

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

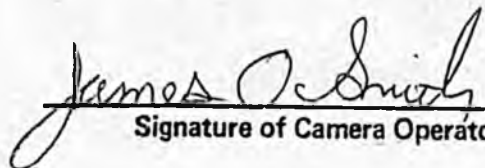
4209 SLAB HB 126 - HB 148

1089

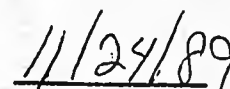


RECORDS CERTIFICATION

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Signature of Camera Operator



Date

H B

h b

Offered: 3/20/85
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 126 (Judiciary)

*SB 432 + 40-
last.*

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act amending the Alaska Securities Act."

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

8 * Section 1. AS 45.55.260(c) is amended to read:

9 (c) For the purpose of this section, an offer to sell or to buy
10 is made in this state, whether or not either party is then present in
11 this state, when the offer

12 (1) originates from this state; [OR]

13 (2) is directed by the offeror to this state and received at
14 the place to which it is directed, or at a post office in this state
15 in the case of a mailed offer;

16 (3) is for an interest or participation in an oil, gas, or
17 mining right, title, or lease on land in the state, including sub-
18 merged land, regardless of where the offer is made;

19 (4) is for an interest or participation in payments out of
20 production under an oil, gas, or mining right, title or lease on land
21 in the state, including submerged land, regardless of where the offer
22 is made; or

23 (5) is for an interest or participation in real property
24 located in the state, a domestic corporation, or a domestic limited
25 partnership; jurisdiction under this paragraph may be exercised only
26 when the exercise is not inconsistent with the constitution of this
27 state or of the United States.

Chairman's Information:

1) CSHB 126(Jud): "An act amending the Alaska Securities Act"

a) Introduced: by Governor

b) Co-Sponsors:

2) INTENT: This bill is designed to expand the jurisdiction of the Division of Banking and Securities, DCED, to regulate transactions in securities which are not covered under the present Alaska Securities Act.

FISCAL NOTE: From House Finance; consolidates funding in DCED, with legal expenses to be RSA's to the Department of Law.

NOTE:

3) ADDITIONAL REFERRALS: Judiciary, and Finance

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?

b) Assign to sub committee for further review?

c) Move from Committee?

d) close public hearings?

6) COMMITTEE ACTION:

a) amendments?

b) CS adoption?

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

CORRECTED

Revision Date: 4/4/85

REQUEST page 1 of 5
 Bill/Resolution No.: CSHB 126 (Jud)
 Title: An Act Amending the Alaska Securities Act
 Sponsor: _____
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL
 Agency Affected: Commerce and Econ. Dev.
 Program Category Affected: Consumer Protection
 BRU, Program or Subprogram(s) Affected: Banking Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		34.0	35.4	36.8	38.2	40.0
300 CONTRACTUAL		10.0	11.7	12.4	13.1	14.1
400 SUPPLIES		42.2	44.8	47.4	50.2	53.4
500 EQUIPMENT		1.0	1.1	1.2	1.3	1.4
600 LAND & STRUCTURES		5.0				
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		92.2	93.0	97.8	102.8	108.9

CAPITAL						
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		92.2	93.0	97.8	102.8	108.9
FEDERAL FUNDS						
OTHER						
TOTAL		92.2	93.0	97.8	102.8	108.9

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

House Finance substitute fiscal note consolidates funding into Dept. of Commerce and Economic Development. Legal expenses will be RSA's to Dept. of Law as needed. Backup from Dept. of Law and Dept. of Commerce is attached.

Prepared By: Al Adams Phone: _____
 Division: House Finance Date: 4/4/85
 Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

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

See notes 12/1/84 F.Y.

C5 126-188-323
FISCAL NOTE ANALYSIS

This bill, if enacted, will require that the Securities Section of the division undertake securities registration for the sale of oil and gas leases located in Alaska and will undoubtedly result in increased filings as well as substantial efforts in compliance and enforcement activities including hearings. A Business Registration Examiner position will be necessary to support these registrations. The current substantially increased workload has stretched the examining/enforcement staff to the limit. The additional clerical support will free up the professional staff time to cope with the expanded registration and enforcement duties imposed by the proposed legislation.

Travel of 3.0 will be required for investigation of wrongdoers in the field. Contractual funds of 3.0 is needed for hearing officer purposes in administrative proceedings. Additionally, a one time expense of 5.0 is included to cover costs of typewriter and computer terminal for the new position.

Amounts shown in FY '85 assume bill passage with an effective date that will permit one month personal services and purchase of equipment within this fiscal year. Form C5 reflects 5.0 in FY '86 for equipment assuming we do not have authority in FY '85.

This bill amends the state's existing securities laws to strengthen the state's law enforcement jurisdiction over securities offerings made in other states, where the underlying "value" of the security is a (non-competitive) oil, gas, or mineral lease on Alaska land. Sales of speculative investments in such leases are already regulated "security" transactions, but Alaska's current law does not allow the state to require registration, or to take enforcement action against sellers who set up offices outside Alaska but who market Alaskan leases as securities, usually only to non-Alaskans.

These sales are often fraught with misrepresentations about the value of the Alaskan oil or gas lease, or the true cost of exploring and developing production on the lease land. Investors in other states pay up to \$1,000 an acre for state and federal lease lands available over-the-counter in Alaska for \$1.00 an acre, in hopes of striking it rich, in line with the promoters' glowing promises.

These sales, and the subsequent losses of \$6,000, \$10,000, even \$20,000 to each of thousands of out-of-state investors, are very damaging to Alaska's commercial and investment image. Moreover, the subdividing into smaller parcels of these 640 acre leases may well defeat the underlying purpose of the state and federal exploratory (non-competitive) leasing program.

Enactment of this bill will require the attorney general to provide additional legal support for research, advice and enforcement action in the courts, as requested by the Division of Banking and Securities. As most of the offending companies are located outside Alaska, lawsuits to obtain injunctions against them will require substantial out-of-state travel funds to take depositions and interview witnesses, as well as funds to conduct those depositions and interviews.

It is expected that, at a minimum, five trips outside Alaska will be necessary to enforce registration of sales Alaskan oil, gas, or mineral leases outside Alaska. It will also be necessary to hire court reporters in order to take depositions and to hire outside counsel to file actions in jurisdictions outside the state.

<u>Out-of-state Travel</u>		
5 trips X \$800	fare =	\$4,000
5 X 10 days X \$80 per day	=	<u>\$4,000</u>
Total travel & per diem	=	\$8,000

Contractual

Court reporter services
6 hrs. X \$80 X 40 days = \$19,200

Outside counsel 4 occurrences
X \$5,000 = \$20,000

Total \$39,200

TOTAL COSTS \$47,200

Costs beyond FY 86 include a 6% annual inflation factor.

1.	POSITION TITLE BUSINESS REGISTRATION EXAMINER				RANGE/STEP 12B	DARG. UNIT GGU	PAGE/LINE	COY.	APPROV.	DISK/YP.
2.	TYPE OF POSITION Fulltime	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				A new position will be required when the Alaska Securities Act is amended to protect the public against the shams in oil and gas land leases involving Alaska lands. The Securities Section will undertake the registration of these leases and will experience a substantial increase in the requirements for compliance, enforcement including hearings.					
					The responsibility for this position will be to set up investigative files, maintain data entry, file investigative reports, coordinate material necessary for preparation of Cease and Desist Orders or possible court actions, screen initial registration documents, do follow-up for inquiry with other securities jurisdictions, BLM, DNR, as well as local State and federal law enforcement agencies.					
					Manage files and documents relative to registration, record funds. In-field registration inspection as required. Generally assist securities examiner as directed.					
5.	PERSONAL SERVICES		RP NUMBER	AMOUNT						
6.	Salary		25.6	3						
7.	Benefits		6.8							
8.	Supplemental Benefits		1.0							
9.	Fixed Benefits									
10.	TOTAL PERSONAL SERVICES		01	34.0						
11.	Travel		02	2.0						
12.	Contractual		03	3.0						
13.	Commodities		04	1.0						
14.	Equipment		05	5.0						
15.	Other									
	TOTAL COST			45.0						
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		C.F. Match 1003								
19.		General Funds 1004								
20.		I-A Receipts 1005								
21.		Program Receipts 1028								
		Other								
FOR BSM USE ONLY										
KEY NUMBER _____										

