided. As it is, no public purpose is really stated. "...for land acquisition and facilities planning in Juneau," is not enough. Eminent domain cases where the issue of what is a public purpose is discussed would provide plenty of authority for this conclusion.

A further problem with the wording of Section 95 is that it appropriates funds from other sources. As is pointed out in an Opinion of the Attorney General of the State of Alaska dated October 14, 1982, dealing with this exact appropriation (copy attached), the other sources appropriation is "an unspecified amount from an unspecified source" and "presents a serious legal issue." It goes on to state:

Representative Bussell  
March 15, 1984  
Page 4

"However, the appropriation of money which may be received from other sources presents a serious legal issue. Because no amount is stated for the appropriation, sufficient authorization may not exist to expend the money beyond the \$4,500,000. 6/ Nonetheless, the unspecified source of the appropriation is presumably severable from the general fund part of the appropriation which is stated with specificity in the amount of \$4,500,000. AS 01.10.030. Consequently, until you begin receiving amounts from "other sources," whatever they may be, the expenditure of general fund money authorized by the appropriation is not a problem."

Thus, the Attorney General, himself, concedes that there may not be authorization to spend funds beyond \$4,500,000, i.e., that the appropriation of funds from other sources is invalid. Presumably, there now exists a problem because the Administration has started spending money from other sources, primarily the Public Facility Planning Fund (know as PFPF), which is a fund created within the Office of the Governor by AS 35.10.135. According to information furnished to me by the Governor's office and DOT/PF, some \$700,000 has been allocated to the Legislative Hall or facility and as of the end of February at least \$172,000 of those funds had been spent or obligated on the project. This expenditure is questionable not only for the reasons suggested by the Attorney General but also because the fund is to be spent "on a reimbursable basis." There is no apparent source of reimbursement unless the State were to issue bonds or the Legislature were to provide a further appropriation for the Legislative Hall in Juneau, neither of which appears likely at this point.

In passing, I would like to comment on a subject discussed in another part of the AG opinion--the validity of financing a public facility through a lease/lease-back commitment without violating the constitutional provisions which prohibit the creation of public debt except for capital improvements and then only after approval by the legislature and a vote of the people. The opinion concludes:

"We believe there is sufficient authority under existing law to finance the construction of a public facility by lease. However, because this financing technique is not specifically authorized by law, we cannot with absolute certainty advise you that a court would agree with our opinion. You should make allowance for this risk when you plan further development of each project to be financed by the lease purchase method."

There is good reason that the Attorney General "cannot with absolute certainty advise" that a court would agree that the lease financing of a public facility is valid. Many jurisdictions (other states) have decided appellate cases showing how the courts have struggled with the validity

Representative Bussell

March 15, 1984

Page 5

of this approach in the face of the prohibition against debt and also the rule against binding future legislatures where that concept is applicable. A number of high courts have, in fact held that the lease approach is invalid and while they may be in the minority, there are enough of them that it can be said that there is substantial authority contra to the conclusion reached in the AG opinion. To determine how the Alaska Supreme Court might go, it would be necessary to determine how similar those other state prohibitions and limitations are to ours.

But I think the real concern here is not a lawyer's legal concern but a layman's legal concern which I have not heard discussed yet. Whereas the AG is advising the Administration that the approach is probably okay, who advises the Legislature, as a client, of the consequences down the road, when the Legislature, which has never approved a Legislative Hall, expresses its disapproval of the first or any annual payment by refusing to approve an appropriation for such payment? Put another way, when the building is up, the lease-back is signed with the City of Juneau, and it is time to appropriate the annual lease payment, what answer is going to be given when legislators ask, "What happens if we don't appropriate any funds for the lease payment?" There is no way I can see any attorney advising that nothing would happen legally. I think rather the advice would be that if no revenue was forth coming from the lease, the bondholders who bought the bonds from the City of Juneau, unless they were otherwise paid, could sue Juneau contending implied misrepresentation. Juneau could cross sue the State of Alaska and the State could lose the suit and if it did, it would be liable for big damages. From a layman's viewpoint, then, this advice would be to the effect that if the Legislature fails to appropriate, then the State may be legally liable to answer in huge sum damages. That advice really wouldn't leave much choice and that conclusion, if accurate, is what really is wrong with the annual appropriation method of trying to make the lease approach to financing valid. In reality the fact that the Legislature is not required to appropriate is meaningless because another part of the State Government will have signed the lease, the City of Juneau will have relied on the annual payments, the long-term bondholders will have relied on the payments and all concerned will testify that they never expected any possibility that there wouldn't be an appropriation each year.

All this could be avoided if the Legislature were given the right to approve a general appropriation for construction, or to authorize a bond issue for construction, or even by bringing a declaratory relief action so the Alaska courts could decide whether the lease/lease-back method is valid.

With regard to the questions posed by Representative Szymanski in his letter of February 9, 1984, and the response from the Attorney General

Representative Bussell  
March 15, 1984  
Page 6

dated march 2, 1984, (copy attached) the latter seems to be a bit cursory in view of the fact it took three weeks in the preparation. In the answer to question one, the AG Opinion previously discussed was relied on. The only thing new added is the reference to form 35a. I was provided a copy of the form which does indeed refer to a Legislative Hall but I don't see how this "provides sufficient authority" to establish the purpose of the appropriation in Section 95. The form copy I was provided was signed and submitted by Representative Duncan when HB 309 was in the House Finance Committee and it is my understanding that the appropriation it requested was not included in the bill. I don't believe this document could in any way support an appropriation that was included in the Senate version of the bill.

In addition, I could find no appellate case authority, at least in Alaska, to the effect that a court would go beyond the wording of the appropriation itself to provide an otherwise missing public purpose requirement. However, in a recent Superior Court decision Alaska State Legislature v. Hammond No 1JU-80-1163 Civil (May, 1983) Judge Carpeneti issued a thorough and carefully considered opinion dealing with a number of issues relating to the wording of appropriations. He made it very clear that the purpose of an appropriation must be specifically and clearly stated and he held that the failure to specify a public purpose made an appropriation challenged by the Governor in that case invalid.

Superior Court Opinion, Page 37: "It should be emphasized that this opinion contains no finding that any of the appropriations challenged are void because they were not for a public purpose. Thus, there is no claim that article IX, section 6 of the Constitution, set out above, was violated. <sup>13</sup> The only issue in this regard, on which this court finds in favor of the Governor, is that the challenged appropriations did not specify a public purpose as required by AS 24.30.030."

It may be that the record of hearings, floor debate, committee back-up, and the like can be used to provide an otherwise missing public purpose but that kind of evidence is usually allowed only on Legislative intent questions rather than the question whether a statutory and constitutional requirement has been complied with as is the issue here. There is no indication in Judge Carpeneti's opinion that such material can be used to supply a missing public purpose. He looked to the wording of the appropriation itself. Thus, I think the correct answer to Szymanski's Question 1 is that there is authority for the Department of Administration to build a facility, provided the project is based on a valid appropriation identifying what the facility is. Obviously, the answer to Szymanski's Question 2 should be, "There is none," for all the reasons discussed already herein.

Representative Bussell

March 15, 1964

Page 7

Representative Szymanski's Question 3 raises some different issues as does Question 4. The Legislature certainly may set up standards and criteria by which the Administration shall carry out the leasing function. The issue of whether the Legislature can, by properly worded legislation, validly require that certain specified types of leases be approved either before being executed by the executive branch or after execution is a question not yet decided by the Alaska appellate courts although the AG Opinion attached hereto indicates that a Superior Court has held the language requiring Legislative approval in AS 37.05.280 (copy attached) invalid. This doesn't mean other proper language would be so held. After all, there are many instances where legislative approval is validly required for executive branch actions.

Be that as it may, I would think the effect of AS 24.05.190 providing for control of the capitol and other space occupied by the Legislature and AS 37.05.280 relating to the lease of space for the use of the State should have been discussed. Subsection (a) of AS 24.05.190 provides in part:

"Control of legislative space. (a) The state capitol, with the exception of the capitol space now occupied by the Office of the Governor, and space occupied in any other state building by the legislature or its agencies is under the control of and subject to assignment by the Legislative Affairs Agency as directed by the legislature."

While it could be argued that "control" means only after the space has been provided by the Administration, it is just as arguable that "control" also means the approval of what space is to be occupied as well. At the very least there should be some sort of request for space to be provided before the Administration blithely sets out to lease for that purpose. Indeed the term "state agencies", which doesn't include the Legislature, (See AS 37.05.400(4)) are required to lease space through the Department of Administration, presumably by issuing some sort of request setting forth the need for the space. Unless the term "the state" used in the first sentence of AS 37.05.280 is construed to include the Legislature, I don't think the procedure for provision of legislative space or who shall request it or who shall approve it is addressed in the statutes except in the last sentence of AS 37.05.280. And until this provision is addressed by the Alaska appellate courts, the issue remains undecided. On this basis, I think the correct answer to Question 3 ought to be "Maybe" and to Question 4 ought to be "No, not under existing law," with a caveat that that law may not be valid as presently written.

As to Questions 5 and 6, I think the answer to Question 5 is probably correct as "No" but, as pointed out earlier in this memo, the lease purchase arrangement for the Legislative Hall is to take the place of either bonded indebtedness or a general appropriation which would

Representative Bussell

March 15, 1984

Page 8

otherwise be required to fund the project, both of which would require legislative approval which has neither been given nor sought. Likewise, the answer to Question 6 ought to be "Probably" because the whole lease/lease-back Juneau revenue bonding scheme depends on the annual appropriation by the Legislature of lease payments to provide the revenue for the bonds. The failure to so appropriate would most certainly call into question the good faith and credit of the State in the minds of future bond buyers and underwriters.

All in all it appears to me that much of what is going on is due to the very real possibility that the Legislature would not approve the construction of a new capitol or Legislative Hall in Juneau. My conclusions are that without Legislative approval the validity of the the proposed lease finance arrangement is highly questionable and might not be upheld by the courts if called into question; that such arrangement would surely fail if there is no legally acquired site that can be leased to the City of Juneau; that the funds now being used to acquire the site were not validly appropriated because (1) the appropriation improperly appeared in a reappropriation and transfer bill, (2) the appropriation did not state a valid public purpose because the nature of the project was not adequately identified as to public purpose, and (3) the source of some of the funds now being used in the project was not specified; and, lastly, that existing statutes may very well require that the Legislature must approve and request any space that is going to be used and occupied by the Legislature as the legislative portion of the capitol or any other building housing the legislative chambers, offices, and other facilities.

# MEMORANDUM

# State of Alaska

TO: Hon. Daniel A. Casey, Commissioner  
Department of Transportation &  
Public Facilities

DATE: October 14, 1983

FILE NO: 366-101-84

AND  
Hon. Lisa Rudd, Commissioner  
Department of Administration

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Construction financing of a public facility by lease agreement

By: William F. Cummings  
Assistant Attorney General  
Transportation Section-Juneau

James L. Baldwin  
Assistant Attorney General  
Governmental Affairs-Juneau

The Department of Administration (DOA) and Department of Transportation and Public Facilities (DOT/PF) have requested our advice whether there is sufficient authority granted by law to permit a state agency to finance the construction of a public facility on state land under a lease agreement with a developer and owner of the facility other than the state. Briefly, the lease agreement consists of a conveyance of a leasehold interest in state land to a developer who constructs a facility on the land which is leased back to the state. Upon expiration of the lease agreement, the facility either reverts to the state or the state has an option to purchase it.

Using this financing technique, DOA proposes to centralize state offices in Anchorage and DOT/PF proposes to construct a legislative hall in Juneau. Under both proposals, facilities owned by others would be located on state land. 1/ The answers to your questions involve consideration of the issues set out below.

1. Does financing a public facility through a lease agreement violate provisions of the Alaska Constitution governing the creation of state debt?

We believe that the financing of construction by lease is valid only if terms and conditions are imposed which provide sufficient evidence that future legislatures are not bound to ap-

1/ We believe that other public facilities are being studied for financing by lease agreement including facilities for the Alaska Vocational Technical Training Center in Seward and a maximum security prison.

Hon. Daniel A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

October 14, 1983  
Page #2  
366-101-84

appropriate money for the rental. 2/ Article IX, section 8 of the Alaska Constitution prohibits the creation of public debt except for capital improvements and then only after authorization by the legislature and a vote of the people. The lease transactions proposed are a means to finance the construction of public facilities without directly appropriating from the general fund for the cost of construction or authorizing the creation of debt by selling general obligation bonds. This makes it imperative that the state's right to possess and use the facility is contingent on annual appropriations from revenue anticipated for the fiscal year in which the lease obligation is incurred. Traditionally, appropriations for lease payments are considered operating appropriations which lapse on June 30 of the fiscal year. A lease agreement which provides for termination of the leasehold if sufficient appropriations to pay rent are not enacted will negate the conclusion that a debt is created. A one-year lease with automatic annual renewal for a maximum number of years upon enactment of an appropriation to finance the annual rent has been approved as a term which negates any possibility that a debt is created. Cude v. City of Lakewood, 636 P.2d 691 (Colo. 1981). See also Glendon Heights, Inc. v. Central Bank and Trust, 658 P.2d 872 (Colo. 1983).

2. Does existing law prevent a state agency from entering into a lease agreement for the construction of a public facility?

The lease of state office space is governed by AS 37.05.220 -- 37.05.280. These statutes require a competitive bidding process with award of the contract by DDA to the lowest responsible bidder for the lease. However, the statutes provide one further requirement for office space leases which is lacking in other state contracts for the purchase of goods or services. AS 37.05.280 provides in relevant part that "no contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of \$12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution." This provision requires legislative approval of virtually all leases which the state executes to procure office and other space. However, we believe that this part of the

2/ The advice given in this memorandum is consistent with the majority of state courts which have considered the question. E.g., Bulman v. McCrane, 312 A.2d 857 (N.J. 1973); State ex rel. Thomson v. Gisel, 72 N.W.2d 577 (Wisc. 1958); but see Opinion of the Justices, 79 A.2d 753 (Me. 1951).

Hon. Daniel A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

October 14, 1983  
Page 43  
366-101-84

statute is invalid for two reasons.

