

ALASKA LEGISLATURE COMMITTEE FILES 1905, 1906

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THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,)
)
Appellant/Cross-Appellee,) File Nos. S-653/678
)
v.) O P I N I O N
)
VERN T. WEISS, et al.,)
)
Appellee/Cross-Appellant.) [No. 2987 - October 4, 1985]
)

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: G. Thomas Koester, Assistant Attorney General, Norman C. Gorsuch, Attorney General, Juneau, for Appellant/Cross-Appellee. Stephen C. Cowper, Fairbanks, for Appellee/Cross-Appellant. Russ Winner, McGrath & Associates, Anchorage, for Amicus Curiae Cook Inlet Region, Inc.

Before: Rabinowitz, Chief Justice, Burke, Matthews and Compton, Justices. [Moore, Justice, not participating]

COMPTON, Justice.

The State of Alaska ("state") appeals from a judgment of the superior court holding that the state breached its duty as trustee of federal mental health grant lands when the legislature redesignated the property as "general grant land." For the reasons set forth below, we

affirm the holding to this extent, but reverse the superior court's conclusion that the redesignation legislation was valid.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act (AMHEA) which, insofar as it concerns this case, granted the Territory of Alaska one million acres of federal land to be held in public trust to help effectuate the creation and operation of mental health care facilities in Alaska. Pub. L. No. 84-830, 70 Stat. 709 (1956). Section 202(e) of the Act specifically provides:

All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide in order to obtain funds or other property to be invested, expended or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act. (emphasis added)

The state managed these lands without maintaining a separate account until 1978. The Alaska State Legislature made its practice law in 1978 when it passed the following statutory provision:

REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND

(a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

Ch. 181, § 3(a), SLA (1978).

Alaska has provided continuous mental health care since statehood. The record indicates that between 1959 and 1982 the state spent over \$222,000,000 on mental health care. Generally speaking, there has been a constant increase from 1959 to the present in mental health expenditures: slightly less than \$1,200,000 was expended in 1959, and slightly more than \$29,000,000 was expended in 1982. The record does not indicate how much of the trust land at issue has been disposed of, nor the total value of such disposed land. In the state's answer to the complaint, it alleges that "state expenditures for mental health purposes exceeded revenues from mental health grant lands in all years for which revenues from those lands were tabulated

separately." The record does indicate that as of 1973, total revenues from these mental health trust lands amounted to \$19,555,582. The state's total expenditures to that point amounted to \$66,726,176.

Weiss et al. filed a class action in 1982 alleging that the state breached the public trust by 1) failing to account for revenues realized, 2) using revenues for purposes other than mental health care and 3) passing legislation redesignating the property "general grant land." Plaintiffs sought declaratory relief invalidating the redesignation legislation; injunctive relief compelling the state to administer the trust according to the law; general relief establishing a trust account "for the receipt of funds generated from all lands selected by the State of Alaska under the aforesaid mental health land grant"

The superior court ruled that invalidation of the redesignation legislation was not an available remedy used on State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981). However, the court did hold that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that

[t]he public trust established by P. L. 84-830, 70 Stat. 709, shall recover from the defendant State of Alaska an amount equal to the fair market value of all lands conveyed from the trust as of the date of conveyance, plus prejudgment interest from the date of each conveyance. For the purposes of this judgment, all lands remaining in the trust as of July 19, 1978, shall be considered

as having been removed from trust status
by the State of Alaska on that date . . .

The court also ordered a set-off for all monies spent by the state on mental health care.

The state appeals from the judgment, except the holding that the redesignation legislation was valid. Weiss et al. cross-appealed the trial court's failure to rule the legislation invalid.

II. DID THE STATE BREACH THE PUBLIC TRUST
CREATED BY CONGRESS WHEN IT REDESIGNATED
PROPERTY IN THE TRUST AS "GENERAL
GRANT LAND?"

A. Nature of the Trust.

The state argues, essentially, that the redesignation is of no legal consequence because the state has always provided public mental health programs in the past and, implicitly, will provide them in the future. The state maintains that providing such programs fulfills its obligations according to AMHEA, freeing the grant lands for other public purposes. Textual support for this position comes from the portion of Section 202(e) which states that "proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska." It is suggested that this language means Congress intended that the land grant serve as a revenue base guarantee. Great emphasis is placed on the legislative history of AMHEA

which establishes that Congress did not wish to limit the use of grant lands exclusively to mental health programs.¹

Despite these observations, we think it irrefutable that Congress intended to create a trust, to be based on a corpus of one million acres of federal land. It is a commonplace of the law that without trust property there can be no trust. Restatement (Second) of Trusts § 74 (1959).² When the state, through the legislature, altered the status of the property grant the trust was thereby effectively terminated. The state, as trustee, had no power to do this

1. The debates in the House and Senate are too lengthy to reproduce in their entirety here, but certain remarks are representative of the discussions. Senator Jackson commented that "[t]he income from sales or leases will be used to support the mental health program in Alaska. The income will be held in trust for that purpose. Any money received over and above the need for the mental health program may be used for other public purposes." He further noted that the language change was not of a fundamental nature, and thus said that, "[t]he purpose of granting 1 million acres is the same as in all other similar grants, such as the public school land-grant program." 102 Cong. Rec. 9761 (June 7, 1956).

We note that the language in the federal grant was changed from designating the proceeds of the land grant to be used as a public trust for Alaska's mental health program, to saying that the proceeds "shall first be applied to meet the necessary expenses of the mental health program" only because of worry among members of Congress that the land may actually have a value far in excess of the necessary health care expenses. The record in this case shows that income from the land grant was actually less than state expenditures for mental health programs.

2. Section 74 provides: "A trust cannot be created unless there is trust property."

and consequently breached its duty to preserve the corpus.³
The fact that the state has provided mental health care in the past and will most likely do so in the future is no justification for termination of the trust. Whether a beneficiary can rely on the bona fides of a trustee to continue voluntarily to uphold the terms of a defunct trust is quite beside the point. We decline the opportunity to encourage the state, or any trustee for that matter, to determine unilaterally when to terminate a trust without specific auth. ty to do so.

B. Remedy.

Having concluded that the state breached the trust, we find it necessary on the facts of this case to invalidate the redesignation statute, Ch. 181, § 3(a), SLA (1978). State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981) does not compel a different result. In that case, the federal government had granted 100,000 acres to the state "for the exclusive use and benefit" of the

3. Our reliance upon basic trust law principles finds ample support in the precedents of this court and the United States Supreme Court. See Lassen v. Arizona, 385 U.S. 458, 17 L.Ed.2d 515 (1967); State v. University of Alaska, 624 P.2d 807 (Alaska 1981). Both Lassen and University of Alaska involved federal grants to be used by states for school purposes. Those cases stand for the proposition "that the same private trust law principles are to apply to federal land granted to the states for school purposes." University of Alaska, 624 P.2d at 813. There is no reason to treat federal lands granted for mental health purposes differently.

University. Id. at 811. Years after the grant, the state included 5,040 acres of the trust land in a state park. This action was not in itself a breach of the trust so long as the University was paid fair market value for the land. We inferred that the legislature intended to pay the University for this disposition, stating:

It is also logical to assume that the legislature intended to compensate the University for the loss of its land. This view gives the statute creating [the park] a reading that is in accord with the well recognized canon of statutory construction that, when possible, legislation should be construed in a way that upholds its validity.

524 P.2d at 816.

Unlike the situation in University of Alaska, the present case does not involve a disposition of a portion of trust lands for a specific use. Instead, the entire corpus of the trust is intermingled with the general grant lands of the state. No particular use of the trust lands is specified and it may be years before much of the land is used. While it was reasonable to infer a legislative intent to pay for 5,040 acres for which there was a present park land use in University of Alaska, it is not reasonable to infer that the legislature meant to pay for a quantity of trust land approaching one million acres for which in large part there is no present use. Thus, the payment remedy imposed in University of Alaska is not appropriate here. Because the state in passing the redesignation act went

beyond the power which had been granted it with respect to the trust lands by Congress, the redesignation act must be declared invalid.

It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective. The case is remanded so that requisite findings can be made. We take this opportunity to provide some guidance to the trial court to simplify its task.

Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its

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CSHB 128
Commission
would be
responsible
for approving
the state's
actions in
carrying
out the
activities
directed
herein.

position just prior to the conveyance effected by the
redesignation legislation.⁴

AFFIRMED in part, REVERSED in part and REMANDED
for further proceedings consistent with this opinion.

ORDER

Pursuant to Appellate Rules 503(e) and
(f) (i), attorney fees of \$1,000.00 are
awarded to appellee and
the appellee shall serve and
file with this court an itemized and verified
cost bill by 10-14-85 Entered
by direction of Justice Compton
Dated: 10-2-85 Deputy: C. Hulbert

4. Amicus raises questions regarding the title held by conveyancees and bona fide purchasers of mental health lands. In view of our disposition of this case, we deem it unnecessary to address those issues at the present time.

HOUSE

COMMITTEE REPORT

JUDICIARY

(7)

Date referred: 2/17/86

FURTHER REFERRALS: FINANCE

DATE: March 25, 1986

The RESOURCES Committee has considered SSHB 128

"An Act relating to the interim management of mental health trust land; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS for SSHB 128 (Resources) same title
- new title

and recommends No recommendation

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DC PASS:

SIGNING OTHER RECOMMENDATIONS:

~~_____~~ *Dick Shultz*

~~_____~~ *Bette Carr*

~~_____~~ *F. Kay Wallis*

~~_____~~ *NO REC*

~~_____~~ *David W. Shanken NO REC*

~~_____~~ *Albert H. Bertram NO REC*

~~_____~~ *John H. ...*

Dick Shultz
 CHAIRMAN

MENTAL HEALTH ANNOTATED CHRONOLOGY

- 1) 1956 - Mental Health Enabling Act
[1956 Public Law 830, Title II, Sec. 202, July 28, 1956]
 - a. Granted 1 million acres of land, including mineral rights, to Territory of Alaska as base for a public trust.
 - b. Established a public trust for the mentally ill in Alaska of the above lands and any income generated by these lands. Monies left over after mental health program costs were met could be used for other public needs. (A 12/7/68 memo from Peter Froelich, Assistant AG, states that this statute "neither required a dedicated or permanent fund nor created a true trust as did the statutes when granted school land.")
- 2) 1958 - Alaska Statehood Act, Sec. 6 (k) [1958 Public Law 85-508], reconfirmed the grant and transferred the grant from the territory to the state.
- 3) 1964 - "Selection of Mental Health School and University Lands by Boroughs", 1964 Opinions of the Attorney General No. 7, (Warren C. Colver), concluded that mental health and university lands were not unappropriated and unreserved (having been appropriated and reserved to support the designated programs) and therefore could not be selected by boroughs.
- 4) 1967 - An informal attorney general's opinion (memorandum) was issued by Deputy Attorney General Edward Reasor on "Mental Health Lands Exchange". This memorandum concluded that the state could exchange mental health lands for general grant lands as long as the exchange was for legitimate state purpose, the integrity of the trust was preserved, and the exchange supported the mental health program (it did not deal with the severance of estate issue).
- 5) 1976 - According to Dr. Jerry Shrader in an article for "Coping" magazine (see #8) a Mental Health Land Board was created within DHSS, Division of Mental Health. I can find no evidence in statutes.
- 6) 1978 - New state legislation dealing with redesignation of mental health, school and university lands was passed. (Chapters 180, 181 and 182, Alaska Session Law 1978). Chapter 180 allowed for the municipal selection of mental health land subject to "DNR-led" land exchange. Chapters 181 and 182 redesignated mental health land as general grant land effective July 1, 1978 (the bill was signed July 18, 1978). The effect of chapters 181 and 182 was that exchanges of mental health land were no longer necessary.

An accounting of income produced from mental health land was required for possible legislation: the total was \$25,110,430 from 1959 thru 1977.

In order to comply with the intent of the original trust legislation, the legislature set up:

- A. A Mental Health Fund,
 - B. A Mental Health Fund Advisory Board within the Department of Revenue (members: Director, Division of Mental Health; Chair, Mental Health Advisory Council; Commissioner, Department of Revenue), and
 - C. The funding source for the fund: 1.5% of total revenue derived from the management of (all) state land.
- 7) 1981-1979 - No money deposited in the Mental Health Fund; no meeting of the Mental Health Fund Advisory Board held. However, money was appropriated by the legislature for the purpose of mental health treatment (e.g. DHSS, Div of Mental Health).
- 8) 1981 - House Bills 151 and 152 were introduced to appropriate \$84,000,000 to the Mental Health Fund (i.e., the amount owed to the fund from 1978-1981), and provide for oversight of the fund and income. Senate Bills 710 and 711 were also introduced to satisfy the Mental Health Fund requirements.

An article by Dr. Jerry Schrader appeared in "Coping" magazine calling for litigation if the legislation was not passed (it did not).

- 9) 1982 - (Feb) Laurz Davis, Assistant AG, did an analysis of the Mental Health Trust Fund (J66-534-81A) at the request of Hugh Malone, state legislator. This analysis points out the following:
- a. That the 1.5% funding established in 1978 legislation was not based on an appraisal of mental health land, therefore, it is not possible to judge its fairness. The funding will exceed the value of the trust land at some future time (prohibited by Article IX Section 7 of the Alaska Constitution);
 - b. Although the legislature has not funded a mental health fund, it has made mental health appropriations;
 - c. Money from the fund established by the Mental Health Enabling Act were not to be used exclusively for mental health. Mental health funding is simply the first priority.
 - d. If the substitution of revenue for the trust imposed by the 1978 legislation was not equal to the fair market value of the trust lands, then the trust has been breached (the failure to appropriate may also be a breach).
 - e. There existed three alternative courses of legislative action:
 1. Do nothing to fund the Mental Health Trust Fund. Litigation was likely with the course, but the state may be immune from enforcement as the MH Enabling Act didn't provide for enforcement. Also, the case can be made that past appropriations have taken care of reasonable mental health needs in Alaska.

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).
3. Seek the repeal of the Alaska Mental Health Enabling Act by congress.

(Nov.) Lawsuit filed (Weiss v. State) claiming that the state violated the terms of the MH Enabling Act.

- a. Seeks to void AS 37.14.070 claiming it was illegal to redesignate the land.
- b. The State has or will realize revenue from redesignated mental health land that is not being placed in trust, wants a trust established.
- c. The State violated public trust by disposing of mental health land at less than fair market value. Wants the court to direct the State to administer the land in accordance with the public trust.

The Assistant AG on the case, Tom Koester, asks DNR to provide information regarding:

- a. The land obtained under the MH Enabling Act.
- b. The disposition of those lands, and
- c. The value of those lands.

DHSS is asked to provide documentation on state expenditures for mental health purposes.