**REQUEST FOR
NEW POSITION**

AGENCY Commerce & Economic Development
 PROGRAM Consumer Protection
 BRU Banking, Securities & Corporations
 COMPONENT Financial Institutions

HR 126, 76-1
 Page 3 of 5
 Revised Date _____

FY 86

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 126, 7.2
 Title: "An Act amending the Alaska Securities Act."
 Sponsor: House Rules/by req. of Gov.
 Requestor: Governor's Office - OMB
 Date of Request: 12/11/84

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Government
 BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		8.0	8.5	9.0	9.5	10.1
300 CONTRACTUAL		39.2	41.6	44.0	46.6	49.4
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	47.2	50.1	53.0	56.1	59.5

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	47.2	50.1	53.0	56.1	59.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Not specified by sponsor.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administration Division Date: 12/12/84
 Approved by Commissioner: Norman C. Gorsuch Date: 12/12/84
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

7/1/84



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 126(Jud)

This bill amends the state's existing securities laws to strengthen the state's law enforcement jurisdiction over "fraudulent" securities offerings made in other states.

Alaska's current law does not allow the state to require registration or to take enforcement action against sellers who set up offices outside of Alaska, but who market Alaskan leases as securities to non Alaskans.

This legislation will broaden the Alaska Securities Act to cover these business firms even if the "investment" sales are not made in Alaska or to Alaskan residents.

This bill will not affect legitimate companies engaged in oil, gas, or mineral exploration or production, as they are already exempted from the Alaska Securities Act by AS 45.55.140(b) (17).

MEMORANDUM

State of Alaska

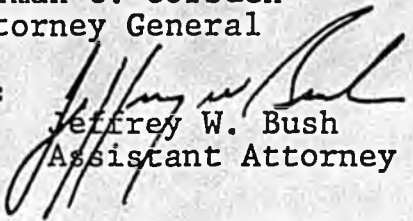
TO: Louann Cutler, Staff Assistant DATE: April 2, 1985
House Finance Committee

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: CSHB 126 (Jud)
Sectional analysis

By: 
Jeffrey W. Bush
Assistant Attorney General

As requested, I have prepared a sectional analysis of CSHB 126 (Jud). This bill is designed to expand the jurisdiction of the Alaska Securities Act to enable the Administrator of Securities (Director, Division of Banking and Securities, Department of Commerce and Economic Development) to regulate certain transactions in securities which are not covered under the present Act.

1. Proposed AS 45.55.260(c)(3). This paragraph expands jurisdiction under the Securities Act to cover any transaction involving the sale of an interest in an oil, gas, or mining lease where the lease is on land located in Alaska, even if both parties to the transaction are outside of the state.

2. Proposed AS 45.55.260(c)(4). This paragraph, which also involves interests in oil, gas, or mining leases located on Alaska lands, extends jurisdiction under the act to transactions involving payments, such as royalties, from production under these leases, even if the parties to the transaction are outside of Alaska.

3. Proposed AS 45.55.260(c)(5). This paragraph, which was added by the Judiciary Committee, expands jurisdiction under the Act to include all transactions between nonresidents who sell security interests in real property located in Alaska, corporations incorporated in Alaska, or limited partnerships registered in Alaska. Recognizing that this paragraph would otherwise be subject to challenge as a violation of the Commerce Clause or the Due Process Clause of the United States Constitution, jurisdiction under this paragraph is expressly limited to those cases where its exercise is constitutionally acceptable.

You have also asked whether the amendment adopted by the Judiciary Committee will result in any change in the fiscal note submitted by the Department of Commerce and Economic Development. I have checked with the department, and they have

Sectional analysis

Louann Cutler, Staff Assistant
House Finance Committee

April 2, 1985
Page 2

informed me that the fiscal note originally submitted is still correct and should be considered in conjunction with CSHE 126 (Jud).

JWB/mf

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

14B.26

January 25, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends the Alaska Securities Act (AS 45.55) by extending its scope to include offers to buy or sell interests in oil, gas, or mining rights on land in the state, regardless of where the offer or sale occurs.

The bill was jointly prepared by the division of banking, securities and corporations of the Department of Commerce and Economic Development and the consumer protection section of the Department of Law in response to numerous complaints of fraudulent oil and gas lease schemes. These schemes typically involve solicitations by firms located outside Alaska who acquire an interest in oil or gas leases through bid offerings of the Department of Natural Resources or the federal Bureau of Land Management.

The lease tracts these firms acquire are often the least likely to contain valuable oil, gas, or mineral resources. However, these firms conduct massive high pressure telephone sales and media advertising aimed at would-be investors in the lower 48 states, promising them high returns if they "invest" in a portion of one of these Alaskan oil or gas leases. The offering firms often falsely represent that they have expertise in oil, gas or mineral exploration or development. What is especially offensive to our state is that these slick operators often use names such as "Alaska Oil and Gas Exploration" or "Alaska Petroleum Investments," and set up empty "shell" corporations with Alaska addresses.

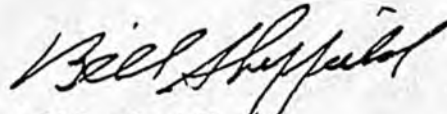
This bill would broaden the Alaska Securities Act to cover these business firms even if the "investment" sales are not made in our state or to Alaska residents. Essentially, the bill would do this by extending the jurisdiction of our state securities regulators and of our courts over these

fraudulent schemes. The state would be able to take legal action against these out-of-state sellers of Alaska mineral rights. By amending the Securities Act, Alaska can require these firms to file securities registrations regarding their sales, and to give prospective purchasers truthful information about the likelihood of realizing a gain on such investments.

This legislation will not affect legitimate companies engaged in oil, gas, or mineral exploration or production, as they are already exempted from the Alaska Securities Act by AS 45.55.140(b)(17).

This bill should be supported by consumer groups as well as by the legitimate members of the oil and gas industry. Therefore, I urge your prompt action on this bill to prevent further damage to the commercial image, nationwide, of Alaska.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Sheffield". The signature is written in a cursive, flowing style.

Bill Sheffield
Governor

(specializing) lawfirms out of Denver and Texas - but you probably couldn't afford even an hour's worth of their time! Also remember, there are NO state or federal laws that protect or help you little guys! The first point you'll have to prove is that the accounting they give you is probably more crooked than a witch's hairpin! And without some knowledge of how and where to prove that (even for a geologist with a foundation in mineral/security law!) will have to spend thousands and probably come up with nothing! The only ones who will win will be the lawyers, and that will be through their terribly high hourly legal fees! ■

Letter 3

PHONE PEDLARS SELLING OIL FRAUDS THINK EVERYONE THEY CALL IS AN A.. H...

Dear Sirs

"Please find inclosed, an oil & gas leaseing rip off I received in the mail today. I have during the past several months received numerous telephone calls, from any numbers of file for you agents. I always give them a bad time. The windup telling them off in terms which would be inprintable. Then Ha Up. In one case I got a call back, the fellow representing himself as THE DISTRICT ATTORNEY!

So I started giving him a BAD TIME, but before I got around to really telling him off. He beat me to it by telling me. [QUOTE: "I knew you were A BIG A-- II--- BEFORE I CALLED YOU, BUT YOU ARE A BIGER A-- II--- THAN I THOUGHT YOU WERE"). THEN HE STARE UP THE PHONET HE BEAT ME TO THE PUNCH, AND TOLD ME OFF. BUT I GOT A BIG LAUGH OUT OF IT ANYWAY."

Yours truly

ANS: Dear subscriber - you learned a silly but happily good lesson from the "telemarketeer" who called you! [You are too intelligent to be taken - the poor slob who called you is the "class rated" JACK-ASS!] Your letter really "tells it like it is!" That psychopath showed you just how low low such telemarketers (as they call themselves) can get to .. (the gutter)!