Article II of the Alaska Constitution requires that the legislature exercise the law-making power by the passage of a bill not by the adoption of a concurrent resolution. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). Furthermore, the requirement for legislative approval of a lease is a violation of the doctrine of the separation of powers. Governmental power is allocated among the three branches of government by the Alaska Constitution. Some powers are logically allocated to the executive and others to the legislature. The power to execute the law on behalf of the state is one which falls to the executive. Alaska Const. art. III, § 16. It is the role of the legislature to enact laws which establish the conditions under which the executive may enter into leases. Alaska Const. art. II, § 1. However, it is not appropriate for the legislature to reserve a veto power over the enforcement decisions made by the executive. The legislature may amend or repeal the leasing authority for DOA. However, the legislature may not usurp the executive function to lease facilities without destroying the system of checks and balances inherent in our tripartite system of government. 3/ Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

DOT/PF has limited authority to dispose of land acquired for public works other than highways. 4/ DOT/PF may "vacate land or part of it, or rights in land acquired for public work purposes" by executing and filing a deed in the appropriate recording district upon vacating. AS 35.20.070. "Title reverts to the persons, heirs, successors, or assigns in whom it was vested at the time of the taking." Id. All other disposals of land acquired for public works are conducted by the Department of Natural Resources (DNR).

Before DNR may lease state land, the public must be informed of the nature and terms of the conveyance. Alaska Const. art. VIII, § 10; AS 38.05.035(a)(14), 38.05.345. DNR, acting in

---

3/ The cited portion of AS 37.05.230 was held invalid on the basis of separation of powers and improper exercise of the law making power by the superior court in Marine View Tenants' Association v. ASI/A, No. 1JU-80-1037 CIV (Nov. 1, 1981). That case was not appealed. However, this decision has limited precedential value until a final decision is rendered by the Alaska Supreme Court.

4/ AS 19.05.070 grants broader discretion to dispose of land acquired for highway purposes.

Hon. Daniel A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

October 14, 1983  
Page #4  
366-101-84

concert with DOA, must prescribe a disposal procedure for state land which provides the safeguards required by law and permits the construction of a facility which the state will lease from the developer. That procedure may include the grant of a lease under AS 38.05.315 to the state agency responsible for the facility. The lease granted by DNR will allow the lessee agency to sublease the land for development of a leased public facility under specified terms which will include prior DNR review and selection of the sublessee according to AS 37.05.230. The sublease of the land will continue in effect long enough to secure financing for the facility. The payment of rent under the lease to the state agency for the facility would be contingent on the enactment of annual appropriations. If the lease is terminated by the failure to appropriate, the lesser would be the successor to the state agency's right to possess the building until reversion or exercise of the option to purchase.

3. Does existing law prevent a state agency from obtaining financing from a municipality to design and construct a state-occupied facility on state-owned property and then enter into an agreement with the municipality for pay-back without competitive bidding?

DOT/PF is proposing to finance the construction of the legislative hall by lease agreement. The City and Borough of Juneau (city) would sell tax exempt municipal revenue bonds, secured by the lease payments to be paid by the state. The state would then supervise the design and construction of the facilities and be the contracting authority.

As a general proposition, DOT/PF has the authority to make contracts with municipalities for public works. AS 35.05.040(7). The purpose of this form of contract is further defined by AS 35.15.080(c), which provides in relevant part, "[a] municipality may request joint assumption of responsibilities with the department relating to the planning, design, and construction of a public works project." The term "public works" is very broad and includes public buildings. A public building is one which is "owned or controlled and held by the state for government or public use." AS 35.25.020(5) and (6).

We believe that DOT/PF may contract with the city for the planning, design and construction of the legislative hall. We reach this conclusion because under the provisions of the lease agreement, the state will have control over the building which it will hold for government or public use. Additionally, the state will have significant ownership interests in the facility because it holds fee title to the land upon which the build-

Hon. Daniel A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

October 14, 1983  
Page #5  
366-101-84

ing will be constructed and at the expiration of the lease agreement, will own the building free of the interest of the city. However, a contract may not alter the city's responsibility for repaying the long term debt established to finance the cost of construction of the facility.

Our memorandum of May 9, 1983 indicated that AS 37.05.-230 generally required competitive bidding to award a lease agreement which provides for the construction of a public facility. However, competitive bidding is not required in all instances of public contracting. McKinnon v. Alpetco, 633 P.2d 281 (Alaska 1981). The lease transaction under consideration may present an instance where it is in the best interests of the state to negotiate directly with a municipality rather than offer the contract to the lowest bidder. See AS 37.05.230(2). A decision to negotiate directly requires a detailed finding of fact in writing by DOA. In the finding of fact, the commissioner must justify the conclusion that negotiation is in the best interests of the state. A municipality enjoys a preferred status when dealing with the state. Intergovernmental contracts are not governed by the same considerations applicable to the state when it is participating in the open market place. It is probable that a facility can be financed cheaper with municipal revenue bonds than by private means. It may be futile to obtain any advantage from the competitive bid process. If DOA sets out ultimate facts in the finding which supports the conclusion that negotiation furthers the public's interest, then competitive bidding is not required. Libby v. City of Dillingham, 612 P.2d 33, 45 (Alaska 1980) (Rabinowitz, J. concurring). However, the award without competitive bidding would be subject to judicial review to determine whether the decision was arbitrary, capricious or an abuse of discretion. McKinnon, 633 P.2d at 287; Hertz Drive-Or-Self Systems, Inc. v. Tucson Airport Authority, 299 P.2d 1071 (Ariz. 1956); Volume Services Division of Interstate United Corp. v. Lantzen Corp., 369 So. 2d 391 (Fla. App. 1979).

4. Does the appropriation to finance the site acquisition and planning for a legislative hall contain defects which prevent DOT/PF from proceeding with the project?

Section 95, ch. 106, SLA 1983 appropriates \$4,500,000 to DOT/PF plus other money received for land acquisition and facilities planning in Juneau. The land acquisition, planning, and preliminary design efforts for the legislative hall will be paid from this appropriation.

This section makes an appropriation from two sources: \$4,500,000 from the general fund and an unspecified amount from

Hon. Daniel A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

October 14, 1983  
Page #6  
366-101-84

an unspecified source. 5/ This appropriation is for land acquisition and facility planning in Juneau.

The appropriation contains a unambiguous statement of purpose that DOT/PF is appropriated at least \$4,500,000 for land acquisition and facilities planning in Juneau. There is no specification of the public facility upon which the appropriation may be expended. The use of the \$4,500,000 appropriated for site acquisition, planning, and preliminary design for the legislative hall is within the purpose set out in the appropriation. However, the appropriation of money which may be received from other sources presents a serious legal issue. Because no amount is stated for the appropriation, sufficient authorization may not exist to expend the money beyond the \$4,500,000. 6/ Nonetheless, the unspecified source of the appropriation is presumably severable from the general fund part of the appropriation which is stated with specificity in the amount of \$4,500,000. AS 01.10.-030. Consequently, until you begin receiving amounts from "other sources," whatever they may be, the expenditure of general fund money authorized by the appropriation is not a problem.

#### CONCLUSION

We believe there is sufficient authority under existing law to finance the construction of a public facility by lease. However, because this financing technique is not specifically authorized by law, we cannot with absolute certainty advise you that a court would agree with our opinion. You should make allowance for this risk when you plan further development of each project to be financed by the lease purchase method.

WFC:ebc:prn/JLB:pjg

cc: Hon. Harold J. Reynolds, Jr.  
Commissioner  
Department of Education

5/ We presume "the other money received" was intended to include money to be provided under a lease agreement with the city as discussed in section 3, supra.

6/ Each appropriation must state an amount. AS 24.30.030. It is not necessary for the appropriation Act to set out the amount in dollars and cents if the appropriation contains provisions which make the amount capable of mathematical calculation. Orbison v. Welsh, 179 N.E.2d 727 (Ind. 1962).

# STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

March 2, 1984

The Honorable Mike Szymanski  
Alaska State House of Representatives  
Pouch V  
Juneau, AK 99811

Re: Questions concerning Alaska  
Legislative Hall Facility  
Design (project R-10181).  
Our file no.: 366-442-84

Dear Representative Szymanski:

This letter responds to your letter of February 9, 1984, in which you asked seven questions concerning the Alaska Legislative Hall. In answering your questions we will set out first your questions, then our responses.

1. By what authority can the Department of Transportation, or the Administration, expend funds to design and construct a facility to be occupied or used by the legislature?

In our opinion of October 14, 1983, (Inf. Op. Att'y Gen.; 366-101-84), we explained that under AS 35.10.010 the Department of Transportation and Public Facilities may construct public buildings of the state. A copy of the opinion is attached. Under AS 35.25.020(5) the term "public building" means: "a building owned or controlled by and held by the state for government or public use."

In section 95, ch. 106, SLA 1983, the legislature enacted an appropriation for the purpose of acquiring land in Juneau for state facilities. That appropriation was supported by a standard form 35a which provides evidence that the purpose of the appropriation was to acquire the site of a legislative hall. These measures taken together provide sufficient authority for DOT/PF to proceed with the design phase of the project.

2. What explicit legislative authorization exists for a "legislative hall?"

See the answer to question (1).

3. Do you feel the Administration can make a commitment to lease or purchase a legislative facility or "legislative hall" without explicit approval by the legislature?

Yes. Ad hoc legislative approval of state leases violates the doctrine of separation of powers. The lease of facilities for public use is not a legitimate part of the law making power.

4. Under AS 37.05.280, can the Administration legally execute a lease for space which is in excess of \$12,000 annually, without legislative approval? In assessing this question, would you please address both administrative and legislative space.

Yes. Under existing law there is no basis for distinguishing between office space occupied by the legislature or the executive.

5. Is the lease purchase arrangement contemplated for this project considered bond indebtedness of the State of Alaska?

No. Lease payments are subject to annual appropriation by the legislature.

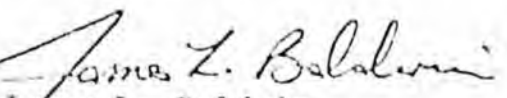
6. Will the full good faith and credit of the state be standing behind the anticipated project bonding on this project? If so, how can this be committed without legislative or voter approval?

No.

We hope this letter answers your questions. Please call if you need further assistance.

Sincerely,

NORMAN C. CORSEUCH  
ATTORNEY GENERAL

By:   
James L. Baldwin  
Assistant Attorney General

JLB:cyb  
Attachment

**Sec. 37.05.250. Delegation of duties.** The department may delegate the duties imposed by this chapter to an employee of the state normally stationed in a town or location distant from the state capital. Agents so designated shall perform the duties as the department requires and in accordance with regulations established by the department. (§ 5 art IV ch 82 SLA 1955)

**Sec. 37.05.260. Preference for Alaska products.** This chapter does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or AS 36.20.010 regarding preference to producers or dealers in Alaska except as provided in AS 37.05.230(1). (§ 6 art IV ch 82 SLA 1955)

**Sec. 37.05.270. Purchases through General Services Administration.** This chapter does not prevent the department from purchasing through the General Services Administration as provided by law. (§ 7 art IV ch 82 SLA 1955; added by § 11 ch 186 SLA 1957)

**Sec. 37.05.280. Leases.** The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency of the state, wherever it is necessary and feasible, subject to compliance with the requirements of AS 37.05.220 — 37.05.280. No lease or contract for a lease may provide for a period of occupancy greater than 40 years. An agency of the state requiring office, warehouse or other space shall lease the space through the department. No contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of \$12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution. (§ 8 art IV ch 82 SLA 1955; added by § 1 ch 81 SLA 1959; am § 1 ch 94 SLA 1961; am § 16 ch 99 SLA 1965)

**Article 4. General Provisions.**

Section	Section
200. Purpose	318. Further regulations prohibited
205. Interpretation of chapter	325. Definitions for AS 37.05.315 —
210. Applicability to University of Alaska	37.05.317
215. Fiscal year	400. Definitions for chapter
220. Grants to municipalities	410. Short title
225. Grants to named recipients	
230. Grants to unincorporated communities	

**Sec. 37.05.290. Purpose.** The purpose of this chapter is to provide uniform financial procedures for all state agencies with respect to accounting, purchasing, post auditing, and related financial procedures or to revise financial procedures to obtain economy, efficiency, and integrity in handling public money. (§ 2 art I ch 82 SLA 1955; am § 2 ch 183 SLA 1970)

ANCHORAGE CAUCUS MEMBERS

ST

HOUSE OF REPRESENTATIVES

ABOOD, M. E.  
BARNES, R. L.  
BUSSELL, C.  
CLOCK SIN, D.  
COWDERY, J. J.  
FLOOD, J.  
FURNACE, W. R.  
HAYES, J. L.  
LINDAUER, J.  
LISKA, J. J.  
MARTIN, T.  
PESTINGER, S.  
PHILLIPS, R.  
SZYMANSKI, M.  
TISCHER, M.  
UEHLING, R.  
WARD, J.

*Basny*  
*Bill*

SENATE

FAIKS, J.  
FISCHER, P. A.  
FISCHER, V.  
GILMAN, D.  
HALFORD, R.  
JOSEPHSON, J. P.  
KELLY, T.  
PETTYJOHN, F.  
RODEY, P. M.  
STURGULEWSKI, A.



# Alaska State Legislature House of Representatives

PO BOX 2716  
ANCHORAGE, ALASKA 99510  
(907) 276-4506

WHILE IN JUNEAU  
POUC 1 V  
JUNEAU ALASKA 99811  
(907) 465-4939

REPRESENTATIVE JERRY WARD  
DISTRICT 13

MEMBER FINANCE COMMITTEE  
CHAIRMAN OF SUBCOMMITTEE ON  
COMMERCE & ECONOMIC DEVELOPMENT  
CHAIRMAN OF SUBCOMMITTEE ON LABOR  
MEMBER OF SUBCOMMITTEE ON STATE LOANS

## MEMORANDUM

DATE: March 12, 1984

TO: Anchorage Caucus Members

FROM: Representative Jerry Ward *JW*  
Chairman, Anchorage Delegation

RE: Meeting with the Governor  
Anchorage Caucus' Position Paper and Resolution #2

## REPORT

At 2:15 p.m. today, we met with the Governor of the State of Alaska, the Honorable William Sheffield to read and deliver to him the Anchorage Caucus' Position Paper and Resolution #2 (copy attached). We explained the thought process behind it and emphasized the cease and desist request. Senators Pettyjohn, Rodey and myself were in attendance. We were assured by the Governor that the plans on the Legislative Hall were preliminary, that they have been in preliminary nature even though it may seem otherwise in some instances.

The Governor also assured us that before any permanent future action would be taken, he would absolutely go through the legislative and public process and he assured us that up to this point there might have been some misunderstanding about the progress of the building of a Legislative Hall in Juneau.

## SUMMARY

It should be the conclusion of the Anchorage Caucus that we have assurances from the Governor that the plans for construction of a Legislative Hall in Juneau will not continue until legislatively approved. This was the assurance that the Governor gave us.

cc: Senator Pettyjohn  
Senator Rodey  
Senator Josephson  
Representative Bussell  
Representative Liska

ANCHORAGE CAUCUS  
POSITION PAPER AND RESOLUTION NO. 2

WHEREAS, the Anchorage Caucus of the Alaska Legislature is made up of 10 members of the Senate and 17 members of the House of Representatives elected from Anchorage Area Districts.