- 10) 1983 - (June) Memorandum Decision (partial summary judgement) entered against the state. Requires the state to account for the value of land removed from the MH Trust. States that the remedy might be monetary rather than a invalidation of 1978 legislation.

(July) Appeal and cross appeal entered and denied.

(Aug) Cowper, the Weiss attorney, states that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Sept) Meeting with DNR/AGO/DHSS reveals that DHSS thinks that all monies derived from MH land must be spent exclusively on MH. DHSS expressed an interest in setting up a DHSS land management section (similar to the university settlement).

(Dec) Court orders the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

- 11) 1984 - (Jan) Tom Hawkins deposition ordered for Feb 2. Required information on land selected under MH Enabling Act and the disposition of that land.

(Feb) Koester drew up a judgment to be entered in the court which specifies that:

- a. The 1978 legislation is constitutional, and
- b. The MH public trust is entitled to be reimbursed for value of land redesignated as of July 19, 1978

(Judgment not signed).

(April) Survey of mental health land completed by DLWM.

(May) Cowper filed a motion to levy a sanction against the state (restraining the state from disposing of mental health land) for non-compliance with the discovery request. The hearing was held in Fairbanks the next day (June 1). At hearing the motion was divided into two parts: sanctions and a temporary restraining order. Frank Mielke testified about our compliance with the discovery request and Koester made a case for the state's solvency. The motions were denied.

(June) Koester drew up a stipulation re: the accounting process:

- a. Value of MH land to be computed by determining fair market value as of July 19, 1978 and simple interest of 10.5% per year;
- b. Appraisals shall be complete by 3/15/85;
- c. Plaintiff (Cowper) has right to review RFP, contract, and list of approved appraisers. The plaintiff will receive copies of the appraisal as they are completed;
- d. The state will develop value estimates of revenues and appraisals made of other 3rd party interests created in MH land prior to July 19, 1978. These estimates are to be based on estimates of revenues and appraisals made of other 3rd party interests on MH land prior to July 19, 1978. Estimates are to be based on appraisals of revenues and appraisals; and
- e. In calculating final judgment the state shall receive credit for appropriations for mental health purposes prior to July 19, 1978 (stipulation not signed).

(August) Notice of Lis Pendens filed August 1, 1984 by Cowper against all land selected by the state.

Koester drew up a stipulation stating that the state will:

- a. Draw up a legal description of all land selected by the state to fulfill the MH land grant;
- b. Provide a listing of the current acquisition status of the MH selections;
- c. Note whether the MH land had been alienated or conveyed and if so, how;
- d. Estimate the fair market value of the interests conveyed or alienated based on appraisals, done at the time of conveyance and revenues derived from the conveyance;
- e. Appraise the fair market value of all mental health land remaining in the MH trust on July 19, 1978; and

- f. Compute the value of all mental health land converted to general grant land by adding simple interest of 10.5% per year to the appraised value (a, b, c, e and f are due by March 15, 1985; d is due May 15, 1985).

The stipulation was signed by Koester August 30, 1984; was signed and filed with the court by Cowper on September 4, 1984.

At the same time, Koester drew up a judgement that stated:

- a. The mental health enabling act created a public trust for which the state is trustee.
- b. The redesignation of mental land to GG land was constitutional.
- c. The public trust shall recover the value of land conveyed from the trust as of the date of conveyance plus prejudgement interest (the redesignation is considered a conveyance).
- d. The state will receive credit for mental health expenditures when calculating the final judgement.

The judgement was filed September 14, 1984.

(September) - The state moved to have the Lis Pendens expunged. Plaintiffs filed an opposing motion. The state counter filed.

The state filed an appeal of the judgement September 18, 1984. The appeal is based on the following:

- a. The mental health trust land is not for the exclusive benefit of mental health.
- b. The redesignation of mental health land was not a breach of the public trust.
- c. The mental health trust fund is not entitled to be reimbursed for the full value of all mental health land received by the state.

A cross appeal is also filed. The appeal challenges the constitutionality of the 1978 redesignation.

(October) plans finalized for completing "appraisals" of the converted land by using a "valuation panel" consisting of three senior appraisers.

The appraisals contracted for in August are complete. This group of 183 parcels (81 tracts) is valued at \$14,233,800.00. Much of the information gathered in this process will be used to aid the valuation panel.

A motion to intervene (plaintiffs) is brought by the Alaska Mental Health Association, Mary C. Nanuwak and John Martin. The motion seeks to bring up other issues in the case:

- a. Is the state deliberately creating barriers to the enforcement the MH trust?
- b. Have third parties receiving MH land been notified of the trust status of the land?

- c. Are the conveyances in b. null and void?
- d. Should the 1.5% of land revenue dedicated to the MH trust by the 1978 legislation be automatically deposited?
- e. Are MH expenditures inadequate or misallocated?
- f. Should the state be replaced as trustee?
- g. Should punitive damages be awarded?
- h. Should the court appoint an independent board to oversee the land?

The prospective interveners were associated with Cowper, but apparently disagree with his tactics and strategy. An opposing motion was filed by Knester. The motion to intervene was denied October 31, 1984 because it was not timely filed.

(November) Order expunging Lis Pendens signed November 15, 1984.

(December) Opinion of Value (appraisal) Panel chosen. The panel consists of three senior designated appraisers each representing a geographic area of the state. They are tasked with evaluating 4,600 parcels of mental health land as of July 19, 1978.

The Mental Health Association announced that it will file a separate lawsuit in federal court.



LAND EXCHANGE FACT SHEET

The disposal of state land or interests in state land by exchange is governed by Alaska Statutes - Title 38.50 and Alaska Administrative Code - 11 AAC 67.200 to 11 AAC 67.280. These statutes and regulations ensure that the commissioner may exchange state land or interests only to achieve public purposes, after proper consideration of alternatives, agency coordination, public notice and public hearing(s). Unless the land or interests which the state receives in an exchange equals, or exceeds, the appraised fair market value of the land or interests exchanged by the state, the Alaska legislature must approve the exchange. Legislative review is also necessary if a exchange involves state land having an appraised or estimated fair market value of more than \$5,000,000.

The land exchange process is usually detailed and time consuming. The department must adhere to the following chronological regulatory steps in order to complete a land exchange:

1. Initial pre-application discussions.
2. Application filed with department.
3. Department reviews application and responds within 60 days.
4. Land status checked.
5. Preliminary exchange agreement signed.
6. Notation of state title records to segregate land from third-party interests.
7. Fair market value appraisal report initiated.
8. Mineral closing order.
9. Land classification action.
10. Land survey completed, if necessary.
11. State agency coordination.
12. Appraisal report completed, reviewed and approved.
13. Preparation of alternative findings and exchange report.
14. Public notice.
15. Public hearing(s) and comment period.
16. Final exchange agreement signed.
17. Deed preparation and review.
18. Execution of exchange.

In addition, if the exchange requires legislative approval, the governor must transmit the proposal to the legislature within ten days of the convening of a regular legislative session. The department is authorized to conclude the exchange upon approval by the legislature of the proposed exchange agreement.

The commissioner may also revise a proposed land exchange to reflect comments or other information provided through the agency and public comment period [AS 38.50.130(b)].

Land Exchange Fact Sheet

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Land exchange application forms may be obtained and submitted at any of the Division of Land and Water's Regional Offices located in Anchorage, Fairbanks or Juneau. If the exchange proposal involves a small tract of state land it will usually be negotiated directly by the applicable regional office. If, however, the exchange proposal involves either a large tract of state land, a federal government agency or Native corporation, or is considered by the department to be unusually complex or sensitive, the exchange will be negotiated by the division's Central Office Land Management Section.



Alaska Department of
**NATURAL
RESOURCES**

Mental Health Land Grant Fact Sheet
January, 1985

History

In July 1956, congress passed Alaska's Mental Health Enabling Act. The act established a public trust fund to be used primarily for the treatment of the mentally ill in Alaska. Any monies left over after mental health program costs were met could be spent for other public purposes at the discretion of the legislature. One million acres of federal land were granted to the Territory of Alaska to form the economic base for the trust.

Land selections were subsequently made between 1956 and 1966, primarily around centers of population (Anchorage, Fairbanks, Juneau, Kenai etc.), the railbelt and other areas believed to be valuable for subsurface resources (Beluga coal, Kenai oil, etc.). State records show that approximately 950,000 acres are now in state ownership. The lands are administered by the Department of Natural Resources along with land acquired through other land grants.

Although a formal trust fund was never established, the Alaska Legislature made appropriations for mental health programs. Total income produced from the mental health land from 1959-1977 was \$25,110,430. Mental health expenditures in Alaska by the state for the same period of time were \$115,364,054, with an additional \$16,430,771 being spent on alcohol and drug abuse programs.

In 1978 the legislature passed a law which redesignated mental health, school, and university trust lands as general grant lands. The redesignation provided for a more compact land base which made the land easier and more cost effective to administer. The legislation also established a trust fund for mental health programs to be financed by 1.5% of the annual receipts for all state land. However, the trust fund has never been funded by the legislature.

In April 1979, the University of Alaska challenged the constitutionality of the 1978 redesignation legislation (it also affected university land). The court upheld the law, but a settlement reached in June, 1982, granted land and money to the university. Heartened by the university's success, the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court on November 26, 1982 on behalf of Carl Weiss, a seven year old boy from Nenana, and Earl Hilliker, a Fairbanks resident. The suit contends that the plaintiffs were in need of mental health services which they could not receive in Alaska. It also raised questions about the constitutionality of the 1978 law; challenged the state's stewardship of mental health land; and asked that a mental health trust fund be established. A judgement was entered by Justice Warren W. Taylor in September 1984. That judgement stated that the mental health trust fund is exclusively dedicated to Alaska's mentally ill, that it had been breached by the legislative redesignation and is entitled to be reimbursed full value of the mental health land. The state has appealed that decision to the Alaska Supreme Court. Mr. Stephen Cowper of Fairbanks represents the plaintiffs, and Mr. Thomas Koester, Attorney General's Office, represents the state.

It has been reported that Mr. Cowper and the Mental Health Association do not agree over the direction of the case. Accordingly, attorney Jim Gottstein of the association board has attempted to intervene in the case. To date the intervention has not been allowed, and Mr. Gottstein has announced that the association will file a separate suit in federal court.

State Compliance

In the spring of 1984, at the direction of the court, the state produced a report which accounted, by acre, for the mental health grant land as of the date of redesignation. The legislature then appropriated \$250,000 for the department to continue the compliance with the discovery request. Stipulations for discovery were agreed to in September 1984, and the state is now in the process of complying with them. These stipulations provide:

1. The state will describe all mental health grant land selected by the state and provide current acquisition status of same by March 15, 1985: The Division of Technical Services within DNR is currently auditing all pertinent selection files. The Bureau of Land Management is auditing corresponding federal title files. Although the audit of state files will be completed by March, further adjudication by the BLM is expected to take another year to bring federal and state records into agreement.
2. By March 15, 1985 the state must estimate the fair market value of all land in state ownership as of the 1978 redesignation. Approximately 4,600 individual parcels are being evaluated by a panel consisting of three independent senior designated appraisers: Mr. Stephen J. MacSwain (representing the northcentral area); Mr. Frank King (representing the southcentral area) and Mr. Barry Thompson (representing the southeastern area). To bring the appraisals current, a simple interest of 10.5% per year will be added to the valuation figure.
3. By May 15, 1985 the state must identify and account for all mental health land alienated or conveyed prior to the 1978 redesignation. An audit and accounting will begin in February.

The remaining issues involved in this litigation are whether the mental health fund is dedicated solely to support mental health programs; whether the state breached the public trust in its management of the mental health grant land prior to 1978 and whether the state should be ordered to reimburse the public trust the full value of the mental health land. There is tremendous potential liability to the State of Alaska as a result of this lawsuit. It has been speculated that these lands may be worth over 1 billion dollars.

For further information contact Salli Slaughter, Pouch 7-005, Anchorage, Alaska 99510, (907) 265-4375.

BACK-UP FOR CSSSHB 128

PRESENTED TO HOUSE RESOURCES COMMITTEE MARCH 24, 1986

BY REPRESENTATIVE MARCO A. PIGNALBERI

C O N T E N T S

<u>Tab</u>	<u>Description</u>
A	Proposed Committee Substitute SSHB 128
B	Sectional Summary: Proposed CSSSHB 128
C	Supreme Court of Alaska Opinion: <u>State of Alaska v. Vern T. Weiss, et al.,</u>
D	Components of Recommended Committee Bill: Submitted by the Alaska Alliance For the Mentally Ill to House Resources - 03/24/86
E	DNR Memo: Bob Arnold to Max Gruenberg: Budget for court ordered mental health land activities
F	HSS Memo: Millie D. Duxbury, Audit Manager to Karen Perdue, Assistant Commissioner HSS: Estimated cost of mental health program audit
G	Intervenor Budget estimate for Alaska Mental Health Lands Project
H	Plaintiff Budget estimate for involvement in mental health lands trust settlement

CS128PAK.MHL

A

Bradley
3/21/86

Original sponsors: Pignalberi, Gruenberg,
Boucher, et al

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 128 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the interim management of mental
7 health trust land; and providing for an effective
8 date."

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

10 * Section 1. The legislature finds that

11 (1) the Congress granted 1,000,000 acres of land to the Terri-
12 tory of Alaska to be administered as a public trust for the necessary
13 expenses of the support of mental health in the territory;

14 (2) the land authorized to be granted to the Territory of Alaska
15 has been selected by the territory and since statehood by the state and
16 most of the 1,000,000 acres has been conveyed to the state;

17 (3) the Alaska Supreme Court ruled in State v. Weiss, 706 P.2d
18 681 (Alaska 1985) that the legislation redesignating mental health trust
19 land as general grant land had actually breached the trust established by
20 Congress and the court ordered the trust reconstituted;

21 (4) there is presently no statutory authority providing for the
22 management of the mental health trust land as trust land;

23
24 (5) the Alaska Mental Health Association as the original sponsor
25 of the litigation regarding the management of the mental health trust land,
26 more recently participating as intervenor in the litigation, and the plain-
27 tiffs have performed and continue to perform an important public function
28 in their efforts to reconstitute the mental health trust land and to pro-
29 vide for the proper management of the trust land;

1 (6) there is an immediate need for funds to facilitate the
2 reconstruction of the trust land and to conclude the litigation over the
3 status of the mental health trust land; and

4 (7) there is an immediate need for the interim management of the
5 trust land as a public trust.

6 * Sec. 2. INTERIM MENTAL HEALTH TRUST LAND COMMISSION ESTABLISHED. (a)
7 The interim mental health trust land commission is established in the
8 Department of Natural Resources.

