

ALASKA LEGISLATURE COMMITTEE FILES 1903-1900 00/2

3823 SCRA JOHN WALSH - LOCAL BOUNDARY COMMISSION (FILE 61)

Progress Report

by
the Alaska
Juvenile Crime
Commission

Goals will be achieved by providing ongoing community education and avenues of involvement for individuals and businesses interested in achieving a safer environment for children and the rehabilitation of exploited and emotionally damaged children and delinquent juveniles.

The Commission is currently giving direction and aid for families involved in exploited or juvenile problems. Identifying and soliciting help from appropriate organizations is often bewildering to emotionally distraught parents or youth. The Commission, by its existence and media visibility, has inherited quite a number of complicated cases. Trained volunteers and investigators aid where time and funds permit.

In 1983 the Commission unveiled findings that rings of juveniles, controlled by adults, were engaged in burglaries and prostitution in Anchorage.

Problem: Dramatic increase in sexual assault arrests of individuals in child care

services.

Action: AJCC actively supported bill permitting youth service businesses and organizations to check employees for sexual molestation records.

■ Records check passed into law, 1983.

■ Petitioned school districts and private child care to utilize the FBI record check.

Fairbanks and Anchorage School Districts initiated finger print checks June 1983.

Problem: Parents and community lacked information on the specific problems of child exploitation and methods of prevention.

Action: AJCC developed the 'Family Protection Packet' for parents. Packets include a brochure on International Marketing of Children, specific prevention methodology, Parenting Checklists, How to Report Suspected Child Abuse, and How Child Service Organizations Can Protect against employing child exploiters.

The Commission has appeared regularly in the news and media. The Commission also created informational public service messages on child exploitation which have played in major cities nationwide and have won national recognition.

Problem: Commission identified need for law enforcement task force unit with special training and intensive investigation techniques to impact crime involving child exploitation.

Action: The Commission created the special Unit for the Investigation of Criminally Exploited Children through the law enforcement community and the state.

■ The law enforcement unit plan adopted 1984. Funded July 1, 1984.

■ The Commission joined in a co-effort with the FBI to provide intensive training seminar on child exploitation to law enforcement and community members statewide. The FBI hosted Agent Ken Lanning. The Commission hosted John Rabun, Deputy Director of the Center for Missing and Exploited Children, Washington, D.C. and William Spaulding, Exploited Child Unit, Louisville, July 23-27, 1984, Anchorage, Alaska.

Problem: State laws did not adequately address the phenomenon of child exploitation.

Action: Commission actively informed community and state about the problem and the need for legislative action.

■ Child prostitution law passed 1983.

- Child pornography law passed 1983.
- Runaway law enabling law enforcement to place juvenile runaways in protective custody passed by legislature – Vetoed by Governor Sheffield.

Problem:Lack of shelters for runaway and exploited children.

Action:AJCC currently consulting with community groups for privately sponsored shelters. Shelters will be a 1985 priority of the Commission.

Problem:School Suspensions: Practice of suspension to the streets for discipline brought over 1600 suspensions in the Anchorage School District in one semester.

Action:Commission joined other groups in petitioning for in-district suspension. Anchorage School District instituted in-district suspension June 26, 1984.

Problem:Alaska did not have consistent information on problems and solutions developing nationally on child exploitation.

Action:Commission formed informational links with state and national organizations creating exchanges of information and have projected our efforts in Alaska into national visibility.

Why should you become involved?

Every two days as many children disappear as lives were lost when Korean Airlines Flight #007 was shot down.

50,000 children disappear each year and their cases remain unsolved at the end of the year.

About 150,000 children each year, victims of custody battles, are abducted by the non-custodial parent.

Each year more than 1,000,000 children are reported as 'runaways' or 'throwaways.' Some become victims of crime, others become criminals.

Every year hundreds of children are found dead and can't be identified. They are buried in John and Jane Doe graves.

The above statistics were provided by Action, Washington, D.C., in cooperation with the Department of Justice.

The Alaska Juvenile Crime Commission has generated concern about the socially destructive and financially costly aspects of escalating juvenile crime. Nationally, communities and law enforcement agencies are

gearing up to cope with a newly identified phenomenon, that of the exploited child in juvenile crime patterns.

If this new and cruel crime against children is allowed to continue unabated, the end result will be shattering.

Based on newly unfolding statistical information, the emotionally scarred and damaged young people of today will become the trained burglars, murderers, drug pushers, and prostitutes of tomorrow. We are facing a potential for ever-increasing numbers of exploited and troubled youths, each with a life span of 40 to 50 years in and out of prison. Add to this cost the high-risk emotional problems and statistical second generation sex abusers, further burdening Alaska's already over-crowded health, social, and correction systems.

This mounting problem is not without a solution. Crime Commission members are donating thousands of hours and professional expertise to this tremendous problem. As a non-profit organization, we rely solely on funding from private citizens and businesses. Your financial support of this commission will make Alaska a healthier and safer environment for all children and families. With your help we can make a difference.

Excerpts of a Letter from a juvenile offender to his former counselor

For some reason I have been feeling good about myself lately. I've been thinking about how it is out there and what's been happening.



I've spent a lot of time here in McLaughlin and not much of it was joyful. It's time now for me to spread my wings and survive on my own, to know what the real world is about. I've learned quite a bit of stuff here in this place and will never forget some of the stuff that has happened to me. I've learned how to step back and look at my problems from all directions, learned how to be a better parent to my kids, instead of how my parents treated me when I was small. I know what to expect out there now more than I did before. To look at myself in a positive way instead of not counting on myself to do things, I've learned to worry about myself instead of my parents or other relations in the family. I like myself better now than I did when I was taking drugs and getting into trouble. I watch the world go by while I'm in here and then call myself a dummy.

How I miss walking through the bike trails, smelling the flowers, hearing the birds sing, I miss it. Golden leaves remind me of being with a girl, walking through the trails, feeling the last of the sun's warmth upon my skin. Sometimes I wish I could be carried away on a cloud soaring over the earth looking on the land. For some reason I've been feeling good about myself lately.

Thank You

THE ALASKA JUVENILE
CRIME COMMISSION IS A
NON-PROFIT
AUTONOMOUS BODY OF
PRIVATE CITIZENS
POSSESSING A SPECIAL
INTEREST OR EXPERTISE
IN THE FIELD OF JUVENILE
CRIME AND CHILD
EXPLOITATION.

HISTORY

The need for a statewide
Juvenile Crime Commission
was identified by individuals
appointed by the Mayor to
serve on the Juvenile Crime
and Narcotics Committee of
the Anchorage Crime
Commission. The Anchorage
Crime Commission was
chartered to address only
those crime problems
impacting the Municipality.
The Alaska Juvenile Crime
Commission was formed on
March 19, 1983.

Board Members

Marroyce Hall,
Director/Chairman
Alaska Juvenile Crime
Commission
Board of Directors
Child Exploitation/Organized
Crime
Chairman, Anchorage Crime
Commission, Juvenile Crime
& Narcotics

Levi Gudde, Vice Chairman
Alaska Juvenile Crime
Commission
Legislative Committee
Private Investigator, Security
Management

Mark Ernst, Treasurer
Alaska Juvenile Crime
Commission
Anchorage Crime Commission
Juvenile Committee
Anchorage Crime Commission
Executive Board

Nancy Sullivan, Secretary
Alaska Juvenile Crime
Commission
Anchorage Crime Commission
Juvenile Committee
Study Guide Committee

**Denise Gnagy, Recording
Secretary**
Alaska Juvenile Crime
Commission
Research and Interview
Committee, Court Watch

Dave Duncan
Alaska Juvenile Crime
Commission
Print and Design Committee

**Alyce Hanley, Anchorage
School Board**
Alaska Juvenile Crime
Commission
Anchorage Crime Commission
Juvenile Committee
Informational Resource and
Study Guide Committee

Paul Edgar,
Alaska Juvenile Crime
Commission
Anchorage Crime Commission
Legislative Committee
Projects Identification

Margret Behrend,
Alaska Juvenile Crime
Commission
Anchorage Crime Commission
Juvenile Committee
Interview and Material
Research

Ermalee Hickel, Former First Lady of Alaska
Alaska Juvenile Crime Commission
Anchorage Crime Commission Juvenile Committee
Committee Consultant and Project Liaison

Joe Hoffbeck
Alaska Juvenile Crime Commission
Anchorage Crime Commission Juvenile Committee
Law Enforcement
Law Enforcement Expertise Liaison for the Committee

Barbara Gudde
Alaska Juvenile Crime Commission
Anchorage Crime Commission Study Guide Committee

Myrna Klingel
Alaska Juvenile Crime Commission
Anchorage Crime Commission Juvenile Committee
Research and Report and Study Guide Committee

Marlene Poulson
Alaska Juvenile Crime Commission
Study Guide Committee

Gail Dail,
Alaska Juvenile Crime Commission
Volunteer Coordinator
Anchorage Crime Commission Juvenile Committee

Cheri Kersbergen
Alaska Juvenile Crime Commission
Interview, Court Watch and Research Committee

Sue Dolman
Alaska Juvenile Crime Commission
Community Resource and Research

William Sharrow, Brig. Gen., Retired
Alaska Juvenile Crime Commission
Media and Research Committee
Special Assistant to Don Young

Special Consultants to the Alaska Juvenile Crime Commission:

John Rabin
Deputy Director, National Center for Missing and Exploited Children
Washington, D.C.
Head of the Louisville Exploited Child Unit
Expert for the Gacy trial, the Atlanta murder trial, and also the Rodriguez trials.

Dr. Vincent J. Fontana, National Consultant
Medical Director, New York Foundling Hospital
Professor of Clinical Pediatrics, New York University, College of Medicine
Author of "Somewhere a Child Is Crying"



President Ronald Reagan speaking at the opening of the National Center for Missing and Exploited Children. Commission Director, Marroyce Hall attended the ceremonies at the invitation of the president.



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

10/31/89
Date

LOCAL
Boundary
Commission

1 of 4

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

CRA 2-5-85 3:36 pm
2-19-85 3:45 pm
2-21-85 3:50 pm
2-28-85 3:37 pm

Alaska State Legislature

Senate

Committee on Community and Regional Affairs



Official Business

Senator Edna DeVries, Chairman
Members:
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V. Fischer

Pouch V
Juneau, Alaska 99811

Summary of Local Boundary Commission Report 2/5/85

The Commission approved the incorporation of Nikiski as a 1st Class city and the electorate rejected incorporation 570 to 29.

The Commission has yet to take final action on the incorporation of Nabesna as a 2nd class city.

The Commission approved the incorporation of Bettles Field as a 2nd class city and an election will be held in April.

Municipal boundary changes were made in Klawock, Hoonah, Soldotna, Homer, Palmer, North Pole, and Kodiak.

The City of Akiachak has petitioned for dissolution; hearing has been scheduled for March 2.

The two major actions taken by the Commission are the proposed annexations to Fairbanks and Togiak.

FAIRBANKS

The City of Fairbanks petitioned for the annexation of 117 acres. Of the 117 acres, 77 make up the Jones Subdivision with a population of approximately 96 residents; and 40 acres are under development by Wise Enterprises. The City of Fairbanks and privately-owned College Utilities Corporation have both petitioned the Alaska Public Utilities Commission for the right to provide utilities to the area of annexation. A decision has not been issued by the APUC. The Local Boundary Commission has approved the City of Fairbanks annexation request without modification. Wise Enterprises has filed an appeal regarding the decision in Superior Court. City of Fairbanks says that the Attorney General has made a motion to dismiss the appeal as frivolous. Wise Enterprises says they have no information to this effect. The Department of Community and Regional Affairs recommended approval of the Fairbanks petition.

TOGIK

The City of Togiak petitioned for the annexation of Togiak Bay, consisting of approximately 183 square miles. The area has no permanent residents but does have a large seasonal influx of population associated with commercial fishing. The City would generate revenues from the collection of raw fish taxes and proposes to provide public safety and other municipal services to the transient Togiak Bay residents. The Department of Community and Regional Affairs recommended that the Togiak petition for annexation be denied.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

LOCAL BOUNDARY COMMISSION

BILL SHEFFIELD, GOVERNOR

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

January 23, 1985

The Honorable Don Bennett
Senate President
Pouch V
Juneau, Alaska 99811

Dear Senator Bennett:

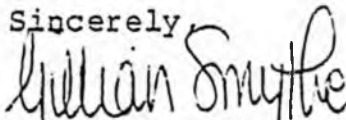
Attached is the report to the First Session of the Fourteenth Legislature on the activities of the Alaska Local Boundary Commission during 1984. The report contains recommendations for the annexation of territory to the Cities of Fairbanks and Togiak.

Pursuant to Article X, Section 12 of the Alaska Constitution and Section 29.68.010(a) of the Alaska Statutes, these recommended boundary changes will become effective forty-five days from this date or at the end of the Session, whichever is earlier, unless disapproved by a concurrent resolution of the Legislature. The members of the Local Boundary Commission anticipate meeting with the members of the Community and Regional Affairs Committees of the House and Senate to discuss this report during the first week in February.

March 11

A copy of the attached report has also been provided to the Speaker of the House.

Sincerely,



Gillian Smythe
Chair

ALASKA LOCAL BOUNDARY COMMISSION

REPORT TO THE FIRST SESSION OF THE
FOURTEENTH LEGISLATURE ON CALENDAR YEAR
1984 ACTIVITIES AND RECOMMENDATIONS FOR
CHANGES TO THE BOUNDARIES OF THE FOLLOWING
MUNICIPALITIES:

1. CITY OF FAIRBANKS (ELECTION DISTRICT 20)
2. CITY OF TOGIAK (ELECTION DISTRICT 26)

JANUARY 23, 1985

TABLE OF CONTENTS

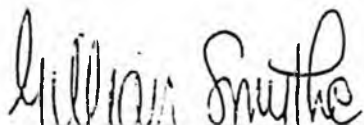
I.	Preface	Page 1
II.	Introduction	Page 2
II.	Summary of Activities of the Local Boundary Commission During 1984	Page 5
III.	Recommendation for the Annexation of Territory to the City of Fairbanks	Page 7
IV.	Recommendation for the Annexation of Territory to the City of Togiak	Page 11

PREFACE

This document provides a report of the activities of the Alaska Local Boundary Commission during 1984 and contains recommendations to the First Session of the Fourteenth Legislature for changes to the boundaries of the Cities of Fairbanks (Election District 20) and Togiak (Election District 26).

Pursuant to Article X, Section 12 of the Alaska Constitution and Section 29.68.010 of the Alaska Statutes, the boundary changes recommended in this report become effective forty-five days after they are presented to the Legislature (March 10, 1985) or at the end of the Session, whichever is earlier, unless they are expressly disapproved by a concurrent resolution of the Legislature.

The members of the Local Boundary Commission look forward to the opportunity to meet with the Community and Regional Affairs Committees of the House and Senate to discuss the recommendations contained in this report.



Gillian Smythe
Chairman
Alaska Local Boundary Commission

January 23, 1985
date

INTRODUCTION

The Local Boundary Commission was established pursuant to Article X, Section 12 of the Alaska Constitution and Section 44.47.565 of the Alaska Statutes. It is the primary role of the Commission to review and act upon proposals for the formation of municipal governments, changes to the jurisdictional boundaries of municipal governments and the dissolution of municipal governments.