WHEREAS, there are from time-to-time matters of special concern to members of the Anchorage Caucus as to which the Caucus wishes to take a collective position and have that position communicated to those most concerned; and

WHEREAS, one such matter is the construction of a legislative hall in Juneau being proposed by the borough of Juneau and the Governor of the State of Alaska without legislative approval; and

WHEREAS, by an overwhelming vote the House of Representatives has expressed its own disapproval of previously announced plans for construction of a legislative hall in Juneau, and consideration of the subject is scheduled in the Senate State Affairs Committee.

NOW, THEREFORE, BE IT RESOLVED that it is the sense of the Anchorage Caucus that the Governor and officials of the City and Borough of Juneau be, and they hereby are, respectfully requested to cease and desist from previously announced plans for the construction of a new legislative hall in Juneau or at any other location within the State without prior consultation with and express direction from the Legislature.

ANCHORAGE CAUCUS  
POSITION PAPER AND RESOLUTION NO. 2

WHEREAS, the Anchorage Caucus of the Alaska Legislature is made up of 10 members of the Senate and 17 members of the House of Representatives elected from Anchorage Area Districts.

WHEREAS, there are from time-to-time matters of special concern to members of the Anchorage Caucus as to which the Caucus wishes to take a collective position and have that position communicated to those most concerned; and

WHEREAS, one such matter is the construction of a legislative hall in Juneau being proposed by the borough of Juneau and the Governor of the State of Alaska without legislative approval; and

WHEREAS, Article IX, Section 9, of our Alaska constitution provides at pertinent part:

"No debt shall be contracted by any political subdivision of the state, unless . . . ratified by a majority vote of those qualified to vote and voting on the question."

and,

WHEREAS, it has come to the attention of the Anchorage Caucus that the borough of Juneau does not intend to conduct a vote permitting its voters to ratify its debt for the construction of the legislative hall within the borough of Juneau; and

WHEREAS, Article IX, Section 8, of the Alaska constitution also states at pertinent part:

"No state debt shall be contracted unless authorized by law and ratified by a majority of the qualified voters of the state."

and,

WHEREAS, the Anchorage Caucus reasonably concludes that the long-term lease/purchase being entered into between the borough of Juneau and the Governor's office, wherein the borough of Juneau is the Seller/Landlord and the Governor's office or State of Alaska is the Purchaser/Tenant, is a debt within the meaning of Article IX, Section 8 of the Alaska constitution; and

WHEREAS, the Anchorage Caucus reasons that the title of the transaction is not controlling, but that all the parameters of the

transaction must be evaluated in determining that the transaction is in fact a debt within the meaning of our constitution. Such factors include, but are not limited to:

Proposed construction of the legislative hall on land owned by the State of Alaska, and the intention of the parties to have the State of Alaska own the land at the expiration of the lease/purchase period.

WHEREAS, the Anchorage Caucus has been advised that the Governor's office does not intend to conduct an election pursuant to Article IX, Section 8 of the constitution, and therefore intends to deny the people of the State of Alaska the opportunity to vote for or against the aforescribed debt; and

WHEREAS, plans are now underway by the city and borough of Juneau to finance and construct a legislative hall to house the legislature of the State of Alaska; and

WHEREAS, it appears to be the intention of the city and borough of Juneau to enter into a long-term lease of the legislative hall with the state; and

WHEREAS, the legislature has not in any manner given its approval to these plans; and

WHEREAS, Article III, Section 22, of the constitution of the State of Alaska provides:

"All executive and administrative . . . functions, powers, and duties shall be allocated by law among and within the principle departments . . ."

and,

WHEREAS, an executive branch which determines the seat of the legislature, without approval of the legislature, disregards the Alaska constitution as aforescribed, the doctrine of powers, and violates the spirit of comity between the branches of government;

IT IS THE SENSE OF the Anchorage Caucus of the Alaska legislature, that the Honorable Bill Sheffield, as well as the city and borough of Juneau, cease and desist from any plan for the construction of a new legislative hall in Juneau or at any other location within the state, without having received the express direction of the legislature of the State of Alaska.

ANCHORAGE CAUCUS MEMBERS

ST

*hold for  
state  
leasing  
hearing*

HOUSE OF REPRESENTATIVES

- ABOOD, M. E.
- BARNES, R. L.
- BUSSSELL, C.
- CLOCKSIN, D.
- COWDERY, J. J.
- FLOOD, J.
- FURNACE, W. R.
- HAYES, J. L.
- LINDAUER, J.
- LISKA, J. J.
- MARTIN, T.
- PESTINGER, S.
- PHILLIPS, R.
- SZYMANSKI, M.
- TISCHER, M.
- UEHLING, R.
- WARD, J.

SENATE

- FAIKS, J.
- FISCHER, P. A.
- FISCHER, V.
- GILMAN, D.
- HALFORD, R.
- JOSEPHSON, J. P.
- KELLY, T.
- PETTYJOHN, F.
- RODEY, P. M.
- STURGULEWSKI, A.



# Alaska State Legislature House of Representatives

P.O. BOX 2716  
ANCHORAGE, ALASKA 99510  
(907) 276-4506

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4939

REPRESENTATIVE JERRY WARD  
DISTRICT 13

MEMBER FINANCE COMMITTEE  
CHAIRMAN OF SUBCOMMITTEE ON  
COMMERCE & ECONOMIC DEVELOPMENT  
CHAIRMAN OF SUBCOMMITTEE ON LABOR  
MEMBER OF SUBCOMMITTEE ON STATE LOANS

## MEMORANDUM

DATE: March 1, 1984

TO: Distribution

FROM: Representative Jerry Ward, Chairman  
Subcommittee on Legislative Move/Legislative Hall

At this mornings' meeting of the Subcommittee on the Legislative Move, it was decided by a majority of the members present that the attached resolution be distribute to the full membership of the Anchorage Caucus for comments and amendments.

Please return your comments as soon as possible to the office of Senator Fritz Pettyjohn (C-113), the originator of the resolution and coordinator of the consensus resolution. If possible we would like to discuss these comments and amendments at the Caucus meeting later today.

Thank you.

ANCHORAGE CAUCUS  
POSITION PAPER AND RESOLUTION NO. 2

WHEREAS, the Anchorage Caucus of the Alaska Legislature is made up of 10 members of the Senate and 17 members of the House of Representatives elected from Anchorage Area Districts.

WHEREAS, there are from time-to-time matters of special concern to members of the Anchorage Caucus as to which the Caucus wishes to take a collective position and have that position communicated to those most concerned; and

WHEREAS, one such matter is the construction of a legislative hall in Juneau being proposed by the borough of Juneau and the Governor of the State of Alaska without legislative approval; and

WHEREAS, Article IX, Section 9, of our Alaska constitution provides at pertinent part:

"No debt shall be contracted by any political subdivision of the state, unless . . . ratified by a majority vote of those qualified to vote and voting on the question."

and,

WHEREAS, it has come to the attention of the Anchorage Caucus that the borough of Juneau does not intend to conduct a vote permitting its voters to ratify its debt for the construction of the legislative hall within the borough of Juneau; and

WHEREAS, Article IX, Section 8, of the Alaska constitution also states at pertinent part:

"No state debt shall be contracted unless authorized by law and ratified by a majority of the qualified voters of the state."

and,

WHEREAS, the Anchorage Caucus reasonably concludes that the long-term lease/purchase being entered into between the borough of Juneau and the Governor's office, wherein the borough of Juneau is the Seller/Landlord and the Governor's office or State of Alaska is the Purchaser/Tenant, is a debt within the meaning of Article IX, Section 8 of the Alaska constitution; and

WHEREAS, the Anchorage Caucus reasons that the title of the transaction is not controlling, but that all the parameters of the

transaction must be evaluated in determining that the transaction is in fact a debt within the meaning of our constitution. Such factors include, but are not limited o:

Proposed construction of the legislative hall on land owned by the State of Alaska, and the intention of the parties to have the State of Alaska own the land at the expiration of the lease/purchase period.

WHEREAS, the Anchorage Caucus has been advised that the Governor's office does not intend to conduct an election pursuant to Article IX, Section 8 of the constitution, and therefore intends to deny the people of the State of Alaska the opportunity to vote for or against the aforescribed debt; and

WHEREAS, plans are now underway by the city and borough of Juneau to finance and construct a legislative hall to house the legislature of the State of Alaska; and

WHEREAS, it appears to be the intention of the city and borough of Juneau to enter into a long-term lease of the legislative hall with the state; and

WHEREAS, the legislature has not in any manner given its approval to these plans; and

WHEREAS, Article III, Section 22, of the constitution of the State of Alaska provides:

"All executive and administrative . . . functions, powers, and duties shall be allocated by law among and within the principle departments . . ."

and,

WHEREAS, an executive branch which determines the seat of the legislature, without approval of the legislature, disregards the Alaska constitution as aforescribed, the doctrine of powers, and violates the spirit of comity between the branches of government;

IT IS THE SENSE OF the Anchorage Caucus of the Alaska legislature, that the Honorable Bill Sheffield, as well as the city and borough of Juneau, cease and desist from any plan for the construction of a new legislative hall in Juneau or at any other location within the state, without having received the express direction of the legislature of the State of Alaska.

FEB 03 1984

STATE OF ALASKA  
THE LEGISLATURE

HOUGHY STATE CAPITOL  
UNIVERSITY ALASKA 99507  
707-455-3400

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1984

SUBJECT: Legislative approval of lease agreements

TO: Senator John Sackett  
Chairman, Senate Finance Committee

FROM: Billy G. Berrier *BGB*  
Director  
Division of Legal Services

You have asked whether there is a requirement that the legislature approve lease agreements entered into by the state and a municipality whereby the municipality finances an improvement by revenue bonds and the state enters into a long term lease adequate to retire the bonds.

Approval is required by AS 37.05.280 when the lease requires annual payments in excess of \$12,000. That statute reads:

Sec. 37.05.280.

Leases.

The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency of the state, wherever it is necessary and feasible, subject to compliance with the requirements of AS 37.05.220 - 37.05.280. No lease or contract for a lease may provide for a period of occupancy greater than 40 years. An agency of the state requiring office, warehouse or other space shall lease the space through the department. No contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of \$12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution.

Senator John Sackett  
Page 2  
February 3, 1984

However on the basis of State v. A.L.I.V.E. Voluntary 606 P.2d 769, which invalidated annulment of regulations by concurrent resolution, and on the prohibition of special and local legislation contained in Sec. 19, Article II of the Constitution of the State of Alaska the Superior Court for the First Judicial District in Juneau in 1981 held this statute unconstitutional. (Marine View Tenants Association V. A.S.H.A. Court case no. 1JU-80-1037 Civ)

The case was not appealed so there is no definitive Supreme Court decision on the point. Nevertheless this decision casts grave doubts on the constitutionality of the statute.

BGB:ojb  
J3/045



Official Business

# Alaska State Legislature

## Senate Committee on State Affairs

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

LETTER OF INTENT SB 466 (state affairs)

SENATE STATE AFFAIRS COMMITTEE

The legislature has already appropriated over \$11,800,000 toward the acquisition of land and other costs associated with the state office complex in Anchorage. The site of the complex has been cleared and condemned, and the state is on the verge of asking for bids for the new facility. In view of past legislative action in appropriating funds, and in view of the progress already made toward the completion of a state office complex in Anchorage, it is the intent of the legislature that the progress on Anchorage office complex is advanced beyond the stage where the additional approval by law or special appropriation as outlined in CSSB 466 (state affairs) is necessary.

# Courts want \$60 million from ASHA bonds

by David Postman  
Times Writer

Alaska Court System officials are taking a new approach in their attempt to fund a \$60 million expansion project for Anchorage's courthouse.

Art Snowden, court administrator, said a bill introduced by Gov. Bill Sheffield would authorize the Alaska State Housing Authority to issue bonds for construction of the courthouse annex on Fourth Avenue between H and I streets. After construction the state would lease the building from the housing authority.

Sheffield's proposal would fund 12 projects, including a \$110 million office building in Anchorage, a \$75 million Capitol building in Juneau and a \$30 million mental health facility in Fairbanks. The plan has come under fire from lawmakers who maintain using the bonds would be too expensive and perhaps unconstitutional.

If legislators do not like the lease arrangement, "they can go find me \$60 million" cash for the project, Snowden said. The 25,000-square-foot expansion is "desperately needed," he said. The state has been trying to secure funding for the project for almost five years.

If the bonding plan is approved this year, Snowden said

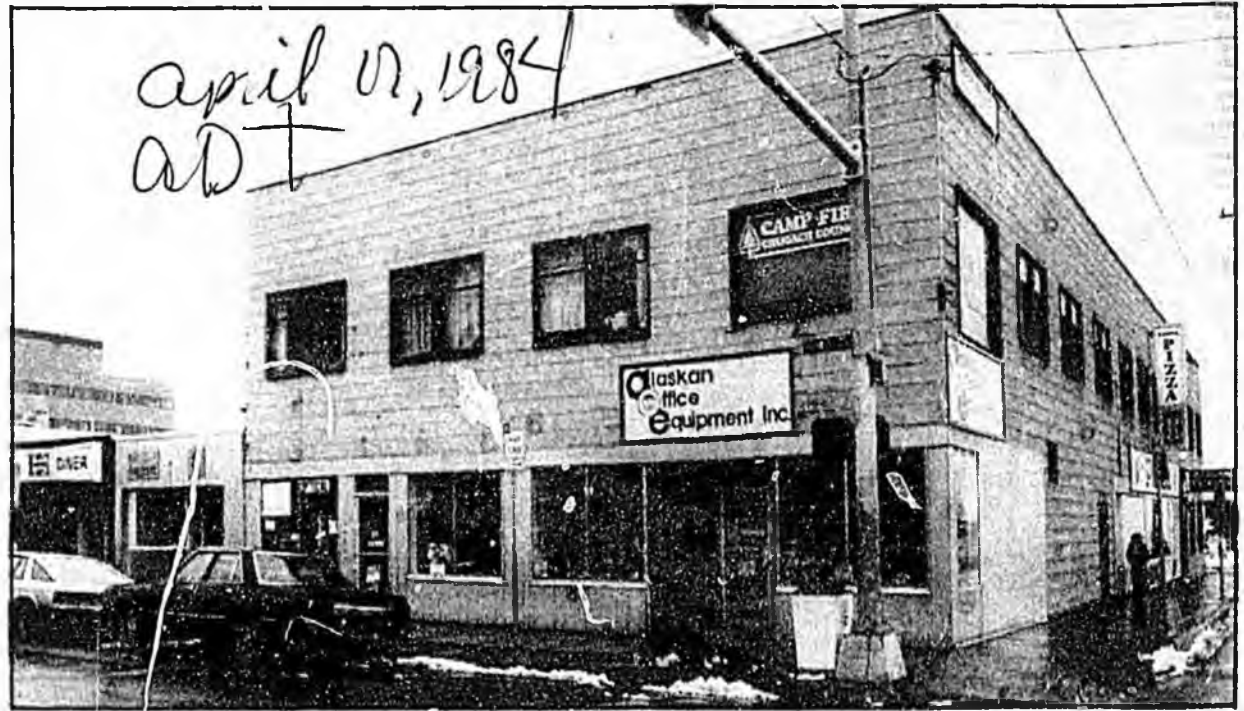
the project could be completed as early as spring of 1985.