9 (b) The commission established under (a) of this section consists of
10 five members, including the commissioner of natural resources and the
11 commissioner of health and social services, or their designees, and three
12 members appointed by the governor as follows:

13 (1) a member representing the plaintiffs, appointed by the
14 governor from a list of three names submitted to the governor by the plain-
15 tiffs in State v. Weiss, 706 P.2d 681 (Alaska 1985);

16 (2) a member representing the intervenors, appointed by the
17 governor from a list of three names submitted to the governor by the inter-
18 venors in State v. Weiss, 706 P.2d 681 (Alaska 1985); and

19 (3) a member representing the Governor's Mental Health Advisory
20 Council, appointed by the governor from a list of three names submitted to
21 the governor by the Governor's Mental Health Advisory Council.

22 (c) The members of the commission shall elect a presiding officer. A
23 majority of the commission constitutes a quorum. The affirmative vote of
24 three members is required to take official action. A vacancy does not
25 impair the power of the remaining members to exercise the powers of the
26 commission.

27 (d) Members of the commission serve without compensation but are
28 entitled to per diem and travel expenses authorized by law for other boards
29 under AS 39.20.180.

(g) The commission may contract with the plaintiffs or intervenors for the performance of functions assigned to it.

1 (e) The commission shall meet at least once a month.

2 (f) The commission may employ an executive director and staff to
3 assist it in fulfilling its responsibilities under this Act.

4 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND
5 THE COMMISSION. (a) The commissioner of natural resources ^{shall} inventory and
6 catalog the mental health trust land of the state, and appraise at fair market value
7 each land transaction involving land that has been part of the mental health trust
8 land of the state, and determine the status of mental health trust land on
9 the effective date of this Act under procedures and guidelines established
10 by the commissioner of natural resources with the approval of the commis-
11 sion. In the exercise of the commission's responsibilities under this
12 section, the commission may review the records of the Department of Natural
13 Resources.

14 (b) The commissioner of natural resources shall, with the approval of
15 the commission, retain an appraiser ^{or appraisers} to appraise all or a portion of land
16 that, at any time, was part of the mental health trust land of the state.
17 The commissioner shall provide the appraiser conducting the appraisal with
18 written procedures and instructions that have been approved by the commis-
19 sion.

20 (c) The commissioner of natural resources is responsible for the
21 management of the mental health land of the state as a public trust under
22 P.L. 84-830, 70 Stat. 709, under the direction of the commission.

23
24 The commissioner of natural
25 resources may not sell, lease, or exchange mental health trust land of the
26 state or an interest in the mental health trust land of the state without
27 the prior approval of the commission. The commissioner of natural re-
28 sources shall sell, lease, and exchange mental health trust land of the
29 state as directed by the commission. In managing the trust and the trust

1 land the commission and the commissioner shall seek to maximize the income
2 earned and received by the trust consistent with a trustee's obligation to
3 protect and perpetuate the trust.

4 (d) The proceeds from the management of the mental health trust land
5 of the state shall be deposited in a special trust account in the general
6 fund of the state and may be appropriated by the legislature for the sup-
7 port of the mental health program in the state.

8 * Sec. 4. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL
9 SERVICES AND THE COMMISSION. (a) The commissioner of health and social
10 services, with the approval of the commission, shall

11 (1) select an independent auditor to audit the state's mental
12 health program;

13 (2) establish the procedures and guidelines to guide the auditor
14 selected under this subsection;

15 (3) propose the guidelines and procedures to be used in de-
16 termining a range of expenditures for mental health programs necessary to
17 comply with the state's comprehensive mental health plan.

18 (b) The commission may review the records of the Department of Health
19 and Social Services that involve mental health expenditures under the
20 state's comprehensive mental health plan.

21 * Sec. 5. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commis-
22 sion shall make an annual report to the legislature on matters of concern
23 to it including recommendations of the commission for amendment of the laws
24 relating the management of mental health trust, the mental health trust
25 land, and the mental health program of the state.

26 * Sec. 6. DEFINITION. In secs. 2 - 5 of this Act "commission" means
27 the interim mental health trust land commission established in sec. 2 of
28 this Act.

29 * Sec. 7. Sections 1 - 6 of this Act are repealed July 1, 1988.

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* Sec. 8. This Act takes effect immediately in accordance with AS 01
10.070(c).

B

SECTIONAL SUMMARY PROPOSED CS SSB 128

Section 1.: Legislative Findings

States that there is currently no statutory authority for the management of the 1,000,000 acres of mental health trust land granted by Congress to the territory of Alaska and conveyed to the state and that there is an immediate need to provide interim management during the process of reconstituting the trust.

Section 2.: Interim Mental Health Trust Land Management Commission

Establishes a five-member commission within the Department of Natural Resources consisting of the Commissioner of the Department of Natural Resources, the Commissioner of the Department of Health and Social Services, and three members appointed by the governor as follows: one member from lists of three submitted by the plaintiffs, the intervenors, and the Governor's Mental Health Advisory Board. Members of the commission are to serve without compensation, but are entitled to per diem and travel expenses.

The commission shall meet at least once a month, may employ an executive director and staff and may contract with the plaintiffs or intervenors for the performance of functions assigned to it.

Section 3.: Responsibilities of the Commissioner of Natural Resource and the Commission

Subsection (a): Assigns the Commissioner of DNR the responsibilities of inventorying and cataloging the mental health trust land of the state as well as auditing and appraising at fair market value every transaction involving the land and the current status of the land, all under the prior approval of the commission.

Subsection (b): Gives the commission prior approval in DNR's retention of appraiser or appraisers.

Subsection (c): Gives the commission power to direct the Commissioner of DNR to manage the mental health trust lands as a public trust under P.L. 84-830, 70 Stat. 709. Specifies maximization of income earned and received by the trust, consistent with a trustee's obligation to protect and perpetuate the trust, as management objective.

Subsection (d): Requires that the proceeds from mental health trust land shall be deposited in a special trust account and states that such funds may be appropriated by the legislature for state mental health program support.

Section 4.: Responsibilities of the Commissioner of Health and Social Services and the Commission

Requires the Commissioner of Health and Social Services with prior approval of the commission to select and establish guidelines for an independent auditor who will audit the state's mental health program. The Commissioner, with prior approval of the commission is also instructed to propose guidelines and procedures for determining a range of expenditures for mental health programs necessary to comply with the state's comprehensive mental health plan.

Section 5.: Additional Responsibilities of the Commission

The commission shall make an annual report to the legislature of its findings.

Section 6.: Definition of "commission"

Section 7.: Provides for termination of commission July 1, 1988.

Section 8.: Immediate effective date

D

COMPONENTS OF RECOMMENDED COMMITTEE BILL
Submitted by the Alaska Alliance For the Mentally Ill to
House Resources
03/24/86

ESTABLISH INTERIM LAND MANAGEMENT COMMISSION (Charged with these duties):

<u>Responsible Department</u>	<u>Purpose</u>	<u>Budget</u>
DNR	Identify, survey, appraise, mental health land inventory status, etc	1 304,000
DNR	Account for all funds or lands from 1978-1985	2 40,800
DNR	Provide management oversight on all transactions and funds received: Approve all land actions	3 142,700
DOR	Establish trust account fund	0
HSS	Oversee audit of mental health program expenditures 1978-1985	4 21,000
HSS	Oversee the department of Health and Social Services determination of the necessary expenditures for the Mental Health Program	0
HSS	Contract for Plaintiff and intervenor involvement in resolution process	5 146,000
Estimated Sub-total:		\$ <u>654,500</u>

ADMINISTRATION OF COMMISSION:

<u>Responsible Department</u>	<u>Purpose</u>	<u>Budget</u>
DNR	The department shall provide the administrative support	
	Provide for monthly meeting	6 15,000
	(Composition: 1 representative each from a list of three nominated by the plaintiffs, intervenors, and governor's advisory on mental health and the commissioners of: Health and Social Services and Natural Resources)	

DNR	Travel and per diem for five com- mission members	7 18,000
DNR	Executive Director and other staff as necessary to meet responsibilities of the commission	8 150,000
	Estimated Sub-total: \$	<u>183,000</u>
	Estimated Total: \$	<u>837,500</u>

1-3

Budget figures taken from 10/27/86 DNR memo to
Representative Gruenberg

4

Budget figure from 02/05/86 HSS Audit Department memo to
Karen Perdue, p.4

5

Budget figure is sum of plaintiff and intervenor projected
settlement budgets

6-8

Budget figures reflect estimated costs associated with
CSSSHB 120 Interim Commission (DNR fiscal note pending)

E

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

February 27, 1986

The Honorable Max Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Gruenberg:

During our meeting this week on the subject of mental health lands legislation, you asked that I provide you with a list of the tasks required of the department by the Supreme Court in its decision in Weiss v. Alaska, and an estimate of the funding required to accomplish these tasks. Although our budget amendment is yet to be submitted, I am pleased to provide you with our estimates.

Of the tasks identified by the Department of Law as required by the court, two will be accomplished during the current fiscal year. These are (1) to identify all mental health lands returned to the trust; and (2) to identify all existing encumbrances for mental health lands, such as interagency land management assignments, parks, and refuges.

Tasks also required by the court, for which no funding is presently available, are as follows:

1. Account for all funds or land received from conveyances and exchanges made between July 19, 1978 and October 4, 1985. Estimated costs: \$40,800.

BUDGET
ITEM # 2

We estimate that 4,650 cases (2,370 land conveyances, 1,370 mining claims, 390 rights-of-way, 275 land leases, 25 timber or material sales, 110 oil and gas or coal leases, and 110 miscellaneous cases) will have to be audited to determine the amount received and/or appraised. Land discounts will have to be accounted for during this process. This process will take a Natural Resource Officer I approximately one year.

The Honorable Max Gruenberg -2-

February 27, 1986

2. Identify and appraise all less than fair market value conveyances and encumbrances. Estimated costs: \$304,800.

BUDGET
ITEM # 1

These appraisals will be performed contractually. However the department must prepare reports and maps containing information about each parcel before the contract can be let.

The reports and maps must take approximately 1,100 parcels into consideration. We expect this project to take a single Natural Resource Officer I three months to complete. Additionally, the project will need funding for supplies and contractual clerical services.

The appraisals are expected to cost \$294,600. We project that approximately 820 parcels totalling 268,000 acres will need appraisals at an estimated cost of \$215,000. In addition, approximately 276 leases must be reappraised at five-year intervals (the Legislature created a first term of 25 years during which time rents cannot be raised). The approximate cost of these lease reappraisals is \$70,600.

3. Provide management oversight of all transactions and account for funds received from mental health lands. Estimated costs: \$142,700.

BUDGET
ITEM #3

Statewide trust management oversight can be provided by a Natural Resource Manager II with support from a Natural Resource Officer I. That manager would be expected to review a large number of transactions, with research assistance from a subordinate, to ensure that the trust is not breached. It is expected that the manager will also provide the necessary coordination between the Department and the plaintiffs, and will be required to travel.

Accounting functions can be broken into two parts: ongoing accounting services, and an independent audit. An accounting Technician I will be needed to receive and separately process that portion of the approximately \$1.5 billion taken in by DNR annually that should be assigned to the mental health accounts.

Please let me know if there is additional information I might provide you.

Sincerely,



Robert D. Arnold
Deputy Commissioner

F

MEMORANDUM

State of Alaska

TO Karen Perdue, Assistant Commissioner
Department of Health & Social Services

DATE: February 5, 1986

FILE NO:

TELEPHONE NO:

465-3120

FROM Millie D. Duxbury, CPA, Audit Manager
Audit - Office of the Commissioner
Department of Health & Social Services

SUBJECT: Mental Health Audit

You requested an estimate of the cost of an independent audit of State mental health expenditures from July 1, 1978 through June 30, 1986.

Based on a discussion with Tom Koester of the Attorney General's Office, it was decided that I should give you two estimates which hinge on the definition of "mental health expenditures".

Tom feels that we should request an audit of all expenditures which could conceivably be construed as having been made for mental health purposes. Such costs would include, but not be limited to, the following expenditures:

- I. Department of Health and Social Services
 - A. Department of Mental Health and Developmental Disability - Operating and Capital expenditures for:
 1. Community Mental Health Programs;
 2. Developmental Disability Programs;
 3. Alaska Psychiatric Institute;
 4. Harborview;
 5. Regional Administration (not currently funded as such); and
 6. Fairbanks Mental Health Services Complex
 - B. Division of Family and Youth Services
 - 1. Adult Residential Care Program;
 - 2. Child Residential Care Programs - some portions thereof;
 - 3. Foster Care - some portions thereof;
 - 4. Youth Services BRU - purchase of psychological services and psychiatric services; and
 - 5. Preventive Services - some portions
 - C. State Office of Alcoholism and Drug Abuse - some portions thereof
 - D. Division of Medical Assistance - payments to private providers under the GRM program for generic mental health services.

II. Department of Public Safety

- A. Violent Crimes Compensation Board - portions of programs covered thereunder
- B. Council on Domestic Violence and Sexual Assault - portions thereof

III. Department of Administration

- A. Division of Pioneers' Benefits - Care of persons occupying long term care beds in Pioneer homes who are being treated for Alzheimer's Disease
- B. Older Alaskan Commission - portions of programs

IV. Department of Corrections

- A. Payments for psychological and psychiatric care of inmates
- B. Costs associated with facility operations where persons are held as a result of mental health related problems

V. Department of Education

- A. Division of Education Program Support - Special Education Programs
- B. Division of Vocational Rehabilitation - some portions thereof

VI. Community and Regional Affairs

- A. Revenue Sharing Programs
 - 1. Portion thereof relating to money expended for mental health services in the health care centers which are part of the revenue sharing formula
 - 2. Pass through money used for mental health care related services

VII. Department of Law

- A. Costs of litigation related to mental health lands

VIII. Department of Natural Resources

- A. Costs associated with Mental Health Lands Management

IX. Specific Designated Grants to Native Corporations used for mental health:

- A. Maniilaq
- B. Norton Sound Health Corporation
- C. Tanana Chiefs Conference

X. Governor's Council on the Handicapped and Gifted

Costs outlined above would be separately presented by the CPA firm in order to allow the costs to be examined on their own merit as to whether or not they fall within the definition of "mental health expenditures".

I would estimate that an audit of all the above expenditures for the eight year period ended June 30, 1986 would require 1000 hours to complete and would cost \$81,000 or \$101,250 including Department of Law litigation costs. The estimate is broken down as follows:

Audit

Partner's Time - 100 hours @ \$125	= \$ 12,500
Senior's Time 600 hours @ \$ 65	= 39,000
Junior's Time 300 hours @ \$ 45	= 13,500
Out of pocket expenses for travel, per diem, telephone	= <u>16,000</u>

Total Estimated Audit Costs	81,000
-----------------------------	--------

<u>Litigation Costs by Dept. of Law-</u> 25% of Audit	
--	--

	<u>20,250</u>
--	---------------

Total Amount Required	
-----------------------	--

	<u><u>\$ 101,250</u></u>
--	--------------------------

The second estimate is based on the assumption that mental health is the primary presenting condition which allows an individual to fall within the doors of the State. In that instance "mental health expenditures" would be interpreted as those funds appropriated by the Legislature to the Department of Health and Social Services, Division of Mental Health and Developmental Disabilities. The scope of an audit of those expenditures would be clearly defined and would probably be completed in 200 hours.