The Local Boundary Commission consists of five members, one from each of the four Judicial Districts of the State, plus one member who serves at-large. The Commission members are appointed by the Governor and serve without compensation at the pleasure of the Governor.

The current members of the Commission are:

Gillian Smythe, Chairman, serving at-large, current term expires January 31, 1987;
Josephine Anderson, serving from the First Judicial District, current term expires January 31, 1986;
Bert Greist, serving from the Second Judicial District, current term expires January 31, 1989;
David G. Hanson, serving from the Third Judicial District, current term expires January 31, 1988;
Charles Bettisworth, serving from the Fourth Judicial District, current term expires January 31, 1990.

Technical and administrative support to the Local Boundary Commission is provided by the Department of Community and Regional Affairs, Division of Municipal and Regional Assistance.

The following provides a brief description of the procedures and different types of actions through which the Commission fulfills its responsibilities.

FORMATION OF MUNICIPAL GOVERNMENTS: City and borough governments are incorporated under the provisions of State laws and administrative regulations. The Local Boundary Commission reviews and acts on all petitions for municipal incorporations in accordance with AS 29.18.011-150, 19 AAC 10.010-030, 19 AAC 10.160-180 and 19 AAC 10.325-440. If the Commission approves a petition for the incorporation of a municipal government, it must also be approved by the voters of the territory proposed for incorporation before the incorporation is effected.

MUNICIPAL BOUNDARY CHANGES: Annexations and detachments may be effected by Local Boundary Commission action through either of the two following general procedures:

- A. Legislative Review - Section 29.68.010(a) of the Alaska Statutes and Sections 19 AAC 10.065-090 and 19 AAC 10.450-620 govern boundary changes related to the legislative review process. This process requires approval of a proposed boundary change by both the Local Boundary Commission and the State Legislature. This process is being used for the two proposed boundary changes recommended for approval by this Session of the Legislature, i.e. for the Cities of Fairbanks and Togiak.

The legislative review process is often initiated by municipalities in circumstances where there is a compelling public need for a boundary change, but where a majority of the residents in the territory involved in the proposed boundary change may not support it. However, such is not the case in the territory proposed for annexation by either the City of Fairbanks or the City of Togiak.

The Commission always conducts a public hearing in the municipality proposing the boundary change under this process. If, following the hearing, the Commission determines that the proposed boundary change meets the standards established by laws and regulations, the Commission presents its recommendation for the boundary change to the Legislature during the first 10 days of any regular session. The recommended change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution receiving concurrent approval from a majority of the members of each house.

- B. Local Action - Section 29.68.010(b) of the Alaska Statutes and Sections 19 AAC 10.065-090 and 19 AAC 10.630-730 govern boundary changes related to the local action process. Municipal boundary changes proposed under this process do not require a review by the Legislature. The following discussion examines the three different types of boundary changes which may be effected under the local action process:

- i. Under the provisions of Section 29.68.010(b)(1) of the Alaska Statutes, territory may be annexed or detached through election by the residents of the territory. To become effective the proposed boundary change must be approved by the Local Boundary Commission and by a majority of voters in the territory proposed for annexation or detachment.

2. Under the provisions of Section 29.68.010(b)(2) of the Alaska Statutes, property which is owned by a municipality and which adjoins its present boundaries may be annexed by ordinance without voter approval. The annexation becomes effective with the filing of the notice of the adoption of the ordinance with the Department of Community and Regional Affairs.
3. Under the provisions of Section 29.68.010(b)(3) of the Alaska Statutes, an area adjoining a municipality may be annexed or detached if all of the property owners and all of the registered voters who reside within the territory petition for the boundary change. The annexation or detachment becomes effective through the adoption of an ordinance by the governing body of the municipality and the consent of the Local Boundary Commission.

DISSOLUTION OF MUNICIPAL GOVERNMENTS: The dissolution of a municipal government may be carried out in accordance with Sections 29.68.500-580 of the Alaska Statutes and Sections 19 AAC 10.130-150 and 19 AAC 10.260-280 of the Alaska Administrative Code.

Proposed dissolutions must be approved by the Local Boundary Commission. If a proposed dissolution is approved by the Local Boundary Commission, it may not be effected unless approved by a vote of the residents of the municipality or by the Legislature, depending on the particular process used.

SUMMARY OF ACTIVITIES OF THE
LOCAL BOUNDARY COMMISSION DURING 1984

Listed below are the petitions concerning proposed municipal incorporations, boundary changes and dissolutions which were brought before the Commission in 1984. While the majority of the petitions have been acted upon, several are currently pending before the Commission, as noted below.

MUNICIPAL INCORPORATIONS:

NIKISKI (ELECTION DISTRICT 7) - The Commission approved the petition for the incorporation of Nikiski as a city of the first class. The territory proposed for incorporation encompassed approximately 30 square miles. An election on the question of incorporation was subsequently held, with the residents of the territory rejecting the proposal to incorporate by a margin of 570 to 29.

NABESNA (ELECTION DISTRICT 17) - The Commission is scheduled to conduct a hearing on January 26, 1985 to consider the incorporation of Nabesna as a city of the second class. The territory proposed for incorporation has a population of approximately 36 and encompasses approximately 258.7 square miles. The Commission has three alternatives in acting upon the petition; it may deny the petition, it may approve the petition as presented, or it may modify the boundaries of the territory proposed for incorporation and approve the petition.

BETTLES FIELD (ELECTION DISTRICT 24) - The Commission approved the petition for the incorporation of Bettles Field as a city of the second class. The territory proposed for incorporation was reduced by the Commission from approximately 36 square miles to approximately 1.59 square miles. An election on this matter to determine whether the community residents will approve the proposal to incorporate is anticipated to be conducted by the Lieutenant Governor's Office in April of 1985. If incorporated, the name of the government would be the City of Bettles.

MUNICIPAL BOUNDARY CHANGES - LEGISLATIVE REVIEW:

CITY OF FAIRBANKS (ELECTION DISTRICT 20) - The Commission approved the petition for the annexation of approximately 117 acres bounded by Peger Road, Davis Road and Hill Road. Details concerning this proposed annexation are contained in the recommendation for the annexation of this territory found on page 7 of this report.

CITY OF TOGIAC (ELECTION DISTRICT 26) - The Commission approved the petition for the annexation of Togiak Bay encompassing approximately 183 square miles. Details concerning this proposed annexation are contained in the recommendation for the annexation of this territory found on page 11 of this report.

CITY OF UNALASKA (ELECTION DISTRICT 26) - The City of Unalaska petitioned for the annexation of an approximately 1,251 square mile area. However, the City has asked that its petition be withdrawn from possible consideration by the First Session of the Fourteenth Legislature.

MUNICIPAL BOUNDARY CHANGES - LOCAL ACTION:

CITY OF KLAWOCK (ELECTION DISTRICT 2) - Approximately 6.52 acres were annexed.

CITY OF HOONAH (ELECTION DISTRICT 2) - Approximately 1,130 acres were annexed. *14.30 selection*

CITY OF SOLDOTNA (ELECTION DISTRICT 5) - Approximately 40.79 acres were annexed.

CITY OF HOMER (ELECTION DISTRICT 5) - Approximately 10.67 square miles were annexed.

CITY OF PALMER (ELECTION DISTRICT 16) - Ten separate actions were approved resulting in the annexation of parcels amounting to 2.01 acres, 0.39 acres, 14.20 acres, 3.04 acres, 9.54 acres, 5.06 acres, 222 acres, 7.96 acres, 23.37 acres and 0.79 acres.

CITY OF NORTH POLE (ELECTION DISTRICT 18) - Three separate actions for annexation were approved resulting in the annexation of parcels amounting to 137 acres, 116.07 acres and 190 acres.

CITY OF KODIAK (ELECTION DISTRICT 27) - Two separate actions for annexation were approved resulting in the annexation of parcels amounting to 10.92 acres and 10.5 acres.

MUNICIPAL DISSOLUTIONS:

CITY OF AKIACHAK (ELECTION DISTRICT 25) - Residents of Akiachak have petitioned for the dissolution of the City of Akiachak which was incorporated in 1974. The Local Boundary Commission has scheduled a hearing on the petition to be conducted in Akiachak on March 2, 1985.

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

RECOMMENDATION NUMBER ONE TO THE
FIRST SESSION OF THE FOURTEENTH LEGISLATURE

RECOMMENDATION FOR THE ANNEXATION OF TERRITORY
TO THE CITY OF FAIRBANKS

SUMMARY OF PROPOSED ACTION

The City of Fairbanks petitioned for the annexation of approximately 117 acres of land contiguous to the City and bounded by Peger, Davis and Hill Roads. The petition for annexation was authorized by Fairbanks City Ordinance Number 4351 and was submitted pursuant to Section 29.68.010(a) of the Alaska Statutes (i.e. the process which requires concurrence from the State Legislature). The Local Boundary Commission held its hearing on the petition in Fairbanks on November 30, 1984.

Approximately 77 of the 117 acres proposed for annexation were subdivided for residential/business purposes. The subdivision, known as the Jones Subdivision, contained a population of 96 individuals, approximately 35 dwellings and a small number of businesses. The balance of the territory, comprised of one 40 acre parcel, was under development. A 142 unit adult apartment complex was under construction on the 40 acre parcel; none of the apartments were yet occupied. An additional 408 apartments were planned for development, which would bring the total number of apartments within the complex to 550.

Both the City of Fairbanks and the privately-owned College Utilities Corporation had petitioned the Alaska Public Utilities Commission for the authority to provide water and sewer utilities service to the territory proposed for annexation. The decision rendered by the Local Boundary Commission on this annexation is not to be construed as being a judgment on the respective abilities of the competing utilities to provide service to the area being annexed to the City of Fairbanks.

Mr. Dennis Wise, the developer of the apartment complex, opposed the annexation of his 40 acre parcel principally on the grounds that he would prefer the College Utilities Corporation to provide water and sewer utilities services and because he opposed regulation of the construction of his project by the City Building Department.

The area proposed for annexation is within the Fairbanks North Star Borough, which has expressed no objections to the proposed annexation and has indicated to the City of Fairbanks that it

has no assets or liabilities within the area which would be acquired or incurred by the City of Fairbanks should the annexation be effected.

FINDINGS OF FACT

Following its hearing on this matter, the Local Boundary Commission made the following findings of fact:

1. The area proposed for annexation is within the Fairbanks North Star Borough which expressed no objections to the proposed annexation.
2. The territory proposed for annexation includes two distinct areas; the Jones Subdivision and Mr. Wise's development.
3. Only the Jones Subdivision is presently developed, with a population of 96 residents, according to the Borough.
4. There is no evidence of substantial opposition to the proposed annexation from the residents of the Jones Subdivision. No polling of residents' preferences regarding annexation was undertaken by the City. However, testimony by a resident of the Jones Subdivision indicated that nearly every household had been contacted concerning the proposed annexation and that only three residents were opposed to the proposed annexation. Notice of the Commission's hearing was extensive, in that it was published three times in the Fairbanks Daily News-Miner. Further, a resident of the subdivision testified that she had personally delivered copies of a notice of the meeting to each household in the subdivision.
5. The Jones Subdivision area is in need of the following City services which it does not presently receive: road construction and maintenance and drainage control.
6. The Jones Subdivision is urban in character: it has a population density of 798 residents per square mile, which is greater than the City as a whole. Additionally, it contains significant residential and commercial development and the property is subdivided.
7. The 40 acre parcel of land owned by Mr. Wise is also urban in character. The property is being developed for residential purposes and the anticipated population density of this parcel of land will be much greater than that of the City as a whole.
8. The current and anticipated future development of the 40

acre parcel of land owned by Mr. Wise will result in the generation of demand for municipal services which can be most efficiently provided by the City of Fairbanks. The anticipated demand for municipal services is particularly great with respect to road maintenance and drainage.

9. The annexation of Mr. Wise's development would enable the City of Fairbanks to exercise a desirable degree of control over development of that property. In particular, the Commission finds that the health and safety of the future occupants of the development would be better ensured if the development were subject to the City's building codes.
10. The question of the health, welfare and safety of City residents being endangered by conditions existing or developing within the property owned by Mr. Wise was raised, particularly with respect to the apparent significant increase in vehicular traffic which will result from the development, regardless of whether future residents of the Wise property exit on 19th or Davis Road. However, the Commission made no determination as to what extent such traffic might endanger the health, safety or welfare of City residents.
11. The City of Fairbanks has made a good faith attempt to ensure that the voting rights of people in the territory proposed for annexation will not be adversely affected by the annexation. The City's actions in this regard include evaluating the ethnic population composition of the area proposed to be annexed in relation to overall City and Borough patterns; and contacting representatives of various minority groups. No adverse comments were offered regarding the possible infringement on voting rights at the Commission's hearing.

STATEMENT OF DECISION

Based on the aforementioned facts, all of the members of the Commission who were present at the hearing and subsequent decisional session have determined that both the Jones Subdivision and the Wise property meet many of the standards for the annexation of contiguous territory to a city. Therefore, the September 12, 1984 petition of the City of Fairbanks for the annexation of territory was approved without modification by the Local Boundary Commission.

RECOMMENDATION

On this basis, the Local Boundary Commission hereby recommends to the First Session of the Fourteenth Legislature that the territory described below be annexed to the City of Fairbanks:

The SW 1/4 of the NE 1/4 of Section 17, T1S, R1W, F.M. and the E.M. Jones Homestead Subdivision recorded in the Fairbanks District Recorders Office as Instrument Number 156.156 on May 25, 1955, the exceptions to these contiguous areas are as follows: those portions of Peger Road and Davis Road rights-of-way that lie within these areas and all of Block 3 of the same E. M. Jones Homestead Subdivision.

NOTE

On January 11, 1985, Dennis Wise and Wise Enterprises, Inc., filed an appeal of the decision of the Local Boundary Commission regarding this matter in Superior Court.

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

RECOMMENDATION NUMBER TWO TO THE
FIRST SESSION OF THE FOURTEENTH LEGISLATURE

RECOMMENDATION FOR THE ANNEXATION OF TERRITORY
TO THE CITY OF TOGIAC

SUMMARY OF PROPOSED ACTION

The City of Togiak petitioned for the annexation of Togiak Bay, consisting of approximately 183 square miles of territory contiguous to the City. The annexation was submitted pursuant to Section 29.68.010(a) of the Alaska Statutes (i.e. the process which requires concurrence from the State Legislature).

The area proposed for annexation consisted of Togiak Bay up to the mean high tideline and bounded on the south by a straight line between the southernmost points of Rocky Point and Tongue Point. Togiak Bay is an area of intense commercial fishing activity during the spring and summer months. The only permanent structure within the territory proposed for annexation is a portion of a cannery operated by Togiak Fisheries, Incorporated. The territory proposed for annexation has no permanent residents, with the possible exception of a watchman employed by Togiak Fisheries, Incorporated. However, the area experiences a large seasonal influx of population associated with commercial fishing, fish processing and related activities during the spring and summer months.

On January 12, 1985, the Commission conducted a hearing on the petition for the annexation in Togiak at the Togiak High School Gymnasium. Both written and oral testimony received by the Commission served to accentuate the frequency and severity of public safety problems attributable to heavy traffic in liquor in Togiak Bay during the fishing seasons. Testimony of local officials, primary health care providers and private individuals emphasized the futility of efforts to prevent the sale and importation of alcohol within the present municipal boundaries of Togiak because of the ready availability of alcoholic beverages from vessels in Togiak Bay during the commercial fishing seasons.