Businesses on the block — including Legal Pizza, the Fourth Avenue Diner and several gift shops — will be torn down to make way for the project. The businesses lease the sites from the state on a monthly basis.

The state battled historic preservationists over whether to demolish the Lathrop Building, one of Anchorage's earliest commercial buildings, at the corner of Fourth Avenue and H Street. A recent decision by the Anchorage Assembly cleared the way for the state to tear down the building. The court system was directed to provide retail space along Fourth Avenue in the expansion project.

Supporters of restoring the Lathrop Building at its present site maintain the building is historically significant and rehabilitation is commercially feasible. The Anchorage Historic Landmarks Preservation Commission has estimated restoration of the 67-year-old building would cost \$2 million.

Snowden said the court system would donate the building to any group that wants to restore it at another site. But Ty L. Dilliplane, state Historic Preservation officer, wrote last year, "I strongly recommend that every possible consideration be given



The Lathrop Building, one of the city's oldest buildings, is on the spot where the court system hopes to build

to retaining the structure at its present and original location. Moving the building to a new site could damage it and would, in all probability, place it in an urban context having no historical connection to the building itself.

Dorie Clark, a local real estate broker, approached the state about acquiring the Lathrop Building to restore it at its present site. Clark heads a part-

nership that is moving and restoring the historic Club 25 this summer. Club 25 will be moved, restored and opened for commercial use without any municipal financial assistance.

Clark said the Lathrop Building has more commercial potential than Club 25. "It will be a real loss to the community" if the Lathrop Building is torn down, she said, adding people do

not realize the building has historic significance because the original wooden tongue and groove siding has been covered up with asbestos shingles.

The building is on the National Register of Historic Places. But Mike Carberry, an historian with the city planning department, said the register does not protect the building from being demolished or moved.

§ 37.05.210

of warrants.  
sented at the  
the date of its  
re considered  
pecial fund or  
sferred to the  
ederal govern-  
ch 130 SLA

partment of  
account, bill,  
asury arising  
mine whether  
ws and regu-  
unt is correct

account, bill,  
ry unless the  
ed against the  
art III ch 82

ent of Revenue  
pies of receipt  
ment of Reve-  
ned, and the  
of the Depart-  
ion may adopt  
rrent receipt  
SLA 1957)

e Department

ports as of the  
nancial condi-  
eriod and the

auditor before  
eceding fiscal  
id of that year,  
ers necessary;  
gislature and

§ 37.05.220

PUBLIC FINANCE

§ 37.05.220

(3) compile statistics necessary for the budget and other statistics required by the governor. (§ 8 art III ch 82 SLA 1955; am § 5 ch 186 SLA 1957; am § 1 ch 11 SLA 1965)

### Article 3. Uniform Purchasing.

#### Section

- 220. Purchasing agent
- 230. Competitive bids
- 231. Estimation of flying hours required
- 240. Award of contracts and purchases
- 250. Delegation of duties

#### Section

- 260. Preference for Alaska products
- 270. Purchases through General Services Administration
- 280. Leases

**Sec. 37.05.220. Purchasing agent.** The Department of Administration is the purchasing agent for the state. The department shall

(1) purchase, rent, or otherwise provide for the furnishing of supplies, materials, equipment, or contractual services for all state agencies;

(2) have power to authorize an agency to purchase directly certain specified supplies, materials, equipment, or contractual services under conditions and procedures prescribed in AS 37.05.230;

(3) prescribe the manner in which supplies, materials, and equipment shall be purchased, delivered, stored, and distributed;

(4) prescribe the time, manner, authentication, and form of making requisitions for supplies, materials, equipment, and contractual services;

(5) fix standards of quality and quantity and develop standard specifications after consultation with the several state agencies, and approve or determine final specifications;

(6) have power to transfer to or between agencies or to sell or trade in supplies, materials, and equipment of agencies which are surplus, obsolete, or unused; and the department shall make proper adjustments in the accounts of the agencies concerned;

(7) prescribe the manner of inspecting deliveries of supplies, materials, and equipment and of making tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(8) prescribe standard forms for bids and contracts for construction, purchases of supplies, and other purposes, which bids and contracts may contain provisions which the department considers necessary; but all contracts for construction shall require the filing of an acceptable performance bond and a penalty provision for failure to perform the contract according to its terms;

(9) provide for other matters which may be necessary to carry out the provisions of this chapter and the regulations adopted under it. (§ 1 art IV ch 82 SLA 1955; am §§ 6, 7 ch 186 SLA 1957; am § 1 ch 55 SLA 1960)

Sec. 37.05.250. Delegation of duties. The department may delegate the duties imposed by this chapter to an employee of the state normally stationed in a town or location distant from the state capital. Agents so designated shall perform the duties as the department requires and in accordance with regulations established by the department. (§ 5 art IV ch 82 SLA 1955)

Sec. 37.05.260. Preference for Alaska products. This chapter does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or AS 36.20.010 regarding preference to producers or dealers in Alaska except as provided in AS 37.05.230(1). (§ 6 art IV ch 82 SLA 1955)

Sec. 37.05.270. Purchases through General Services Administration. This chapter does not prevent the department from purchasing through the General Services Administration as provided by law. (§ 7 art IV ch 82 SLA 1955; added by § 11 ch 186 SLA 1957)

Sec. 37.05.280. Leases. The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency of the state, wherever it is necessary and feasible, subject to compliance with the requirements of AS 37.05.220 — 37.05.280. No lease or contract for a lease may provide for a period of occupancy greater than 40 years. An agency of the state requiring office, warehouse or other space shall lease the space through the department. No contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of \$12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution. (§ 8 art IV ch 82 SLA 1955; added by § 1 ch 81 SLA 1959; am § 1 ch 94 SLA 1961; am § 16 ch 99 SLA 1965)

Article 4. General Provisions.

Section	Section
290. Purpose	318. Further regulations prohibited
300. Interpretation of chapter	325. Definitions for AS 37.05.315 — 37.05.317
305. Applicability to University of Alaska	400. Definitions for chapter
310. Fiscal year	410. Short title
315. Grants to municipalities	
316. Grants to named recipients	
317. Grants to unincorporated communities	

Sec. 37.05.290. Purpose. The purpose of this chapter is to provide uniform financial procedures for all state agencies with respect to accounting, purchasing, post auditing, and related financial procedures; and to revise financial procedures to obtain economy, efficiency, and integrity in handling public money. (§ 2 art I ch 82 SLA 1955; am § 2 ch 188 SLA 1970)

Sec. 37 construed it. If a federal funds are inoperativ

Editor's r the chapter see notes foll

Sec. 37. missioner functions Board of F and guidel necessary formance (§ 5 ch 46

Legislativ letter of int

Sec. 37. July 1 of ea accounts c Revenue, connected with refer ACLA 194

Revisor's ACLA 1949 by § 30, ch. 1 24, SLA 1953

Sec. 37. appropriat of Adminis ability of tl an agreem municipali appropriat state of the consistent facilities an use of the g the grant c

ANCHORAGE CAUCUS MEMBERS

HOUSE OF REPRESENTATIVES

ABOOD, M. E.  
BARNES, R. L.  
BUSSELL, C.  
CLOCKSIN, D.  
COWDERY, J. J.  
FLOOD, J.  
FURNACE, W. R.  
HAYES, J. L.  
LINDAUER, J.  
LISKA, J. J.  
MARTIN, T.  
PESTINGER, S.  
PHILLIPS, R.  
SZYMANSKI, M.  
TISCHER, M.  
UEHLING, R.  
WARD, J.

SENATE

FAIKS, J.  
FISCHER, P. A.  
FISCHER, V.  
GILMAN, D.  
HALFORD, R.  
JOSEPHSON, J. P.  
KELLY, T.  
PETTYJOHN, F.  
RODEY, P. M.  
STURGULEWSKI, A.



# Alaska State Legislature House of Representatives

P.O. BOX 2716  
ANCHORAGE, ALASKA 99510  
(907) 276-4506

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4939

REPRESENTATIVE JERRY WARD  
DISTRICT 13

MEMBER FINANCE COMMITTEE  
CHAIRMAN OF SUBCOMMITTEE ON  
COMMERCE & ECONOMIC DEVELOPMENT  
CHAIRMAN OF SUBCOMMITTEE ON LABOR  
MEMBER OF SUBCOMMITTEE ON STATE LOANS

## MEMORANDUM

DATE: March 8, 1984

TO: Senator Jan Faiks  
Coordinator, Senate Anchorage Caucus

Representative Mae Tischer  
Coordinator, House Anchorage Caucus

FROM: Representative Jerry Ward *JW*

RE: Position Paper and Resolution No. 2

Last week the Anchorage Caucus passed a resolution to ask the Governor to cease and desist building of the Legislative Hall in Juneau without the express permission of the the Legislature and that we wanted the Governor to know he did not have authorization and has not received it. A delegation of Representatives Bussell, Liska and myself were appointed to deliver the resolution to the Governor. We are still waiting for 3 appointees from the Senate side.

In light of the recent appointed Attorney General's opinion of March 2, we would hope to deliver the resolution by the end of the day so that the Governor will know the Anchorage Caucus's position.

*3/8/84 Position Paper & Resolution # 2 / From Rep. Jerry Ward*

ANCHORAGE CAUCUS  
POSITION PAPER AND RESOLUTION NO. 2

WHEREAS, the Anchorage Caucus of the Alaska Legislature is made up of 10 members of the Senate and 17 members of the House of Representatives elected from Anchorage Area Districts.

WHEREAS, there are from time-to-time matters of special concern to members of the Anchorage Caucus as to which the Caucus wishes to take a collective position and have that position communicated to those most concerned; and

WHEREAS, one such matter is the construction of a legislative hall in Juneau being proposed by the borough of Juneau and the Governor of the State of Alaska without legislative approval; and

WHEREAS, by an overwhelming vote the House of Representatives has expressed its own disapproval of previously announced plans for construction of a legislative hall in Juneau, and consideration of the subject is scheduled in the Senate State Affairs Committee.

NOW, THEREFORE, BE IT RESOLVED that it is the sense of the Anchorage Caucus that the Governor and officials of the City and Borough of Juneau be, and they hereby are, respectfully requested to cease and desist from previously announced plans for the construction of a new legislative hall in Juneau or at any other location within the State without prior consultation with and express direction from the Legislature.

ANCHORAGE CAUCUS  
POSITION PAPER AND RESOLUTION NO. 2

WHEREAS, the Anchorage Caucus of the Alaska Legislature is made up of 10 members of the Senate and 17 members of the House of Representatives elected from Anchorage Area Districts.

WHEREAS, there are from time-to-time matters of special concern to members of the Anchorage Caucus as to which the Caucus wishes to take a collective position and have that position communicated to those most concerned; and

WHEREAS, one such matter is the construction of a legislative hall in Juneau being proposed by the borough of Juneau and the Governor of the State of Alaska without legislative approval; and

WHEREAS, Article IX, Section 9, of our Alaska constitution provides at pertinent part:

"No debt shall be contracted by any political subdivision of the state, unless . . . ratified by a majority vote of those qualified to vote and voting on the question."

and,

WHEREAS, it has come to the attention of the Anchorage Caucus that the borough of Juneau does not intend to conduct a vote permitting its voters to ratify its debt for the construction of the legislative hall within the borough of Juneau; and

WHEREAS, Article IX, Section 8, of the Alaska constitution also states at pertinent part:

"No state debt shall be contracted unless authorized by law and ratified by a majority of the qualified voters of the state."

and,

WHEREAS, the Anchorage Caucus reasonably concludes that the long-term lease/purchase being entered into between the borough of Juneau and the Governor's office, wherein the borough of Juneau is the Seller/Landlord and the Governor's office or State of Alaska is the Purchaser/Tenant, is a debt within the meaning of Article IX, Section 8 of the Alaska constitution; and

WHEREAS, the Anchorage Caucus reasons that the title of the transaction is not controlling, but that all the parameters of the

transaction must be evaluated in determining that the transaction is in fact a debt within the meaning of our constitution. Such factors include, but are not limited to:

Proposed construction of the legislative hall on land owned by the State of Alaska, and the intention of the parties to have the State of Alaska own the land at the expiration of the lease/purchase period.

WHEREAS, the Anchorage Caucus has been advised that the Governor's office does not intend to conduct an election pursuant to Article IX, Section 8 of the constitution, and therefore intends to deny the people of the State of Alaska the opportunity to vote for or against the aforescribed debt; and

WHEREAS, plans are now underway by the city and borough of Juneau to finance and construct a legislative hall to house the legislature of the State of Alaska; and

WHEREAS, it appears to be the intention of the city and borough of Juneau to enter into a long-term lease of the legislative hall with the state; and

WHEREAS, the legislature has not in any manner given its approval to these plans; and

WHEREAS, Article III, Section 22, of the constitution of the State of Alaska provides:

"All executive and administrative . . . functions, powers, and duties shall be allocated by law among and within the principle departments . . ."

and,

WHEREAS, an executive branch which determines the seat of the legislature, without approval of the legislature, disregards the Alaska constitution as aforescribed, the doctrine of powers, and violates the spirit of comity between the branches of government;

IT IS THE SENSE OF the Anchorage Caucus of the Alaska legislature, that the Honorable Bill Sheffield, as well as the city and borough of Juneau, cease and desist from any plan for the construction of a new legislative hall in Juneau or at any other location within the state, without having received the express direction of the legislature of the State of Alaska.