I estimate the cost of this audit to be \$16,500 or \$21,000 with litigation costs by Department of Law. The estimate is broken down as follows:

Audit

Partner's Time - 20 hours @ \$125	=	\$ 2,500
Senior's Time 120 hours @ \$ 65	=	7,800
Junior's Time 60 hours @ \$ 45	=	2,700
Out of pocket expenses for travel, per diem, telephone	=	<u>3,500</u>

Total Estimated Audit Costs	16,500
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<u>Litigation Costs by Dept. of Law-</u> 27% of Audit	<u>4,500</u>
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Total Amount Required	<u>\$ 21,000</u>
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BUDGET
ITEM #4

These estimates have been discussed with Tom Koester and he feels they are reasonably accurate. Based on the quality of work I've seen done on other audits of governmental units and non-profits, I would recommend the bids for this work go out to the following CPA firms in Anchorage:

Arthur Young
Coopers Lybrand
Ernst & Whinney

Should you have further questions, please call.

1986 BUDGET
for
ALASKA MENTAL HEALTH LANDS PROJECT

SALARIES/FEES:

Land Status & Management Review/Support Staff \$50,000

OFFICE:

Supplies and equipment \$13,000

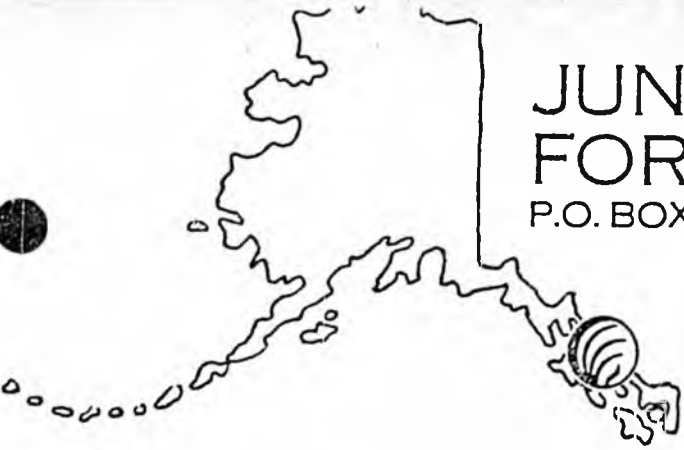
Rent DONATED

Utilities, including telephone \$ 3,500

Printing and copies/Records \$ 5,000

Travel \$ 3,500

TOTAL 1986 BUDGET \$75,000



PLAINTIFF

H.

JUNEAU ALLIANCE FOR THE MENTALLY ILL

P.O. BOX 211247, ANCHORAGE, AK 99521. (907) 789-5028

HALF OF BUDGET ITEM #5

PROPOSED BUDGET FOR INVOLVEMENT IN MENTAL HEALTH
LANDS TRUST SETTLEMENT

STAFF		
Research Coordinator		\$32,000.
Clerical (part-time)		12,000.
TRAVEL		
Meetings of Alliance Board (4/year)		12,000.
OFFICE		
Rental, Equipment, Supplies		12,000.
COMMUNICATIONS		
Telephone, Teleconference, Mailings		<u>3,600.</u>
	TOTAL	\$71,600.

TESTIMONY

Representative Marco A. Pignalberi

House Resources Committee

HB 128 Mental Health Trust

March 20, 1985

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HB 128

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Testimony by Representative Marco A. Pignalberi
House Resources Committee on HB 128
March 20, 1985

Mr. Chairman, members of the Committee, let me repeat the last provision of the Supreme Court ruling: the Trust is entitled to be reimbursed by the state of Alaska for the fair market value of the mental health trust lands.

WHAT DOES THIS MEAN TO THE STATE OF ALASKA?

What this means to the State is that Alaska is facing a potential liability of immense proportions. Several estimates of reimbursement have ranged upwards of five billion dollars! Unlike other states which received mental health lands from the Federal Government by each section 16 & 32 in every township, Alaska was able to select whatever million acres it wanted in whatever part of the state it wanted.

Accordingly, the state selected prime real estate in most of the major population areas of the state. No mountain tops or barren tundra was selected. Examples of lands that were selected and are now subject to fair market appraisal for reimbursement to the Trust include valuable acreage in the Swanson River oil and gas field, Beluga Coal field, Trans Alaska Gasline System project, Eklutna water project and the Kachemak Bay State Park. Additionally, other mental health lands have already been conveyed to municipalities in fulfillment of their entitlement programs. You can look at the map I've brought and see exactly where the impacted areas are located.

What this means is the state is faced with a staggering liability. If a negotiated settlement is not reached between the parties of the suit, it is possible that the court will mandate a settlement. If this occurs, the state may be required to establish a mental health trust account and deposit a specific amount of money to be maintained as a trust fund exclusively for mental health purposes. It could be the equivalent of transferring the amount in the Alaska Permanent Fund to the mental health trust account.

Is this a possibility? Yes. There are many who believe it is a distinct possibility due to the dismal performance of the state in funding mental health programs. Although there is no clear definition of just what constitutes a "mental health program", the Department of Health & Social Services budget for Alaska Psychiatric Institute, Community Mental Health Centers and all administrative services total only just over 22 million dollars.

Testimony Rep. Marco Pignalberi
March 20, 1985

According to testimony by the Commissioner of Health & Social services, Alaska is serving only a third of the people with mental health needs. A study by the U.S. Dept. of Health & Human Services, 1983 found that Alaska ranks last among the fifty states in a number of mental health service areas. Not only is our state the poorest in the nation in funding mental health programs, but we spend less than one-half as much as the next poorest state, and less than one-sixth of the national average.

Alaska has such a poor track record in funding mental health programs that if the court steps in to establish a trust fund settlement, Alaska may be required to substantially increase these program funds as well as transfer billions of dollars into a special trust account.

This bill would prevent the state from making a bad situation worse by stopping the disposition of any more trust lands.

The background files on this issue are voluminous. Attached are summary papers prepared by parties with different viewpoints. I think they are good chronological synopsis of the issues. Thank you

Historical perspective:

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act which transferred the fiscal and functional responsibility for activities in the field of mental health from the Federal Government to the Territory.

To ensure that the Territory had adequate financial resources to discharge the responsibilities in the mental health field, the Congress granted Alaska one million acres of federal lands. These lands are located in Interior, Southcentral and Southeastern Alaska. The enabling Act stated:

"...all lands granted to the Territory under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income and proceeds shall be managed and utilized in such manner as the legislature of Alaska may provide..."

The state did not establish and maintain a separate account into which income or proceeds derived from mental health lands were deposited. Then in 1978, the State redesignated mental health lands as general grant lands and changed the record method of accounting for income from public lands.

Superior Court Class Action Suit

In 1982 a class action court suit was filed by the Alaska Mental Health Association. It filed the suit for "all persons who are residents of the State of Alaska and who will require mental health services in the future which are not available in the state.

The Superior Court entered a partial summary judgement in June 1983 which found that the state was not required to invalidate prior legislative action but was required to compensate the trust for fair market value of the lands in question. A year later, in September 1984, the Superior Court ruled in Final Summary Judgement that:

- 1) the Alaska Mental Health Enabling Act "established a public trust for the benefit of the mentally ill in Alaska;"
- 2) "the approximately one million acres of land granted to the state was dedicated for the use and benefit of the mentally ill in Alaska;"
- 3) Chapters 181 and 182, SLA 1978, effectively removed lands from the trust established by the federal Act;
- 4) invalidation of the state legislation was an improper remedy; and
- 5) "the trust is entitled to be reimbursed by the State of Alaska for the fair market value of the mental health trust lands."

Introduced: 1/25/85
Referred: Resources, Judiciary
and Finance

BY PIGNALBERI, GRUENBERG, BOUCHER,
JENKINS, KOPONEN AND TAYLOR

1 IN THE HOUSE

2 HOUSE BILL NO. 128

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to mental health trust lands; and
7 providing for an effective date."

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

9 * Section 1. AS 38.05 is amended by adding a new section to read:

10 Sec. 38.05.880. DISPOSITION OF STATE MENTAL HEALTH TRUST LANDS.

11 The state may not convey or otherwise dispose of land owned in fee by
12 the state that was received from the federal government under sec. 202
13 of the Alaska Mental Health Enabling Act of 1956 (P.L. 84-830).

14 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

HB 128

5

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99817
PHONE: 465-3030

March 19, 1985

The Honorable Marco Pignalberi
Alaska State House
Pouch V
Juneau, Alaska 99811

Dear Representative Pignalberi:

The Department of Health and Social Services, Division of Mental Health and Developmental Disabilities, provides core services for mentally ill persons through a grant-funded network of community mental health centers and the State-operated Alaska Psychiatric Institute (API). Alaska statutes which give authority to the Department to provide mental health services do not define these services in explicit, all inclusive language. They speak in terms of "carrying out a comprehensive mental health program" and "treatment of the mentally ill." Mental illness is defined in AS 47.30.915 and related words and processes also are defined which apply to the delivery of mental health care, but we are left uninformed about when a service, such as is delivered by a public school counselor, becomes a mental health service.

The Alaska Administrative Code 7 AAC 71.135 defines the populations which will be served by grant-funded community mental health centers, and establishes the prioritized order in which these populations are to receive service:

- 1) acutely disturbed persons,
- 2) chronically, severely disturbed persons,
- 3) children and adolescents,
- 4) other persons or agencies requiring direct mental health intervention, and
- 5) other persons or agencies requiring non-direct mental health intervention.

In addition to these populations the centers are, in priority, to provide evaluation services and treatment services which emphasize a brief therapy

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and crisis intervention model including the following:

- a) 24-hour inpatient voluntary and involuntary psychiatric treatment; and
- b) outpatient care including crisis and 24-hour emergency services, individual counseling/psychotherapy, group counseling/psychotherapy, case management and supportive care for chronic patients, referral services to other agencies, and consultation and education services.

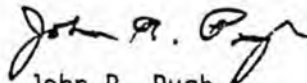
The services just cited are basic core mental health services which the State is now providing and they can be financially quantified, i.e., appropriations are made each year for these specific services. We will furnish dollar amounts for any period in which you may have an interest.

The issue of what to include in the expanded, all inclusive scope of mental health services and the calculation of the costs of these services is very complex. As an example, services to persons who are developmentally disabled were included as a mental health type service and continue to be included in some presentations, as are counseling services available to substance and alcohol abuse clients. Dollar descriptions of these services are relatively easy to capture. Another more bothersome dimension to the problem is the school counselor or social worker, public health nurse, etc., who may spend part of their time doing "mental health work" but do not record this fact in any logical format. The vocational training efforts and the special education programs sponsored by State and local school systems likewise present a similar dilemma. Is theirs a mental health service and if so, what percent of the total cost is captured as the mental health effort?

In the utilization of mental health land trust funds the statute states that the income of the fund will not be appropriated for a purpose other than the support of the State mental health program (AS 47.14.040). There is no definition of the "the State mental health program". Consequently, there is no clear legislative direction as to what should be funded if the appropriation was made from the trust income.

Please let me know if there are any specific programs for which you need cost data.

Sincerely,



John R. Pugh
Commissioner

MENTAL HEALTH ANNOTATED CHRONOLOGY

- 1) 1956 - Mental Health Enabling Act
[1956 Public Law 830, Title II, Sec. 202, July 28, 1956]
 - a. Granted 1 million acres of land, including mineral rights, to Territory of Alaska as base for a public trust.
 - b. Established a public trust for the mentally ill in Alaska of the above lands and any income generated by these lands. Monies left over after mental health program costs were met could be used for other public needs. (A 12/7/68 memo from Peter Froelich, Assistant AG, states that this statute "neither required a dedicated or permanent fund nor created a true trust as did the statutes when granted school land.")
- 2) 1958 - Alaska Statehood Act, Sec. 6 (k) [1958 Public Law 85-508], reconfirmed the grant and transferred the grant from the territory to the state.
- 3) 1964 - "Selection of Mental Health School and University Lands by Boroughs", 1964 Opinions of the Attorney General No. 7, (Warren C. Colver), concluded that mental health and university lands were not unappropriated and unreserved (having been appropriated and reserved to support the designated programs) and therefore could not be selected by boroughs.
- 4) 1967 - An informal attorney general's opinion (memorandum) was issued by Deputy Attorney General Edward Reasor on "Mental Health Lands Exchange". This memorandum concluded that the state could exchange mental health lands for general grant lands as long as the exchange was for legitimate state purpose, the integrity of the trust was preserved, and the exchange supported the mental health program (it did not deal with the severance of estate issue).
- 5) 1976 - According to Dr. Jerry Shrader in an article for "Coping" magazine (see #8) a Mental Health Land Board was created within DHSS, Division of Mental Health. I can find no evidence in statutes.
- 6) 1978 - New state legislation dealing with redesignation of mental health, school and university lands was passed. (Chapters 180, 181 and 182, Alaska Session Law 1978). Chapter 180 allowed for the municipal selection of mental health land subject to "DNR-led" land exchange. Chapters 181 and 182 redesignated mental health land as general grant land effective July 1, 1978 (the bill was signed July 18, 1978). The effect of chapters 181 and 182 was that exchanges of mental health land were no longer necessary.

An accounting of income produced from mental health land was required for possible legislation: the total was \$25,110,430 from 1959 thru 1977.

DEPARTMENT OF
NATIONAL RESOURCES

DEC 21 1984

COMM. NO. 0058-10-1
1984

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In order to comply with the intent of the original trust legislation, the legislature set up:

- A. A Mental Health Fund,
 - B. A Mental Health Fund Advisory Board within the Department of Revenue (members: Director, Division of Mental Health; Chair, Mental Health Advisory Council; Commissioner, Department of Revenue), and
 - C. The funding source for the fund: 1.5% of total revenue derived from the management of (all) state land.
- 7) 1981-1979 - No money deposited in the Mental Health Fund; no meeting of the Mental Health Fund Advisory Board held. However, money was appropriated by the legislature for the purpose of mental health treatment (e.g. DHSS, Div of Mental Health).
- 8) 1981 - House Bills 151 and 152 were introduced to appropriate \$84,000,000 to the Mental Health Fund (i.e., the amount owed to the fund from 1978-1981), and provide for oversight of the fund and income. Senate Bills 710 and 711 were also introduced to satisfy the Mental Health Fund requirements.