FINDINGS OF FACT

Following its hearing on this matter, the Local Boundary Commission made the following findings of fact:

- I. THE TERRITORY IS IN NEED OF MUNICIPAL SERVICES WHICH THE CITY CAN PROVIDE MORE EFFICIENTLY THAN ANOTHER MUNICIPALITY.
 - A. Testimony by the City of Togiak and local residents demonstrated that police protection in Togiak Bay is needed to effectively enforce the local ban on the importation and sale of alcohol, especially during the herring and salmon commercial fishing seasons, and that these services are not being effectively provided by the State of Alaska. A neighboring community, Twin Hills, is unincorporated and is presently provided with police protection services by officers from Togiak. Thus, the City of Togiak could provide the needed police protection services more efficiently than any other municipality.

- II. THE HEALTH, WELFARE OR SAFETY OF CITY RESIDENTS IS ENDANGERED BY CONDITIONS EXISTING OR DEVELOPING IN THE TERRITORY AND ANNEXATION WILL ENABLE THE CITY TO REMOVE OR RELIEVE THOSE CONDITIONS.
 - A. Testimony concerning alcohol-related accidents and public health problems which was given by local law enforcement officials, primary health care providers and private citizens gave strong support to the petitioner's assertion that the health and welfare of city residents is endangered by activities in Togiak Bay, especially during the commercial herring and salmon fishing seasons. Alcohol was cited as a factor in several drownings in Togiak Bay during the past 3 or 4 years.
 - B. Additional revenues generated by raw fish taxes which the City of Togiak could expect to receive as a result of annexation of Togiak Bay would provide financial resources sufficient to purchase needed equipment such as a boat and to hire trained personnel to enforce the City's prohibition of the sale and importation of alcohol in the community.

- III. RESIDENTS OR PROPERTY OWNERS WITHIN THE TERRITORY RECEIVE OR MAY REASONABLY BE EXPECTED TO RECEIVE, DIRECTLY OR INDIRECTLY, THE BENEFIT OF CITY GOVERNMENT WITHOUT COMMENSURATE PROPERTY TAX CONTRIBUTIONS, WHETHER CITY SERVICES ARE RENDERED OR RECEIVED INSIDE OR OUTSIDE THE CITY.
 - A. Primary health care, public safety and other municipal services are available to transient Togiak Bay residents. These people presently do not contribute directly to the local support of such services.

STATEMENT OF DECISION

Based on the aforementioned facts, all of the members of the Commission who were present at the hearing and subsequent decisional session have determined that the petition submitted by the City of Togiak for the annexation of Togiak Bay meets several of the standards for the annexation of contiguous territory to a city. Therefore, the September 18, 1984 petition of the City of Togiak for the annexation of territory as described in Togiak City Resolution Number 84-02 is approved without modification by the Local Boundary Commission.

This annexation is deemed necessary because the recommendation for the creation of a service area for Togiak Bay pursuant to AS 29.03.020, submitted by the Commission to the First Session of the Thirteenth Legislature, was not enacted.

The possibility of Twin Hills' future incorporation was discussed by the Commission. Should such an eventuality occur, appropriate boundary adjustments in Togiak Bay should be made at that time.

The provisions of the Federal Voting Rights Act of 1965, as amended, have been considered. They do not appear to have been violated.

RECOMMENDATION

On this basis, the Local Boundary Commission hereby recommends to the First Session of the Fourteenth Legislature that the territory described below be annexed to the City of Togiak:

Starting at the mean high tideline of the southern most tip of Tongue Point on the west side of Togiak Bay; thence moving in a northeasterly direction along a straight line to the mean high tideline of the southern most tip of Rocky Point on the east side of Togiak Bay; thence meandering in a northerly direction along the mean high tideline of the east side of Togiak Bay to the intersection with the east bank of the mouth of the Togiak River; thence meandering in a northerly direction along the east bank of the Togiak River to the intersection with the northern boundary of the protracted Section 6, T13S, R66W, Seward Meridian (S.M.); thence west along the section line to the intersection with the west bank of the Togiak River; thence meandering in a southerly direction along the west bank of the Togiak River to the

intersection with the mean high tideline of the western side of Togiak Bay; thence meandering in a southerly direction along the mean high tideline of the west side of Togiak Bay to the intersection with the southern most tip of Tongue Point, the true point of beginning, containing approximately 183 square miles.

Cultures debate necessity of oil drilling

Continued from page A-1

stop our leasing program."

Before the sale, Interior Secretary Donald P. Hodel had argued that Bristol Bay leasing was "in the national interest" because a major new oil find would reduce America's need to import one-third of its oil, some of it from politically unstable Middle Eastern countries, and would help reduce a trade deficit estimated at \$140 billion last year.

By industry estimates, the field would generate between 750 and 2,100 jobs.

But with a worldwide glut of oil now pushing prices down to about \$20 a barrel, from a peak of \$40 on the spot market five years ago, the importance of the Bristol Bay sale was questioned not only by the Eskimos and a coalition of environmental groups, but was also opposed by commercial salmon fishing interests, an influential \$1 billion Alaskan industry employing 10,000 during the peak salmon surge and by the usually pro-oil state of Alaska, which derives almost 90 percent of its revenues from oil.

"When oil prices are so low, it makes good sense to stop the sale," said Sarah Chasis, a lawyer for the National Resources Defense Council. She called the bay "the crown jewel" of the nation's marine areas.

The Interior Department estimates the chances of finding oil in Bristol Bay at one in five.

If oil is found and the field goes into production, an oil spill is almost a certainty. The environmental impact statement compiled for the sale by Interior said a spill of "1,000 barrels or greater is anticipated" during an expected 26 years of production.

However, because wells would be drilled 11 to 114 miles offshore, the chances are "remote" that even a spill of 100,000 barrels would foul sensitive eelgrass marsh areas where seabirds feed and streams where salmon spawn, according to the study.

Compared with the enormous Prudhoe Bay field on Alaska's North Slope, which contained 10 billion barrels of recoverable oil when discovered in 1968, the potential of the Bristol Bay field, in the southwest, is small, an estimated 279 million barrels and 2.1 trillion cubic feet of natural gas.

Well aware that the Bristol Bay sale was "contentious," the Interior Department trimmed back the Bristol Bay lease area from an original 32 million acres by 83 percent, avoiding principal fishing areas.

While the matter is far from being settled, the judge's action

marked the third time in the last year that federal courts have recognized that the Eskimos' right to preserve their lifestyle might outweigh a 1978 federal law that requires the "expedited exploration and development" of the outer continental shelf's oil resources.

For the Eskimos of Togiak, the fear of an oil spill is more elemental. For centuries, in driftwood and skin-clad kayaks, they have fished and hunted in the bay. Today, some younger Eskimos in the village are apt to pilot modern 25-foot aluminum boats with 300 horsepower engines, like their white counterparts in Dillingham.

But the old rhythms, rituals and reasons remain. In April, the herring, to be packed in bay, is eating later, then the what people can eat," said Albert

But for the Eskimos, fishing for salmon, hunting for walrus or moose, gathering kelp and berries, is more than merely survival. It has a strong spiritual element. It binds them to land and sea and to the experiences of their ancestors, they say.

"When our maker made the earth and the animals, he made what people can eat," said Albert

Bayilla Sr., another tribal elder. "You eat from the environment what the environment feeds you."

"How come the oil companies and the federal government don't ask me first and include me in their planning?" asked Coopchiak. "We would have less conflict. We can evaluate the situation. We can say yes or no. We do not say 'no' all the time."

Oil companies clash with natives over leases

by Mike Leary
Knight-Ridder Newspapers

TOGIAK — The slushy, slate-gray waters of Bristol Bay slapped the shoreline of this small Eskimo fishing village as tribal elder Teddy Coopchiak, speaking in the curt cadence of the Yupik language, told of the bay's bounty.

"Our grocery store," he called the bay, the richest red salmon grounds in the world, where 100 million adult fish swim during the summer spawning season. It is home, too, for crab, herring, whale and walrus.

"We eat the fish, the sea mammals, the clams, the eggs of seabirds. We have done this from time immemorial. It is our life," Coopchiak said.

But there also may be a treasure of oil and natural gas under these shallow and stormy waters, where the seas often rise 40 feet and the winds howl at 80 mph. Major petroleum companies, having spent billions of dollars drilling dry holes in other offshore regions of Alaska, now view Bristol Bay as a prime prospect, even though it is estimated to contain a relatively modest 279 million barrels.

"What if there is an oil spill?" worried Coopchiak, a stocky man whose face is deeply furrowed from 65 years of exposure to sea and sun. "Everything will die. What will happen to us and our way of life?"

"We will weaken, we will starve," said another tribal elder, Joseph Nick, 62.

Last week, U.S. District Judge James von

der Heydt, sitting in Anchorage, weighed the competing interests of these traditional Togiak fishermen, who used the 20th-century tool of a lawsuit to oppose oil development, and the oil men. Then he temporarily blocked the U.S. Interior Department's planned sale of 990 oil leases to 5.6 million offshore acres in Bristol Bay. The bids were to be read Jan. 15 in the Anchorage Convention Center, but they remained locked in a safe, pending an appeal.

"We want to overturn this as quickly as possible," said Alan D. Powers, regional manager of the Interior Department's Minerals Management Service, which has jurisdiction over offshore waters. "This will not

See Cultures, page A-10

Times
1/26/86

Alaska Constitution

Article 10

law or charter. A new established if, consistent article, the new service existing service area, by annexation to a city. The levying of taxes, within a service area to

ture shall provide for the it deems necessary or boroughs, allowing for on and responsibility. Its function in an unorganized assembly may exercise in

ll be incorporated in a and shall be a part of are located. Cities shall ons conferred by law or ed, consolidated, clas- sified in the manner pro-

ing body of a city shall

ified voters of any bor- ity of the first class may home rule charter in a In the absence of such dy of a borough or city le the procedure for the or rejection of the char- or amendments of char- the qualified voters of hall become effective if those who vote on the

Extended
Home Rule
Home Rule
Powers

Boundaries

Agreements:
Transfer of
Powers

Local
Government
Agency

Special
Service
Districts

SECTION 10. The legislature may extend home rule to other boroughs and cities.

SECTION 11. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

SECTION 12. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

SECTION 13. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

SECTION 14. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities; collect and publish local government information, and perform other duties prescribed by law

SECTION 15. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

(f) A second class borough may establish a service area by ordinance which may include only vacant, unappropriated and unreserved land owned by the municipality. A second class borough may establish a service area, with the concurrence of the commissioner of natural resources, which may include only vacant, unappropriated and unreserved land owned by the state and classified for disposal to individuals. A second class borough may provide those services in a service area established under this subsection necessary to develop state or municipal land as required by the planning and platting ordinances of the borough. Exercise of the powers authorized by this subsection shall be by ordinance. (§ 2 ch 118 SLA 1972; am §§ 9, 10 ch 85 SLA 1979)

NOTES TO DECISIONS

Effect of 1979 amendments. — The 1979 amendments to the service area provisions found in subsections (a) and (f) of this section do not violate constitutional

rights of borough residents. Wolfgang Falke v. Fairbanks North Star Borough, Sup. Ct. Op. No. 2530 (File Nos. 5761, 5781), 648 P.2d 597 (1982).

Collateral references. — Standing of municipal corporation or other govern-

mental body to attack zoning of land lying outside its borders, 49 ALR3d 1126.

Chapter 68. Alteration of Boundaries.

Article

- 1. Annexation and Exclusion (§§ 29.68.010 — 29.68.020)
- 2. Merger and Consolidation (§§ 29.68.030 — 29.68.110)
- 3. Unification of Local Governments (§§ 29.68.240 — 29.68.440)
- 4. Dissolution (§§ 29.68.500 — 29.68.580)

Article 1. Annexation and Exclusion.

Section

- 10. Local boundary commission
- 20. Annexation of military reservations

Sec. 29.68.010. Local boundary commission. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.47.567, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local

action.
(1) a
must b
residing
(2) p
municip
and
(3) p
annexe
voters
(c) A
a bound
in time

Cross
sions re
sion pro

Defini
function
ipalities
the bound
cise of
Town of
(9th Cir
43 S. Ct
Annexat
Alaska S
1956), de
The loc
Const.,
mented
§ 15.010
Valdez, S
1996), 52

Expans
is matter
who resic
be annex
that annex
consent.
municipa
concerned
that of the
Util. Dist
Ct. Op. N
540, app
371 U.S.
(1962), de

Annex
changed
dents of
annexatio

action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time. (§ 2 ch 118 SLA 1972)

Cross references. — For further provisions relating to local boundary commission procedures, see AS 44.47.565 — 44.47.583. For requirements of a hearing on local boundary changes, see AS 44.47.581.

NOTES TO DECISIONS

Defining boundaries is a legislative function. — The creation of municipalities, and the defining of the extent of the boundaries thereof, involve the exercise of legislative, not judicial, power. *Town of Fairbanks v. Barrack*, 282 F. 417 (9th Cir. 1922), cert. denied, 261 U.S. 615, 43 S. Ct. 361, 67 L. Ed. 828 (1923); *In re Annexation to City of Anchorage*, 16 Alaska 519, 146 F. Supp. 98 (D. Alaska 1956), decided under former, similar law.

The local action provision of Alaska Const., art. X, § 12 has been implemented by this section and by 19 AAC § 15.010 et seq. *Port Valdez Co. v. City of Valdez*, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

Expansion of municipal boundaries is matter of statewide concern. — Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

Annexation procedure may be changed. — The state may permit residents of local communities to determine annexation questions at an election. But

when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

One proceeding for annexing several tracts. — See *In re Town of Sitka*, 11 Alaska 201 (1946), decided under former, similar law.

Areas in public utility district may be annexed. — The fact that the areas are embraced within a public utility district constitutes no bar to annexation. *In re Annexation to City of Anchorage*, 15 Alaska 504, 129 F. Supp. 551 (D. Alaska 1955). See *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

Consent of voters in district required if annexation proceeds under this article. — The provision of AS 42.35.370 providing for dissolution of a utility district with the consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city"

NOTES TO DECISIONS

When constitutional provision effective. — The method for making boundary changes, contemplated by art. X, § 12, of the Alaska Constitution, was operative upon the enactment of AS 44.19.260 [now AS 44.47.567] and this section. Fairview Pub. Util. Dist. No. 1 v. Anchorage, Sup.

Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962).

Cited in Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

Sec. 44.47.567. Powers and duties. (a) The local boundary commission shall

- (1) make studies of local government boundary problems;
- (2) develop proposed standards and procedures for changing local boundary lines;
- (3) consider a local government boundary change requested of it by the legislature, the commissioner of community and regional affairs, or a political subdivision of the state; and
- (4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.

(b) The local boundary commission may

- (1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services; and

(2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years. (§ 7 ch 64 SLA 1959; § 2 ch 45 SLA 1960; am §§ 1, 2 ch 55 SLA 1964; am §§ 1, 2 ch 161 SLA 1966; am § 6 ch 200 SLA 1972)

Revisor's notes. — Formerly AS 44.19.260. Renumbered in 1980.

Cross references. — For further statement of powers of local boundary commission, see Alaska Constitution, art. X, § 12.