# Alaska State Legislature House of Representatives

PO BOX 2716  
ANCHORAGE, ALASKA 99510  
19071 276-4506

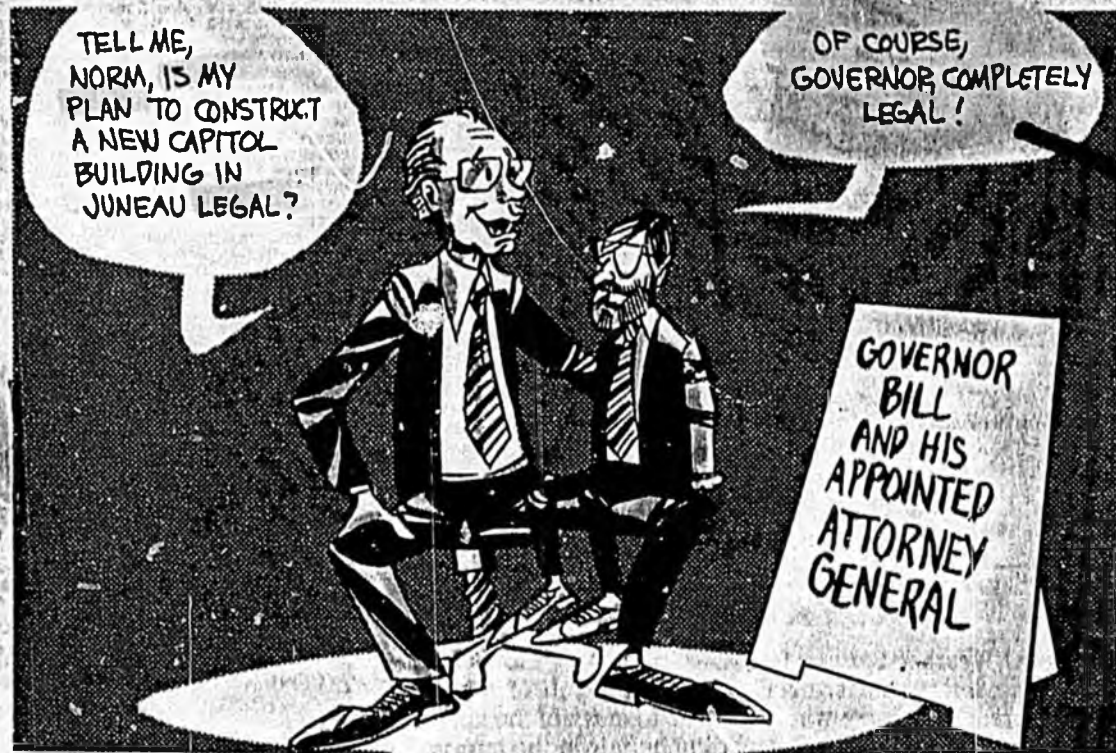
WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
19071 465-4939

REPRESENTATIVE JERRY WARD  
DISTRICT 13

MEMBER FINANCE COMMITTEE  
CHAIRMAN OF SUBCOMMITTEE ON  
COMMERCE & ECONOMIC DEVELOPMENT  
CHAIRMAN OF SUBCOMMITTEE ON LABOR  
MEMBER OF SUBCOMMITTEE ON STATE LOANS

ALASKA FEVER

TIMES 2/25/84



2-25

JERRY WARD  
THE ANCHORAGE TIMES

over

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1984

The Honorable Mike Szymanski  
Alaska State House of Representatives  
Pouch V  
Juneau, AK 99811

Re: Questions concerning Alaska  
Legislative Hall Facility  
Design (project R-10181).  
Our file no.: 366-442-84

Dear Representative Szymanski:

This letter responds to your letter of February 9, 1984, in which you asked seven questions concerning the Alaska Legislative Hall. In answering your questions we will set out first your questions, then our responses.

1. By what authority can the Department of Transportation, or the Administration, expend funds to design and construct a facility to be occupied or used by the legislature?

In our opinion of October 14, 1983, (Inf. Op. Att'y Gen.; 366-101-84), we explained that under AS 35.10.010 the Department of Transportation and Public Facilities may construct public buildings of the state. A copy of the opinion is attached. Under AS 35.25.020(5) the term "public building" means: "a building owned or controlled by and held by the state for government or public use."

In section 95, ch. 106, SLA 1983, the legislature enacted an appropriation for the purpose of acquiring land in Juneau for state facilities. That appropriation was supported by a standard form 35a which provides evidence that the purpose of the appropriation was to acquire the site of a legislative hall. These measures taken together provide sufficient authority for DOT/PF to proceed with the design phase of the project.

2. What explicit legislative authorization exists for a "legislative hall?"

See the answer to question (1).

*Leg Hall*

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

3. Do you feel the Administration can make a commitment to lease or purchase a legislative facility or "legislative hall" without explicit approval by the legislature?

Yes. Ad hoc legislative approval of state leases violates the doctrine of separation of powers. The lease of facilities for public use is not a legitimate part of the law making power.

4. Under AS 37.05.280, can the Administration legally execute a lease for space which is in excess of \$12,000 annually, without legislative approval? In assessing this question, would you please address both administrative and legislative space.

Yes. Under existing law there is no basis for distinguishing between office space occupied by the legislature or the executive.

5. Is the lease purchase arrangement contemplated for this project considered bond indebtedness of the State of Alaska?

No. Lease payments are subject to annual appropriation by the legislature.

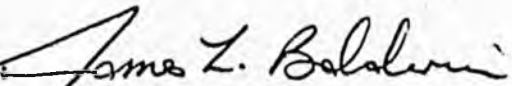
6. Will the full good faith and credit of the state be standing behind the anticipated project bonding on this project? If so, how can this be committed without legislative or voter approval?

No.

We hope this letter answers your questions. Please call if you need further assistance.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
James L. Baldwin  
Assistant Attorney General

JLB:cyb  
Attachment

# MEMORANDUM

# State of Alaska

TO: Hon. Daniel A. Casey, Commissioner DATE: October 14, 1983  
Department of Transportation & Public Facilities FILE NO: 366-101-54  
AND  
Hon. Lisa Rudd, Commissioner TELEPHONE NO: 465-3600  
Department of Administration

FROM: Norman C. Gorsuch SUBJECT: Construction financing of a public facility by lease agreement  
Attorney General

By: William F. Cummings  
Assistant Attorney General  
Transportation Section-Juneau

James L. Baldwin  
Assistant Attorney General  
Governmental Affairs-Juneau

The Department of Administration (DOA) and Department of Transportation and Public Facilities (DOT/PF) have requested our advice whether there is sufficient authority granted by law to permit a state agency to finance the construction of a public facility on state land under a lease agreement with a developer and owner of the facility other than the state. Briefly, the lease agreement consists of a conveyance of a leasehold interest in state land to a developer who constructs a facility on the land which is leased back to the state. Upon expiration of the lease agreement, the facility either reverts to the state or the state has an option to purchase it.

Using this financing technique, DOA proposes to centralize state offices in Anchorage and DOT/PF proposes to construct a legislative hall in Juneau. Under both proposals, facilities owned by others would be located on state land. 1/ The answers to your questions involve consideration of the issues set out below.

1. Does financing a public facility through a lease agreement violate provisions of the Alaska Constitution governing the creation of state debt?

We believe that the financing of construction by lease is valid only if terms and conditions are imposed which provide sufficient evidence that future legislatures are not bound to ap-

---

1/ We believe that other public facilities are being studied for financing by lease agreement including facilities for the Alaska Vocational Technical Training Center in Seward and a maximum security prison.

Hon. Daniel A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

October 14, 1983  
Page #2  
366-101-84

propriate money for the rental. 2/ Article IX, section 8 of the Alaska Constitution prohibits the creation of public debt except for capital improvements and then only after authorization by the legislature and a vote of the people. The lease transactions proposed are a means to finance the construction of public facilities without directly appropriating from the general fund for the cost of construction or authorizing the creation of debt by selling general obligation bonds. This makes it imperative that the state's right to possess and use the facility is contingent on annual appropriations from revenue anticipated for the fiscal year in which the lease obligation is incurred. Traditionally, appropriations for lease payments are considered operating appropriations which lapse on June 30 of the fiscal year. A lease agreement which provides for termination of the leasehold if sufficient appropriations to pay rent are not enacted will negate the conclusion that a debt is created. A one-year lease with automatic annual renewal for a maximum number of years upon enactment of an appropriation to finance the annual rent has been approved as a term which negates any possibility that a debt is created. Cude v. City of Lakewood, 636 P.2d 691 (Colo. 1981). See also Glennon Heights, Inc. v. Central Bank and Trust, 658 P.2d 872 (Colo. 1983).

2. Does existing law prevent a state agency from entering into a lease agreement for the construction of a public facility?

---

The lease of state office space is governed by AS 37.05.220 -- 37.05.280. These statutes require a competitive bidding process with award of the contract by DOA to the lowest responsible bidder for the lease. However, the statutes provide one further requirement for office space leases which is lacking in other state contracts for the purchase of goods or services. AS 37.05.280 provides in relevant part that "no contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of \$12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution." This provision requires legislative approval of virtually all leases which the state executes to procure office and other space. However, we believe that this part of the

---

2/ The advice given in this memorandum is consistent with the majority of state courts which have considered the question. E.g., Bulman v. McCrane, 312 A.2d 857 (N.J. 1973); State ex rel. Thomson v. Gisel, 72 N.W.2d 577 (Wisc. 1958); but see Opinion of the Justices, 79 A.2d 753 (Me. 1951).

Hon. Daniel A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

October 14, 1983  
Page #3  
366-101-84

statute is invalid for two reasons.

Article II of the Alaska Constitution requires that the legislature exercise the law-making power by the passage of a bill not by the adoption of a concurrent resolution. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). Furthermore, the requirement for legislative approval of a lease is a violation of the doctrine of the separation of powers. Governmental power is allocated among the three branches of government by the Alaska Constitution. Some powers are logically allocated to the executive and others to the legislature. The power to execute the law on behalf of the state is one which falls to the executive. Alaska Const. art. III, § 16. It is the role of the legislature to enact laws which establish the conditions under which the executive may enter into leases. Alaska Const. art. II, § 1. However, it is not appropriate for the legislature to reserve a veto power over the enforcement decisions made by the executive. The legislature may amend or repeal the leasing authority for DOA. However, the legislature may not usurp the executive function to lease facilities without destroying the system of checks and balances inherent in our tripartite system of government. 3/ Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

DOT/PF has limited authority to dispose of land acquired for public works other than highways. 4/ DOT/PF may "vacate land or part of it, or rights in land acquired for public work purposes" by executing and filing a deed in the appropriate recording district upon vacating. AS 35.20.070. "Title reverts to the persons, heirs, successors, or assigns in whom it was vested at the time of the taking." Id. All other disposals of land acquired for public works are conducted by the Department of Natural Resources (DNR).

Before DNR may lease state land, the public must be informed of the nature and terms of the conveyance. Alaska Const. art. VIII, § 10; AS 38.05.035(a)(14), 38.05.345. DNR acting in

---

3/ The cited portion of AS 37.05.280 was held invalid on the basis of separation of powers and improper exercise of the law making power by the superior court in Marine View Tenants' Association v. ASHA, No. 1JU-80-1037 CIV (Nov. 1, 1981). That case was not appealed. However, this decision has limited precedential value until a final decision is rendered by the Alaska Supreme Court.

4/ AS 19.05.070 grants broader discretion to dispose of land acquired for highway purposes.

Hon. Danie' A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

October 14, 1983  
Page 44  
366-101-84

concert with DOA, must prescribe a disposal procedure for state land which provides the safeguards required by law and permits the construction of a facility which the state will lease from the developer. That procedure may include the grant of a lease under AS 38.05.315 to the state agency responsible for the facility. The lease granted by DNR will allow the lessee agency to sublease the land for development of a leased public facility under specified terms which will include prior DNR review and selection of the sublessee according to AS 37.05.230. The sublease of the land will continue in effect long enough to secure financing for the facility. The payment of rent under the lease to the state agency for the facility would be contingent on the enactment of annual appropriations. If the lease is terminated by the failure to appropriate, the lessor would be the successor to the state agency's right to possess the building until reversion or exercise of the option to purchase.

3. Does existing law prevent a state agency from obtaining financing from a municipality to design and construct a state-occupied facility on state-owned property and then enter into an agreement with the municipality for pay-back without competitive bidding?

DOT/PF is proposing to finance the construction of the legislative hall by lease agreement. The City and Borough of Juneau (city) would sell tax exempt municipal revenue bonds, secured by the lease payments to be paid by the state. The state would then supervise the design and construction of the facilities and be the contracting authority.

As a general proposition, DOT/PF has the authority to make contracts with municipalities for public works. AS 35.05.-040(7). The purpose of this form of contract is further defined by AS 35.15.080(c), which provides in relevant part, "[a] municipality may request joint assumption of responsibilities with the department relating to the planning, design, and construction of a public works project." The term "public works" is very broad and includes public buildings. A public building is one which is "owned or controlled and held by the state for government or public use." AS 35.25.020(5) and (6).

We believe that DOT/PF may contract with the city for the planning, design and construction of the legislative hall. We reach this conclusion because under the provisions of the lease agreement, the state will have control over the building which it will hold for government or public use. Additionally, the state will have significant ownership interests in the facility because it holds fee title to the land upon which the build-

Hon. Daniel A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

October 14, 1983  
Page #5  
366-101-84

ing will be constructed and at the expiration of the lease agreement, will own the building free of the interest of the city. However, a contract may not alter the city's responsibility for repaying the long term debt established to finance the cost of construction of the facility.

Our memorandum of May 9, 1983 indicated that AS 37.05.-230 generally required competitive bidding to award a lease agreement which provides for the construction of a public facility. However, competitive bidding is not required in all instances of public contracting. McKinnon v. Alpetco, 633 P.2d 281 (Alaska 1981). The lease transaction under consideration may present an instance where it is in the best interests of the state to negotiate directly with a municipality rather than offer the contract to the lowest bidder. See AS 37.05.230(2). A decision to negotiate directly requires a detailed finding of fact in writing by DOA. In the finding of fact, the commissioner must justify the conclusion that negotiation is in the best interests of the state. A municipality enjoys a preferred status when dealing with the state. Intergovernmental contracts are not governed by the same considerations applicable to the state when it is participating in the open market place. It is probable that a facility can be financed cheaper with municipal revenue bonds than by private means. It may be futile to obtain any advantage from the competitive bid process. If DOA sets out ultimate facts in the finding which supports the conclusion that negotiation furthers the public's interest, then competitive bidding is not required. Libby v. City of Dillingham, 612 P.2d 33, 45 (Alaska 1980) (Rabinowitz, J. concurring). However, the award without competitive bidding would be subject to judicial review to determine whether the decision was arbitrary, capricious or an abuse of discretion. McKinnon, 633 P.2d at 287; Hertz Drive-Ur-Self Systems, Inc. v. Tucson Airport Authority, 299 P.2d 1071 (Ariz. 1956); Volume Services Division of Interstate United Corp. v. Canteen Corp., 369 So. 2d 391 (Fla. App. 1979).