An article by Dr. Jerry Schrader appeared in "Coping" magazine calling for litigation if the legislation was not passed (it did not).

- 9) 1982 - (Feb) Laura Davis, Assistant AG, did an analysis of the Mental Health Trust Fund (J66-534-81A) at the request of Hugh Malone, state legislator. This analysis points out the following:
- a. That the 1.5% funding established in 1978 legislation was not based on an appraisal of mental health land, therefore, it is not possible to judge its fairness. The funding will exceed the value of the trust land at some future time (prohibited by Article IX Section 7 of the Alaska Constitution);
 - b. Although the legislature has not funded a mental health fund, it has made mental health appropriations;
 - c. Money from the fund established by the Mental Health Enabling Act were not to be used exclusively for mental health. Mental health funding is simply the first priority.
 - d. If the substitution of revenue for the trust imposed by the 1978 legislation was not equal to the fair market value of the trust lands, then the trust has been breached (the failure to appropriate may also be a breach).
 - e. There existed three alternative courses of legislative action:
 1. Do nothing to fund the Mental Health Trust Fund. Litigation was likely with the course, but the state may be immune from enforcement as the MH Enabling Act didn't provide for enforcement. Also, the case can be made that past appropriations have taken care of reasonable mental health needs in Alaska.

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).
3. Seek the repeal of the Alaska Mental Health Enabling Act by congress.

(Nov.) Lawsuit filed (Weiss v. State) claiming that the state violated the terms of the MH Enabling Act.

- a. Seeks to void AS 37.14.070 claiming it was illegal to redesignate the land.
- b. The State has or will realize revenue from redesignated mental health land that is not being placed in trust, wants a trust established.
- c. The State violated public trust by disposing of mental health land at less than fair market value. Wants the court to direct the State to administer the land in accordance with the public trust.

The Assistant AG on the case, Tom Koester, asks DNR to provide information regarding:

- a. The land obtained under the MH Enabling Act.
- b. The disposition of those lands, and
- c. The value of those lands.

DHSS is asked to provide documentation on state expenditures for mental health purposes.

- 10) 1983 - (June) Memorandum Decision (partial summary judgement) entered against the state. Requires the state to account for the value of land removed from the MH Trust. States that the remedy might be monetary rather than a invalidation of 1978 legislation.

(July) Appeal and cross appeal entered and denied.

(Aug) Cowper, the Weiss attorney, states that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Sept) Meeting with DNR/AGO/DHSS reveals that DHSS thinks that all monies derived from MH land must be spent exclusively on MH. DHSS expressed an interest in setting up a DHSS land management section (similar to the university settlement).

(Dec) Court orders the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

- 11) 1984 - (Jan) Tom Hawkins deposition ordered for Feb 2. Required information on land selected under MH Enabling Act and the disposition of that land.

(Feb) Koester drew up a judgment to be entered in the court which specifies that:

- a. The 1978 legislation is constitutional, and
- b. The MH public trust is entitled to be reimbursed for value of land redesignated as of July 19, 1978

(Judgment not signed).

(April) Survey of mental health land completed by DLWM.

(May) Cowper filed a motion to levy a sanction against the state (restraining the state from disposing of mental health land) for non-compliance with the discovery request. The hearing was held in Fairbanks the next day (June 1). At hearing the motion was divided into two parts: sanctions and a temporary restraining order. Frank Mielke testified about our compliance with the discovery request and Koester made a case for the state's solvency. The motions were denied.

(June) Koester drew up a stipulation re: the accounting process:

- a. Value of MH land to be computed by determining fair market value as of July 19, 1978 and simple interest of 10.5% per year;
- b. Appraisals shall be complete by 3/15/85;
- c. Plaintiff (Cowper) has right to review RFP, contract, and list of approved appraisers. The plaintiff will receive copies of the appraisal as they are completed;
- d. The state will develop value estimates of revenues and appraisals made of other 3rd party interests created in MH land prior to July 19, 1978. These estimates are to be based on estimates of revenues and appraisals made of other 3rd party interests on MH land prior to July 19, 1978. Estimates are to be based on appraisals of revenues and appraisals; and
- e. In calculating final judgment the state shall receive credit for appropriations for mental health purposes prior to July 19, 1978 (stipulation not signed).

(August) Notice of Lis Pendens filed August 1, 1984 by Cowper against all land selected by the state.

Koester drew up a stipulation stating that the state will:

- a. Draw up a legal description of all land selected by the state to fulfill the MH land grant;
- b. Provide a listing of the current acquisition status of the MH selections;
- c. Note whether the MH land had been alienated or conveyed and if so, how;
- d. Estimate the fair market value of the interests conveyed or alienated based on appraisals, done at the time of conveyance and revenues derived from the conveyance;
- e. Appraise the fair market value of all mental health land remaining in the MH trust on July 19, 1978; and

- f. Compute the value of all mental health land converted to general grant land by adding simple interest of 10.5% per year to the appraised value (a, b, c, e and f are due by March 15, 1985; d is due May 15, 1985).

The stipulation was signed by Koester August 30, 1984; was signed and filed with the court by Cowper on September 4, 1984.

At the same time, Koester drew up a judgement that stated:

- a. The mental health enabling act created a public trust for which the state is trustee.
- b. The redesignation of mental land to GG land was constitutional.
- c. The public trust shall recover the value of land conveyed from the trust as of the date of conveyance plus prejudgement interest (the redesignation is considered a conveyance).
- d. The state will receive credit for mental health expenditures when calculating the final judgement.

The judgement was filed September 14, 1984.

(September) - The state moved to have the Lis Pendens expunged. Plaintiffs filed an opposing motion. The state counter filed.

The state filed an appeal of the judgement September 18, 1984. The appeal is based on the following:

- a. The mental health trust land is not for the exclusive benefit of mental health.
- b. The redesignation of mental health land was not a breach of the public trust.
- c. The mental health trust fund is not entitled to be reimbursed for the full value of all mental health land received by the state.

A cross appeal is also filed. The appeal challenges the constitutionality of the 1978 redesignation.

(October) plans finalized for completing "appraisals" of the converted land by using a "valuation panel" consisting of three senior appraisers.

The appraisals contracted for in August are complete. This group of 183 parcels (81 tracts) is valued at \$14,233,800.00. Much of the information gathered in this process will be used to aid the valuation panel.

A motion to intervene (plaintiffs) is brought by the Alaska Mental Health Association, Mary C. Nanuwak and John Martin. The motion seeks to bring up other issues in the case:

- a. Is the state deliberately creating barriers to the enforcement the MH trust?
- b. Have third parties receiving MH land been notified of the trust status of the land?

- c. Are the conveyances in b. null and void?
- d. Should the 1.5% of land revenue dedicated to the MH trust by the 1978 legislation be automatically deposited?
- e. Are MH expenditures inadequate or misallocated?
- f. Should the state be replaced as trustee?
- g. Should punitive damages be awarded?
- h. Should the court appoint an independent board to oversee the land?

The prospective interveners were associated with Cowper, but apparently disagree with his tactics and strategy. An opposing motion was filed by Koester. The motion to intervene was denied October 31, 1984 because it was not timely filed.

(November) Order expunging Lis Pendens signed November 15, 1984.

(December) Opinion of Value (appraisal) Panel chosen. The panel consists of three senior designated appraisers each representing a geographic area of the state. They are tasked with evaluating 4,600 parcels of mental health land as of July 19, 1978.

The Mental Health Association announced that it will file a separate lawsuit in federal court.



Alaska Department of
**NATURAL
RESOURCES**

Mental Health Land Grant Fact Sheet
January, 1985

History

In July 1956, congress passed Alaska's Mental Health Enabling Act. The act established a public trust fund to be used primarily for the treatment of the mentally ill in Alaska. Any monies left over after mental health program costs were met could be spent for other public purposes at the discretion of the legislature. One million acres of federal land were granted to the Territory of Alaska to form the economic base for the trust.

Land selections were subsequently made between 1956 and 1966, primarily around centers of population (Anchorage, Fairbanks, Juneau, Kenai etc.), the railbelt and other areas believed to be valuable for subsurface resources (Beluga coal, Kenai oil, etc.). State records show that approximately 950,000 acres are now in state ownership. The lands are administered by the Department of Natural Resources along with land acquired through other land grants.

Although a formal trust fund was never established, the Alaska Legislature made appropriations for mental health programs. Total income produced from the mental health land from 1959-1977 was \$25,110,430. Mental health expenditures in Alaska by the state for the same period of time were \$115,364,054, with an additional \$16,430,771 being spent on alcohol and drug abuse programs.

In 1978 the legislature passed a law which redesignated mental health, school, and university trust lands as general grant lands. The redesignation provided for a more compact land base which made the land easier and more cost effective to administer. The legislation also established a trust fund for mental health programs to be financed by 1.5% of the annual receipts for all state land. However, the trust fund has never been funded by the legislature.

In April 1979, the University of Alaska challenged the constitutionality of the 1978 redesignation legislation (it also affected university land). The court upheld the law, but a settlement reached in June, 1982, granted land and money to the university. Heartened by the university's success, the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court on November 26, 1982 on behalf of Carl Weiss, a seven year old boy from Nenana, and Earl Hilliker, a Fairbanks resident. The suit contends that the plaintiffs were in need of mental health services which they could not receive in Alaska. It also raised questions about the constitutionality of the 1978 law; challenged the state's stewardship of mental health land; and asked that a mental health trust fund be established. A judgement was entered by Justice Warren W. Taylor in September 1984. That judgement stated that the mental health trust fund is exclusively dedicated to Alaska's mentally ill, that it had been breached by the legislative redesignation and is entitled to be reimbursed full value of the mental health land. The state has appealed that decision to the Alaska Supreme Court. Mr. Stephen Cowper of Fairbanks represents the plaintiffs, and Mr. Thomas Koester, Attorney General's Office, represents the state.

It has been reported that Mr. Cowper and the Mental Health Association do not agree over the direction of the case. Accordingly, attorney Jim Gottstein of the association board has attempted to intervene in the case. To date the intervention has not been allowed, and Mr. Gottstein has announced that the association will file a separate suit in federal court.

State Compliance

In the spring of 1984, at the direction of the court, the state produced a report which accounted, by acre, for the mental health grant land as of the date of redesignation. The legislature then appropriated \$250,000 for the department to continue the compliance with the discovery request. Stipulations for discovery were agreed to in September 1984, and the state is now in the process of complying with them. These stipulations provide:

1. The state will describe all mental health grant land selected by the state and provide current acquisition status of same by March 15, 1985: The Division of Technical Services within DNR is currently auditing all pertinent selection files. The Bureau of Land Management is auditing corresponding federal title files. Although the audit of state files will be completed by March, further adjudication by the BLM is expected to take another year to bring federal and state records into agreement.
2. By March 15, 1985 the state must estimate the fair market value of all land in state ownership as of the 1978 redesignation. Approximately 4,600 individual parcels are being evaluated by a panel consisting of three independent senior designated appraisers: Mr. Stephen J. MacSwain (representing the northcentral area); Mr. Frank King (representing the southcentral area) and Mr. Barry Thompson (representing the southeastern area). To bring the appraisals current, a simple interest of 10.5% per year will be added to the valuation figure.
3. By May 15, 1985 the state must identify and account for all mental health land alienated or conveyed prior to the 1978 redesignation. An audit and accounting will begin in February.

The remaining issues involved in this litigation are whether the mental health fund is dedicated solely to support mental health programs; whether the state breached the public trust in its management of the mental health grant land prior to 1978 and whether the state should be ordered to reimburse the public trust the full value of the mental health land. There is tremendous potential liability to the State of Alaska as a result of this lawsuit. It has been speculated that these lands may be worth over 1 billion dollars.

For further information contact Salli Slaughter, Pouch 7-005, Anchorage, Alaska 99510, (907) 265-4375.

POSITION OF THE ALASKA MENTAL HEALTH ASSOCIATION
REGARDING
ADMINISTRATION OF MENTAL HEALTH TRUST LANDS

SUMMARY

On July 28, 1956, the "Alaska Mental Health Enabling Act" (P.L. 83-830, 70 Stat. 709) was enacted providing for selection and conveyance of one million acres of public lands into state ownership to be held and dealt with as a "public trust" to permanently serve the needs of the mental health program of Alaska.

PUBLIC LAW 83-830 July 28, 1956

Sec. 202

- (a) The Territory of Alaska is hereby granted and shall be entitled to select...one million acres from the public lands of the United States in Alaska...All lands duly selected by the Territory of Alaska pursuant to this section shall be patented to the Territory by the Secretary of the Interior.
- (b) ... The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved...
- (c) All grants made or confirmed under this section shall include mineral deposits: ...
- (d) Following the selections of lands by the Territory pursuant to subsection (b) but prior to the issuance of final patent, the Territory shall be authorized to lease and make conditional sales of such selected lands.
- (e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner

compatible with the conditions and requirements imposed by other provisions of this Act.

(Emphasis Added)

The grants and selections made under this Act were confirmed by the Statehood Act and the responsibility for managing the lands as a Trust was accepted by the State of Alaska.

INTENT

The Act as written and passed by the U.S. Congress clearly intended for these lands to be used to serve the needs of the mental health program of Alaska for all time. It established a permanent "Trust" whose assets were a million acres of land. This "Trust" was to be administered so that the Mental Health Lands would provide a permanent source of revenues to meet the needs of the mental health program of Alaska.

STATE MANAGEMENT OF MENTAL HEALTH LANDS

As set forth previously, subsection (e) of the Alaska Mental Health Enabling Act provides that the Mental Health Lands,

...proceeds and income therefrom shall be administered as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska...

and that

... The authority of the Legislature of Alaska under this subsection be exercised in a manner compatible with the conditions and requirements imposed by other provisions of the Act.

Even a cursory examination reveals that the state has knowingly flaunted its trust obligations regarding the administration of Mental Health Lands.¹ The Mental Health Lands have been and are being dealt with as if they are no different than any other state lands and, in fact, are sometimes given away more freely

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James B. Gottstein, attorney for the Alaska Mental Health Association, has available upon request documentation of the state's knowledge of its illegal actions. Mr. Gottstein can be contacted at 564-2424, 6401 A Street, Anchorage, Alaska 99502.

than other state lands with inadequate or no compensation. The Legislature has passed laws that have transferred Mental Health Lands into non-revenue producing uses such as State Parks and Wildlife Withdrawals and finally, in 1978, purported to abolish the Mental Health Lands designation altogether with no compensation given to the Mental Health Trust. As a result the Trust has lost a great deal of its original assets and revenue-generating potential. Since 1978, the state has illegally purported to convey to third parties tremendous amounts of Mental Health Lands, again with inadequate or no compensation to the state and no compensation at all to the Mental Health Trust.