Opinions of attorney general. — When grouped together, the powers and duties of the local boundary commission

are as follows: (1) To consider any local government boundary change (§ 12, art. X, Alaska Constitution); (2) to present proposed changes to the legislature (§ 12, art. X, Alaska Constitution; § 7, ch. 64, SLA 1959); (3) (subject to law) to establish procedures whereby boundaries may be adjusted by local action (§ 12, art. X, Alaska Constitution); (4) to make studies

of local (§ 7, ch proposed changin, SLA 19 proposed

By thi provide make s boundar standard boundari changes r visions. hearings proposed change b legislature permits Smelting, Boundary (File No.

When c tive. — S 44.47.565.

Alaska lished tw boundari direct actio sion subjec (2) by esta procedures aries by le City of Val No. 1996),

Step an assimilati immediate tion prov assimilatic incorporate ation woul Port Valde. Op. No. 11 1147 (1974

How ste Ordinarily menced b specifically although could re qui the step me Valdez, Su 1996), 522

Section art. X, § mented Al

44:47.567

1). 368 P.2d
rt. der'ied,
Ed. 2d 49

ocal Bound-
39 (File No.

ary com-

ing local

l of it by
ffairs, or

services
- limited
ous area
tax mill
of these
nishing

ernment
ernment
porated
of ser-

regular
ig grad-
is areas
a to be
ation of
of the
7 ch 64
m §§ 1,

ny local
12, art.
present
re (§ 12,
ch. 64,
establish
may be
art. X,
e studies

§ 44.47.567

STATE GOVERNMENT

§ 44.47.567

of local government boundary problems (§ 7, ch. 64, SLA 1959); (5) to develop proposed standards and procedures for changing local boundary lines (§ 7, ch. 64, SLA 1959); (6) to hold hearings on proposed boundary changes (§ 7, ch. 64,

SLA 1959). 1959 Op. Att'y Gen., No. 30.
The local boundary commission has the power and authority to recommend borough boundaries to the legislature. 1959 Op. Att'y Gen., No. 30.

NOTES TO DECISIONS

By this section and AS 44.47.583 it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves; legislative silence permits the change. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).

When constitutional provision effective. — See same catchline in note to AS 44.47.565.

Alaska Const., art. X, § 12 established two methods by which local boundaries might be changed: (1) by direct action of the local boundary commission subject to legislative disapproval, and (2) by establishment by the commission of procedures for the adjustment of boundaries by local action. Port Valdez Co. v. City of Valdez, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

Step annexation allows for gradual assimilation. — As an alternative to immediate annexation, the step-annexation provision allows for gradual assimilation of contiguous areas into incorporated cities where direct annexation would be premature or impractical. Port Valdez Co. v. City of Valdez, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

How step annexation commenced. — Ordinarily, a step annexation will be commenced by a municipality's petition specifically requesting that alternative, although presumably the commission could require the municipality to annex by the step method. Port Valdez Co. v. City of Valdez, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

Section implements Alaska Const., art. X, § 12. — The legislature implemented Alaska Const., art. X, § 12 by

enacting this section. Port Valdez Co. v. City of Valdez, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

The intention of Alaska Const., art. X, § 12 and this section was to provide an objective administrative body to make state-level decisions regarding local boundary changes, thus avoiding the chance that a small, self-interested group could stand in the way of boundary changes which were in the public interest. Port Valdez Co. v. City of Valdez, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

The duties imposed upon the commission in subsection (a) are mandatory. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).

And those in subsection (b) are discretionary. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).

The development of standards is a precondition to the commission's exercise of its discretion under subsection (b) of this section. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).

The exercise of the commission's discretion under subsection (b) of this section is conditioned upon the development of standards and procedures for changing local boundary lines under subsection (a)(2) of this section. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).

Under subsection (a) of this section the legislature requires the commission to develop standards in order to recommend boundary changes. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, Sup. Ct. Op. No. 727 (File No. 1461), 489 P.2d 140 (1971).

Since mandatory terms were used, the legislature clearly intended the local boundary commission to adopt regulations

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 28, 1985

SUBJECT: Annexation of Territory to Togiak

TO: Senator Edna DeVries
Chair, Community and Regional Affairs

FROM: Tamara Brandt Cook ^{TBC}
Deputy Director
Division of Legal Services

You have asked several questions concerning the proposed annexation of territory to Togiak. First, you want to know where the state boundary is in the area proposed for annexation. I do not have the expertise needed to make such a determination. That is very technical matter, and, I understand, there are several places where the boundary is in dispute. A map of the area to be annexed should probably be submitted to the appropriate federal agency with a request for a determination of whether it includes territory outside the state jurisdictional boundary.

In general, the state's jurisdictional boundary extends three miles past its coastline as provided under the Submerged Lands Act (See 43 U.S.C. 1312; Pollards Lessee v. Hagan, 44 U.S. 212, 223 (1845); U.S. v. California, 332 U.S. 19 (1947)). However, many factors influence the boundary determination at a particular point. It is my understanding that where there are islands within the three-mile limit, the state's boundary may include waters three miles past the islands and this can result in a jurisdiction that exceeds three miles from the state's coastline. Inland waters are also included within the jurisdiction of a state, but there is considerable confusion over how it is determined whether a body of water qualifies as "inland". Bays less than 25 miles wide seem generally to be classed as inland waters. The state also has jurisdiction over "historic bays" -- those over which the state has exercised continuous authority in the past and the authority has been accepted by other jurisdictions. (See U.S. v. Alaska, 422 U.S. (1975) holding that the lower Cook Inlet is not a "historic bay".)

Senator DeVries
Page 2
February 28, 1985

You have also asked what jurisdiction has authority over the waters beyond the state's boundaries. It should be noted that not even the federal government claims outright ownership of the waters past the three-mile limit, although it exerts control over waters at the 200-mile limit as an economic zone. The federal government, however, does have the paramount rights in the area beyond the three-mile limit. Nevertheless, the principle of federal exclusivity does not preclude the state from regulating in situations that do not conflict with federal regulation. For example, the state may regulate certain aspects of extraterritorial fishing. (State v. Sieminski, 556 P.2d 929 (Alaska 1976); State v. Bundrant, 546 P.2d 530, rehearing denied, 547 P.2d 838 (Alaska 1976); hearing denied, 50 Led.2d 66) So, it cannot be said that the state has no jurisdiction over waters outside its boundaries, only that federal jurisdiction is supreme.

Lastly, you have asked whether an annexation that includes part of an improvement presents any legal problems. Although it might create some minor tax assessment difficulties, as a legal matter I can think of nothing that precludes the annexation of a portion of improved property.

Regardless of whether the proposed annexation of territory to Togiak becomes is approved, the boundaries of a city may not include territory that is not within the boundaries of the state. If the legislature does not disapprove the annexation by resolution, it will be valid as to territory described in the annexation that is within the state's boundaries.

TBC:ojb
J12/034



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box 1668
Juneau, Alaska 99802
Telephone (907) 586-7414

February 26, 1985

Honorable Edna DeVries
Alaska State Senate
Attention: Ms. Trudie Alford
Pouch V
Juneau, Alaska 99811

Dear Senator DeVries:

Thank you for requesting, through Ms. Alford of your staff, my comments on the proposed annexation by the City of Togiak of Togiak Bay. I represent the National Oceanic and Atmospheric Administration (NOAA) of the United States Department of Commerce. NOAA includes such agencies as the National Marine Fisheries Service and the National Ocean Service which have significant interest in governmental jurisdiction over marine areas.

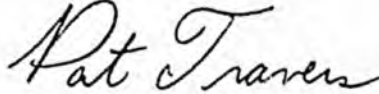
As Ms. Susan Cox of the Department of Law advised you in her letter of February 25, 1985, there is a difference of opinion between the State of Alaska and the United States as to the location of the seaward boundary of the State, that is, the three-mile limit. As Ms. Cox suggests, the State would probably take the position that all of Togiak Bay is within the State's seaward boundary, and that there is thus no impediment to the City's annexation of the Bay due to lack of jurisdiction. The Federal Government, on the other hand, has clearly taken the position that a large portion of the Bay is beyond the three-mile limit, and is thus outside the boundaries of the State. This position was developed by the Federal Inter-agency Baseline Committee, under the auspices of the U.S. Department of State, and is reflected in NOAA Nautical Chart No. 8802, which you and Ms. Cox have examined. Under this Federal view of the situation, the City would probably not be able to annex all of the proposed area, but only that portion of it that lies within the three-mile limit as illustrated on Chart No. 8802.

As Ms. Cox has noted, this difference of opinion between the State and Federal governments is now the subject of litigation before the United States Supreme Court. Perhaps one way in which the Legislature could take positive action on the proposed annexation while not raising this issue would be to approve the annexation of the proposed area of the Bay to the extent this area lies within the boundaries of the State. In that way, the extent of the annexation could be settled whenever the more general disagreement over the extent of the State's seaward boundaries is resolved, without the need for additional action by the Legislature or the Local Boundary Commission.



I appreciate very much the opportunity to participate in your deliberations on this matter, and hope that you will let me know if I can be of any further help as you formulate the Legislature's decision.

Respectfully yours,

A handwritten signature in cursive script that reads "Pat Travers". The signature is written in dark ink and is positioned above the typed name.

Patrick J. Travers
Alaska Regional Counsel

US Department
of Transportation

United States
Coast Guard



Commander
Seventeenth Coast Guard District

P.O. Box 3-5000
Juneau, AK 99802
Staff Symbol: (d1)
Phone: (907)
586-7397

5800

FEB 28 1985

Senator Edna DeVries
Alaska State Senate
Committee on Community and Regional Affairs
Pouch V
Juneau, Alaska 99811
Attn: Ms. Trudie Alford

Re: Togiak Bay Annexation

Dear Senator DeVries:

I am writing at your request concerning the Coast Guard's view of the Togiak Bay annexation.

Although I am not familiar with the case referred to by the Attorney General, I am familiar with the methods of drawing baselines as they are presently drawn under international law.

There are a few preliminary points that I would like to set out.

1. The placement of baselines, from which the outer limits of the territorial sea are measured, is a matter of international law and is presently governed by Articles 3 through 11 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. 1505T, 1606, TIAS 5639, 516 UNTS 205.
2. Under international law, the federal position on the location of the baseline is, by virtue of the supremacy clause of the U. S. Constitution, superior to any state or local claim. The federal position is the only position recognized as legitimate by the international community and agencies of the federal government including the Coast Guard.
3. The U. S. government has established and published the lines delineating the territorial sea and contiguous zone on the chart entitled "Alaska Peninsula and Aleutian Islands to Seguam Pass," NOAA Chart 16011, 30th Ed., April 1983, which I understand was presented to the Committee on 21 February 1985. The lines shown on that chart represent a federal interdepartmental committee's interpretation of the applicable legal principles as applied to that geographical area. The lines represent the official U. S. government position on the limits of the territorial sea.

5800
FEB 28 1985

4. The lines published on chart 16011 are in conformity with the 1958 Convention and are the boundaries presently recognized by the international community.
5. The 1958 Convention of the High Seas defines as high seas any area beyond the territorial sea. 13 OST 2312, TIAS 5200, 450 UNTS 82.

By drawing the area proposed to be annexed on Chart 16011, it can be seen that the area extends beyond the internationally recognized limit of the territorial sea. Togiak is in effect proposing to annex a portion of what is presently recognized as high seas. Such an attempt to exercise sovereignty over the high seas would be inconsistent with international and federal law.

I would therefore urge the Committee to disapprove the action of the Local Boundary Commission at least to the extent that the proposed annexation extends beyond the limits of the territorial sea as shown on Chart 16011.



R. S. LUCAS
REAR ADMIRAL U.S. COAST GUARD
COMMANDER, SEVENTEENTH COAST GUARD DISTRICT



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman

Members:

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

Pouch V

Juneau, Alaska 99811

MEMORANDUM

February 26, 1985

TO: Senator DeVries

FROM: Trudie Alford *TA*

SUBJECT: TOGIK BAY ANNEXATION (Alaska Local Boundary Commission Report)

Received phone calls this date from the U.S. Coast Guard Office and the National Marine Fisheries Service Office in Juneau. Both government agencies indicated a desire to review the territorial boundary matter in connection with the annexation of Togiak Bay.

I explained to them that the Legislature had to either allow the Local Boundary Commission decision to stand or disapprove same by a concurrent resolution on or before March 8, 1985. Representatives from both offices stated they wanted to submit written and or oral testimony on the annexation.

Per your instructions, I informed them that any input they want to make should be received not later than 3:30 p.m., Thursday, February 28, 1985.



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

POUCH V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

M E M O R A N D U M

TO: Senate C&RA Committee Members
Senator DeVries, Chair
Senator Ferguson, Vice-chair
Senator Coghill
Senator Sturgulewski
Senator Vic Fischer

FROM: Senator Fred F. Zharoff

DATE: February 25, 1985

SUBJ: Togiak Annexation

On Tuesday, February 26, the Senate Community & Regional Affairs Committee will be considering SJR 18. This resolution disapproves the Local Boundary Commission's recommendation for the City of Togiak's annexation of Togiak Bay. I urge you to not support this resolution.

As you know, the Local Boundary Commission has considered the Togiak annexation proposal and recommends approval. Further, while the DC&RA staff initially had some concerns about the annexation, Commissioner Notti, in his letter of February 15, 1985 to Senator DeVries, clearly states the Department's support for the Local Boundary Commission's action to approve the annexation of Togiak Bay.

The people of Togiak have shown overwhelming support for the annexation in public hearings conducted by the Local Boundary Commission. Although objections have been expressed by some individuals from Twin Hills, the Local Boundary Commission has addressed this issue in its report. Twin Hills is an unincorporated community. When and if Twin Hills decides to incorporate, the question of boundary adjustments should be taken up at that time. Therefore, I can see no reason why the annexation should not be approved.

Please keep these points in mind when you are considering SJR 18. Thank you.

2/25/85 Distributed
by Sen. Zharoff to
Senate C&RA members.
fza



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman
Members
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V. Fischer

Pouch V
Juneau, Alaska 99811

February 19, 1985

C&RA Meeting -- 3:30p

This meeting has been continued from the Feb 5 meeting wherein the Local Boundary Commission presented its report to the Legislature. The two items for consideration are the Commission approved annexation of 117 acres to the City of Fairbanks and 183 square miles to the City of Togiak. Teleconference hook-up has been setup with Fairbanks and Togiak.

Togiak has requested to testify from 3:30 to 4:00p

The Mayor of Togiak, Emma Ayojiak-Carlos

will testify-- I do not know how many others

Fairbanks testimony will be from 4:00 until 4:30p

Dennis Wise and/or his attorney, Mr. Hackett

will testify and the City of Fairbanks will be

represented by City Attorney Herb Kuss

Information received since the February 5 meeting on the Fairbanks annexation: Superior Court Judge James Blair has issued an order staying the Local Boundary Commission decision pending appeal filed by Wise Enterprises.

The committee requested the Dept of Community and Regional Affairs to clarify their position on the annexation of the area requested by Togiak, since their present position paper recommends against annexation. I called and requested this written clarification last week and was told that it would be provided prior to today's meeting.

The meeting at 6:30p today was suggested by the Committee in order to have a work session with the Local Boundary Commission on incorporation within the unorganized borough. I have attached two documents that are general in nature but do speak to this issue. I suggest that you open the discussion by requesting Arliss to give an overview of some of the work she did on this issue while she was chair of Senate Community and Regional Affairs.....

I suggest that you ask the Ccmmission to provide the Committee with information on how many requests for incorporation have been received over the past 5 years, and how many of those requests have been approved and how many have been denied.