4. Does the appropriation to finance the site acquisition and planning for a legislative hall contain defects which prevent DOT/PF from proceeding with the project?

Section 95, ch. 106, SLA 1983 appropriates \$4,500,000 to DOT/PF plus other money received for land acquisition and facilities planning in Juneau. The land acquisition, planning, and preliminary design efforts for the legislative hall will be paid from this appropriation.

This section makes an appropriation from two sources: \$4,500,000 from the general fund and an unspecified amount from

Hon. Daniel A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

October 14, 1983  
Page #6  
366-101-84

an unspecified source. 5/ This appropriation is for land acquisition and facility planning in Juneau.

The appropriation contains a unambiguous statement of purpose that DOT/PF is appropriated at least \$4,500,000 for land acquisition and facilities planning in Juneau. There is no specification of the public facility upon which the appropriation may be expended. The use of the \$4,500,000 appropriated for site acquisition, planning, and preliminary design for the legislative hall is within the purpose set out in the appropriation. However, the appropriation of money which may be received from other sources presents a serious legal issue. Because no amount is stated for the appropriation, sufficient authorization may not exist to expend the money beyond the \$4,500,000. 6/ Nonetheless, the unspecified source of the appropriation is presumably severable from the general fund part of the appropriation which is stated with specificity in the amount of \$4,500,000. AS 01.10.-030. Consequently, until you begin receiving amounts from "other sources," whatever they may be, the expenditure of general fund money authorized by the appropriation is not a problem.

#### CONCLUSION

We believe there is sufficient authority under existing law to finance the construction of a public facility by lease. However, because this financing technique is not specifically authorized by law, we cannot with absolute certainty advise you that a court would agree with our opinion. You should make allowance for this risk when you plan further development of each project to be financed by the lease purchase method.

WFC:ebc:prm/JLB:pjg

cc: Hon. Harold J. Reynolds, Jr.  
Commissioner  
Department of Education

---

5/ We presume "the other money received" was intended to include money to be provided under a lease agreement with the city as discussed in section 3, supra.

6/ Each appropriation must state an amount. AS 24.30.030. It is not necessary for the appropriation Act to set out the amount in dollars and cents if the appropriation contains provisions which make the amount capable of mathematical calculation. *Orbison v. Welsh*, 179 N.E.2d 727 (Ind. 1962).



# 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 466 Leases by the state  
DATE: March 26, 1984

### PROPOSED COMMITTEE SUBSTITUTE

The proposed CSSB 466 (state affairs) would require approval by law for execution of contracts or leases that either exceed \$1,000,000 annually, or where the total consideration is over \$1,000,000 and any part of the consideration may be used toward acquisition of the property.

### ORIGINAL VERSION OF THE BILL

The original version of SB 466 requires contracts or leases that fall under either of the two examples below be subject to specific appropriation:

- the annual rental payment is in excess of \$150,000 and the term of the lease exceeds 3 years;
- if any of the consideration for the lease or contract may be applied toward acquisition of the property, and the total acquisition exceeds \$150,000 (in this case, the bill requires that the appropriation be for the total rental payment and all costs of the acquisition).

### Fiscal information

The bill has a zero fiscal note.

### Back-up information

fiscal note from the Department of Administration.  
list of state leases exceeding \$1,000,000 a year.



# Alaska State Legislature

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V

Juneau, Alaska 99811

(907) 467-4954

Official Business

### MEMORANDUM

TO: Senate State Affairs Committee  
FROM: Senate State Affairs Committee Staff  
RE: SB 466 Leases by the state  
DATE: April 3, 1984

### PROPOSED COMMITTEE SUBSTITUTE (version 5)

The proposed CSSB 466 (state affairs) requires approval for the procurement of space by law or specific appropriation before execution of a contract or lease may take place. Leases and contracts affected by this legislation either exceed a cost of either \$1,000,000 annually, or exceed a total consideration of \$1,000,000 where any part of the consideration may be used toward acquisition of the property.

This version of the bill also contains a provision (beginning page 1, line 28) exempting leases executed before the effective date, or leases executed after the effective date where the site has been acquired and the bid document has been prepared.

### ORIGINAL VERSION OF THE BILL

The original version of SB 466 requires contracts or leases that fall under either of the two examples below be subject to specific appropriation:

- the annual rental payment is in excess of \$150,000 and the term of the lease exceeds 3 years;
- if any of the consideration for the lease or contract may be applied toward acquisition of the property, and the total acquisition exceeds \$150,000 (in this case, the bill requires that the appropriation be for the total rental payment and all costs of the acquisition).

Fiscal information

The bill has a zero fiscal note

Back-up information

Fiscal note from the Department of Administration

List of state leases exceeding \$1,000,000 a year



# 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 466 Leases by the state  
DATE: March 29, 1984

### PROPOSED COMMITTEE SUBSTITUTE

The proposed CSSB 466 (state affairs) requires approval for the procurement of space by law or specific appropriation before execution of a contract or lease may take place. Leases and contracts affected by this legislation either exceed a cost of either \$1,000,000 annually, or exceed a total consideration of \$1,000,000 where any part of the consideration may be used toward acquisition of the property.

### ORIGINAL VERSION OF THE BILL

The original version of SB 466 requires contracts or leases that fall under either of the two examples below be subject to specific appropriation:

--the annual rental payment is in excess of \$150,000 and the term of the lease exceeds 3 years;

--if any of the consideration for the lease or contract may be applied toward acquisition of the property, and the total acquisition exceeds \$150,000 (in this case, the bill requires that the appropriation be for the total rental payment and all costs of the acquisition).

### Fiscal information

The bill has a zero fiscal note

### Back-up information

fiscal note from the Department of Administration

List of state leases exceeding \$1,000,000 a year

Here is the CS for the  
leasing bill. The language

Version #4  
Berrier  
4/3/84

Original sponsors: Bennett, Sackett,  
Kerttula, et al

to cover leases over  
1M and Arch. Off. Complex  
begins at bottom  
of page. ST

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 466 (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 leases by the state; and provid-  
7 ing for an effective date."

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

9 \* Section 1. AS 37.05.280 is amended to read:

10 Sec. 37.05.280. LEASES. (a) The department shall lease neces-  
11 sary space, and contract for the lease of space for the use of the  
12 state or an agency of the state, wherever it is necessary and feasi-  
13 ble, subject to compliance with the requirements of AS 37.05.220 -  
14 37.05.280. A [NO] lease or contract for a lease may not provide for a  
15 period of occupancy greater than 40 years. An agency of the state  
16 requiring office, warehouse or other space shall lease the space  
17 through the department.

18 (b) A contract or lease may not be executed unless procurement  
19 of the space by contract or lease has been approved by law or unless a  
20 specific appropriation of the required consideration for the first  
21 year of the contract or lease has been made before the contract or  
22 lease is executed if, (1) the contract or lease is for office, ware-  
23 house or other space and the annual consideration is in excess of  
24 \$1,000,000, or (2) the total consideration over the life of the con-  
25 tract or lease is in excess of \$1,000,000 and any part of the consid-  
26 eration may be applied toward acquisition of the property that is the  
27 subject matter of the lease or contract.

28 (c) The requirements of (b) of this section do not apply to  
29 continuation or renewal of leases executed before the effective date

Covers 4 leases  
over  
1 million  
Covers  
ancorase  
office  
complex

1 of this Act if the annual rental on the lease is in excess of  
2 \$1,000,000 on that date and do not apply to leases executed after the  
3 effective date of this Act if a site for the improvement to be leased  
4 has been acquired and bid documents for the improvement have been  
5 prepared before the effective date of this Act [NO CONTRACT OR LEASE  
6 EXECUTED AFTER JANUARY 1, 1966, WHICH PROVIDES FOR A PAYMENT OR PAY-  
7 MENTS BY THE STATE IN EXCESS OF \$12,000 ANNUALLY IS VALID UNLESS THE  
8 USE OF THE SPACE TO BE PROVIDED FOR BY SUCH CONTRACT OR LEASE HAS BEEN  
9 EXPRESSLY APPROVED BY THE LEGISLATURE BY CONCURRENT RESOLUTION].

10 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
11 10.070(c).

12 1) Do we still need better content?  
13 NO

14  
15 2) The only remaining question  
16 was is whether or not to  
17 to pay the <sup>lease</sup> cost to the Anch  
18 CPI. Bill Benner says that  
19 a provision to do **NO** is very difficult  
20 to put in statute (as relate to lease).  
21  
22  
23  
24  
25  
26  
27  
28  
29

Offered: 4/4/84  
Referred: Finance

Original sponsors: Bennett, Sackett,  
Kerttula, et al

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE  
2 CS FOR SENATE BILL NO. 466 (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 leases by the state; and provid-  
7 ing for an effective date."

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

9 \* Section 1. AS 37.05.280 is amended to read:

10 Sec. 37.05.280. LEASES. (a) The department shall lease neces-  
11 sary space, and contract for the lease of space for the use of the  
12 state or an agency of the state, wherever it is necessary and feasi-  
13 ble, subject to compliance with the requirements of AS 37.05.220 -  
14 37.05.280. A [NO] lease or contract for a lease may not provide for a  
15 period of occupancy greater than 40 years. An agency of the state  
16 requiring office, warehouse or other space shall lease the space  
17 through the dep rtment.

18 (b) A contract or lease may not be executed unless procurement  
19 of the space by contract or lease has been approved by law or unless a  
20 specific appropriation of the required consideration for the first  
21 year of the contrac or lease has been made before the contract or  
22 lease is executed if, (1) the contract or lease is for office, ware-  
23 house or other space and the annual consideration is in excess of  
24 \$1,000,000, or (2) the total consideration over he life of the con-  
25 tract or lease is in excess of \$1,000,000 and any part of the consid-  
26 eration may be applied toward acquisition of the property that is the  
27 subject matter of the lease or contract.

28 (c) The requirements of (b) of this section do not apply to  
29 continuation or renewal of leases executed before the effective date

1 of this Act if the annual rental on the lease is in excess of  
2 \$1,000,000 on that date and do not apply to leases executed after the  
3 effective date of this Act if a site for the improvement to be leased  
4 has been acquired <sup>by the state</sup> and bid documents for the improvement have been  
5 prepared <sup>by April 1, 1984</sup> before the effective date of this Act [NO CONTRACT OR LEASE  
6 EXECUTED AFTER JANUARY 1, 1966, WHICH PROVIDES FOR A PAYMENT OR PAY-  
7 MENTS BY THE STATE IN EXCESS OF \$12,000 ANNUALLY IS VALID UNLESS THE  
8 USE OF THE SPACE TO BE PROVIDED FOR BY SUCH CONTRACT OR LEASE HAS BEEN  
9 EXPRESSLY APPROVED BY THE LEGISLATURE BY CONCURRENT RESOLUTION].

10 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
11 10.070(c).

Introduced: 2/13/84  
Referred: State Affairs and  
Finance

BY BENNETT, SACKETT, KERTTULA,  
ELIASON, FAIKS, MOSS, MULCAHY,  
STURGULEWSKI AND PETTYJOHN

1 IN THE SENATE

2 SENATE BILL NO. 466

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 leases by the state; and provid-  
7 ing for an effective date."

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

9 \* Section 1. AS 37.05.280 is amended to read:

10 Sec. 37.05.280. LEASES. The department shall lease necessary  
11 space, and contract for the lease of space for the use of the state or  
12 an agency of the state, wherever it is necessary and feasible, subject  
13 to compliance with the requirements of AS 37.05.220 - 37.05.280. No  
14 lease or contract for a lease may provide for a period of occupancy  
15 greater than 40 years. An agency of the state requiring office,  
16 warehouse or other space shall lease the space through the department.  
17 No contract or lease executed after January 1, 1966, which provides  
18 for a payment or payments by the state in excess of \$12,000 annually  
19 is valid unless the use of the space to be provided for by such con-  
20 tract or lease has been expressly approved by the legislature by  
21 concurrent resolution. No contract or lease may be executed after the  
22 effective date of this Act if the term of the lease is more than three  
23 years and the annual rental is in excess of \$150,000 unless a specific  
24 appropriation for the required rental payment of the contract or lease  
25 for the first three years of the lease term has been made before the  
26 contract or lease is executed. No contract or lease may be executed  
27 after the effective date of this Act if any of the consideration for  
28 the contract or lease may be applied toward acquisition of the  
29 property leased if the total consideration for the acquisition exceeds

1       \$150,000 unless a specific appropriation for the total rental payment  
2       and all other costs of acquisition under the contract or lease has  
3       been made before the contract or lease is executed.

4       \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
5       10.070(c).

SENATE AMENDMENT #1

By

Pettyjohn

To:

CS

SENATE BILL No.

466 (State Affairs)

To:

HOUSE BILL No.

PAGE:

2

LINE:

2-5

After ~~the word~~ "date" on line 2,  
delete the remaining portions of  
lines 2-5, up to and including  
the word "Act" on line 5.

SENATE AMENDMENT

#2

By Pettyjohn

To: CS SENATE BILL No. 466 State Affairs

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

PAGE: 2 LINE: 4

after "acquired" insert "by the state"

Page 2 Line 5

after "prepared", delete "before the effective date of this Act" and insert "prior to April 1, 1984"



# 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 466 Leases by the state  
DATE: April 3, 1984

### PROPOSED COMMITTEE SUBSTITUTE (version 5)

The proposed CSSB 466 (state affairs) requires approval for the procurement of space ~~by law~~ or specific appropriation before execution of a contract or lease may take place. Leases and contracts affected by this legislation either exceed a cost of either \$1,000,000 annually, or exceed a total consideration of \$1,000,000 where any part of the consideration may be used toward acquisition of the property.

*PRIOR by law*

This version of the bill also contains a provision (beginning page 1, line 28) exempting leases executed before the effective date, or leases executed after the effective date where the site has been acquired and the bid document has been prepared.

### ORIGINAL VERSION OF THE BILL

The original version of SB 466 requires contracts or leases that fall under either of the two examples below be subject to specific appropriation:

- the annual rental payment is in excess of \$150,000 and the term of the lease exceeds 3 years;
- if any of the consideration for the lease or contract may be applied toward acquisition of the property, and the total acquisition exceeds \$150,000 (in this case, the bill requires that the appropriation be for the total rental payment and all costs of the acquisition).