DESCRIPTION OF MENTAL HEALTH LANDS

The lands in question here are those lands selected by Alaska under the authority of the Act of 1956. They are described in 155 casefiles which are maintained by the Bureau of Land Management, part of the United States Department of the Interior. These descriptions of the selections made by Alaska in these casefiles describe lands in the following resource areas:

Kenai Peninsula	67 Casefiles
McGrath	47 Casefiles
Glennallen	7 Casefiles
Yukon	32 Casefiles
Fortymile	2 Casefiles

The numbers above describe casefiles only. In many cases, the selections were very small while other selections were for very large tracts of land.

The lands are located in 186 townships across the state. Appendix I has a complete listing of all townships statewide that have Mental Health Lands within them. The following list describes the number of townships affected in the various geographical areas:

1) Copper River Meridian (Gulf of Alaska & Southeast)	60 Townships
2) Northeast Seward Meridian	15 Townships
Southeast Seward Meridian	1 Township
Northwest Seward Meridian	55 Townships
Southwest Seward Meridian	12 Townships
3) Northeast Fairbanks Meridian	9 Townships
Southeast Fairbanks Meridian	10 Townships
Northwest Fairbanks Meridian	4 Townships
Southwest Fairbanks Meridian	20 Townships

The following figures approximate the total conveyance from federal to state holdings of Mental Health Lands:

Patented Lands	719,703.83 Acres
Tentatively Approved Lands	219,655.92 Acres
Selected and Not Yet Conveyed	357,986.18 Acres

It is clear that the state has not yet received its full entitlement of Mental Health Lands from the federal government.

Mental Health Lands contain a great deal of resources. The Mental Health Lands grant includes both surface and subsurface title. Many of the lands lie on or near producing oil and gas fields; others lie within high potential coal and other mineral areas; and much of the others were selected for their surface value. Millions of dollars have been collected in purchases, rentals, and royalties on oil and mineral exploration leases, while untold other millions of dollars have been foregone by the state. A detailed inventory is needed to determine the extent of these resources on Mental Health Lands.

POSITION OF THE ALASKA MENTAL HEALTH ASSOCIATION

It is clear from the language of the Alaska Mental Health Enabling Act that: (a) the state is obligated to manage Mental Health Lands, and proceeds and income from those lands as a public trust; and (b) the mental health program of the state is to be the primary beneficiary of this Trust. This position is reinforced by the specific language used in testimony presented in the Congressional Record (Senate, page 9760, June 1956):

... This million-acre grant is in exactly the same category, and has the same legal status as the grants of public lands which have been made to all of our Western States for public schools and other public purposes. It is to be administered by the Territory of Alaska as a public trust, and the mental health program will have first call on the income and proceeds from it.

Over the years, the state has recognized its illegal management of the Mental Health Trust but has failed to correct the situation (see footnote 1, page 2).

NECESSARY ACTIONS

In order to remedy the situation created by mismanagement of the Mental Health Trust the Alaska Mental Health Association recommends that the following actions be undertaken immediately:

- 1) Alaska must fulfill the purpose for which the Mental Health Lands were originally granted.

- 2) The state must differentiate between Mental Health Lands and state public domain lands by providing separate and distinct land management to ensure the future management of Mental Health Lands in accordance with recognized trust principles and applicable law.
- 3) A permanent Mental Health Trust should be created. Allocated to this fund should be all funds collected from transactions involving Mental Health Lands.
- 4) Steps must be taken to resolve conflicts resulting from the past management of all lands granted to the state under the Alaska Mental Health Enabling Act. This must include an equal-value exchange of all lands on which irreversible encumbrances have been created which preclude the management of those lands as Mental Health Lands.
- 5) A method should be established to calculate the dollar amount due, with interest, to the Mental Health Trust from the state with regard to the management and disposal of Mental Health Lands, and the dollar amount due, with interest, for Mental Health Lands and resources therefrom which have been disposed of at less than their current fair market value.
- 6) An independent Mental Health Lands Managing Agency must be created and staffed. This agency will be charged with the responsibility of administering the Mental Health Trust in accordance with law. This agency will be governed by these rules:
 - a) The Mental Health Lands shall be administered as a permanent public trust.
 - b) The purpose of the Mental Health Lands is to generate revenues to be used first to meet the necessary expenses of the mental health program of Alaska.

The Mental Health Lands Managing Agency must have sufficient safeguards to prevent future abuses of Mental Health Lands.

- 7) A legitimate, impartial and objective method be established for determining the necessary expenses of the mental health program of Alaska must be established with sufficient safeguards to prevent future abuses.

STATE MENTAL HEALTH PROGRAM

SUMMARY FACT SHEET

Prepared December 14, 1984

ALASKA PROVIDES THE LOWEST PERCENTAGE OF STATE REVENUES TO MENTAL HEALTH PROGRAMS OF ALL 50 STATES. On average, the other 49 states provide a percentage of state revenues to mental health programs that is more than six times larger than Alaska provides (0.3%). More than half of the states provide at least five times larger percentages than does Alaska. The 49th state in the ranking provides double that of Alaska, while the first state in the ranking provides a percentage that is more than 11 times greater than Alaska provides (Reference: The Final Report - Funding Sources and Expenditures for State Mental Health Agencies, NASMHPD, 1984).

ON A PER CAPITA BASIS, ALASKANS HAVE RECEIVED ONLY 27 PERCENT OF THE LEVEL OF FEDERALLY SUPPORTED COMMUNITY MENTAL HEALTH CENTER SERVICES RECEIVED BY THE CITIZENS OF THE OTHER STATES. Based on a survey of all federally supported community mental health centers, Alaskan centers provided less than 27% of the episodes of care per 100,000 population per year than did centers in all other states (Reference: Provisional Data on Federally Funded Community Mental Health Centers, NIMH, 1981).

SERVICES FOR THE CHRONICALLY MENTALLY ILL IN ALASKA (A HIGH PRIORITY ACCORDING TO STATE REGULATIONS) SUFFER FROM INEQUITABLE DISTRIBUTION OF PROGRAM FUNDS. As one example, a State DMHDD Request for Proposal last month announced \$403,000 for vocational services to developmentally disabled persons and only \$30,000 for vocational services to mentally ill persons. The chronically mentally ill also suffer from a lack of other rehabilitation services, residential facilities, continuity of care, and support services available to the chronically mentally ill in other parts of the nation. Clinical staffing for aftercare services for the chronically mentally ill in Anchorage is only 37% of the median staffing level of "lower 48" mental health centers on a per capita basis (Reference: Guidebook on Numerical Indicators for Performance Evaluation of Community Mental Health Centers, Medical College of Pennsylvania, 1982).

SERVICES FOR CHILDREN AND ADOLESCENTS IN ALASKA (A HIGH PRIORITY ACCORDING TO STATE REGULATIONS) HAVE BEEN HARDEST HIT BY STATE AND LOCAL MENTAL HEALTH FUNDING REDUCTIONS. Based on the National Institute of Mental Health standards of service for community mental health programs, children have been consistently underserved every year by the Alaska Community Mental Health Program. To make matters even worse, in 1984 a 76% cutback in staffing for children and adolescent services occurred at the Southcentral Counseling Center, which has a service area covering half of the State's population, due to public program funding cuts. These program cuts have resulted in a 42% reduction in children and adolescent caseload since November, 1983. Currently State Community Mental Health Program funds only provide for one-half of one full-time position to deliver mental health services to children and adolescents for all of Anchorage! Total clinical staffing for children and adolescent mental health center services in Anchorage is only 14% of the median staffing level of "lower 48" mental health centers on a per capita basis (Reference: Guidebook listed above). The Southcentral Counseling Center currently has a long waiting list for outpatient services.

HOUSE HEALTH, EDUCATION & SOCIAL SERVICES
STANDING COMMITTEE
February 26, 1985
4:30 p.m.

Members Present: Co-Chairman Max Gruenberg
Rep. Robin Taylor
Rep. Alyce Hanley
Rep. Fritz Pettyjohn
Rep. Katie Hurley

Members Absent: Co-Chairman Niilo Koponen
Rep. David Thompson

COMMITTEE CALENDAR

Testimony from the Mental Health Planning
and Needs Assistance Committee

WITNESS REGISTER

Beth Trawick
Committee for Mental Health Planning in Fairbanks
503 7th Avenue
Fairbanks, AK
(907) 452-4148
Position Statement: Supports mental health services

Kathy Whitzell
Committee for SB 520
P.O. Box 10081
Fairbanks, AK
(907) 457-7223
Position Statement: Supports SB 520 and mental health services

Mark Mattaini
Committee for SB 520
1302 21st
Fairbanks, AK
(907) 452-2446
Position Statement: Supports SB 520 and mental health services

Glade Birch
Southcentral Counseling Center
Mental Health Dir. Assoc.
4020 Folker St.
Anchorage, AK 99508
(907) 563-1000
Position Statement: Supports mental health services

Vince VanDerHyde
Division of M.H. & D.D.

3470 Meadow Way
Juneau, AK
(907) 465-3370
Position Statement: Supports mental health services

Tom Koestet
Department of Law
Pouch K
Juneau, AK 99811
(907) 465-3600
Position Statement: To provide information on mental health
lands litigation

Commissioner John Pugh
Department of Health and Social Services
Pouch H-01
Juneau, AK 99811
(907) 465-3030
Position Statement: To provide information on mental health

PREVIOUS ACTION

No previous action to record.

ACTION NARRATIVE

TAPE #32, SIDE ONE
Recording
Number 000

Co-Chairman Gruenberg called the meeting to order at 4:37 p.m. to discuss mental health planning and needs. Reps. Koponen and Thompson were absent.

Number 029

Co-Chairman Gruenberg announced the arrival of Rep. Taylor.

Number 064

Beth Trawick, a private psychiatrist in Fairbanks, representing the Mental Health Committee, testified. She said when it came time to discharge a chronically ill patient from the hospital to a halfway house, there were no accommodations, thus leaving them out on the street only to return to the hospital later.

On the subject of children, she said they didn't have facilities for intensive out-patient psycho-therapy for them and their families. If the family was wealthy or had good insurance coverage they could afford private care. She said children end up "drifting" through the system, becoming non-

functional or progressing towards chronic mental illness, which sometimes, early treatment could have prevented.

In summary, she supported more treatment facilities such as vocational rehabilitation, halfway homes, and community based facilities, which would help patients more and cost less.

Number 277

Kathy Whitzell, representing the Resource Committee for SB 520, and the Fairbanks Memorial Hospital, testified. She spoke for the mentally ill adults whose illness often begins in early adulthood: a gradual withdrawal from others, losing touch with reality and inability to function. She said lack of facilities for these adults, including "road people" who have no shelter and are often ill, resulted in an overcrowded API.

Ms. Whitzell said most evening and weekend emergencies for families are dealt with by phone with no personal interventions, although the hospitals are available. If an adult won't voluntarily commit himself, and a relative won't involuntarily commit them, they wander the street, get into trouble, and often end up in jail until evaluation. Families attempting to maintain the ill individual at home have problems within the family and the neighborhood. In summary, Ms. Whitzell supported a care facility where such adults would be receive services and function in a safe environment.

Number 450

Mark Mattaini, Director of Mental Health Programs for Tanana Chiefs Conference, and Chairman of the Children's Subcommittee for the Resource Committee for SB 520 testified. He said in developing their plan for children, they looked at the most serious cases (suicidal, severe depression, personality problems, etc.). He emphasized the need for out-patient treatment, a diagnostic and crisis unit with residential capacities, individualized foster homes, small group homes, day treatment programs, facilities for young adults (halfway houses), and a family hostel operation for rural and bush areas.

Number 582

Glade Birch, Executive Director of the

Southcentral Counseling Center in Anchorage, and a representative of the Alaska Mental Health Program Director's Association testified. He said the turnover at centers is 170% per year. He said the suicide explosion could be predicted when they failed to give mental health care. He mentioned 7 days before he arrived in Juneau, he knew of 22 serious attempts by school kids (2 successful). He knows of a village without mental health care due to funding that average 2 attempts per month with a population of 350.

Mr. Birch said in the initiative to identify child abuse victims, there was a problem of not doing anything after this is done. He supported a community based setting which would cost far less than jail or API.

He said there would be a problem of an accredited institution such as API running into problems of overcrowding, and being able to keep their accreditation.

CHANGE TAPE TO SIDE TWO

Number 000

Mr. Birch continues his discussion in support of community based mental health care facilities versus cost of jail or API.

Number 077

Rep. Hanley asked Mr. Birch what is covered in API for accreditation; the physical plant, program, or methods of treatment. He said everything.

Number 091

Rep. Taylor asked Mr. Birch if in the requested increment for treatment of children, have they included in it cost that child abuse legislation would incur. Mr. Birch said no. He said they were only funded for 3 1/2 people for their mental health needs. Rep. Taylor said he shared Mr. Birch's concerns but he was informed it was appropriate to keep the budget where it's at and spend \$32 million on asbestos removal. Rep. Taylor said he had a hard time prioritizing between the risk from asbestos exposure versus risk of suicide, though he supported mental health needs.

Number 140

Vincent VanDerHyde, Research Analyst for Division of Mental Health distributed to the committee a paper presented in May of last

year at the American Association of Sociotology meetings in Anchorage concerning suicide. He said the Division wanted to further research suicide by working with the Alaska Native Health Board who had research money to look at suicide attempts, village public safety officer logs, state trooper logs, emergency treatment logs, etc.

Number 178

Mr. VanDerHyde showed a set of 8 slides to the committee. The slides look at the trend in mental health service delivery across the state of Alaska.

Slide 1 shows the need for mental health services in Alaska by showing the population growth rate. Between 1980 and 1984 the growth rate was around 30%. In 1984, Alaska led the nation in population growth at 5-1/2%. The growth rate will then decline slightly.

Slide 2 shows the number of admissions to the community centers. From 1974 through 1984, there was a 285% increase. In 1984, there was a 15% increase. The projections based on the data, shows there will be around a 23% increase over the next 5 years.

Slide 3 shows the expansion of services. From 1975, the admissions were 42 per 10,000 population. By 1984, it increased to 120 per 10,000 population (9.4% increase).

Slide 4 shows comparisons between admissions, end-of-year caseloads and clients seen for the period 1979 through 1984, while in the past 5 years, the population has increased 30%, admissions over 100%, and case-loads 105%. He said during fiscal year 1984, a little over 8,000 clients were served (1.5% of Alaska's population).

Slide 5 shows admissions to the Alaska Psychiatric Institute. Between 1970 and 1982 admissions increased by 175%. In 1983, there was a slight decline due to changes in delivery of services. In 1984, admissions increased by another 5% due to the population growth.

Slide 6 shows a count of in-patient days (beds available). For 1983, the API

utilized 95% of in-patient days. For 1984, they utilized 98%.