He proved exactly what Thyra Thompson, Secretary of State for Wyoming wrote in one of her excellent legal opinions (on the subject) in late 1983! He proved what the Denver Post described in a funny article in 1984 - giving the same descriptive (slang terms and names) such boiler room con-artist use to describe their potential VICTIMS! The low-life that call their sucker lists across the U.S. consider the public dribbling morons. They have less respect for ... public they call than killing a rat.

When, in fact, the boiler room bosses (allegedly most of the time) are right out of the

arrested in Florida recently were described by Federal authorities; "Underworld" characters.

I recently read about a \$250,000 study and report commissioned by the Justice Department. And it clearly states that such "underworld" swindlers have gotten SO RICH (the Godfathers behind the scenes) that run all types of "SECURITY swindles"-are RICHER than the federal government and the state governments. And its now too expensive to fight these criminals!

We have found in recent years that when it comes down to the various federal agencies who do good to excellent investigations - then have to hand it all over to young, inexperienced federal attorneys (low in the pecking order) that all the "task force's investigations eventually go for nothing!" Now, you make up your own mind - come to your own conclusions WHY THAT IS A FACT?! I know what I believe! And it goes right back to the statement made in the report - "the people who head such "franchised" security scams HAVE BIG MONEY!" And what is the old saying? -- Money Talks?!

Its no wonder that the public is so gullible. For "ignorance is bliss!" Even with the swindlers, their ignorance is only exceeded by their stupidity, lead by arrogance and cunning!

You got a good dose (happily so, from what you report), of just exactly what LOW esteem these salesmen think of the people they swindle! They are the lowest form of human - as you now know, they aren't fit to lick your boots! And they darned well know exactly what they are doing! The "room" bosses - their secret "godfathers"-and YES - including the salespeople (they also USE) are lower than grave-robbers and from what that early 1984 Airline Magazine reported, these salesmen even "stink like a major-league' locker room!" - Its reported (alleged) the real "Underworld" bosses (the king-pins at the top in the real high chain of command) have always been pushing prostitution, drugs, gambling, you name it ... -- And many a "low-level soldier" has been watched getting on and off planes to and from Las Vegas "every week-end." This was reported by a well-known (respected) investigative reporter from Phoenix several years ago! [And he recently came out with still another article about the same "mob figure!"]

I'm glad that many readers are finding this all out on their own! YES! we've heard tapes of threatening (egotistical) salesmen's high-pressure calls. When a client tells them off! (Calling back and threatening potential victims .. nothing new)! Your letter is one of many received (only more expressive and clear)! "They" are obviously using OLD sucker-lists - worked over and over again! As we stated in earlier issue, "The people being called are weary of such time consuming bunk." And some are "getting mad!"

In a way you were lucky, He did you a big

forget! Such "Underworld" characters, as you now know, are low-life that can't earn a living in any other way (outside of "armed robbery" as one recent Classified ad so stated in late 1984 - seeking more salesmen)! At least you really got the last laugh and the biggest laugh! -- Such temper-tantrums are classic and reveal more than a psychiatric evaluation! He exposed himself completely, proving his mouth and mind are nothing more than a sewer! -- And that joker is trying to make his suckers believe he's an "investment advisor?!?!!" The FBI's warnings last summer, naming men's names, was most significant! It proves these people are capable of any kind of violence and are the worst of human types! Yet they love to portray themselves as such up-right citizens in their slick promotional brochures! And they guarantee everything! But then why should they care! So far such long past histories reveal a series of C&Ds, civil lawsuits, and often criminal histories-and they are still out there calling people using ever new names and shell corporations! And invariably "lawyers" names show up prominently in their expensive literature!

We have got too little state and federal law enforcement, along with 'know nothing' staff (about security fraud). Most are green-behind-the-ears (about how legitimate O&G deal work). They couldn't recognize O&G security frauds if they fell in them. All too many bureaucrats don't really care, as long as their paychecks arrive. The general public is jammed! Victims must realize they are responsible for their own involvement in sending thousands to a fraudulent investment! There are laws on books to be enforced. Legislatures fund such state agencies. And even the Justice Dept. gives only 'lip service.' (such as last March when top of criminal division promised "grand jury indictments soon")! [When D.C. official made TV-news of Postal Inspectors raids on "22 boiler rooms" nationwide!] It's past due for "buyer beware!" But I must say, not to get in trouble with ALL security agencies, that there are a few states (such as Alaska, Iowa, Texas, etc.), that have done good jobs of attempting to clean up and stop white-collar/career criminals. Texas is doing best job with court sentences of as much as 25-years to such criminals. ■

Don't move without letting us know! - Include your old address (address sticker if possible).

Name _____

Address _____

City 15 _____ State _____ Zip _____

Southwest Oil & Gas News
P.O. Drawer 25847
Albuquerque NM 87125

F.C.W

Stratford Company, Inc.
11601 Biscayne Blvd.
Miami, Florida 33181

TXA Investments, Inc.
P.O. Box 4034
28990 Pacific Coast Highway
Malibu, California 90265

✓ (A 20-711 F 1000 1000 1000)
Trans Alaska Energy Corporation
Miami Beach, Florida
Van Nyes, California
Chicago, Illinois

Trans-Alaska Investment, Inc.
1001 Ives Dairy Road - 3204
North Miami Beach, Florida 33179

Trans-Alaska Leasing Corporation
(Company)
5445 Balboa Boulevard, Suite 111
Encino, California 91316

Trans-Alaska Oil Development

Trans World Resources Corporation
Hollywood, Florida 33024

Tundra Oil, Inc.
28990 Pacific Coast Hwy., Ste 214
Malibu, California 90265

USA Resources, Ltd.
1331 - 17th Street Suite 400
P.O. Box 5200
Denver, Colorado 80217

Trans-Petro
Encino, CA.
818/906-1445

Florida Cease and Desist 10/25/83; Michigan
Cease and Desist 10/24/83. Same address as
Eagle Oil & Gas Company.

Offers "Partnerships," Cliff Burglin,
Fairbanks, Alaska, "Managing General
Partner." Associated with Alaska Land
Leasing, Inc. or Alaska Capitol
Corporation? Montana Cease and Desist for
Texas oil program, 3/20/84.

On 12/19/83, Mylo Tague, 1937 Denslow Drive,
South Bend, Indiana advised that he had
been solicited by this firm. David Swain
was identified to Tague as chairman (see
Federal Property Record Company, Inc. and
Barrington Aims Whitney, Ltd., above). FTC
TRO 3/84.

Inquiry 2/27/84 by Alabama Securities
Division. Again 4/12/84.

Sale in 5/84 of Partnership interest in
an Ohio well to a California resident along
with a related 240 acre "Alaskan exploratory
right." (Denali Block) Associated with
International Western Oil, International
Western Mud, International Western Drilling,
International Western Resources Corporation,
Trans-Petro, "Petro-Mark."

Associated with Federal Property Record,
Inc. - Alabama inquiry 4/20/84.

Final order to deny or revoke exemptions
and Cease and Desist issued by Michigan
Corporation and Securities Bureau 2/27/84.

The State of Alaska is presently in
litigation with this firm. (See Alaska
Land Leasing above.)

Inquiry concerning this firm received
1/31/84 from David Reintf, 1508 S. Merlon,
Aberdeen, South Dakota 57401. Inquiry by
Texas Securities Division, 3/6/84.
Associated with Northwest Asset
Corporations.

Apparently has mailing list of ALLI people
from which solicitations are being made.

U.S. Oil and Gas Corporation

Florida corporation. Desist and Refrain Order issued by California Department of Real Estate 6/21/84.

United American Mineral Corporation

On 12/21/83, Norah Malkian, Commercial Leins Underwriter, Ultima Insurance Services, Inc., 3280 E. Foothill Blvd., Suite 440, Pasadena, California 91107, made an inquiry to Lawyers Title Insurance Agency, Inc., Anchorage, Alaska concerning United American Mineral Corporation. The description of its planned activity would indicate that it intended to sell secondary leases in federal oil and gas properties in Alaska. No further information is available.