The Commission might be asked to give its opinion as to incorporation within the unorganized borough.



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman
Members:
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V. Fischer

Pouch V
Juneau, Alaska 99811

C&RA Joint House/Senate Meeting 2/19/85

3:30p -- Butrovich Room

Continue hearing on two proposed annexations before the
Local Boundary Commission

— Fairbanks has petitioned to annex 117 acres to the
City...

The annexation is contested by Dennis Wise of
Wise Enterprises -- there will be teleconference hookup to
Fairbanks - Superior Court Judge Blair has issued a stay order
to the Commission decision on the Fairbanks annexation

— the City of Togiak has petitioned the Commission to annex
183 square miles --- The Dept of C&RA originally
recommended denying the Togiak annexation; however
by memorandum dated Feb 15th C&RA supports this annexation.

The City of Togiak will be on line with teleconference
hook-up to the Committee

6:30p -- Butrovich Room

Work Session with joint committee to discuss with the Local
Boundary Commission the issue of incorporation within the
the unorganized borough

Attached are three separate issue papers on this subject that
you may find instructive

**attached*

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

- POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

February 15, 1985

The Honorable Edna DeVries
Chairman
Senate Committee on
Community and Regional Affairs
Pouch V
Juneau, Alaska 99811

Dear Senator DeVries:

During the February 5 meeting with the Local Boundary Commission, members of the House and Senate Community and Regional Affairs Committees expressed interest in determining whether this agency supported the Local Boundary Commission's action to approve the annexation of Togiak Bay to the City of Togiak. The answer is yes.

As you are aware, the Department prepared a report and recommendation to the Commission on this matter dated November 15, 1984. Our recommendation contained in that report was for a different action than that taken by the Commission. However, it is important to realize such reports are prepared prior to the Commission having conducted public hearings on these matters. Such public hearings are essential to the complete and careful consideration of matters brought before the Commission. Our report and recommendation is only one element of several which the Commission considers in evaluating boundary change proposals.

The extent of the problem relating to the use of alcohol in and around Togiak became much more evident at the Commission's hearing than was expressed in our report. Too, the desire and will of the citizens of the community to respond to the alcohol problem was readily demonstrated at the hearing. For these reasons, the Department believes that the annexation of Togiak Bay is in the best interests of the State and the communities of Togiak and Twin Hills.


The Honorable Edna DeVries
Chairman
Senate Committee on Community and Regional Affairs
February 15, 1985
Page 2

Finally, I wish to point out that the analysis in the Department's report of additional raw fish tax revenues which the City might receive as a result of the annexation, was incomplete and may have been overestimated. It is very difficult to obtain accurate data in this regard. However, we believe additional revenues received by the City in this regard will be key to its ability to address the alcohol related problems in the territory proposed for annexation.

In conclusion, we urge you to support the recommendation of the Local Boundary Commission for the annexation of Togiak Bay to the City of Togiak. Thank you for the opportunity to clarify our position.

I have also written a letter to Representative Goll, Chairman of the House Community and Regional Affairs Committee, advising him of our position.

Sincerely,



Emil Notti
Commissioner

cc: The Honorable Peter Goll
The Honorable Adelheid Herrmann
Gillian Smythe, Chairman, Local Boundary Commission
Marty Rutherford, Director, MRAD

Togiak

P.O. Box 99
Togiak, Alaska 99678

Second Class City

Phone: (907) 493-5820, or 493-9614

INCORPORATION DATE: June 23, 1969
POPULATION: 554
REGULAR ELECTION: First Tuesday in October
SALES TAX: 2%
CITY COUNCIL MEETS: Bi-Monthly

MAYOR: Emma Ayojiak-Carlos 1985

CITY COUNCIL MEMBERS

Andrew Franklin 1987
William Coupchiak 1986
Anuska Schaeffer 1985
Henry L. Bavilla 1985
Henry Pavian 1985
John Coopchiak 1985

SCHOOL BOARD

Andrew Franklin
Anuska Schaeffer

PLANNING & ZONING COMMISSION

Teddy Coopchiak, CIP
Henry Kohuk
Billy Blue
Henry Pavian
Andrew Franklin

MUNICIPALLY OWNED UTILITIES:

Water, Sewer, Airport, Refuse Collection

ADMINISTRATOR Margie Coopchiak
ADMINISTRATIVE ASSISTANT. Marie Pavian
AIRPORT MANAGER William Coupchiak
ATTORNEY. Frederick Torrisi
CLERK Daniel Nanalook, Jr.
FIRE CHIEF. Kenneth Nanalook
HEALTH AIDE Sophie Nick
HEALTH AIDE Anecia Active
POLICE CHIEF. Herbert Lockuk, Sr.
TREASURER Henry L. Bavilla
VPSO. Stan Active, Jr.
VPSO Ken Nanalook
WATER-SEWER SUPERINTENDENT. Pete Abraham

Fairbanks

410 Cushman Street
Fairbanks, Alaska 99701

Home Rule City

Phone: (907) 452-1881

INCORPORATION DATE: November 10, 1903
POPULATION: 27,103
REGULAR ELECTION: First Tuesday following first Monday in October
SALES TAX: None
CITY COUNCIL MEETS: First Monday following First Thursday

MAYOR: Bill Walley 1986

CITY COUNCIL MEMBERS

Chris Anderson 1985
Valerie Therrien 1985
Paul Whitney 1987
Ted Lehne 1986
John Immel 1987
Janet Halvarson 1986

MUNICIPALLY OWNED UTILITIES:

Water, Sewer, Electricity,
Telephone, Steam

ATTORNEY Herb Kuss
CLERK Carma B. Roberson
ELECTRIC SUPERINTENDENT Keith Sworts
ENGINEER John Phillips
FINANCE DIRECTOR Robert Wolting
FIRE CHIEF Warren Tilman
HEAT/WATER DISTRIBUTION SUPERINTENDENT Charles Meggitt
MANAGER W.C. Droz
PARKS & RECREATION DIRECTOR Terry Leberman
POLICE CHIEF Howard Mahler
PUBLIC UTILITY MANAGER Virgil Gillespie
PUBLIC WORKS DIRECTOR Lane Thompson
PURCHASING OFFICER Paul Raiford
SEWER SUPERINTENDENT John Miko
WATER SUPERINTENDENT Dar Heine

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

1
2
3 DENNIS B. WISE d/b/a/ WISE)
ENTERPRISES, INC.,)
4 Appellant,)
5 vs.)
6 STATE OF ALASKA LOCAL BOUNDARY)
COMMISSION,)
7 Appellee.)

No. 4FA-85-60 CIV

8
9
10 MOTION TO DISMISS APPEAL

11 Comes now appellee State of Alaska Local Boundary Com-
12 mission (the LBC), by and through counsel, Susan D. Cox, Assis-
13 tant Attorney General, and moves this court to dismiss the ap-
14 peal herein. This motion is supported by the attached memoran-
15 dum of law, affidavits, and exhibits.

16 DATED: February 19, 1985

17
18 NORMAN C. GORSUCH
ATTORNEY GENERAL

19 By: *Susan D. Cox*
20 Susan D. Cox
21 Assistant Attorney General

22
23
24
25
26
27
28
29
30
31
32
33
34
ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K. JUNEAU, ALASKA 99811
PHONE 465-3600

Mt Dismiss

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

DENNIS B. WISE d/b/a/ WISE)
ENTERPRISES, INC.,)
Appellant,)
vs.)
STATE OF ALASKA LOCAL BOUNDARY)
COMMISSION,)
Appellee.)

No. 4FA-85-60 CIV

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Two independently valid grounds support the contention of appellee State of Alaska Local Boundary Commission (the LBC) that this administrative appeal must be dismissed. First, the administrative decision being appealed only recommends annexation of 117 acres to the City of Fairbanks; that decision (and annexation) does not become effective until after March 9 and only if the legislature does not concur in a resolution disapproving of the annexation. AS 44.47.583. Second, appellant's points on appeal are premised on wholly irrelevant legal principles found in AS 44.47.567(a)(4) and AS 29.68.010(b)(1).

I. THE LBC'S DECISION PROPOSING ANNEXATION OF 117 ACRES TO FAIRBANKS IS NOT RIPE FOR APPELLATE REVIEW

On August 20, 1984, the City of Fairbanks passed Ordinance No. 4351 petitioning the LBC to approve annexation of approximately 117 acres under AS 29.68.010(a) and AS 44.47.567-(b)(2). See Aff. of Bockhorst, ¶ 2 and Exh. A thereto, originally submitted with the LBC's Opposition to Motion to Waive or Reduce Appeal Bond on January 24, 1985, another copy of which is attached. The LBC scheduled a public hearing for November 30, 1984 in Fairbanks, notice of which was printed in the local paper on three occasions. Aff. of Bockhorst, ¶¶ 7 and 8. Dennis Wise, appellant herein, appeared before the LBC at the hearing to oppose the annexation. Aff. of Bockhorst, ¶ 8. The LBC convened the following day and after consideration of the

Mm Dismiss

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
FOUCH K. JUNEAU, ALASKA 99811
PHONE 465-3600

1 record voted to approve the annexation petition without modifi-
2 cation. Aff. of Bockhorst, ¶ 9. A document entitled "Summary
3 of Proposed Action, Findings of Fact, Statement of Decision"
4 (Summary/Finding/Decision) was subsequently prepared and issued
5 on or about January 2, 1985. Exh. A, see also Aff. of Hackett,
6 filed Jan. 21, 1985, ¶ 6, another copy of which is attached.

7 There are two processes by which annexation can be
8 accomplished: (1) the LBC may consider proposed boundary
9 changes, then submit them to the legislature for review under AS
10 29.68.010(a) and AS 44.47.567(b)(2), or (2) residents, property
11 owners, or a municipality may effect boundary changes through
12 the "local action" provisions of AS 29.68.010(b). Alaska Const.
13 art. X, § 12. The latter, local action boundary changes are not
14 subject to legislative review. The former type of boundary
15 changes, once approved by the LBC, are presented to the legisla-
16 ture for review and are not effective until "45 days after pre-
17 sentation or at the end of the session, whichever is earlier,
18 unless disapproved by a resolution concurred in by a majority of
19 the members of each house." AS 44.47.583.

20 The Summary/Findings/Decision of the LBC which is the
21 subject of this appeal, recommending annexation of 117 acres to
22 the City of Fairbanks, is not a final decision at this time be-
23 cause the period for legislative review has not passed. The
24 Statement of Decision section itself states that the LBC "will
25 submit its recommendation to the First Session of the Fourteenth
26 Legislature for the boundary change requested by the City of
27 Fairbanks." Exh. A., p. 3 (emphasis added). Accordingly, the
28 proposal was presented to the legislature on January 23, 1985,
29 within the time frame specified in the state constitution and
30 statute. Aff. of Bockhorst, ¶ 10; see also 1985 H. Jour. at
31 105, 1985 S. Jour. at 103-104, Alaska Local Boundary Commission
32 Report to the First Session of the Fourteenth Alaska State Leg-
33 islature, copies of which are attached as Exhibit B. The pro-
34 posed annexation will not become effective until after March 9,

1 1985, and then only if the legislature has not vetoed it. AS
2 44.47.583. Therefore, appellant's appeal herein is premature,
3 since the administrative decision at issue is not truly a final
4 one.

5 In U.S. Smelting, Refining and Mining Co. v. Local
6 Boundary Comm'n, 489 P.2d 140 (Alaska 1971), the Alaska Supreme
7 Court considered the validity of an annexation to Nome proposed
8 by the LBC to the legislature that became effective after the
9 legislative review period had passed. The grounds for challenge
10 were that the LBC had not yet adopted standards and procedures
11 for changing local boundary lines as required by AS 44.19.260-
12 (a)(2), which is now AS 44.47.567(a)(2). The court considered
13 the proper focus of review to be "whether the 'applicable rules
14 of law and procedure were observed'" by the LBC. U.S. Smelting,
15 489 P.2d at 143.

16 This test delineates the contours of judicial
17 review employed by us in the case at bar in
18 reaching the conclusion that the Local Boundary
19 Commission failed to comply with the mandate of
20 AS 44.19.260(a) that it develop standards for the
21 changing of local boundary lines. Without doubt
22 there are questions of public policy to be deter-
23 mined in annexation proceedings which are beyond
24 the province of the court. Examples are the de-
25 sirable of annexation, as expressed in pub-
26 lished standards. Judicial techniques are not
27 well adapted to resolving these questions. In
28 that sense, these may be described as political
29 questions," beyond the compass of judicial re-
30 view. But other annexation issues, such as
31 whether statutory notice requirements were fol-
32 lowed, are readily decided by traditional judi-
33 cial techniques. Murkowski clearly permits this
34 latter type of review.

Our decision as to the availability of judi-
cial review of the Local Boundary Commission's
action in this case is reflective of our deter-
mination that it is administrative action, rather
than legislative action which we have been called
upon to review. We thus find unpersuasive the
argument that article X, section 12 of the Alaska
Constitution and AS 44.19.340 [now AS 44.47.583]
make the decision as to whether the commission
has complied with the law exclusively legislative.

U.S. Smelting, 489 P.2d at 143 (footnote omitted).

The LBC recognizes that appellant is challenging the
validity of an administrative decision, not the legislative pro-

Mm Dismiss

1 cess, but that does not alter the fact that the administrative
2 proposal is not a final decision ripe for appeal. Under the
3 unusual constitutional and statutory structure which applies to
4 the boundary change at hand, the administrative decision is only
5 tentative. Only after the legislative review period has passed
6 does a proposed annexation have any potential effect. If the
7 Fairbanks annexation becomes effective, there will be an admin-
8 istrative decision to review for compliance with applicable law
9 and procedures. If not, the appeal will be moot. In any case,
10 the appeal is premature now.

11 Dicta in a subsequent Alaska Supreme Court case sup-
12 ports this position: "annexations effected through Local Bound-
13 ary Commission procedures receive a full administrative hearing,
14 followed by legislative review, before they are subjected to
15 judicial scrutiny." Port Valdez Company, Inc., v. City of Val-
16 dez, 522 P.2d 1147, 1155 (Alaska 1974)(emphasis added). It is
17 also noteworthy that the Alaska Supreme Court cases involving
18 LBC boundary changes cited herein were filed after annexation
19 became effective: U.S. Smelting (within two months after its
20 effective date, according to n.33 in Port Valdez case, 522 P.2d
21 at 1156); Port Valdez (one year and nine months after the legis-
22 lative review period), id.).

23 II. THIS APPEAL IS BASED ON WHOLLY INAPPLICABLE STATUTES

24 The Statement of Points on Appeal raises several is-
25 sues under AS 29.68.010(b)(1), (2), and (3). These three para-
26 graphs describe three methods to change local boundaries by
27 "local action." As has already been explained above, local ac-
28 tion is an entirely different process from the legislative re-
29 view procedure. The local action provisions are wholly inappli-
30 cable to the legislative review method of annexation which has
31 been utilized in the present case. Because the points on appeal
32 do not raise any claim under the relevant authority (AS 44.47.-
33 567(b)(2) or AS 29.68.010(a), this appeal must be dismissed.