Slide 7 shows discharge data. A little over 50% of patients are released in 4 to 5 weeks. 5 or 6% are in API around 6 months.

Slide 8 shows as population pressures occur, shows over the years the populations which become re-admissions in the system, for example, FY83's admissions drop off and FY84's length of stay goes down and the re-admissions increase. He said there were two things driving the API's population: the state population as it increases and the maximum utilization of the facility driving re-admission rates up.

Number 436

Tom Koester, Attorney General's Office, Department of Law, testified regarding the mental health lands litigation. He said the mental health enabling act, a federal statute passed in 1956 by the U.S. Congress, was passed because mental health services in Alaska were unacceptable. In the 1911 Organic Act, Congress precluded the Alaska Territorial Legislature from dealing with mental health problems in Alaska and retained the sole responsibility for the federal government.

In territorial days, the federal government's program for dealing with a person believed to be insane was for the U.S. Attorney to bring an indictment against them, try them before a jury, and if found insane, would be sent to Morningside Portland hospital in Oregon. If not, they'd be released without follow-up, etc. The Congress saw as a way to economize during a budget crunch, to transfer this responsibility to Alaska. The problem was there was no means to raise revenue, which was costing \$1.2 million per year. Congress came up with a phased 10-year grant program of funds to Alaska in a declining revenue set-up, plus a cash grant to build API. To provide a source of funds, Congress authorized the territory to select 1 million acres of land (from vacant and unappropriated federal lands in Alaska).

Mr. Koester said because Congress didn't know the program cost in Alaska or the worth

of Alaska-selected lands, they declined to earmark all proceeds from the lands to the mental health program. Its rationale was they didn't know the cost of the programs or how much money would be generated from the lands. They didn't want Alaska to think they had to use all the money for mental health programs.

Mr. Koester said language from the bill said proceeds and income from the land shall first be used for expenses from the mental health programs. Additional funds can be used for other purposes. In 1978, there was pressure for Alaska lands to be made available to Alaskans and municipalities. Since Alaska could select its lands, it began to build on them: U of A, Juneau, Hillside and some of the Chugach State Park, Swanson River oil fields, many intersections between the Alaska Railroad, and the highway between Anchorage and Fairbanks, etc.

Mr. Koester said the 1978 legislature converted statutorily mental health lands to general grant lands, in effect, directing the Department of Natural Resources to deal with the lands as if they were already received. The alternative was a statutory dedicated fund of 1-1/2% of general funds revenues and because the language of the statute is subject to appropriation, the legislature has never appropriated the 1-1/2%.

Number 530

Co-Chairman Gruenberg said in 1978 the legislature passed 2 bills, and 1 mandated 1-1/2% and the other made it discretionary. He said the Governor signed the discretionary bill after he signed the mandatory bill, thereby making the operative law discretionary.

Number 543

Mr. Koester said the lawsuit was brought by Alaskan citizens who needed mental health services that weren't available. The object was to regain title to equivalent land. Judge Taylor in Fairbanks ruled it was an exclusive trust. Mr. Koester said most attorneys agree with the analysis that they are not dedicated exclusively ("shall first be used"). The Attorney General's office has appealed the entire judgement made by Mr. Taylor, which was that the 1978

redesignation was a breach of the trust, which is currently pending before the Alaska Supreme Court.

Mr. Koester stated Judge Taylor ruled it was permissible for the Legislature to re-designate the lands, however, if they make the decision to treat them as general grant lands, it must compensate the trust with the fair market value. He said the cross-appeal is of Judge Taylor's determination that the legislature has the power to exchange land for money, it has not funded it, so if the case proceeds, the final judgement is Judge Taylor ruled the state will have a liability of a significant amount of money. He said they've attempted to communicate to the plaintiffs that they may be able to settle the lawsuit by coming forward with a proposal.

Mr. Kester said the proposal is on file, and in brief, the concept proposed is a way to develop a process which would satisfy the expectation of the U. S. Congress in 1956. The process is to continue with an accounting effort to identify the value of the land, converts it to an unfunded liability and then identifies proceeds from that liability (or what they would have been had it been funded) and then have the necessary expenses for the mental health needs first, and the rest for other expenses. Rep. Taylor asked Commissioner Pugh what the present mental health budget was. He said around \$20 million for mental health only.

CHANGE TO TAPE #33, SIDE ONE

Number 000

Mr. Koester's testimony on the lands issue continues. Rep. Taylor asked why they couldn't take care of mental health needs the way it was intended. Mr. Koester said the problem was they are trying not to go beyond what Congress contemplated. He said the lands were not dedicated exclusively to mental health. Rep. Taylor said that the first use for mental health. Mr. Koester said the point was that Congress contemplated the territorial legislature making the mental health needs determination. When it made the determination, it would appropriate the

necessary revenues from the lands to fulfill that program. The 1956 law did not specify what the mental health program was to look like. Since then, Alaska has funded a mental health program. The problems with putting together a settlement proposal is the Attorney General's office does not feel free, given the 1978 law which governs the performance of the AG's duties and obligations, that they have the latitude to propose a settlement which would require the legislature to undo what it did in 1978. He said the position they have always held was no legislature can bind a subsequent legislature, but a previous legislature could bind the administration, and that's what happened.

Number 336

Co-Chairman Gruenberg adjourned the meeting at 6:27 p.m.

MENTAL HEALTH SERVICES IN THE STATE OF ALASKA
TREND ANALYSIS THROUGH FISCAL YEAR 1984

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
RESEARCH AND DATA SUPPORT SECTION

(FOR INCLUSION IN THE FY1984 ANNUAL REPORT)

Trend Analysis

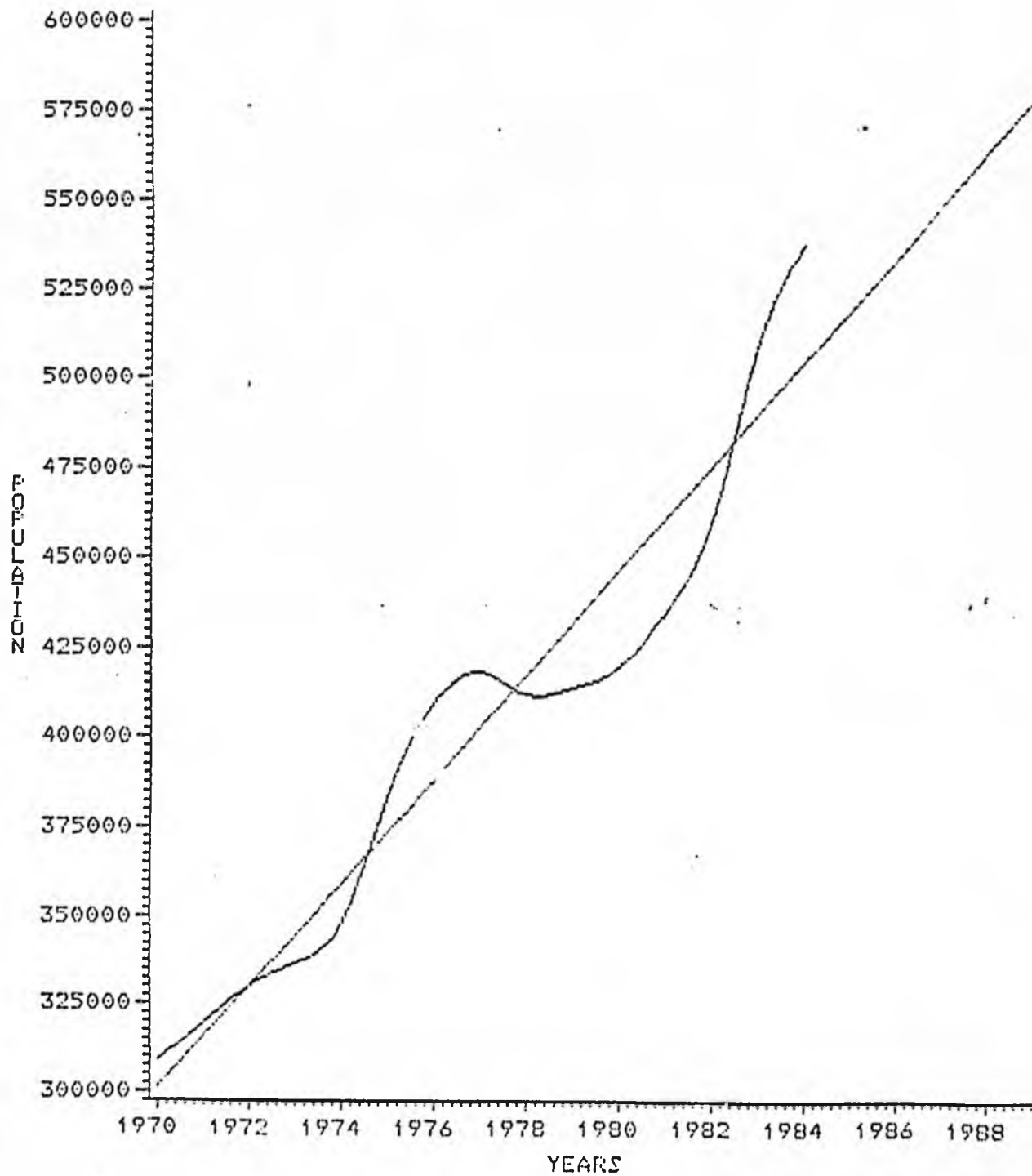
This section presents a discussion of a series of graphs based on data for the past several years showing the growth in mental health services in the state of Alaska. Taken collectively, these data reflect the publically funded portion of the state's mental health system, the impact of population growth, and the expanding need for services in both the inpatient and community mental health center systems.

Graph 1 on the following page shows Alaska state population estimates from 1970 through 1989. Actual population figures form the curved lines while projected and estimated figures are shown as a straight line.* The states' population increased rapidly during the period of oil pipeline construction and development in 1974-1976, then leveled off and declined during 1977-1979. A second increase began in 1980 and appears to be increasing, though projections indicate that the rate of growth may decrease somewhat.

Since 1980 the state population has grown by 28.2%. In 1984 alone population increased by 5.4%. This rapid increase in growth should be kept in mind while reviewing the following trend data on mental health services in Alaska.

*Population projections for the years 1985-1989 are based on the ordinary least squares regression estimates using prior years data for 1970-1984. The five years projected data is thus an estimate based on the straight line which best fits the actual population data for prior years. The population figure for 1984 is a Dept. of Labor estimate.

ALASKA STATE POPULATION

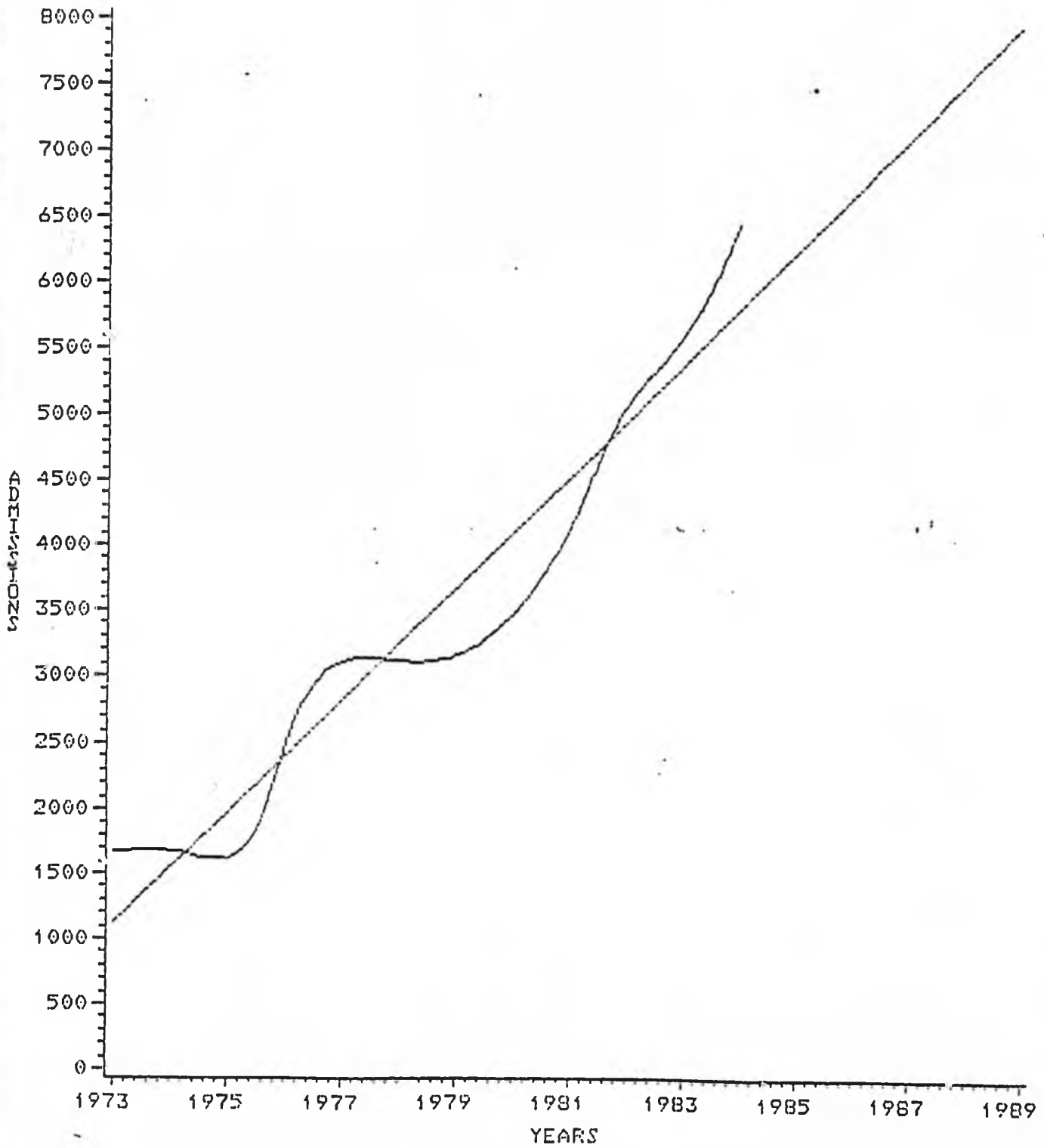


POPULATION WITH FIVE YEAR PROJECTIONS

Graph 2 presents data on the admission of new cases to the community mental health center's caseload. A total of 26 such centers are funded across the state, located in major population areas and in a number of rural or bush communities. They provide essential mental health services in their catchment areas, and are often the only source of such services in the more rural areas. From 1974 through 1984 admissions to this system have gone from 1,678 to 6,456, a 285% increase. During fiscal year 1984 alone admissions increased 15.2%.