*The 4 leases over 1 million which state is already involved.*

*LAUNCH OFF COMPLEX ARE JUST ABOUT READY TO BE PUT OUT*

Fiscal information

The bill has a zero fiscal note

Back-up information

Fiscal note from the Department of Administration

List of state leases exceeding \$1,000,000 a year

Introduced: 2/13/84  
Referred: State Affairs and  
Finance

BY BENNETT, SACKETT, KERTTULA,  
ELIASON, FAIKS, MOSS, MULCAHY,  
STURGULEWSKI AND PETTYJOHN

1 IN THE SENATE

2 SENATE BILL NO. 466

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 leases by the state; and provid-  
7 ing for an effective date."

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

9 \* Section 1. AS 37.05.280 is amended to read:

10 Sec. 37.05.280. LEASES. The department shall lease necessary  
11 space, and contract for the lease of space for the use of the state or  
12 an agency of the state, wherever it is necessary and feasible, subject  
13 to compliance with the requirements of AS 37.05.220 - 37.05.280. No  
14 lease or contract for a lease may provide for a period of occupancy  
15 greater than 40 years. An agency of the state requiring office,  
16 warehouse or other space shall lease the space through the department.  
17 No contract or lease executed after January 1, 1966, which provides  
18 for a payment or payments by the state in excess of \$12,000 annually  
19 is valid unless the use of the space to be provided for by such con-  
20 tract or lease has been expressly approved by the legislature by  
21 concurrent resolution. No contract or lease may be executed after the  
22 effective date of this Act if the term of the lease is more than three  
23 years and the annual rental is in excess of \$150,000 unless a specific  
24 appropriation for the required rental payment of the contract or lease  
25 for the first three years of the lease term has been made before the  
26 contract or lease is executed. No contract or lease may be executed  
27 after the effective date of this Act if any of the consideration for  
28 the contract or lease may be applied toward acquisition of the  
29 property leased if the total consideration for the acquisition exceeds

1        \$150,000 unless a specific appropriation for the total rental payment  
2        and all other costs of acquisition under the contract or lease has  
3        been made before the contract or lease is executed.

4        \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
5        10.070(c).



§ 37.05.210

of warrants.  
presented at the  
the date of its  
are considered  
pecial fund or  
ferred to the  
ederal govern-  
ch 130 SLA

Department of  
account, bill,  
asury arising  
mine whether  
ws and regu-  
ount is correct

account, bill,  
ry unless the  
ed against the  
art III ch 82

ent of Revenue  
opies of receipt  
ment of Reve-  
ned, and the  
of the Depart-  
ion may adopt  
urrent receipt  
SLA 1957)

e Department

ports as of the  
nancial condi-  
eriod and the

auditor before  
eceding fiscal  
d of that year,  
ers necessary;  
gislature and

§ 37.05.220

PUBLIC FINANCE

§ 37.05.220

(3) compile statistics necessary for the budget and other statistics required by the governor. (§ 8 art III ch 82 SLA 1955; am § 5 ch 186 SLA 1957; am § 1 ch 11 SLA 1965)

**Article 3. Uniform Purchasing.**

Section	Section
220. Purchasing agent	260. Preference for Alaska products
230. Competitive bids	270. Purchases through General Services Administration
231. Estimation of flying hours required	280. Leases
240. Award of contracts and purchases	
250. Delegation of duties	

**Sec. 37.05.220. Purchasing agent.** The Department of Administration is the purchasing agent for the state. The department shall

(1) purchase, rent, or otherwise provide for the furnishing of supplies, materials, equipment, or contractual services for all state agencies:

(2) have power to authorize an agency to purchase directly certain specified supplies, materials, equipment, or contractual services under conditions and procedures prescribed in AS 37.05.230;

(3) prescribe the manner in which supplies, materials, and equipment shall be purchased, delivered, stored, and distributed;

(4) prescribe the time, manner, authentication, and form of making requisitions for supplies, materials, equipment, and contractual services;

(5) fix standards of quality and quantity and develop standard specifications after consultation with the several state agencies, and approve or determine final specifications;

(6) have power to transfer to or between agencies or to sell or trade in supplies, materials, and equipment of agencies which are surplus, obsolete, or unused; and the department shall make proper adjustments in the accounts of the agencies concerned;

(7) prescribe the manner of inspecting deliveries of supplies, materials, and equipment and of making tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(8) prescribe standard forms for bids and contracts for construction, purchases of supplies, and other purposes, which bids and contracts may contain provisions which the department considers necessary; but all contracts for construction shall require the filing of an acceptable performance bond and a penalty provision for failure to perform the contract according to its terms;

(9) provide for other matters which may be necessary to carry out the provisions of this chapter and the regulations adopted under it. (§ 1 art IV ch 82 SLA 1955; am §§ 6, 7 ch 186 SLA 1957; am § 1 ch 55 SLA 1960)

Sec. 37.05.250. Delegation of duties. The department may delegate the duties imposed by this chapter to an employee of the state normally stationed in a town or location distant from the state capital. Agents so designated shall perform the duties as the department requires and in accordance with regulations established by the department. (§ 5 art IV ch 82 SLA 1955)

Sec. 37.05.260. Preference for Alaska products. This chapter does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or AS 36.20.010 regarding preference to producers or dealers in Alaska except as provided in AS 37.05.230(1). (§ 6 art IV ch 82 SLA 1955)

Sec. 37.05.270. Purchases through General Services Administration. This chapter does not prevent the department from purchasing through the General Services Administration as provided by law. (§ 7 art IV ch 82 SLA 1955; added by § 11 ch 186 SLA 1957)

Sec. 37.05.280. Leases. The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency of the state, wherever it is necessary and feasible, subject to compliance with the requirements of AS 37.05.220 — 37.05.280. No lease or contract for a lease may provide for a period of occupancy greater than 40 years. An agency of the state requiring office, warehouse or other space shall lease the space through the department. No contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of \$12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution. (§ 8 art IV ch 82 SLA 1955; added by § 1 ch 81 SLA 1959; am § 1 ch 94 SLA 1961; am § 16 ch 99 SLA 1965)

Article 4. General Provisions.

Section	Section
290. Purpose	318. Further regulations prohibited
300. Interpretation of chapter	325. Definitions for AS 37.05.315 — 37.05.317
305. Applicability to Municipality of Alaska	400. Definitions for chapter
310. Fiscal year	410. Short title
315. Grants to municipalities	
316. Grants to named recipients	
317. Grants to unincorporated communities	

Sec. 37.05.290. Purpose. The purpose of this chapter is to provide uniform financial procedures for all state agencies with respect to accounting, purchasing, post auditing, and related financial procedures; and to revise financial procedures to obtain economy, efficiency, and integrity in handling public money. (§ 2 art I ch 82 SLA 1955; am § 2 ch 188 SLA 1970)

Sec. 37 construed it. If a federal funds are inoperativ

Editor's the chapter see notes fol

Sec. 37 missioner functions Board of F and guidel necessary formance (§ 5 ch 46

Legislativ letter of int

Sec. 37. July 1 of ea accounts c Revenue, i connected with refer ACLA 194

Revisor's ACLA 1949 by § 30, ch. 1 24, SLA 1953

Sec. 37. appropriat of Adminis ability of tl an agreem municipali appropriat state of the consistent facilities an use of the the grant c

TO: VF

FROM:ST

RE: SB 466 leasing of office space

DATE:4/27/84

The state affairs version of the bill raised the ceiling to 1 million dollars on bills needing specific legislative approval. There are 4 leases over 1 million dollars (attached).

The ceiling was raised due to the incredible number of leases between 150,00 dollars and 1 million dollars (over 600, see the run in your folder). The real problem areas in the leasing are over 1 million a year, and would still be covered under the bill.

The "approval by law" language on page 1, line 19 was put in at the request of the administration (department of law, and dept. of admin.).

February 1, 1984

ANCHORAGE OFFICE COMPLEX  
DATA SHEET

- The Department of Administration currently manages approximately 903,000 sq. ft. of leased and warehouse office space in Anchorage.
  - This space is spread among 71 different locations in Anchorage.
  - The Anchorage Office Complex will consolidate 37 of those leases into a new facility of approximately 350,000 square feet of usable office space.
  - Only offices which are compatible with location in a general office building are to be located in the AOC.
  - Specialized functions such as public health labs, animal carcass incinerators, scientific laboratories, computer centers and so forth are not included in the AOC.
  - \* ◦ AOC will be built on state owned land which was jointly selected by the Municipality of Anchorage and the State of Alaska, located between "A" and Cordova and between 5th and 6th Avenue in downtown Anchorage.
  - AOC will be built by a private developer using private financing and then leased to the State.
  - AOC project documents will permit the developer to include a limited amount of retail space in order to enhance the mixed use potential of the project.
  - Approximately 1,000 spaces of on-site parking are required in the project.
  - The State anticipates shared use of the parking spaces to support after-hours meetings and cultural events held in the nearby vicinity.
- \* The site has been condemned and cleared. Not all purchases have been settled

## Anchorage Office Complex

### General Information

The Anchorage Office Complex Developed around four main guidelines. Consolidate Anchorage office space at a location selected by the State, in a building designed to meet the State's requirements while utilizing private financing.

We determined that the best way to accomplish this was for the state to procure the building site, prepare performance specifications, and then bid for developers to design, build, and then lease the required structure to the State. The State would lease the building site to the developer. At the end of the 40 year ground lease the building would revert to State ownership. I've attached brief outlines of the commercial and ground leases.

Dot/Pf has been involved since the beginning. They selected the consultant who prepared the performance requirements, and have reviewed all work to date.

The bid evaluation was divided into two segments. Our consultant would review the bid documents to assure all the basic requirements were met. All bidders meeting the requirements would be evaluated. Forty percent of the evaluation would be based on aesthetic values of the building. A breakdown of the weighting factors is provided in schedule A of the bidding criteria. The evaluation would be performed by a 5 member panel.

After the aesthetic portion was scored the financial sixty percent of the evaluation would be done. This portion would be based on lowest life-cycle cost with that cost being based on rental rates, operating costs and escalation factors provided by the bidders.

The scores for aesthetic and financial segments would be combined, the bid would be awarded, and contracts would be signed.

The structure would include approximately 350,000 net square feet of office space, 60,000 square feet of commercial space, a 1000 car parking garage and enough systems furniture to furnish the office space. The furniture was included for two primary reasons. The space requirements were based on the utilization of systems furniture so if it were not used we anticipated the need for substantial additional space. Secondly we realized there was little likelihood of securing a capital appropriation for the \$12-\$14 million necessary to buy the furniture.

At present we are completing the bid package in case there is a determination to return to this approach to procuring the structure. The only revision remaining involves clarifying the calculation of operating costs for the purposes of bid evaluation and completing the lease.

The consultant's "good ball-park" estimate of the cost required to construct a building which meets our performance requirements is \$100,000,000 unfurnished, \$114,000,000 furnished.

February 1, 1984

ANCHORAGE OFFICE COMPLEX  
DATA SHEET

- The Department of Administration currently manages approximately 903,000 sq. ft. of leased and warehouse office space in Anchorage.
- This space is spread among 71 different locations in Anchorage.
- The Anchorage Office Complex will consolidate 37 of those leases into a new facility of approximately 350,000 square feet of usable office space.
- Only offices which are compatible with location in a general office building are to be located in the AOC.
- Specialized functions such as public health labs, animal carcass incinerators, scientific laboratories, computer centers and so forth are not included in the AOC.
- \* ◦ AOC will be built on state owned land which was jointly selected by the Municipality of Anchorage and the State of Alaska, located between "A" and Cordova and between 5th and 6th Avenue in downtown Anchorage.
- AOC will be built by a private developer using private financing and then leased to the State.
- AOC project documents will permit the developer to include a limited amount of retail space in order to enhance the mixed use potential of the project.
- Approximately 1,000 spaces of on-site parking are required in the project.
- The State anticipates shared use of the parking spaces to support after-hours meetings and cultural events held in the nearby vicinity.

\* The site has been condemned and cleared. Not all purchases have been settled

To convert our package from its present private financing to an ASHA financed approach would take approximately thirty working days if all policy decisions could be handled in a timely manner. Neither lease would be required in their present forms. The bid evaluation would be revised to eliminate life-cycle cost calculations as we would expect ASHA to require some form of "triple net lease". Any revisions could be accomplished under our existing contract with our consultant-William J. King and Assoc.

December 27, 1983

ABSTRACT OF GROUND LEASE

(State leases its real property to a developer for purpose of having a building built upon it for the States use)

- 40 year term, no renewal option
- States's Option: A. Improvements revert to State at termination of lease at no cost; or
  - B. State can require removal of improvements from our property at no cost.
- Rental rate for land set by State based on current value (rate unsettled yet)
- To be determined by bid - intent is that States land rental rate is escalated same way as commercial lease
- Land rent owed to State is offset against commercial rent owed to developer
- Developer pays all taxes to appropriate taxing authority
- Requires developer to build the AOC or be in default on the ground lease
- \$100 million performance bond
- Liquidated damages set at 1% of annual rent for each day of delayed occupancy
- Developer will maintain the premises
- Major maintenance, repairs, alterations require States approval
- Developer will insure the premises to State requirements
- Lease may be assigned to others with an equal or better financial standing than that of the developer
- Assignment or sublease requires approval of State

8/RECV/DW.3601

December 27, 1983

ABSTRACT OF COMMERCIAL LEASE

(State leases the commercial office space from the developer)

- 40 year term, no option to renew
- Rental rate for building set by bid process
- Rental rate escalation set by bid process
- Operating cost pass thru set by bid process
- Developer to provide all maintenance, utilities, and services
- State can assign and sublease to others at its discretion
- Developer will keep premises insured to State requirements
- Developer will share proceeds of condemnation
- Developer will periodically renovate premises
- If developer sells or transfers premises to another, the lease shall remain in effect for the new owner

8/RECV/DW.3601

1983 DEC 27 A 9:18  
DIVISION OF  
GENERAL SERVICES & SUPPLY

Leases in Excess of \$1,000,000. - (Rounded)

June (1) Lease # 1444 Capitol Office Park Fish & Game

Neg. START: Dec 1, 1981 \$1,020,941. - year

B.W.