United Arctic Oil, Inc.
1100 Glendon Avenue, Suite 2101
Los Angeles, California 90024

This firm has made solicitations in the State of Alaska. See Knight-Anderson Cease and Desist Order issued by the Iowa Superintendent of Securities 11/23/84.

United Petrosearch, Ltd.
2979 N. Mayfair Road
P.O. Box 25820
Milwaukee, Wisconsin 53225
414/453-3500

Sent mail solicitation to an Alaska state representative. Alaska Cease and Desist issued 4/3/84, finalized 5/7/84.

Westchase Petroleum Exploration, Inc.
401 W. Texas Street
Midland, Texas 79701

Order to Cease and Desist issued by the Alaska Division of Securities 12/15/83. Company was active in Wisconsin and Colorado.

YESCO

See the Denali Group.

Yare Energy Sciences Corporation
3723 Birch Street, Suite 24
Newport Beach, California 92660

See The Denali Group.

Worldwide Exploration, Inc.
11050 Santa Monica Blvd.
Santa Monica, CA. 90404

~~Inquiry by~~ Ak. Order 84-19. Involves Scott Chapin. Dee Delta Oil Co. and Chapin & Associates, Inc.

Wyoming Exploration, Inc.
2922 Santa Monica Blvd.
Santa Monica, CA. 90404
James Francisco - President
Jason W. Smith - Vice President

Inquiry by Idaho resident 2/19/85. Firm contacting earlier lease purchasers. ~~James Francisco~~

k

Bass Oil Co.
2213 Van Owen Street
Canoga Park, CA. 91307
818/716-5211

~~Alfred~~ Green, Alfred
Bass, Donald - ~~PRESIDENT~~
Daehon, Adam
Linder, Tricia-employee

3/85 gave St. of Ak. \$195,000 ch
to maintain lease payments for 1.
sold to ALLI investors. Payment
stopped on check.

~~619/235-0383~~
Bank DuPont
23441 South Pointe Dr.
Laguna Hills, CA.

Gardner, H.L.-Exec.V.P.
Kirby, Jonathon-Salesman
Michael, Robert C.-Geologist
SINGECH RICHARD-ACCT. EXEC.
DR. CHARLES-EXEC. VP.

Inquiry from Ca. 3/11/85. Offering
for \$2,000 an undivided interest
in 560 acre federal lease held by
Bank DuPont using ~~XXXXXX~~ name
IRA 1984 ~~xx~~ Partnership.

ASTOC INC
W/TH 15% INTEREST
ASSIGNED TO THE COMPANY
BEFORE THE PARTNERSHIP
BEFORE THE PARTNERSHIP

~~Micallie~~

Micallef Energy & Development
Corporation

~~Two~~Two Century Plaza

2049 Century Park East, Suite 110

Los Angeles, CA. 90067

213/556-3003

Micallef, Gregory E. - President

Skinner, Michael C. - Vice President

Vilardi, John

Dealing in Alaska federal oil
gas leases.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF BANKING, SECURITIES & CORPORATIONS

POUCH D
JUNEAU, ALASKA 99811

Banking & Securities (907) 465-25
Corporations Section (907) 465-25

ANCHORAGE

February 5, 1985

Corporation Information (907) 563-21

Honorable Mike Navarre, Chairman
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Attention Roger Poppi
Administrative Assistant

Dear Representative Navarre:

Re: House Bill 126 - An Act Amending the
Alaska Securities Act

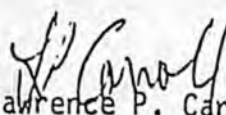
You have requested of this division whether or not the enclosed HB 126, amending the Alaska Securities Act, is in conflict with any federal law.

Last year when this particular legislation was drafted and compiled by the Department of Law, that same question was treated by the Attorney General. In seeking their counsel on this matter, we were advised that the proposed legislation does not conflict with the Interstate Commerce provisions of federal law, and, because this deals with an important state's rights interest, i.e., the lease held lands are located in Alaska, the State was well within its jurisdiction to require disclosure and registration on offerings concerning Alaska land. I believe the position of the Department of Law is unchanged with respect to this matter but suggest that, should confirmation of this position be desired, a request be made of the Department of Law, specifically either Mr. Jeffrey Bush, who represents the division on matters of this nature, or to the Attorney General, himself, who testified on this matter at last year's Senate and House hearings.

We see no apparent conflicts with federal law or, at least, none that are insurmountable and defer to the department of law with respect to any formalized opinions.

I remain at your disposal should you require any further information or assistance.

Yours very truly,


Lawrence P. Carroll
Senior Securities Examiner

LPC/va11081c
2/5/85A
Enclosure

Backup

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: 1907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

March 23, 1984

The Honorable Fritz Pettyjohn
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 432, "an Act amending
the Alaska Security's Act"

Dear Senator Pettyjohn:

At the Senate Labor and Commerce Committee hearing on February 15, 1984, you requested our opinion with respect to the effect on the jurisdictional scope of SB 432. This legislation would clarify the existing Alaska Security's Act to better reach fraudulent or high pressure out-of-state sales of oil and gas lease hold interests on state or federal lands in Alaska.

The Administration believes that Alaska is well served by having an ability to regulate sales of land or lease hold interests located in Alaska, even where the transactions take place outside the state between non-residents of the state. The state may protect the legitimate concerns of its citizens by exercising the right to sue according to the doctrine of parens patriae. This doctrine is recognized in Alaska. State v. First National Bank of Anchorage, 660 P.2d 406, 420-21 (Alaska 1982); Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975).

Because we believe there is a substantial state interest in preventing fraudulent sales of oil and gas leases located within the state's border, we believe a constitutional challenge against Alaska's assertion of jurisdiction provided by the proposed legislation would fail. A claim that the jurisdiction afforded by the proposed legislation violates an out-of-state citizen's rights under the Due Process Clause, Full Faith and Credit Clause or Commerce clause of the U.S. Constitution would, in all likelihood, be dismissed. See generally, Aldens, Inc., v. Packel, 524 F.2d 38 (3rd Cir. 1975). The Aldens case is instructive because it involved a challenge to Pennsylvania's right to enforce state credit sales laws as applied to an

The Honorable Fritz Pettyjohn
Senate Bill 432

March 23, 1984
Page #2

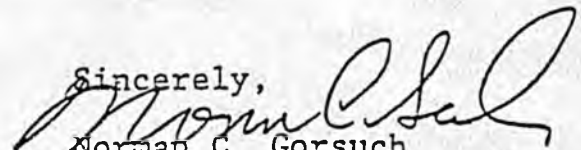
Illinois corporation operating a mail order business in all fifty states and where all orders were accepted in Chicago. In that case, the court performed a thorough and comprehensive analysis of a variety of constitutional issues and concluded that none of the constitutional provisions were violated by enforcement of Pennsylvania's laws.

The currently accepted approach to Due Process Clause limitation challenges is one of interest analysis where the court focuses on whether a state has sufficient interest "to justify any exercise of it's sovereignty in connection with the trans-action and dispute." Id. at 42-43, (citing McGee v. International Company, 355 U.S. 220 (1957)) emphasis in original. The court further noted in Alden that a relatively low threshold of state interest is needed to justify jurisdiction. Id. at 43.

In conclusion, because Alaska has a substantial interest in transactions involving land or interest of land within its borders, we believe a court would find that the exercise of jurisdiction through the proposed legislation does not interfere with an out-of-state defendant's due process or other constitutional rights.

Please feel free to call if we can be of additional assistance.

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:eer

cc: Senator Richard I. Elaison
Chairman, Senate Labor and
Commerce Committee

Senator Bob Mulcahy
Vice-Chairman, Senate Labor
and Commerce Committee

Senator Patrick Rodey
Senate Labor and Commerce
Committee

Senator John C. Sackett
Senate Labor and Commerce
Committee

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

March 14, 1984

The Honorable Richard I. Eliason
Chairman
Senate Labor and Commerce Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Chairman Eliason:

The Federal Trade Commission's Bureaus of Competition, Consumer Protection, and Economics,¹ at the request of Governor Sheffield, submit comments on Senate Bill No. 432. We wish to thank you and Governor Sheffield for the opportunity to share our views on S. 432. We think that expanding the jurisdiction of the Alaska Securities Act of 1959 to cover all oil and gas leases to land located in Alaska would complement our efforts and those of other federal and state agencies to control what appear to be serious abuses in the rapidly growing, nation-wide marketing of Alaska oil and gas leases. The Commission staff favors passage of S. 432.