Comparing Graph 1 with its population data, and Graph 2 on CMHC admissions, it is evident that admissions closely followed population growth. With the continued growth of the states' population an increase of 23% in admissions is expected over the next five years due to this fact alone.

COMMUNITY MENTAL HEALTH CENTERS ADMISSIONS

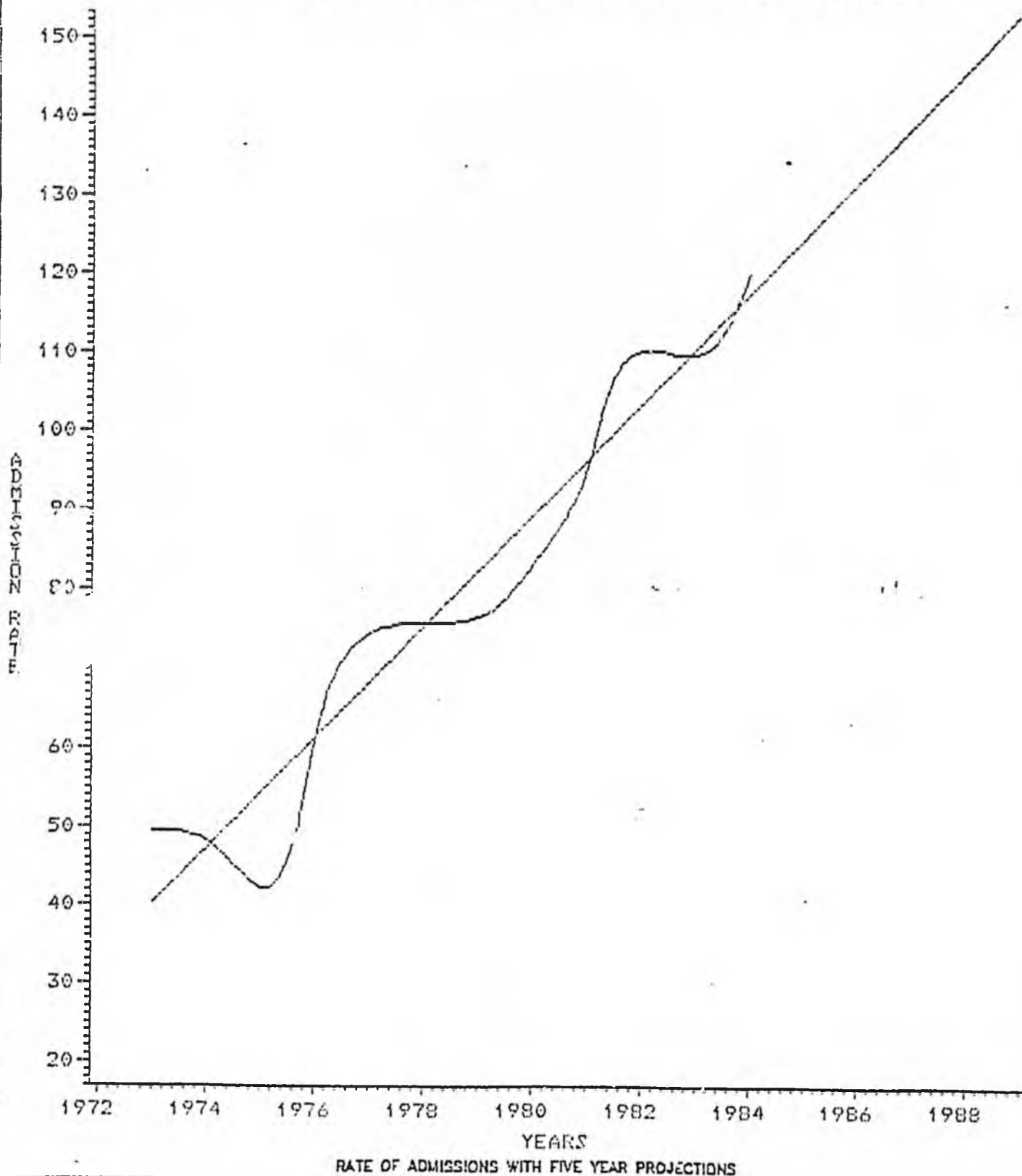


ADMISSIONS WITH FIVE YEAR PROJECTIONS

Rates of admission to the community mental health center system per 10,000 state population is one measure of the workload of those who deliver mental health services throughout the state. During the period from 1975 through 1984 this rate has increased from 42 per 10,000 population to 120 per 10,000 population, an increase of 185%. During fiscal year 1984 the admission rate increased 9.4% compared to the population growth rate of 5.4%. It is evident from this graph and the preceding one taken together that the growth in community mental health center admissions is a function of both population growth and of their providing services to a greater proportion of the state population.

Still, there remains an unknown fraction of the state population which does not receive the minimum level of essential mental health services. To some degree this is reflected in the continuing increase in the rate of admissions to the community programs. It is expected that these programs will continue to expand their service delivery to the extent that they are able to do so based on the availability of staff and funds, and that one result of this will be a continuing increase in admission rates. This will, of course, further increase the number of admissions and the size of caseloads in the system.

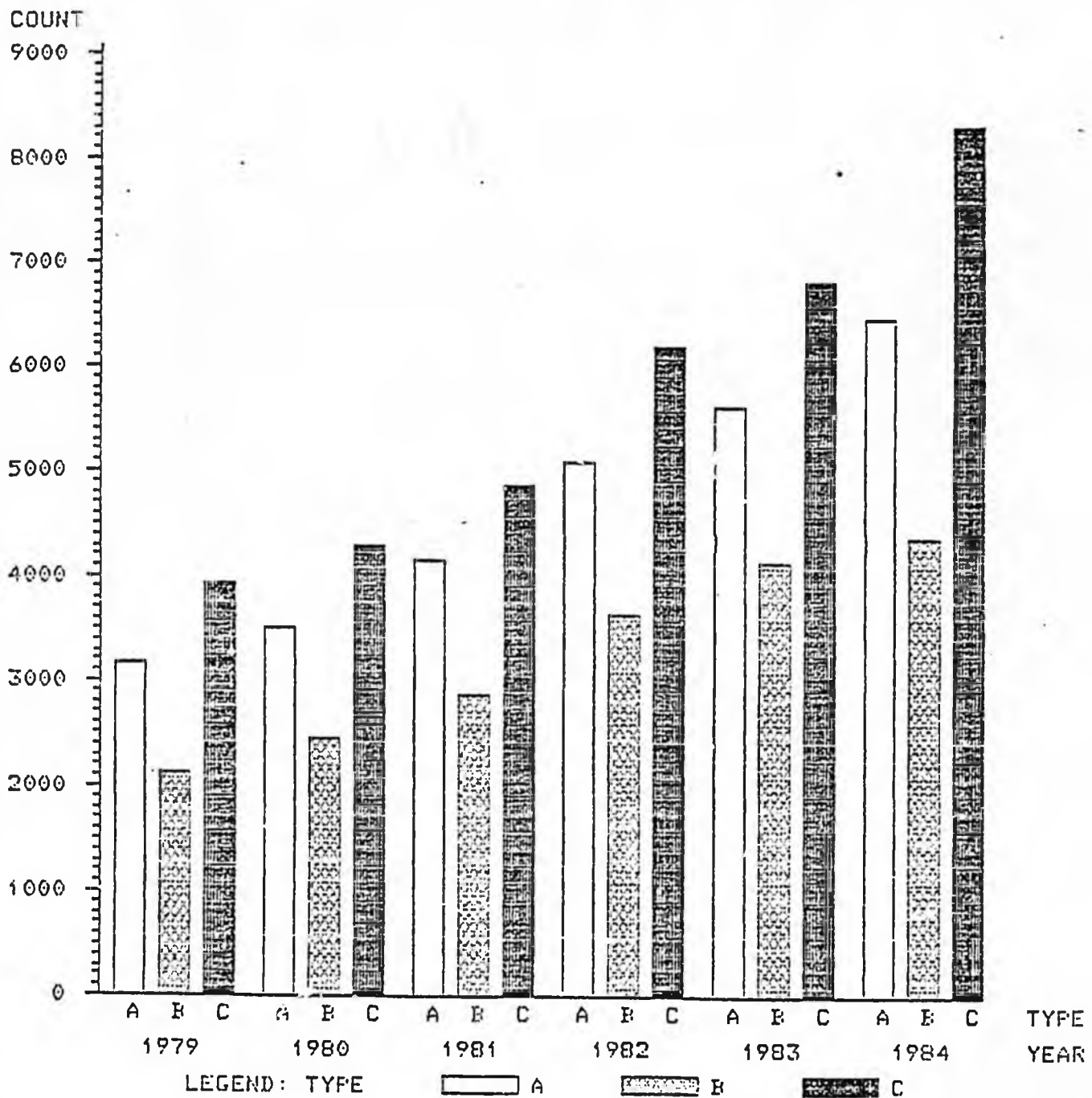
COMMUNITY MENTAL HEALTH CENTERS RATE OF ADMISSIONS PER 10,000 POPULATION



.The graph on the following page presents three different measures of the services provided by the community mental health center system; admissions, caseloads, and the unduplicated client count. Admissions represent new clients coming into the system for treatment. The caseload represents unique individuals receiving services during the last 90 days of the fiscal year and are considered as the "open cases" in the system. The unduplicated count of clients reflects the total number of specific individuals who received service at any time during the fiscal year.

During the past five years there has been a consistent increase in growth in all three of these indicators. Admissions increased 104%, the caseload increased 105%, and the unduplicated count of cases increased 111 percent. During the same five years population increased 30%.

COMMUNITY MENTAL HEALTH CENTERS ADMISSIONS, CASELOADS, AND CLIENTS SERVED

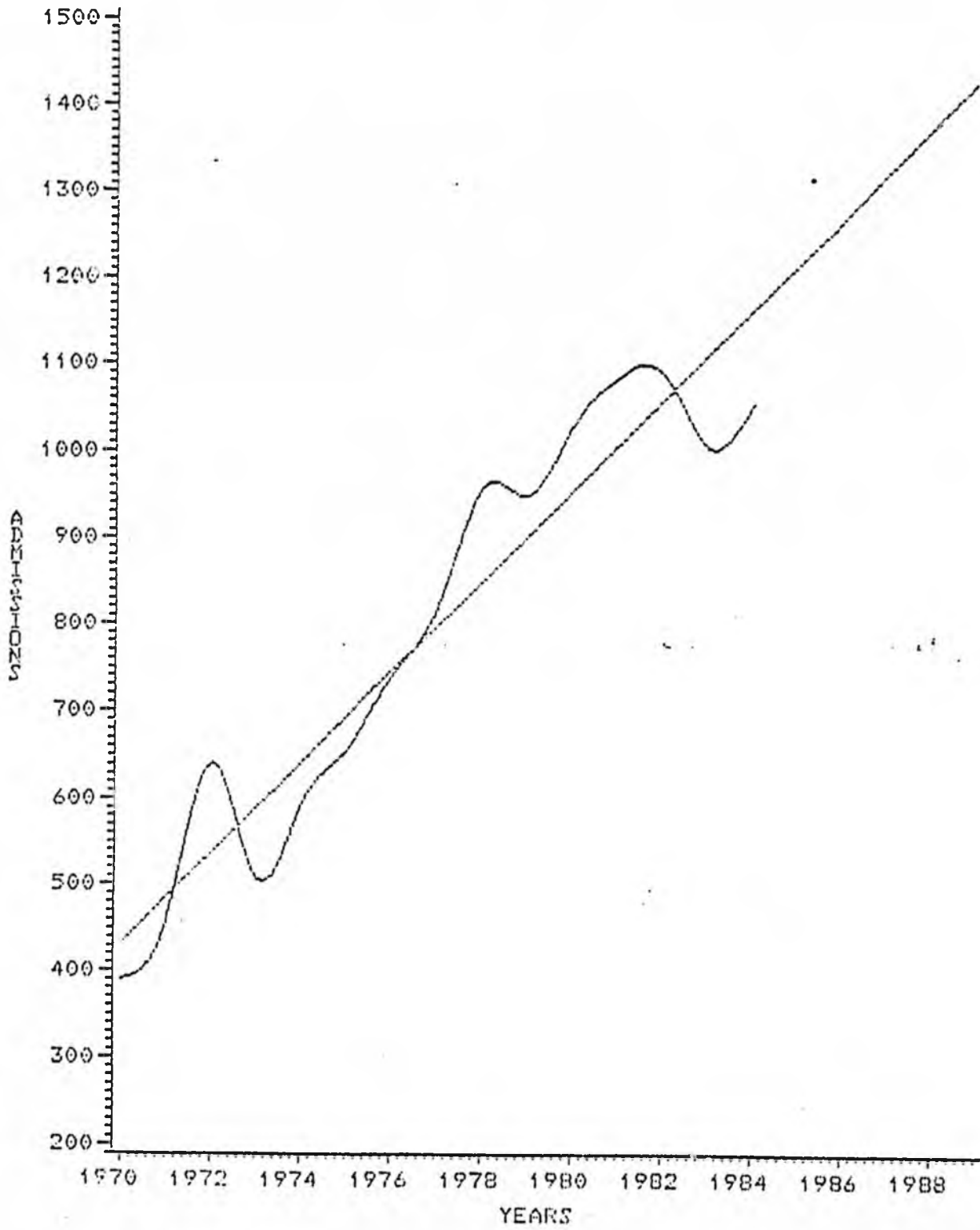


A=ADMISSIONS B=CASES C=CLIENTS
 FOOTNOTE 1: OPEN CASES RECEIVING SERVICES
 IN LAST 90 DAYS OF FISCAL YEAR
 FOOTNOTE 2: UNDUPLICATED COUNT OF OPEN CASES
 RECEIVING SERVICES DURING FISCAL YEAR

The Division of Mental Health and Developmental Disabilities operates the state's sole public psychiatric hospital, the Alaska Psychiatric Institute, in Anchorage. This facility receives both voluntary and involuntary admissions from across the state and also provides forensic services to the Department of Corrections. Graph 5 shows admissions from 1970 through 1984.

During the period 1970-1982 admissions rose from just under 400 to almost 1100, and increase of 175%. The decline in admissions in fiscal year 1983 was largely due to the provision of mental health services in correctional facilities in place of the transfer of the incarcerated patient to the psychiatric hospital in an effort both to provide better services to forensic patients as well as more security during treatment and in an effort to control population growth at the hospital. Population pressures were again felt in fiscal 1984 however, as admissions kept pace with population growth by rising almost 5%. It is very likely that pressures on the Alaska Psychiatric Institute are similar to those in the community outpatient system, a combination of population growth and the need to expand services to a greater proportion of the population.

ALASKA PSYCHIATRIC INSTITUTE ADMISSIONS



ADMISSIONS WITH FIVE YEAR PROJECTIONS