34 Mm Dismiss

1 The LBC's report to the legislature, attached as Ex-
2 hibit B, explains how annexations and detachments may be effect-
3 ed by LBC action through either of two general procedures: leg-
4 islative review or local action. Paragraph (a) of AS 29.68.010
5 applies to the legislative review process, while paragraph (b),
6 subparagraphs (1) -- (3) describe methods of local action. AS
7 29.68.010(c) makes it clear that these are two alternative meth-
8 ods: "A boundary change effected under (a) of this section pre-
9 vails over a boundary change initiated by local action, without
10 regard to priority in time." The LBC has adopted separate regu-
11 lations for each process: 19 AAC 10.450 -- 19 AAC 10.620 is
12 titled "Procedures for Boundary Changes Requiring Legislative
13 Review" while 19 AAC 10.630 -- 19 AAC 10.730 covers "Procedures
14 for Boundary Changes by Local Action." The Alaska Supreme Court
15 has also recognized that article X, section 12 of our state con-
16 stitution

17 established tow methods by which local boundaries
18 might be changed: (1) by direct action of the
19 Local Boundary Commission subject to legislative
20 disapproval, and (2) by establishment by the com-
mission of procedures for the adjustment of bound-
aries by local action.

21 Port Valdez, 522 P.2d at 1150 (footnote omitted).

22 The legislative review process requires approval of a
23 proposed boundary change by both the LBC and the legislature and
24 is currently being used for proposed annexations to Fairbanks
25 and Togiak. Exh. B., Report p. 3. This process "is often ini-
26 tiated by municipalities in circumstances where there is a com-
27 pelling public need for a boundary change, but where a majority
28 of the residents in the territory involved in the boundary
29 change may not support it." Id. Although the LBC report states
30 that this is not the case in the proposed Fairbanks annexation
31 (id.), it is clear that the legislative reiev process is avail-
32 able in such situations.

33 We have previously recognized that the in-
34 tention o: the constitutional provision and its
implementing statute, AS 44.19.260 [now AS 44.-

Mm Dismiss

1 47.567], was to provide an objective administra-
2 tive body to make state-level decisions regarding
3 local boundary changes, thus avoiding the chance
4 that a small, self-interested group could stand
5 in the way of boundary changes which were in the
6 public interest. In Fairview Public Utility Dis-
7 trict No. 1 v. City of Anchorage, 368 P.2d 540,
8 543 (Alaska 1962), appeal dismissed, 371 U.S. 5,
9 83 S.Ct. 39, 9 L.Ed.2d 49 (1962) we said:

6 An examination of the relevant minutes [of
7 the constitutional convention] shows clearly
8 the concept that was in mind when the local
9 boundary commission section was being con-
10 sidered: that local political decisions do
11 not usually create proper boundaries and
12 that boundaries should be established at the
13 state level.

11 Port Valdez, 522 P.2d 1150 n.7.

12 In contrast, boundary changes proposed by local action
13 do not require legislative review. Under AS 29.68.010(b)(1),
14 annexation may be accomplished by majority vote of the residents
15 in the territory proposed for annexation, and LBC approval. If
16 a municipality owns property adjoining its boundaries, it may
17 annex that property by ordinance without voter approval under AS
18 29.68.010(b)(2). The annexation becomes effective upon filing
19 of the notice of adoption of the ordinance with the Department
20 of Community and Regional Affairs. Finally, an area adjoining a
21 municipality may be annexed if all the property owners and all
22 of the registered voters who reside within the territory pro-
23 posed for annexation petition for the boundary change under AS
24 29.68.010(b)(3). This type of annexation takes effect through
25 adoption of an ordinance by the governing body of the municipal-
26 ity and consent of the LBC.

27 Appellant's points on appeal are premised entirely on
28 the mistaken belief that the local action process was utilized
29 for the proposed Fairbanks annexation. He claims that "[b]e-
30 cause the annexation proceeding was commenced by City of Fair-
31 banks Ordinance No. 4351 and not by a petition of affected prop-
32 erty owners, and because there was no vote conducted on the
33 question of the proposed annexation, the annexation proceedings,
34 and the decision of the LBC, are void." Stmt of Points on

Mm Dismiss

1 Appeal, ¶ 2. He contends that the absence of an election vio-
2 lates AS 29.68.010(b)(1), and argues that "voter approval is
3 required before annexation of adjoining, privately-owned proper-
4 ty can become effective," since (b)(2) allows annexation by
5 ordinance of adjoining municipal property only and (b)(3) only
6 allows annexation by ordinance without voter approval if all
7 property owners and voters within the area petition the municipi-
8 pality. Stmt of Points on Appeal, ¶ 3.

9 If this were a local action-initiated boundary change,
10 appellant would be correct in arguing that an election for
11 annexation of private land would be necessary where all property
12 owners and residents had not petitioned the municipality for
13 annexation. However, the proposed annexation of approximately
14 117 acres to the City of Fairbanks was not initiated by local
15 action. The petition by the City of Fairbanks states on its
16 face that the annexation was being proposed under the legisla-
17 tive review process of 19 AAC 10.450 -- 19 AAC 10.620, AS 29.-
18 68.010(a), and AS 44.47.567(b)(2). Aff. of Bockhorst, ¶ 2, and
19 Exh. A attached thereto, ¶ 1. There is no requirement in stat-
20 ute or regulation to hold an election for the voters of an area
21 proposed for annexation. See Fairview Public Utility Dist. No.
22 1 v. City of Anchorage, 368 P.2d 540, 545-546 (Alaska 1962)(no
23 constitutional right to insist that annexation take place only
24 with consent of residents and property owners).

25 Under 19 AAC 10.460, a request for a local government
26 boundary change under the legislative review process is initi-
27 ated by filing a petition with the LBC. The petition may be
28 initiated by "the governing body of a municipality whose bound-
29 aries are to be changed." 19 AAC 10.470(a). This was the pro-
30 cess followed by the City of Fairbanks and the LBC. While
31 appellant may have the right to challenge whether applicable
32 procedures for this process were followed, he has not raised
33 that issue. Notwithstanding the uncontroverted fact that the
34 proposed annexation at issue is one for legislative review, and

1 not one accomplished by local action, appellant's points on
2 appeal raise questions of compliance with totally irrelevant
3 "local action" law.

4 Besides alleging violation of the inapplicable voter
5 approval requirement for local action boundary changes in AS
6 29.68.010(b)(1), appellant also claims that the "LBC Statement
7 of Decision in effect modified the City of Fairbanks' annexation
8 and approved it as a step annexation." Stmt of Points on Ap-
9 peal, ¶ 7. "Step annexation" refers to a gradual, as opposed to
10 immediate annexation.

11 The local boundary commission shall

12

13 (4) develop standards and procedures for
14 the extension of services and ordinances of in-
15 corporated cities into contiguous areas for lim-
16 ited purposes upon majority approval of the
17 voters of the contiguous area to be annexed and
18 prepare transition schedules and prorated tax
19 mill levies as well as standards for participa-
20 tion by voters of these contiguous areas in the
21 affairs of the incorporated cities furnishing
22 services.

23 Port Valdez, 522 P.2d at 1150 n.4; AS 44.47.567(a)(4). Regula-
24 tions for step annexations are set out in yet another section of
25 LBC regulations: 19 AAC 10.735 -- 19 AAC 10.790.

26 In Port Valdez, 522 P.2d at 1150-1152, the Alaska Su-
27 preme Court faced an argument identical to that of appellant.
28 The court explained that step annexation allows for gradual as-
29 similation of contiguous areas "where direct annexation would be
30 premature or impractical." Id. at 1151. The court noted that
31 "[o]rordinarily, a step annexation will be commenced by a municipi-
32 lity's petition specifically requesting that alternative, al-
33 though presumably the commission could require the municipality
34 to annex by the step method." Id. However, in the Port Valdez
case, the original petition of the City of Valdez requested a
direct annexation, and the certification of boundaries did not
contain a single fact suggesting that a step annexation was con-
templated. Id. The court held that "since the city did not

1 request and the commission did not certify a step annexation,
2 the requirements for step annexation are not applicable." Id.

3 The Port Valdez Company argued that because service
4 areas with different municipal services and tax rates were es-
5 tablished after annexation, the annexation must be considered to
6 have been effected by the step method. The court responded:

7 We find the selection of annexation method made
8 by the commission and approved by the legislature
9 to be controlling. The company's argument
10 amounts to an assertion that the differing munic-
11 ipal services and tax rates demand the choice of
12 the step method. We find no such fetters imposed
13 upon the commission's discretion.

14 Port Valdez, 522 F.2d at 1151 (emphasis added, footnote omitted).

15 Similarly, in the case at hand, the City of Fairbanks
16 petitioned the LBC for approval of a direct annexation under the
17 legislative review process. No mention of step annexation,
18 gradual provision of services to the proposed area, or the step
19 annexation regulations (19 AAC 10.735 -- 19 AAC 10.790) is found
20 in either the city's petition or the LBC's Summary/Findings/De-
21 cision. Given the court's ruling in Port Valdez, appellant's
22 contention that the LBC modified Fairbanks' annexation and ap-
23 proved it as a step annexation is of no effect.

24 Appellant argues alternatively that "the LBC abused
25 its discretion by approving the City of Fairbanks' annexation as
26 a direct, and not a step annexation, under the facts and circum-
27 stances of this case." Stmt of Points on Appeal, ¶ 8. The
28 court in Port Valdez did recognize that the "policy decision as
29 to the mode of annexation is an exercise of lawfully vested ad-
30 ministrative discretion which we will review only to determine
31 if administrative, legislative or constitutional mandates were
32 disobeyed or if the action constituted an abuse of discretion."
33 Port Valdez, 522 P.2d at 1151 (footnote omitted). However, the
34 court went on to determine that there were no facts from which
35 to conclude that the direct annexation approved by the LBC con-
36 stituted an abuse of discretion. Id. There is no "constitu-
37 tional, statutory or administrative provision which requires

1 that an annexation of territory like that absorbed by the City
2 of Valdez be accomplished by the step method." Id. at 1152.
3 The court went on to "hold that the Valdez annexation was under-
4 taken by the direct method rather than the step method. It fol-
5 lows that the company's contentions regarding the necessity of
6 an election, schedule of services and tax mill levies as man-
7 dated by the step annexation provision are without merit." Id.

8 While the LBC acknowledges that there may be cases
9 where the court can review the LBC's choice of direct or step
10 annexation for an abuse of discretion, this is not such a case.
11 As in Port Valdez, the city petitioned for direct, not step an-
12 nexation. The LBC approved the annexation petition without mod-
13 ification. Exh. A, p. 3. There is no legal provision requiring
14 that this annexation be accomplished by the step method. Appel-
15 lant's final point on appeal is frivolous.

16 III. CONCLUSION

17
18 The LBC contends that this appeal must be dismissed
19 because it is premature: there is no final administrative deci-
20 sion in effect. Only after the legislative review period has
21 passed might there be an annexation from which to appeal.

22 Additionally, appellant's pleadings on their face fail
23 to raise relevant legal issues on appeal. As explained above,
24 the Statement of Points on Appeal is premised on alleged viola-
25 tions of entirely inapplicable law. An examination of the City
26 of Fairbanks' annexation petition, the LBC's Summary of Proposed
27 Action, and the LBC's report to the legislature reveals clearly
28 that this is a legislative review type of annexation. Appel-
29 lant's points claiming violation of local action statutes rely
30 on inapposite authority. Furthermore, the points relating to
31 step annexation raise no appellate issues in light of the Port
32 Valdez case, 522 P.2d at 1150-1152. The LBC contends that these
33 nonissues are the true crux of appellant's case and, therefore,
34 the appeal is without merit and should be dismissed.

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K, JUNEAU, ALASKA 99811
PHONE 465-3600

1 If the court does not find that the LBC's arguments
2 herein dispose of appellant's entire appeal, the LBC requests
3 that the court strike those points on appeal which do not raise
4 a claim. The LBC contends that points 1-4, relating to local
5 action statute AS 29.68.010(b), must be stricken. The LBC has a
6 complete record of its public hearing in Fairbanks on November
7 30, 1984 and its decisional meeting on December 1, 1984, and
8 would be happy to provide an affidavit to that effect if it can
9 dispose of point 5 and save the appellant the expense of certi-
10 fication of the record. (Gene Kane sent a copy of the tape-
11 recorded proceedings to counsel for appellant on January 2,
12 1985. Aff. of Hackett, Exh. A attached thereto.) Although the
13 LBC concedes that failure to consider the testimony presented
14 might be a valid basis for review under ordinary circumstances,
15 point 6 should not be allowed to salvage this appeal from dis-
16 missal, where appellant has obviously misconstrued what the LBC
17 was to consider in making its decision (e.g., mistake re appli-
18 cation of legislative review vs. local action process). Points
19 7 and 8 are illegitimate claims under Port Valdez and should be
20 stricken.

21 Finally, in the event that the court considers some
22 points sufficient to state an appellate claim, and does not find
23 dismissal warranted, the LBC requests that, at a minimum, con-
24 sideration of this appeal and certification of the record be
25 stayed until after the legislative review period passes on March
26 9, 1985.

27 DATED: February 19, 1985

28
29 NORMAN C. GORSUCH
ATTORNEY GENERAL

30
31 By: *Susan D. Cox*
Susan D. Cox
32 Assistant Attorney General
33
34

Mm Dismiss

- 11 -

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

SUMMARY OF PROPOSED ACTION
FINDINGS OF FACT
STATEMENT OF DECISION

IN THE MATTER OF THE ANNEXATION)
BY THE CITY OF FAIRBANKS, ALASKA)
OF APPROXIMATELY 117 ACRES)
BOUNDED BY PEGER ROAD, DAVIS ROAD)
AND HILL ROAD.)
_____)

SUMMARY OF PROPOSED ACTION

The City of Fairbanks petitioned for the annexation of approximately 117 acres of land contiguous to the City and bounded by Peger, Davis and Hill Roads. The annexation was submitted pursuant to Section 29.68.010(a) of the Alaska Statutes (i.e. the process which requires concurrence from the State Legislature).

Approximately 77 of the 117 acres proposed for annexation were subdivided for residential/business purposes. The subdivision, known as the Jones Subdivision, contained a population of 96 individuals, approximately 35 dwellings and a small number of businesses. The balance of the territory, comprised of one 40 acre parcel, was under development. A 142 unit adult apartment complex was under construction on the 40 acre parcel, none of the apartments were yet occupied. An additional 408 apartments were planned for development, which would bring the total apartments within the complex to 550.

Both the City of Fairbanks and the privately-owned College Utilities Corporation had petitioned the Alaska Public Utilities Commission for the authority to provide water and sewer utilities service to the territory proposed for annexation. The decision rendered by the Local Boundary Commission on this annexation should not be construed as being a judgement on the respective abilities of the competing utilities to provide service to the area being annexed to the City of Fairbanks. In fact, the Commission came to no conclusion on this question and based its decision on other considerations.

Mr. Dennis Wise, the developer of the apartment complex, opposed the annexation of his 40 acre parcel principally on the grounds that he would prefer the College Utilities Corporation to provide water and sewer utilities services and because he opposed regulation of the construction of his project by the City Building Department.

The area proposed for annexation is within the Fairbanks North Star Borough, which has expressed no objections to the proposed annexation and has indicated to the City of Fairbanks that it has no assets or liabilities within the area which would be acquired or incurred by the City of Fairbanks should the annexation be effected.

The Local Boundary Commission conducted a hearing on the petition in Fairbanks on November 30, 1984. Members of the Commission present at the hearing were Gillian Smythe, Chairman; Dave Hanson and Bert Greist. Member Charles Bettisworth was excused due to a conflict of interest in that he had an on-going business relationship with Mr. Dennis Wise. Member Joesphine Anderson was unable to attend for personal reasons.