The Commission, in fulfilling its Congressionally-mandated mission to protect consumers from unfair and deceptive practices in the nation's commerce, has been investigating suspected fraud by sellers of oil and gas leases and related services. In the course of these investigation the Commission staff has identified from the public records of the federal Bureau of Land Management ("BLM") and the Alaska Department of Natural Resources a number of companies that have acquired oil and gas leases to millions of acres of land in Alaska. These companies acquired most of their leases for \$1 per acre under the BLM noncompetitive oil and gas leasing program.² Most of these acquisition have occurred in the Minchumina, Denali, and Tielkel block areas of Alaska.³

¹ This statement reflects the views of the Bureaus of Competition, Consumer Protection and Economics of the Federal Trade Commission, but does not necessarily reflect the views of the Commission or of any individual Commissioner. The Federal Trade Commission has voted, however, to authorize the Bureaus to submit these comments.

² 43 C.F.R. § 3110 et seq.

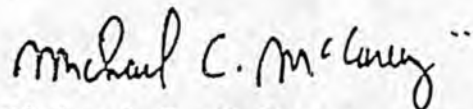
³ Public Land Orders Nos. 6098, 46 Fed. Reg. 61472 (December 17, 1981), and 6329, 47 Fed. Reg. 39495 (September 8, 1982).

for lands located in Alaska. This revision would empower the Alaska Division of Securities to require these companies to register their leases as securities and to provide prospective purchasers with meaningful disclosures of the speculative nature of these investments.

Senate Bill No. 432 should not materially hinder the development of Alaska's resources. The Alaska Securities Act already includes an exemption for sales of leases to bona fide oil and gas exploration companies. Thus, the expansion of the securities law's jurisdiction should not materially change the effect of the statute on those firms actually exploring and developing Alaska's resources.

The Commission staff strongly supports passage of S. 432. With the new authority granted by this bill, state officials could effectively join the Commission and other federal law enforcement agencies in our efforts to protect consumers and to stop the possible misuse of Alaska's name and its resources.

Very truly yours,



Michael C. McCarey
Associate Director

RECEIVED
JAN 31 A 11:28

3123 B. Broadmoor Vly. Rd.
Colorado Springs, CO 80906
January 23, 1985

Subject: Alaska Land Leasing Inc.
(A California-based Alaska Corporation)

To: Alaska Banking, Securities and Corporation Division
of Commerce and Economics.
Pouch D
Juneau, Alaska 99811

In June 1983 I purchased a 160 acre BLM Oil Lease, serial # AA048253 through the Alaska Land Leasing Inc., a State of Alaska Corporation with offices in and around Las Angeles, California. legally described as the SE $\frac{1}{4}$ Section 27, Twp.32 N, Rng.10E in the Seward Meridian. The ALLI principals in this transaction were:

Frank Smith, Sales Representative ALLI
Terry J. Risenhoover, Chairman of the Board ALLI
Vic Gainer, Executive Vice-President ALLI
David Castle, Documents Control Manager ALLI
Marjorie Diehl Foote, Tundra Oil, INC

Shortly thereafter, I became concerned when there were NEWS releases about Fraud in the Oil Leasing Industry and I wrote to the Better Business Bureau, Los Angeles Counties, 639 South New Hampshire Ave, L.A., CA 90005; I received a "form letter" which indicated no fraudulent Business dealing being conducted by ALLI.

In December 1983 I purchased a one-thirtyfifth (1/35) interest in the Prudhoe Uplands 34-231 Associates, a subsidiary of Alaska Land Leasing Inc. The principals in the Prudhoe Uplands Associates were:

Frank Smith, Sales Representative ALLI
Terry J. Risenhoover, Chairman of the Board ALLI
Vic Gainer, President, ALLI
Ms. Marlana Huter, ALLI ("one of the General Partners P.U. 34-231)
David Castle
Marjorie D. Foote

I received a letter, dated May 14, 1984 from Terry Risenhoover, ALLI informing me of a reorganization with a change in address and new telephone numbers (see attached copy). On May 15, 1984 I received a telephone call from a Richard Brown, Master Securities Management, saying that he was taking over my account. When he was unable to answer my questions I ask him to have Vic Gainer call me. Finally, on June 20, 1984 I received a call from Vic Gainer who promised to send me a list of the shareholders in the Prudhoe Uplands 34-231 Associates. To date I have not received that list nor have I been successful in my attempts to contact anyone associated with ALLI.

I understand that the State of Alaska has filed a civil suit in the Superior Court, against both Alaska Land Leasing Inc and Tundra Oil, Inc. I would appreciate any information you may be able to give me including addresses and telephone numbers of the corporation(s) and the remaining principals in the organizations.

Thanking you in advance, I am

Sincerely Yours,


Julian R. Thornton, Jr.

Alaska Land Leasing Inc.

~~Sixth Floor P.O. Box 401326~~

~~Los Angeles, CA 90049~~

~~(213) 826-2123~~

May 14, 1984

Dear Alaskan Lease Holder:

After many months of serious consideration, we at Alaska Land Leasing Inc. have decided to cease all retail marketing.

We are continuing to function as a wholesaler of large blocks of oil and gas leases for publicly registered offerings.

As a result of this decision we have found it necessary to close both our Brentwood and Thousand Oaks, California offices.

We have opened a new service office at:

Alaska Land Leasing Inc.
5655 Lindero Canyon Road
Suite #408
Westlake Village, CA 91362

This office will be staffed by Mr. Vic Gainer and myself. Either one of us may be reached by calling:

(818) 889-9061

We have hired Masters Management Company, an affiliate of Masters Securities, to complete all lease processing and to handle all inquiries regarding your leases.

Masters Management Company has hired a few former Alaska Land Leasing Inc. administrative staff members to provide you with the best possible service.

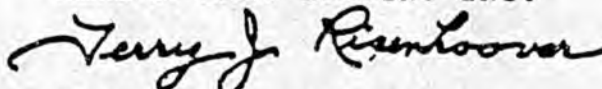
If you have any questions regarding your lease, please call either David Castle or Marjorie Foote at:

(818) 991-5805

Thank you for your consideration. I remain . . .

Cordially yours,

ALASKA LAND LEASING INC.



Terry J. Risenhoover,
Chairman



investment contract. — Sufficient evidence was presented to support a jury finding that vending machine sales program was an investment contract where the company, through advertisements, verbal representations to potential investors, and various investment documents prepared and signed by defendant acting as a corporate officer and by the sales agent, sold a package of contractual benefits which included, in addition to vending machines themselves,

the precise experience, expertise and resources necessary to assure profits from the machines. *Wheeler v. State*, Ct. App. Op. No. 227 (File No. 5428), 659 P.2d 1241 (1983).

Territorial distributorships must be registered. — Territorial distributorships constitute an investment contract and are securities subject to registration. *American Gold & Diamond Corp. v. Kirkpatrick*, Sup. Ct. Op. No. 2799 (File No. 7608), P.2d (1984).

Sec. 45.55.140. Exemptions.

NOTES TO DECISIONS

Quoted in *Greater Area, Inc. v. Bookman*, Sup. Ct. Op. No. 2589 (File No. 5557), 657 P.2d 828 (1982).