Firm Through 6/30/82 C.P.I. ANNUALLY

June (2) Lease # 1607 Blomfield/Holden Labor

Bid # 8867 START: July 1, 1982 \$1,405,420. - year

Firm Through 6/30/84 C.P.I. ANNUALLY

Arch (3) Lease # 7535 Frontier Bldg. VARIOUS

Neg. START: Oct. 1, 1982 \$3,628,319. - year

Firm Through 6/30/83 Neg. Adj. ANNUALLY

June (4) Lease # 1627 Goldbelt Entr. Education

Neg. START: Oct. 1, 1982 \$1,079,470. - year

Firm Through 6/30/85 C.P.I. ANNUALLY

# State of Alaska

John S. Harrison  
Associate Director  
Office of Management and Budget  
Division of Strategic Planning

DATE: March 21, 1984

FILE NO: 84B-11

TELEPHONE NO: 465-3568

FROM: Richard Emerman  
Manager

SUBJECT: Leasing, Bonds, and  
Cash

Various leasing arrangements are being considered to finance the construction of certain State facilities; for example, the proposed maximum security prison and the proposed Anchorage State Office Building. A number of questions have been raised as a result:

- °What are these financing mechanisms and how do they work?
- °In what way and to what extent do they resemble G.O. debt?
- °Do these mechanisms result in more or less cost to the State than G.O. bond financing or cash acquisition?

These questions are explored in the discussion below. A general description and comparison of the major types of leasing arrangements is followed by a brief discussion of their similarity to debt. The question of relative cost to the State is then addressed beginning with a brief discussion of cash acquisition versus G.O. bond financing, followed by a cost comparison among leasing and bonding alternatives for two specific cases: the proposed maximum security jail and the proposed Anchorage State Office Building.

## Lease-Purchase Agreements and Lease Revenue Bonds

In the world of government finance, a lease-purchase agreement is also referred to as a "tax-exempt lease," and is essentially equivalent to an installment purchase of a capital good. At the end of the schedule of lease payments, the lessee can acquire the good for a nominal price, e.g., one dollar. Like all installment purchases, the sum of the installments is greater than the "cash up front" price, since the payment schedule incorporates an interest rate. The interest component of the "lease payments" is identified in the original lease-purchase agreement, and is considered tax-exempt income to the lease payment recipients. This is because the IRS considers the "installments" or "lease payments" analogous to debt service on municipal bonds, the interest component of which is exempt from Federal income taxes.

A lease-purchase agreement used to finance large capital structures can be broken into shares called "certificates of participation." Typically, a financial intermediary such as a bank sells the certificates of participation (CPs) to private investors, and the proceeds of the sale are used to finance project construction. The certificates are rated securities, and entitle the holders to receive specified portions of the lease payments over the term of the agreement. The interest component of the lease payments constitutes tax-exempt income to the CP holders.

The lessor in a lease-purchase agreement can be a private developer. In that event, the developer would not secure debt at taxable interest rates in order to finance construction, but would instead be likely to sell the lease-purchase agreement to one or more investors seeking tax-exempt income. The developer would use the proceeds from the sale to finance construction, and assign receipt of the ensuing lease payments to the investors.

Since lease-purchase agreements are essentially equivalent to installment sales, the "lessee" is considered the owner of the property for Federal tax purposes at the inception of the lease and throughout its term. Since the lessee in our case would be the State, and since the State pays no Federal income tax, there is no way under this arrangement to capture any benefit from the use of depreciation or applicable investment tax credits. These benefits are relevant only through the mechanism of a "true lease," discussed later in this memo.

A tax-exempt revenue bond secured by a State lease is sometimes called a "lease revenue bond." In concept, these are analogous to lease-purchase agreements. In either case, financing for a capital project is obtained at tax-exempt interest rates, with repayment to creditor(s) secured by a long-term lease that is contingent on annual appropriations by the Legislature. The interest rates required by investors are comparable for either instrument, and are somewhat higher than G.O. bond rates due to the added risk implied by the "contingent on appropriation" clause. Underwriting spread is also comparable for lease-purchase and revenue bond financing, and in either case is more costly to the State than it is for G.O. bond financing.

There are various reasons why states might consider using these alternatives instead of G.O. bonds. Revenue bonds are often used as a way to ensure that project beneficiaries pay for the capital cost of a facility through user fees that are pledged to the payment of debt service. However, that purpose is not relevant when the bonds are secured by a State lease that will be paid with the State's unrestricted revenue. Some governments operate under the restriction of legal limits on G.O. debt,

which can be avoided (for better or worse) by resort to these financing techniques. The State of Alaska, however, does not have such a limit on the books. The State does have a limited debt capacity -- if too much debt is issued, the State's bond rating will fall and higher interest rates will result. However, the rating agencies consider lease revenue bonds and lease-purchase agreements in determining the State's remaining debt capacity (see Attachment A: letter to Milt Barker from Standard and Poor's Corporation). The State does not conserve its debt capacity by using these financial instruments.

The effective interest rates for G.O. bonds will always be lower than comparable revenue bond rates. However, revenue bonds can result in certain compensating cost savings, such as avoidance of referendum cost (i.e., the cost of placing a bond proposition before the voters) and possibly some portion of construction cost if the revenue bond mechanism results in time savings (i.e., if there is real inflation in construction costs, and construction can begin sooner by not having to wait for the next general election). In addition, reserve fund requirements applicable to lease revenue bonds may result in the realization of arbitrage income (by investing the reserve fund at taxable interest rates), thus lowering the net cost of debt service. It is commonly assumed, however, that G.O. bond financing will be less costly to the issuer than lease revenue bond financing, an assumption that will be examined in more detail later in this memo.

Why else would the State consider using lease revenue bonds instead of G.O. bonds? There appear to be two basic reasons:

1. There is an unwillingness to accept the risk of rejection of a G.O. bond proposition by the Legislature or by the voters.
2. There is an emergency situation that requires faster response than the G.O. bond process allows.

Since lease-purchase agreements (or tax-exempt leases) are so closely analogous to lease revenue bonds, the reasons for preferring one to the other are not clear. There might be technical considerations in any specific case (such as the availability of an appropriate intermediary) that would tend to favor one option over the other.

#### True Leases

In a true lease, the lessor maintains ownership of the property throughout the lease and may take advantage of depreciation and

applicable investment tax credit benefits. These benefits can be passed along to the lessee.

If these benefits are to be realized then the lessor must be a tax-paying entity, which would typically rely on taxable debt for its own financing (unless industrial development bonds can be obtained for a particular project). As a result, the required lease payments under a true lease usually must be high enough to cover the lessor's taxable debt service with its higher interest rates. Although such interest is tax deductible to the private lessor, this is offset by the fact that the lease payments constitute fully taxable income to the lessor (i.e., there is no "tax-exempt interest component" of a lease payment made under a true lease).

In addition, the IRS will not permit the lessor to take advantage of depreciation and investment tax credits during the term of the lease and then sell the property to the lessee for a nominal price at the end of the lease. Such sale at a nominal price would indicate that the "lease" was equivalent to an installment purchase all along. A consequence of true leasing is that the lessee cannot acquire the property for less than its market value at the end of the lease. If the property were an office building which the State planned to occupy indefinitely, a true lease arrangement would require either that the State purchase it at market value after the initial lease term, or continue leasing the space after its initial construction cost had been paid off.

In general, the following considerations are important in evaluating the merits of true lease financing:

1. What is the current spread between the interest rates payable on tax-exempt and taxable debt? This differential changes over time in response to various factors, including tax laws and the supply and demand for each type of debt instrument. In addition, interest rates on taxable debt are particularly subject to variation depending on the type of project being financed and the relative ease of finding alternate users should the State pull out of the lease. One would expect that the spread between taxable and tax-exempt rates would be greater for a prison than for an office building in downtown Anchorage. True lease financing becomes more attractive as the size of the spread decreases.
2. Can the private developer obtain financing through tax-exempt industrial development bonds (IDBs)? Presently, Federal regulations allow issuance of IDBs in excess of \$10 million for various specific types of structures, including sports arenas, convention centers, airports,

docks, and several others. However, neither prisons nor office buildings appears on the list. The use of IDBs has come under increasing scrutiny by Congress, particularly as it contemplates ways to reduce the Federal budget deficit. Legislation has been proposed that would severely curtail the issuance of IDBs.

3. Can the private developer make full use of depreciation tax deductions? If the developer does not make a profit in a particular year, those benefits cannot be realized for that year. Will Federal law continue to allow the developer to use accelerated depreciation, or will another method such as straight-line depreciation over a greater number of years be required in the future as has been recently proposed in Congress?
4. Can the investment tax credit (ITC) be used to significant advantage for the project under consideration? The ITC is most significant when the project involves the rehabilitation of an historic structure. Public entities owning such structures have sometimes entered into sale-leaseback arrangements with private firms in order to benefit from the ITC. For new construction, however, the ITC is calculated only on equipment purchases and is generally of only marginal benefit.
5. Will a private developer be able to build a particular structure for less cost than the public sector would incur for building the same structure, perhaps due to the operation of efficiency incentives? If so, some of the cost savings might be passed through to the public lessee.
6. Private property owners are subject to payment of local real estate taxes while public owners are not. The added cost of such taxes constitutes a financial penalty under the true lease alternative. However, if a public owner (e.g., the State) were to make payments to a municipality in lieu of property taxes (e.g., higher revenue sharing), this financial advantage of public ownership would be lost.
7. Under a true lease, the lessee cannot acquire the property at the end of the lease for less than its fair market value. If the State were to plan indefinite occupancy of a facility, it would have to plan either acquisition at such price or indefinite extension of a lease arrangement. There are obviously some problems in estimating the future "market value" of a facility such as a maximum security jail. In general, however, such an estimate is essential to the financial evaluation of a true lease proposal.

8. The interest paid by a private developer can be deducted from the developer's taxable income. However, the rental income received by a private developer under a true lease is fully taxable. These two factors tend to offset each other, but must be explicitly recognized in true lease evaluations.
9. In contrast to lease-purchase agreements or lease revenue bonds, true lease financing does have the advantage of conserving the State's remaining debt capacity. The rating agencies are not likely to consider lease payments made under true leases to be equivalent to debt service obligations. True lease financing can therefore help the State preserve a higher bond rating, though the amount of savings that can be attributed to a specific true lease as a result depends on how important it was in preserving the rating and how much bonding the State undertakes in the future.

#### Leasing and Debt

Much discussion has taken place on the extent to which leasing resembles debt. Although approval by the Legislature and the voters is necessary before G.O. debt can be incurred, the Executive branch can unilaterally enter into a lease that calls for annual payments over a long term. Such leases always carry the qualification that payment is contingent on annual legislative appropriations, and it is this provision that mainly distinguishes leases from debt. However, for this to be a meaningful distinction, the Legislature must actually be presented with a meaningful annual choice.

To illustrate, assume that a bank sells certificates of participation in a lease to be paid by the State of Alaska, and that the CPs receive an "A" rating by one or more of the rating agencies. The State's name appears on the face of the security. Assume further that the lease is for a facility that would not be used by any other entity; for example, a prison. Even though the certificates state that payment is contingent on annual legislative appropriations, the effect of not appropriating the funds could be severe. Essentially, the investors holding the CPs would now be holding worthless paper with Alaska's name on it. It seems likely that such an event would have a negative impact on the State's credit rating, though there seems to be little consensus as to how serious it would be. If the result were a substantial decline of the State's bond rating along with a jump in the interest rates faced by the State and its subdivisions, the result would be serious indeed. This prospect could force the Legislature to "choose" to appropriate funds for payment of the lease. On the other hand, perhaps the impact of

non-appropriation would be much more tolerable. It is a subject which should be more closely examined.

If the State entered into a true lease with a private developer who obtained private financing at taxable interest rates, then non-payment of the lease would not be likely to affect the State's credit or the credit of any other public entities in Alaska. A key point seems to be: does the name of the State or any of its subdivisions appear on the face of a rated security, and if so, will non-appropriation of a "lease payment" result in the holders of such securities losing their investment? If the answer to these questions is yes, and if the State's credit is seriously affected as a result, then the similarity of leasing and debt for that particular case is striking.

#### Cash versus G.O. Bonds

The evaluation of cash financing compared, for example, with G.O. bond financing is conceptually difficult. One argument is that Alaska would be financially better off by bonding for capital projects while depositing cash revenues in the Permanent Fund. In so doing, the State would realize earnings at taxable rates of interest while borrowing funds at lower, tax-exempt rates of interest. Ignoring the effect of Permanent Fund dividends (i.e., assuming that the government retained all Permanent Fund earnings), the resulting "arbitrage income" would leave the State financially better off than if cash had simply been paid out to finance capital construction.

However, increases in bonding would probably not, in reality, be accompanied by increases in Permanent Fund deposits or any other type of government saving. It is therefore misleading, one may argue, to assume that earnings at taxable rates of interest constitute an opportunity cost of cash expenditure for capital projects. The available cash will be spent in any event -- bonding for capital projects will simply enable the State to spend more than it otherwise would, increasing future financial obligations in the process.

It does appear that bonding can be said to be "cheaper" than cash only if the cash that is freed up by bonding is invested at a higher rate of return. If the cash that is freed up is simply expended on something else, then it is difficult to see how bonding can serve to improve the State's financial position.

#### Comparison of Financing Mechanisms -- Maximum Security Jail

Financial advisors to the State from Foster & Marshall/American Express, Inc. (F&M) have provided data that enable rough comparison of certain financing alternatives for the proposed maximum security jail. In the opinion of F&M, the cash flow conse-

quences to the State of the lease revenue bond and lease-purchase alternatives are so nearly the same that they may be considered identical for purposes of rough financial analysis. Thus, one set of figures below reflects the expected costs of either lease revenue bond or lease-purchase financing. The other set of figures displays expected costs for G.O. bond financing. At the bottom of each column are shown the present values of each stream of payments calculated at selected discount rates.

This example incorporates the following assumptions:

1. Construction cost is estimated at \$65 million.
2. G.O. bonds would be rated "AA" while revenue bonds or certificates of participation would be rated "A." G.O. bonds receive the higher rating since, unlike the alternatives, they are formally secured by the State's "full faith and credit." In order for the revenue bonds or CPs to receive an "A" rating, the project evaluators must be reasonably certain either that the Legislature will in fact appropriate the necessary funds throughout the term of the lease, or that alternative users of the facility can readily be found with the capacity to assume the lease payments.
3. As a result of these ratings, the interest rate projected for G.O. bonds is estimated to be 75 basis points (.75%) below the rate for revenue bonds or CPs.
4. For each alternative, general fund outlays for debt service (or "lease payments") are scheduled to occur over a ten year period. The ten year schedule is typical of recent G.O. bond offerings by the State of Alaska. Ten years was selected for revenue bonds and CPs simply for comparison purposes, although shorter repayment periods result in significant reduction of the present value of State cost.
5. The analysis assumes that funds are obtained and construction begins in the summer of 1984, with completion of the facility scheduled for the summer of 1986. The revenue bond/lease-purchase alternative assumes that interest would be capitalized for the construction period, with lease payments beginning only after the facility is completed. (This accounts for the zero net debt service shown in the example during the first two years in the lease revenue bond/lease-purchase column.) The present value of State cost is relatively insensitive in this example to whether or not interest is capitalized for the construction period.