FINDINGS OF FACT

Following its hearing on this matter, the Local Boundary Commission made the following findings of fact:

1. The area proposed for annexation is within the Fairbanks North Star Borough which expressed no objections to the proposed annexation.
2. The territory proposed for annexation includes two distinct areas: the Jones Subdivision and Mr. Wise's development.
3. Only the Jones Subdivision is presently developed, with a population of 96 residents, according to the Borough.
4. There is no evidence of substantial opposition to the proposed annexation from the residents of Jones Subdivision. No polling of residents' preferences regarding annexation was undertaken by the City. However, testimony by Vicki Hanson (resident of the Jones Subdivision) indicated that she had spoken to nearly every household and had found only 3 individuals opposed to annexation. Notice of the Commission's hearing was extensive, in that it was published three times in the Fairbanks Daily News-Miner. Vicki Hanson testified that she had personally delivered copies of a notice of the meeting to each household in the subdivision.
5. The Jones Subdivision area is in need of the following City services which it does not presently receive: road construction and maintenance and drainage control.
6. The Jones Subdivision is urban in character: it has a population density of 798 residents per square mile, which is greater than the City as a whole. Additionally, it contains significant residential and commercial development and the property is subdivided.
7. The 40 acre parcel of land owned by Mr. Wise is also urban in character. The property is being developed for residential purposes and the anticipated population density of this parcel of land will be much greater than that of the City as a whole.
8. The current and anticipated future development of the 40 acre parcel of land owned by Mr. Wise will result in an increased demand for certain municipal services which can be most efficiently provided by the City of Fairbanks. The anticipated demand for municipal services is relevant with respect to road maintenance and drainage.
9. The annexation of Mr. Wise's development would enable the City of Fairbanks to exercise a desirable degree of control over development of that property. In particular, the Commission finds that the health and safety of the future occupants of the development would be better ensured if the development were subject to the City's building codes.
10. The question of the health, welfare and safety of City residents being affected by conditions existing or developing within the property owned by Mr. Wise was raised, particularly with respect to the apparent significant increase in vehicular traffic which will result from the development regardless of whether future residents of the Wise property exit on 19th or Davis Road. The Commission made no determination as to what extent such traffic might endanger the health, safety or welfare of City residents. However, the Commission noted that some impacts on streets, traffic patterns and drainage patterns were likely to affect adjacent areas both within and outside the City of Fairbanks' municipal boundaries.

11. The City of Fairbanks has made a good faith attempt to ensure that the voting rights of people in the territory proposed for annexation will not be adversely affected by the annexation. The City's actions in this regard include evaluating the ethnic population composition of the area proposed to be annexed in relation to overall City and Borough patterns; and contacting representatives of various minority groups. No adverse comments were offered regarding the possible infringement on voting rights at the Commission's hearing.

STATEMENT OF DECISION

Based on the aforementioned facts, all of the members of the Commission who were present at the hearing and subsequent decisional session have determined that both the Jones Subdivision and the Wise property meet many of the standards for the annexation of contiguous territory to a city. Therefore, the September 12, 1984 petition of the City of Fairbanks for the annexation of territory as described in Fairbanks City Ordinance Number 4351 is approved without modification by the Local Boundary Commission.

Consequently, the Commission will submit its recommendation to the First Session of the Fourteenth Legislature for the boundary change requested by the City of Fairbanks. The recommendation will be submitted during the first ten days of the Session, and will take effect 45 days from the date submitted unless both the House and Senate adopt resolutions rejecting the recommendation.

Staff is hereby asked to:

1. Provide a copy of this document to the City of Fairbanks, the Fairbanks North Star Borough, Mr. Dennis Wise, the Fairbanks North Star Borough University Fire Department at Fairbanks and the College Utilities Corporation.
2. Provide a copy of this document to the Alaska Public Utilities Commission, along with an explanation that this decision is not to be construed as a judgment on the respective merits of utilities companies competing for the right to provide utility service to the territory proposed for annexation. A determination as to whether the City of Fairbanks or the College Utilities Corporation should be granted the authority to provide utility services to the area proposed for annexation will be made by the Alaska Public Utilities Commission.
3. Assist the City of Fairbanks in submitting necessary documents and information to the U.S. Justice Department to demonstrate that the proposed annexation will not violate the terms of the Voting Rights Act of 1965, as amended.
4. Prepare and process this decision.

APPROVED DECEMBER 1, 1984.

BY:

Gillian Smythe
Gillian Smythe, Chairman

Dave Hanson
Dave Hanson, Member

Bert Greist
Bert Greist, Member

SENATE JOURNAL

ALASKA STATE LEGISLATURE

FOURTEENTH LEGISLATURE - FIRST SESSION

JUNEAU, ALASKA

WEDNESDAY

January 23, 1985

Tenth Day

Pursuant to adjournment, the Senate was called to order by President Bennett at 11:08 a.m.

The roll showed nineteen members present. Senator Ferguson was excused from a call of the Senate.

The prayer was offered by the Chaplain, Reverend Reimer of the Auke Bay Bible Church. Senator Halford moved and asked unanimous consent that the prayer be spread. Without objection, it was so ordered.

"Our God and Heavenly Father, we thank You that You have not rewarded us according to our sins but have extended mercy and forgiveness to us through Jesus Christ our Lord. Grant us thankful and responsive hearts for this kindness.

We thank You for the privilege of living in a country where freedom prevails, where generally there is sufficient for basic needs. Open our hearts to those who do not enjoy such blessings.

We recognize that all too often we allow life to become extremely complicated because our selfish pursuits get in the way. Teach us to live for others. Help us to see other people as fellow travellers rather than competitors or fields of exploitation. As we meet them show us how we can leave them better than we found them. Give us insight into the circumstances and problems of this day, to analyze them properly and then to draw upon Your wisdom and power to change those situations from stumbling blocks to building materials.

Amen"

Senator Halford moved and asked unanimous consent that the journal for the ninth legislative day and Supplement No. 6 be approved as certified. Without objection, it was so ordered.

MESSAGES FROM THE HOUSE

Message of January 23 was read, stating the House passed:

FIRST READING AND REFERENCE OF HOUSE BILLS

HB 70

HOUSE BILL NO. 70 by the Rules Committee by request of the Governor, entitled:

"An Act relating to donation of leave by state employees; and providing for an effective date."

was read the first time and referred to the Finance Committee.

COMMUNICATIONS

Dated and received 8:33 a.m., January 23:

"Dear Senator Bennett:

Attached is the report to the First Session of the Fourteenth Legislature on the activities of the Alaska Local Boundary Commission during 1984. The report contains recommendations for the annexation of territory to the Cities of Fairbanks and Togiak.

Pursuant to Article X, Section 12 of the Alaska Constitution and Section 29.68.010(a) of the Alaska Statutes, these recommended boundary changes will become effective forty-five days from this date or at the end of the session, whichever is earlier, unless disapproved by a concurrent resolution of the Legislature. The members of the Local Boundary Commission anticipate meeting with the members of the Community and Regional Affairs Committees of the House and Senate to discuss this report during the first week in February.

A copy of the attached report has also been provided to the Speaker of the House.

Sincerely,
/s/
Gillian Smythe
Chair"

The above report is on file in the Office of the Secretary of the Senate and appears in Senate and House Joint Supplement No. 3.

President Bennett referred the above report to the Community and Regional Affairs Committee.

A letter dated January 23, 1985, was received from Gillian Smythe, Chair of the Local Boundary Commission, transmitting the following report in accordance with Article X, Section 12 of the Alaska Constitution and AS 29.63.010(a):

Report to the First Session of the
Fourteenth Legislature on the Calendar
Year 1984 Activities and Recommendations
for Changes to the Boundaries of the
Following Municipalities: City of Fairbanks
and City of Togiak.

The report appears in Joint Senate and House Journal Supplement No. 3.

REPORTS OF STANDING COMMITTEES

HB 14

The State Affairs Committee has considered HOUSE BILL NO. 14 (making members of the Alaska Territorial Guard eligible for a death gratuity) and reports it back as follows: Hurley (Chairman), Navarre, M.M. Miller, Jenkins, Cato, Collins and Boucher recommend do pass. A fiscal note was attached.

HB 14 was referred to the Finance Committee.

The fiscal note appears in House Journal Supplement No. 7.

HB 70

The State Affairs Committee has considered HOUSE BILL NO. 70 (relating to donation of leave by state employees; effective date) and reports it back as follows: Hurley (Chairman), Navarre, M.M. Miller, Cato, Collins, Boucher and Jenkins recommend do pass.

HB 70 appears on today's calendar.

HJR 3

The State Affairs Committee has considered HOUSE JOINT RESOLUTION NO. 3 (relating to the ratification of an amendment to the Constitution of the United States defining voting rights for residents of the District of Columbia and reports it back as follows: Hurley (Chairman), Navarre, M.M. Miller, Cato, Collins and Boucher recommend do pass; Jenkins has no recommendation.

HJR 3 was referred to the Judiciary Committee.

ALASKA LOCAL BOUNDARY COMMISSION

REPORT TO THE FIRST SESSION OF THE
FOURTEENTH LEGISLATURE ON CALENDAR YEAR
1984 ACTIVITIES AND RECOMMENDATIONS FOR
CHANGES TO THE BOUNDARIES OF THE FOLLOWING
MUNICIPALITIES:

1. CITY OF FAIRBANKS (ELECTION DISTRICT 20)
2. CITY OF TOGIAK (ELECTION DISTRICT 26)

JANUARY 23, 1985

TABLE OF CONTENTS

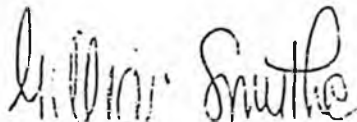
I.	Preface	Page 1
II.	Introduction	Page 2
II.	Summary of Activities of the Local Boundary Commission During 1984	Page 5
III.	Recommendation for the Annexation of Territory to the City of Fairbanks	Page 7
IV.	Recommendation for the Annexation of Territory to the City of Togiak	Page 11

PREFACE

This document provides a report of the activities of the Alaska Local Boundary Commission during 1984 and contains recommendations to the First Session of the Fourteenth Legislature for changes to the boundaries of the Cities of Fairbanks (Election District 20) and Togiak (Election District 26).

Pursuant to Article X, Section 12 of the Alaska Constitution and Section 29.68.010 of the Alaska Statutes, the boundary changes recommended in this report become effective forty-five days after they are presented to the Legislature (March 10, 1985) or at the end of the Session, whichever is earlier, unless they are expressly disapproved by a concurrent resolution of the Legislature.

The members of the Local Boundary Commission look forward to the opportunity to meet with the Community and Regional Affairs Committees of the House and Senate to discuss the recommendations contained in this report.



Gillian Smythel
Chairman
Alaska Local Boundary Commission

January 23, 1985
date

INTRODUCTION

The Local Boundary Commission was established pursuant to Article X, Section 12 of the Alaska Constitution and Section 44.47.565 of the Alaska Statutes. It is the primary role of the Commission to review and act upon proposals for the formation of municipal governments, changes to the jurisdictional boundaries of municipal governments and the dissolution of municipal governments.

The Local Boundary Commission consists of five members, one from each of the four Judicial Districts of the State, plus one member who serves at-large. The Commission members are appointed by the Governor and serve without compensation at the pleasure of the Governor.

The current members of the Commission are:

Gillian Smythe, Chairman, serving at-large, current term expires January 31, 1987;
Josephine Anderson, serving from the First Judicial District, current term expires January 31, 1986;
Bert Greist, serving from the Second Judicial District, current term expires January 31, 1989;
David G. Hanson, serving from the Third Judicial District, current term expires January 31, 1988;
Charles Bettisworth, serving from the Fourth Judicial District, current term expires January 31, 1990.

Technical and administrative support to the Local Boundary Commission is provided by the Department of Community and Regional Affairs, Division of Municipal and Regional Assistance.

The following provides a brief description of the procedures and different types of actions through which the Commission fulfills its responsibilities.

FORMATION OF MUNICIPAL GOVERNMENTS: City and borough governments are incorporated under the provisions of State laws and administrative regulations. The Local Boundary Commission reviews and acts on all petitions for municipal incorporations in accordance with AS 29.18.011-150, 19 AAC 10.010-030, 19 AAC 10.160-180 and 19 AAC 10.325-440. If the Commission approves a petition for the incorporation of a municipal government, it must also be approved by the voters of the territory proposed for incorporation before the incorporation is effected.

MUNICIPAL BOUNDARY CHANGES: Annexations and detachments may be effected by Local Boundary Commission action through either of the two following general procedures:

- A. Legislative Review - Section 29.68.010(a) of the Alaska Statutes and Sections 19 AAC 10.065-090 and 19 AAC 10.450-620 govern boundary changes related to the legislative review process. This process requires approval of a proposed boundary change by both the Local Boundary Commission and the State Legislature. This process is being used for the two proposed boundary changes recommended for approval by this Session of the Legislature, i.e. for the Cities of Fairbanks and Togiak.

The legislative review process is often initiated by municipalities in circumstances where there is a compelling public need for a boundary change, but where a majority of the residents in the territory involved in the proposed boundary change may not support it. However, such is not the case in the territory proposed for annexation by either the City of Fairbanks or the City of Togiak.

The Commission always conducts a public hearing in the municipality proposing the boundary change under this process. If, following the hearing, the Commission determines that the proposed boundary change meets the standards established by laws and regulations, the Commission presents its recommendation for the boundary change to the Legislature during the first 10 days of any regular session. The recommended change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution receiving concurrent approval from a majority of the members of each house.

- B. Local Action - Section 29.68.010(b) of the Alaska Statutes and Sections 19 AAC 10.065-090 and 19 AAC 10.630-730 govern boundary changes related to the local action process. Municipal boundary changes proposed under this process do not require a review by the Legislature. The following discussion examines the three different types of boundary changes which may be effected under the local action process:

1. Under the provisions of Section 29.68.010(b)(1) of the Alaska Statutes, territory may be annexed or detached through election by the residents of the territory. To become effective the proposed boundary change must be approved by the Local Boundary Commission and by a majority of voters in the territory proposed for annexation or detachment.

2. Under the provisions of Section 29.68.010(b)(2) of the Alaska Statutes, property which is owned by a municipality and which adjoins its present boundaries may be annexed by ordinance without voter approval. The annexation becomes effective with the filing of the notice of the adoption of the ordinance with the Department of Community and Regional Affairs.
3. Under the provisions of Section 29.68.010(b)(3) of the Alaska Statutes, an area adjoining a municipality may be annexed or detached if all of the property owners and all of the registered voters who reside within the territory petition for the boundary change. The annexation or detachment becomes effective through the adoption of an ordinance by the governing body of the municipality and the consent of the Local Boundary Commission.

DISSOLUTION OF MUNICIPAL GOVERNMENTS: The dissolution of a municipal government may be carried out in accordance with Sections 29.68.500-580 of the Alaska Statutes and Sections 19 AAC 10.130-150 and 19 AAC 10.260-280 of the Alaska Administrative Code.

Proposed dissolutions must be approved by the Local Boundary Commission. If a proposed dissolution is approved by the Local Boundary Commission, it may not be effected unless approved by a vote of the residents of the municipality or by the Legislature, depending on the particular process used.