Sec. 45.55.200. Orders and injunctions. (a) Whenever it appears to the administrator that a person has engaged or is about to engage in an act or practice in violation of any provision of this chapter or rule or order under this chapter, the administrator may

(1) in the public interest or for the protection of investors, issue an order (A) directing the person to cease and desist from continuing the act or practice, (B) directing the person, for a period not to exceed three years, to file the annual reports, proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 with the administrator for examination and review 10 working days before a distribution to shareholders, and (C) voiding any proxies obtained by a person required to file under AS 45.55.139, including their future exercise or actions resulting from their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or rule or order under this chapter, and upon a proper showing, the appropriate remedy shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

(b) Before issuing an order under (a)(1) of this section the administrator shall give reasonable notice of and an opportunity for a hearing. However, the administrator may issue a temporary order pending the hearing which order shall remain in effect until 10 days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice. (§ 308 ch 198 SLA 1959; am § 1 ch 126 SLA 1968; am § 1 ch 65 SLA 1981; am § 107 ch 16 SLA 1982)

Sec 45.55.140
(b)(1)
→

Alaska law pursuant to the federal Act. To the extent of an inconsistency between a provision of this Act and a provision of AS 10.05 or 10.20, this Act prevails with regard to a corporation organized under Alaska law pursuant to the federal Act."

Sec. 45.55.139. Reports of corporations. A copy of all annual reports, proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations distributed, published or made available by any person to at least 30 Alaska resident shareholders of a corporation which has total assets exceeding \$1,000,000 and a class of equity security held of record by 500 or more persons and which is exempted from the registration requirements of AS 45.55.070 by AS 45.55.138, shall be filed with the administrator concurrently with its distribution to shareholders. (§ 1 ch 58 SLA 1977)

For case construing common law prohibition of materially false and misleading statements in proxy solicitations, see *Brown v. Ward*, Sup. Ct. Op. No. 1825 (File No. 3579), 593 P.2d 247 (1979).

Sec. 45.55.140. Exemptions. (a) The following securities are exempted from AS 45.55.070:

(1) a security, including a revenue obligation, issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one or more of the foregoing; or a certificate of deposit for any of the foregoing;

(2) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the foregoing, or a foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) a security issued by and representing an interest in or a debt of, or guaranteed by, a bank organized under the laws of the United States, or a bank, savings institution, savings and loan association, building and loan association, or trust company organized and supervised under the laws of a state or of the United States;

(4) a commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or a guarantee of the paper or of the renewal, if the commercial paper is of the type eligible for discount by a federal reserve bank;

(5) an investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if the administrator is notified in writing 30 days before the inception of the plan or, with respect to plans which are in effect on May 9, 1959, within 60 days thereafter, or within 30 days before they are reopened if they are closed on May 9, 1959;

(6) a security issued by and representing an interest in or a debt of, or guaranteed by, a federal savings and loan association, or a building and loan or similar association organized under the laws of a state and authorized to do business in this state;

(7) a security issued by and representing an interest in or a debt of, or guaranteed by, an insurance company organized under the laws of a state and authorized to do business in this state; but this exemption does not apply to an annuity contract, investment contract, or similar security under which the promised payments are not fixed in dollars but are substantially dependent upon the investment results of a segregated fund or account invested in securities; except that policies or annuity contracts of insurance companies admitted to do business in the state are not subject to this chapter;

(8) a security issued or guaranteed by a federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(9) a security issued or guaranteed by a railroad, other common carrier, public utility, or holding company which is

(A) subject to the jurisdiction of the Interstate Commerce Commission;

(B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of the company within the meaning of that Act;

(C) regulated in respect of its rates and charges by a governmental authority of the United States or a state; or

(D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, a state, Canada, or a Canadian province;

(10) a security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, or the Pacific Coast Stock Exchange, or any other security of the same issuer which is of senior or substantially equal rank; a security called for by subscription rights or warrants so listed or approved; or a warrant or right to purchase or subscribe to any of the foregoing;

(11) a security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association.

(b) The following transactions are exempted from AS 45.55.070:

(1) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(2) a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidence of indebtedness, secured thereby, is offered and sold as a unit;

(3) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(4) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(5) sales by an issuer

(A) to no more than 10 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective buyer in this state;

(ii) the total dollar amount invested during a period of 12 consecutive months does not exceed \$100,000;

(iii) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(iv) offers are made without public solicitation or advertisement; and

(v) the issuer files with the administrator a notice specifying the issuer, the security to be sold and the terms of the offer at least two days before any sales are made;

(B) to no more than 25 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) the sales are made solely in this state;

(ii) before any sale, each prospective buyer is furnished access to the information that would be provided to a prospective buyer in a registration under AS 45.55.100 (which information shall be furnished to the administrator upon his request);

(iii) the total dollar amount invested during a period of 12 consecutive months does not exceed \$500,000;

(iv) commissions or other remuneration meet the requirements of this chapter and are made only to persons registered under AS 45.55.040;

(v) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(vi) the issuer obtains a signed agreement from the buyer acknowledging that he is buying for investment purposes and that the securities will not be resold without registration under this chapter;

(vii) offers are made without public solicitation or advertisement; and

(viii) the issuer files with the administrator a notice specifying the issuer, the security to be sold, and the terms of the offer at least two days before any sales are made;

(6) an offer or sale of a preorganization certificate or subscription if

(A) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective subscriber,

(B) the number of subscribers does not exceed 10, and

(C) no payment is made by any subscriber;

(7) a transaction under an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if

(A) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting a security holder in this state, or

(B) the issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next five full business days;

(8) an offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending under either Act;

(9) an isolated nonissuer transaction, whether effected through a broker-dealer or not;

(10) a nonissuer distribution of an outstanding security if

(A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or

(B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(11) a nonissuer transaction effected by or through a registered broker-dealer under an unsolicited order or offer to buy; however, the administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(12) a transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(13) a transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation or sale of assets, if

(A) no commission or other remuneration, other than a standby commission is paid or given directly or indirectly for soliciting a security holder in this state; and

(B) the issuer files a notice in the form specified by the administrator not less than 30 days before making the offer;

(14) a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock;

(15) an act incident to a class vote by stockholders, under the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of securities of another corporation;

(16) the offer or sale by a registered broker-dealer, acting either as principal or agent, of securities previously sold and distributed to the public if

(A) the securities are sold at prices reasonably related to the current market price at the time of sale, and, if broker-dealer is acting as agent, the commission collected by the broker-dealer on account of the sale is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(B) the securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by the broker-dealer as an underwriter of the securities or as a participant in the distribution of the securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(C) the securities have been lawfully sold and distributed in this state under this chapter;

(17) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles or leases, or in payments out of production under such rights, titles or leases, if the purchasers

(A) are or have been during the preceding two years engaged primarily in the business of exploring for, mining, producing, or refining oil, gas, or minerals; or

(B) have been found by the administrator upon written application to be substantially engaged in the business of exploring for, mining, producing, or refining oil, gas, or minerals so as not to require the protection provided by AS 45.55.070.

(c) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(d) The administrator may by order deny or revoke an exemption specified in (a)(5), (7) or (11) of this section or in (b) of this section with respect to a specific security or transaction. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for it and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(e) No order under (d) of this section may operate retroactively. No person may be considered to have violated AS 45.55.070 or 45.55.150 by reason of an offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order.

(f) The administrator shall by regulation prescribe a schedule of fees for examination or investigation of claimed exemption. (§ 302 ch 198 SLA 1959; am §§ 3 — 11 ch 105 SLA 1961; am § 1 ch 8 SLA 1966; am § 1 ch 25 SLA 1968; am §§ 11 — 13 ch 86 SLA 1972; am § 15 ch 218 SLA 1976; am §§ 1 — 3 ch 132 SLA 1977; am § 1 ch 56 SLA 1978; am § 50 ch 94 SLA 1980)

Effect of amendments. — The 1976 amendment inserted "not" preceding "by order disallow" in paragraph (7)(B) of subsection (b).

The 1977 amendment rewrote paragraph (5) of subsection (b), substituted "under this chapter" for "or any other state of the United States under this or any act regulating the sale of the securities" in paragraph (16)(C) of subsection (b), and substituted "(a)(5), (7) or (11)" for "(a)(5) or (7)" in the first sentence of subsection (d).

The 1978 amendment added paragraph (17) of subsection (b).

The 1980 amendment, in subparagraph

(b)(5)(B)(viii), substituted "sold" for "offered" near the middle of the subparagraph, and substituted "any sales are" for "the offer is" near the end of the subparagraph.

Legislative history reports. — For report on ch. 8, SLA 1966, see House Journal (1966), p. 169. For report on ch. 132, SLA 1977 (SB 48), see 1977 Senate Journal, p. 190.

ALR references.—What securities are exempt from registration under § 402(a) of the Uniform Securities Act, 84 ALR3d 575.

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TRADE AND COMMERCE

§ 45.55.260

uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) All financial statements shall be prepared in accordance with generally accepted accounting practices. The administrator may by rule or order prescribe (1) the form and content of financial statements required under this chapter, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants.

(d) No provision of this chapter imposing liability applies to an act done or omitted in good faith in conformity with a rule, form, or order of the administrator, notwithstanding that the rule, form, or order may be later amended or rescinded or be determined by judicial or other authority to be invalid.

(e) Every hearing in an administrative proceeding shall be public unless the administrator in his discretion grants a request joined in by all the respondents that the hearing be conducted privately. (§ 312 ch 198 SLA 1959)

Sec. 45.55.250. Administrative files and opinions. (a) A document is filed when it is received by the administrator.

(b) The administrator shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension, or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with a registration statement, application, or report may be made available to the public under the rules which the administrator prescribes.

(d) Upon request and at the reasonable charges which he prescribes, the administrator shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In a proceeding or prosecution under this chapter, a copy so certified is prima facie evidence of the contents of the entry or document~~s~~ certified.

(e) The administrator in his discretion may honor requests from interested persons for interpretative opinions. (§ 313 ch 198 SLA 1959; am §§ 16, 17 ch 105 SLA 1961)

Sec. 45.55.260. Scope of the chapter and service of process. (a) AS 45.55.010, 45.55.030(a), 45.55.070, 45.55.170, and 45.55.220 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

(b) AS 45.55.010, 45.55.030(a), and 45.55.170 apply to persons who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state or (2) is directed by the offeror to this state and received at the place to which it is directed, or at a post office in this state in the case of a mailed offer.

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at a post office in this state in the case of a mailed acceptance.

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months, or (2) a radio or television program originating outside this state is received in this state.

(f) AS 45.55.020, 45.55.030(c), and 45.55.170, so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this chapter and every issuer which proposes to offer a security in this state through a person acting on an agency basis in the common-law sense shall file with the administrator, in the form which he prescribes by rule, an irrevocable consent appointing the administrator or his successor in office to be his attorney to receive service of lawful process in a civil suit, action, or proceeding against him or his successor executor or administrator which arises under this chapter or a rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who files the consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless (1) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by him, immediately sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the administrator, and (2) the plaintiff's affidavit of mailing is filed in the case on or before the return day of the process, if any, or within the further time which the court allows.

(h) When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or a rule or order

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under this chapter, and he has not filed a consent to service of process under (g) of this section and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct is considered equivalent to his appointment of the administrator or his successor in office to be his attorney to receive service of process in a civil suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this chapter or a rule or order under this chapter, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the administrator, but service is not effective unless (1) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the administrator in a proceeding before him, shall order the continuance which is necessary to afford the defendant or respondent reasonable opportunity to defend. (§ 314 ch 198 SLA 1959; am § 18 ch 105 SLA 1961)

Sec. 45.55.270. Short title. This chapter may be cited as the Alaska Securities Act of 1959. (§ 315 ch 198 SLA 1959)

Chapter 57. Takeover Bid Disclosure Act.

Section	Section
10. Provisions of takeover bids	70. Criminal penalties
20. Disclosure	80. Civil liabilities
30. Recommendations to accept or reject	90. Consent to service of process
40. Deceptive practices	100. Regulations
50. Investigations and subpoenas	110. Definitions
60. Injunctions	120. Short title

Sec. 45.57.010. Provisions of takeover bids. The following provisions apply to every takeover bid:

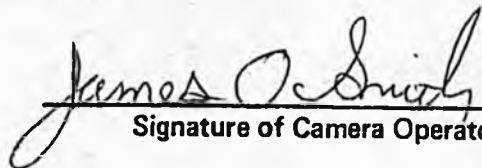
(1) The period of time within which securities may be tendered by an offeree under a takeover bid shall not be less than 21 days nor more than 35 days from the date copies of the takeover bid are first published or sent or given to offerees.

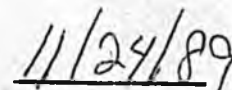
(2) Securities deposited under a takeover bid may be withdrawn by an offeree or his attorney-in-fact by demand in writing on the offeror or the depository at any time within 21 days from the date copies of the takeover bid are first published or sent or given to offerees.



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A SPECIAL REPORT ON THE
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF MEASUREMENT STANDARDS

April 6, 1983

Audit Control Number

08-4156-83-S

Commissioner, Department of
Commerce and Economic Development

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Deputy Commissioners, Department of
Commerce and Economic Development

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STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

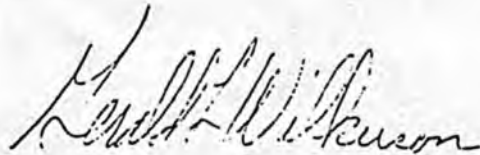
April 6, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A SPECIAL REPORT ON THE
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF MEASUREMENT STANDARDS

April 6, 1983



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, an examination of the Department of Commerce and Economic Development, Division of Measurement Standards (DMS), was conducted to determine if:

1. The Division has complied with applicable State statutes and regulations governing its fiscal and budgeting activities.
2. The allegations submitted to the Legislative Budget and Audit Committee are true. (See Appendix A of this report).
3. The performance of the Division is acceptable in terms of economy, efficiency, and effectiveness.

DMS was organized in July, 1982, with the transfer of the permit and weigh station functions of the Department of Public Safety to the Department of Commerce and Economic Development, Weights and Measures Section. We recognize the problems created by the transition from a section of 18 employees who were located in three areas of the State to a division of 58 employees stationed in eight different locations. Therefore, in general, we focused our evaluation of program performance on those program areas which were in existence within the Weights and Measures Section prior to July, 1982.

The policy and audit approach utilized by the Division of Legislative Audit for Performance Review can best be described as "audit by exception".

This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design finite audit resources are used to identify where and how improvements can be made and little time is devoted to reviewing well run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

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ORGANIZATION AND FUNCTION

The Division of Measurement Standards (DMS) was established in July 1982 with the transfer of the permit and weigh station functions from the Department of Public Safety to the Department of Commerce and Economic Development, Weights and Measures Section. The Division has four distinct statutory requirements:

1. Public and consumer protection through maintenance of uniform standards which ensure the accuracy of commercial weighing and measuring devices within the State (AS 45.75).
2. Consumer protection for buyers of mobile homes through the enforcement of mobile home warranties (AS 45.30).
3. Operation of weigh stations to identify and remove overweight commercial vehicles from the State highway system (AS 44.33.020(25)).
4. Issuing of special permits authorizing the operation of overweight and oversize vehicles, and the collection of fees for these special permits (AS 44.33.020(25)).

The "Weights and Measures Act", AS 45.75, requires a system of weights and measures that conforms to the standards customarily in use in the United States. The weights and measures obtained by the State are to be verified by the National Bureau of Standards (NBS) and are to be properly maintained to ensure their reliability and traceability to NBS.

To accomplish this mandate, DMS is the custodian of the State's weights and measures and conducts the periodic verification with NBS. The State's standards of weights and measures are used to verify all office standards. The office standards then are used to verify all field standards used by DMS. In addition, these standards become the basis for verification of all instruments and devices used for determining weight or measure in commercial transactions within the State.

DMS fulfills its responsibilities through physical inspection of devices, examination of packaging, and the investigation of complaints. DMS may issue "stop-use" or "removal orders" of measuring devices and commodities offered for sale, when it is necessary to enforce the Weights and Measures Act.

Alaska Statute 45.30 mandates the responsibility to resolve warranty defects of mobile homes. Manufacturers selling mobile homes in the State are required to post a bond guaranteeing the warranty of that mobile home for one year. If the warranty is violated and a complaint is submitted through the Division, the Mobile Home Inspector has the authority to resolve the warranty defect through negotiations with the manufacturer, local dealer, and home owner.