SUMMARY OF ACTIVITIES OF THE
LOCAL BOUNDARY COMMISSION DURING 1984

Listed below are the petitions concerning proposed municipal incorporations, boundary changes and dissolutions which were brought before the Commission in 1984. While the majority of the petitions have been acted upon, several are currently pending before the Commission, as noted below.

MUNICIPAL INCORPORATIONS:

NIKISKI (ELECTION DISTRICT 7) - The Commission approved the petition for the incorporation of Nikiski as a city of the first class. The territory proposed for incorporation encompassed approximately 30 square miles. An election on the question of incorporation was subsequently held, with the residents of the territory rejecting the proposal to incorporate by a margin of 570 to 29.

NABESNA (ELECTION DISTRICT 17) - The Commission is scheduled to conduct a hearing on January 26, 1985 to consider the incorporation of Nabesna as a city of the second class. The territory proposed for incorporation has a population of approximately 36 and encompasses approximately 258.7 square miles. The Commission has three alternatives in acting upon the petition; it may deny the petition, it may approve the petition as presented, or it may modify the boundaries of the territory proposed for incorporation and approve the petition.

BETTLES FIELD (ELECTION DISTRICT 24) - The Commission approved the petition for the incorporation of Bettles Field as a city of the second class. The territory proposed for incorporation was reduced by the Commission from approximately 36 square miles to approximately 1.59 square miles. An election on this matter to determine whether the community residents will approve the proposal to incorporate is anticipated to be conducted by the Lieutenant Governor's Office in April of 1985. If incorporated, the name of the government would be the City of Bettles.

MUNICIPAL BOUNDARY CHANGES - LEGISLATIVE REVIEW:

CITY OF FAIRBANKS (ELECTION DISTRICT 20) - The Commission approved the petition for the annexation of approximately 117 acres bounded by Peger Road, Davis Road and Hill Road. Details concerning this proposed annexation are contained in the recommendation for the annexation of this territory found on page 7 of this report.

CITY OF TOGIAC (ELECTION DISTRICT 26) - The Commission approved the petition for the annexation of Togiak Bay encompassing approximately 183 square miles. Details concerning this proposed annexation are contained in the recommendation for the annexation of this territory found on page 11 of this report.

CITY OF UNALASKA (ELECTION DISTRICT 26) - The City of Unalaska petitioned for the annexation of an approximately 1,251 square mile area. However, the City has asked that its petition be withdrawn from possible consideration by the First Session of the Fourteenth Legislature.

MUNICIPAL BOUNDARY CHANGES LOCAL ACTION:

CITY OF KLAWOCK (ELECTION DISTRICT 2) - Approximately 6.52 acres were annexed.

CITY OF HOONAH (ELECTION DISTRICT 2) - Approximately 1,130 acres were annexed.

CITY OF SOLDOTNA (ELECTION DISTRICT 5) - Approximately 40.79 acres were annexed.

CITY OF HOMER (ELECTION DISTRICT 5) - Approximately 10.67 square miles were annexed.

CITY OF PALMER (ELECTION DISTRICT 16) - Ten separate actions were approved resulting in the annexation of parcels amounting to 2.01 acres, 0.39 acres, 14.20 acres, 3.04 acres, 9.54 acres, 5.06 acres, 222 acres, 7.96 acres, 23.37 acres and 0.79 acres.

CITY OF NORTH POLE (ELECTION DISTRICT 18) - Three separate actions for annexation were approved resulting in the annexation of parcels amounting to 137 acres, 116.07 acres and 190 acres.

CITY OF KODIAK (ELECTION DISTRICT 27) - Two separate actions for annexation were approved resulting in the annexation of parcels amounting to 10.92 acres and 10.5 acres.

MUNICIPAL DISSOLUTIONS:

CITY OF AKIACHAK (ELECTION DISTRICT 25) - Residents of Akiachak have petitioned for the dissolution of the City of Akiachak which was incorporated in 1974. The Local Boundary Commission has scheduled a hearing on the petition to be conducted in Akiachak on March 2, 1985.

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

RECOMMENDATION NUMBER ONE TO THE
FIRST SESSION OF THE FOURTEENTH LEGISLATURE

RECOMMENDATION FOR THE ANNEXATION OF TERRITORY
TO THE CITY OF FAIRBANKS

SUMMARY OF PROPOSED ACTION

The City of Fairbanks petitioned for the annexation of approximately 117 acres of land contiguous to the City and bounded by Peger, Davis and Hill Roads. The petition for annexation was authorized by Fairbanks City Ordinance Number 4351 and was submitted pursuant to Section 29.68.010(a) of the Alaska Statutes (i.e. the process which requires concurrence from the State Legislature). The Local Boundary Commission held its hearing on the petition in Fairbanks on November 30, 1984.

Approximately 77 of the 117 acres proposed for annexation were subdivided for residential/business purposes. The subdivision, known as the Jones Subdivision, contained a population of 96 individuals, approximately 35 dwellings and a small number of businesses. The balance of the territory, comprised of one 40 acre parcel, was under development. A 142 unit adult apartment complex was under construction on the 40 acre parcel; none of the apartments were yet occupied. An additional 408 apartments were planned for development, which would bring the total number of apartments within the complex to 550.

Both the City of Fairbanks and the privately-owned College Utilities Corporation had petitioned the Alaska Public Utilities Commission for the authority to provide water and sewer utilities service to the territory proposed for annexation. The decision rendered by the Local Boundary Commission on this annexation is not to be construed as being a judgment on the respective abilities of the competing utilities to provide service to the area being annexed to the City of Fairbanks.

Mr. Dennis Wise, the developer of the apartment complex, opposed the annexation of his 40 acre parcel principally on the grounds that he would prefer the College Utilities Corporation to provide water and sewer utilities services and because he opposed regulation of the construction of his project by the City Building Department.

The area proposed for annexation is within the Fairbanks North Star Borough, which has expressed no objections to the proposed annexation and has indicated to the City of Fairbanks that it

has no assets or liabilities within the area which would be acquired or incurred by the City of Fairbanks should the annexation be effected.

FINDINGS OF FACT

Following its hearing on this matter, the Local Boundary Commission made the following findings of fact:

1. The area proposed for annexation is within the Fairbanks North Star Borough which expressed no objections to the proposed annexation.
2. The territory proposed for annexation includes two distinct areas; the Jones Subdivision and Mr. Wise's development.
3. Only the Jones Subdivision is presently developed, with a population of 96 residents, according to the Borough.
4. There is no evidence of substantial opposition to the proposed annexation from the residents of the Jones Subdivision. No polling of residents' preferences regarding annexation was undertaken by the City. However, testimony by a resident of the Jones Subdivision indicated that nearly every household had been contacted concerning the proposed annexation and that only three residents were opposed to the proposed annexation. Notice of the Commission's hearing was extensive, in that it was published three times in the Fairbanks Daily News-Miner. Further, a resident of the subdivision testified that she had personally delivered copies of a notice of the meeting to each household in the subdivision.
5. The Jones Subdivision area is in need of the following City services which it does not presently receive: road construction and maintenance and drainage control.
6. The Jones Subdivision is urban in character: it has a population density of 798 residents per square mile, which is greater than the City as a whole. Additionally, it contains significant residential and commercial development and the property is subdivided.
7. The 40 acre parcel of land owned by Mr. Wise is also urban in character. The property is being developed for residential purposes and the anticipated population density of this parcel of land will be much greater than that of the City as a whole.
8. The current and anticipated future development of the 40

acre parcel of land owned by Mr. Wise will result in the generation of demand for municipal services which can be most efficiently provided by the City of Fairbanks. The anticipated demand for municipal services is particularly great with respect to road maintenance and drainage.

9. The annexation of Mr. Wise's development would enable the City of Fairbanks to exercise a desirable degree of control over development of that property. In particular, the Commission finds that the health and safety of the future occupants of the development would be better ensured if the development were subject to the City's building codes.
10. The question of the health, welfare and safety of City residents being endangered by conditions existing or developing within the property owned by Mr. Wise was raised, particularly with respect to the apparent significant increase in vehicular traffic which will result from the development, regardless of whether future residents of the Wise property exit on 19th or Davis Road. However, the Commission made no determination as to what extent such traffic might endanger the health, safety or welfare of City residents.
11. The City of Fairbanks has made a good faith attempt to ensure that the voting rights of people in the territory proposed for annexation will not be adversely affected by the annexation. The City's actions in this regard include evaluating the ethnic population composition of the area proposed to be annexed in relation to overall City and Borough patterns; and contacting representatives of various minority groups. No adverse comments were offered regarding the possible infringement on voting rights at the Commission's hearing.

STATEMENT OF DECISION

Based on the aforementioned facts, all of the members of the Commission who were present at the hearing and subsequent decisional session have determined that both the Jones Subdivision and the Wise property meet many of the standards for the annexation of contiguous territory to a city. Therefore, the September 12, 1984 petition of the City of Fairbanks for the annexation of territory was approved without modification by the Local Boundary Commission.

RECOMMENDATION

On this basis, the Local Boundary Commission hereby recommends to the First Session of the Fourteenth Legislature that the territory described below be annexed to the City of Fairbanks:

The SW 1/4 of the NE 1/4 of Section 17, T1S, R1W, F.M. and the E.M. Jones Homestead Subdivision recorded in the Fairbanks District Recorders Office as Instrument Number 156.156 on May 25, 1955, the exceptions to these contiguous areas are as follows: those portions of Peger Road and Davis Road rights-of-way that lie within these areas and all of Block 3 of the same E. M. Jones Homestead Subdivision.

NOTE

On January 11, 1985, Dennis Wise and Wise Enterprises, Inc., filed an appeal of the decision of the Local Boundary Commission regarding this matter in Superior Court.

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

RECOMMENDATION NUMBER TWO TO THE
FIRST SESSION OF THE FOURTEENTH LEGISLATURE

RECOMMENDATION FOR THE ANNEXATION OF TERRITORY
TO THE CITY OF TOGIAK

SUMMARY OF PROPOSED ACTION

The City of Togiak petitioned for the annexation of Togiak Bay, consisting of approximately 183 square miles of territory contiguous to the City. The annexation was submitted pursuant to Section 29.68.010(a) of the Alaska Statutes (i.e. the process which requires concurrence from the State Legislature).

The area proposed for annexation consisted of Togiak Bay up to the mean high tideline and bounded on the south by a straight line between the southernmost points of Rocky Point and Tongue Point. Togiak Bay is an area of intense commercial fishing activity during the spring and summer months. The only permanent structure within the territory proposed for annexation is a portion of a cannery operated by Togiak Fisheries, Incorporated. The territory proposed for annexation has no permanent residents, with the possible exception of a watchman employed by Togiak Fisheries, Incorporated. However, the area experiences a large seasonal influx of population associated with commercial fishing, fish processing and related activities during the spring and summer months.

On January 12, 1985, the Commission conducted a hearing on the petition for the annexation in Togiak at the Togiak High School Gymnasium. Both written and oral testimony received by the Commission served to accentuate the frequency and severity of public safety problems attributable to heavy traffic in liquor in Togiak Bay during the fishing seasons. Testimony of local officials, primary health care providers and private individuals emphasized the futility of efforts to prevent the sale and importation of alcohol within the present municipal boundaries of Togiak because of the ready availability of alcoholic beverages from vessels in Togiak Bay during the commercial fishing seasons.

FINDINGS OF FACT

Following its hearing on this matter, the Local Boundary Commission made the following findings of fact:

- I. THE TERRITORY IS IN NEED OF MUNICIPAL SERVICES WHICH THE CITY CAN PROVIDE MORE EFFICIENTLY THAN ANOTHER MUNICIPALITY.
 - A. Testimony by the City of Togiak and local residents demonstrated that police protection in Togiak Bay is needed to effectively enforce the local ban on the importation and sale of alcohol, especially during the herring and salmon commercial fishing seasons, and that these services are not being effectively provided by the State of Alaska. A neighboring community, Twin Hills, is unincorporated and is presently provided with police protection services by officers from Togiak. Thus, the City of Togiak could provide the needed police protection services more efficiently than any other municipality.

- II. THE HEALTH, WELFARE OR SAFETY OF CITY RESIDENTS IS ENDANGERED BY CONDITIONS EXISTING OR DEVELOPING IN THE TERRITORY AND ANNEXATION WILL ENABLE THE CITY TO REMOVE OR RELIEVE THOSE CONDITIONS.
 - A. Testimony concerning alcohol-related accidents and public health problems which was given by local law enforcement officials, primary health care providers and private citizens gave strong support to the petitioner's assertion that the health and welfare of city residents is endangered by activities in Togiak Bay, especially during the commercial herring and salmon fishing seasons. Alcohol was cited as a factor in several drownings in Togiak Bay during the past 3 or 4 years.
 - B. Additional revenues generated by raw fish taxes which the City of Togiak could expect to receive as a result of annexation of Togiak Bay would provide financial resources sufficient to purchase needed equipment such as a boat and to hire trained personnel to enforce the prohibition of the sale and importation of alcohol in the community.

- III. RESIDENTS OR PROPERTY OWNERS WITHIN THE TERRITORY RECEIVE OR MAY REASONABLY BE EXPECTED TO RECEIVE, DIRECTLY OR INDIRECTLY, THE BENEFIT OF CITY GOVERNMENT WITHOUT COMMENSURATE PROPERTY TAX CONTRIBUTIONS, WHETHER CITY SERVICES ARE RENDERED OR RECEIVED INSIDE OR OUTSIDE THE CITY.
 - A. Primary health care, public safety and other municipal services are available to transient Togiak Bay residents. These people presently do not contribute directly to the local support of such services.

STATEMENT OF DECISION

Based on the aforementioned facts, all of the members of the Commission who were present at the hearing and subsequent decisional session have determined that the petition submitted by the City of Togiak for the annexation of Togiak Bay meets several of the standards for the annexation of contiguous territory to a city. Therefore, the September 18, 1984 petition of the City of Togiak for the annexation of territory as described in Togiak City Resolution Number 84-02 is approved without modification by the Local Boundary Commission.

This annexation is deemed necessary because the recommendation for the creation of a service area for Togiak Bay pursuant to AS 29.03.020, submitted by the Commission to the First Session of the Thirteenth Legislature, was not enacted.

The possibility of Twin Hills' future incorporation was discussed by the Commission. Should such an eventuality occur, appropriate boundary adjustments in Togiak Bay should be made at that time.

The provisions of the Federal Voting Rights Act of 1965, as amended, have been considered. They do not appear to have been violated.

RECOMMENDATION

On this basis, the Local Boundary Commission hereby recommends to the First Session of the Fourteenth Legislature that the territory described below be annexed to the City of Togiak:

Starting at the mean high tideline of the southern most tip of Tongue Point on the west side of Togiak Bay; thence moving in a northeasterly direction along a straight line to the mean high tideline of the southern most tip of Rocky Point on the east side of Togiak Bay; thence meandering in a northerly direction along the mean high tideline of the east side of Togiak Bay to the intersection with the east bank of the mouth of the Togiak River; thence meandering in a northerly direction along the east bank of the Togiak River to the intersection with the northern boundary of the protracted Section 6, T13S, R66W, Seward Meridian (S.M.); thence west along the section line to the intersection with the west bank of the Togiak River; thence meandering in a southerly direction along the west bank of the Togiak River to the

intersection with the mean high tideline of the western side of Togiak Bay; thence meandering in a southerly direction along the mean high tideline of the west side of Togiak Bay to the intersection with the southern most tip of Tongue Point, the true point of beginning, containing approximately 183 square miles.