If the problem cannot be resolved, the Division may revoke the bond and use the proceeds to repair the warranty defect.

Under AS 44.33.020(25) the Division is responsible for the operation of 12 weigh stations located on the State highway system. The primary function of these weigh stations is to remove vehicles from the highway system that are in violation of the axle and gross weight limitations adopted by the Department of Transportation under AS 19.10.060.

In addition, DMS administers the oversize and overweight permit program within AS 44.33.020(25). Commercial vehicles that exceed the maximum allowable size, weight, and load limitations are able to legally travel over the highway system by obtaining special permits which are issued for a fee. DMS also regulates pilot cars under this statute.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department should take immediate action to improve the employee morale of the Division of Measurement Standards (DMS).

As a result of interviews with 15 employees which is 28% of the current staff and the review of written communications (see Appendix A), it is obvious that a serious morale problem exists within DMS. The cause of the low employee morale does not appear to be centered around any single issue but is due to a build up of problems within the Weights and Measures Section over the past several years. Additional morale problems occurred with the transfer of the permit and weigh station functions to DMS.

During our review the Director of DMS and the Commissioner of the Department of Commerce and Economic Development recognized the severity of the morale problem and its potentially negative effect on program performance. Procedures, including employee interviews conducted by the Department's personnel officer, have been initiated to determine the causes of the low employee morale and to provide for possible solutions.

We encourage the Commissioner to continue these efforts to ensure improved employee morale and to avoid deterioration in program operations.

Recommendation No. 2

DMS should avoid situations that give the appearance of a conflict of interest.

We noted several situations during our review which at a minimum give the appearance of a conflict of interest to employees (see Appendix A, Question Nos. 1 and 2) and other persons outside the Division. The situations noted are as follows:

1. Complaints may be filed with DMS by consumers against mobile home dealers and/or manufacturers when a mobile home has warranty defects. The DMS Mobile Home Inspector acts as a mediator between the consumer and the mobile home dealer and/or manufacturer to resolve the complaint.

During the period from July 1, 1981 to January 31, 1983, the Mobile Home Inspector received and mediated at least four complaints involving the mobile home dealership owned by his father. We understand the father has voluntarily dissolved his business as part of an out-of-court settlement with the State's Consumer Protection Section. However, other relatives own mobile home dealerships in the State.

2. During our review of contract procedures, we found that three contracts were awarded to a mobile home service and repair company. The DMS Mobile Home Inspector is a former employee of this business and his brother currently is employed there. The contracts were for remodeling of the current DMS offices, repair of a damaged weigh station, and construction of stairs at another weigh station. These contracts totalled \$3,689 and required two informal competitive bid proposals, and awarded the contracts.

In order to avoid the appearance of a conflict of interest, DMS should provide written procedures which would require an additional review of the bids by the Section Chief in these situations prior to awarding the contract. In addition, DMS should ensure that the person delegated the responsibility of awarding contracts is familiar with AS 37.05, Section 4, Uniform Purchasing and the State's contract procedures in Chapter 8 of the Purchasing Regulations.

3. A person convicted of price fixing in a retail gasoline business was hired by the Director in March, 1981, as a Weights and Measures Inspector I. The inspector's duties include inspection and testing of retail gasoline pumps.

The Division of Personnel requires a written description of a misdemeanor or felony conviction with the State employment applications. The description is evaluated to determine if the applicant is suitable for the responsibilities of a particular position. The evaluation may include discussions with the probation officer, if any, and the hiring authority.

In this case the hiring authority was the Director of DMS who had full knowledge of the employee's past, however, no written description of the conviction was in his personnel file.

The employee was asked to resign and his termination was effective April 17, 1981. However, as an agency entrusted with the responsibility of regulating industry for the public's protection, DMS should exercise a greater degree of care in its hiring practices.

Recommendation No. 3

DMS should improve its budgeting and financial management.

Our review of the last three fiscal year budget requests and DMS financial records resulted in the following recommendations (see also Appendix A, Question Nos. 4 through 7).

A. DMS should ensure performance indicators in their budget requests are accurate.

The State budget request includes a form for each agency to report its performance activities of a past fiscal year based on predetermined measurements. In addition, the agency is to project its planned performance activities for the budget year. These performance indicators are one of the guidelines used to determine whether or not the amount of funds requested by the agency is reasonable.

In a review of the Fiscal Year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in Fiscal Years 1981 and 1982 was not accurate. The exceptions noted were as follows:

<u>Performance Activity</u>	<u>Number per Budget Request</u>	<u>L/A Findings</u>
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Fiscal Year 1981

Commodity items audited	699,485	This number represents the estimated population of commodity items from which a sample of items was audited. In comparison, the number reported for Fiscal Year 1982 was 12,577, which was the number of items audited that year rather than the estimated population of commodities.
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Fiscal Year 1982

Value of prepackaged goods found in violation	648,900	This number represents the estimated population of commodity items (see Fiscal Year 1981 above) which does not relate to dollar value. In contrast, DMS reported an estimated \$66,500,000 for this performance activity for Fiscal Year 1981. However, the methods used to derive this dollar amount are questionable.
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<u>Performance Activity</u>	<u>Number per Budget Request</u>	<u>L/A Findings</u>
Devices tested	16,500	The activity reports submitted to management showed a total of 11,276 devices. See Recommendation No. 7(C) concerning the accuracy and completeness of activity reports.
Mobile home inquiries/complaints received	100/150	The number of inquiries is unknown as no log or record is kept by DMS. The number of complaints based on a review of DMS records was actually 26 instead of 150. See Recommendation No. 5 relating to the mobile home program.

The budget instructions state that the agency should select only measures of activities for which data is already being collected or reasonably can be collected in the budget year. In addition, they state that once a useful measure has been identified it is useful to look at the same measure from year-to-year. DMS presented 17 performance activity measures in the last three fiscal year budgets of which only two have been reported all three years.

DMS should ensure information that is used, in part, to determine their level of funding is accurately and consistently presented in the budget requests.

- B. DMS should prepare their fiscal year budgets in accordance with their anticipated spending plans.

The DMS Fiscal Year 1982 budget requested \$96,900 for rental of State vehicles through DOTPF. Actual costs during 1982 totalled approximately \$62,000, 36% less than budgeted. DMS staff explained that this budget line item was intentionally overbudgeted and the excess funds were used to cover expenditures in other underbudgeted line items within the contractual services category for which funding was harder to secure.

State budget requests should reflect anticipated spending to provide the Legislature with an accurate estimate of program needs.

- C. DMS should ensure State funds are expended only for authorized purchases in accordance with the State Administrative Manual.

DMS purchased seafood in August, 1981, and September, 1982, totalling \$100 and \$548 respectively. The seafood was presented to the members of the Western Weights and Measures Conferences. The State Administrative Manual, Section 6820, prohibits expenditure of State funds for nonessential food-stuffs.

- D. DMS should ensure appropriations are expended in accordance with law.

DMS received an appropriation totalling \$33,200 through Chapter 50, SLA 1980 to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska". Through a review of the related expenditures, we found \$8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska.

In addition, DMS received another appropriation totalling \$39,100 through Chapter 120, SLA 1980, to implement the Mobile Home Warranty Program enacted by Chapter 104, SLA 1980. We determined that \$2,875 of these funds were expended on travel unrelated to the Mobile Home Warranty Program.

Recommendation No. 4

DMS should improve its personnel management.

During our review we noted personnel matters which may have contributed to the low employee morale (see Appendix A, Question Nos. 16 and 17). Our findings and recommendations are as follows:

- A. DMS should update job descriptions and classifications as required by the State Personnel Rules.

We determined through a review of job descriptions and employee interviews that material changes have occurred in the duties and responsibilities of two classified positions since the formation of the Division.

A Weights and Measures Inspector IV position no longer has the supervisory authority over the inspectors. The employee's current responsibilities include only administrative and budgeting duties. The Mobile Home Inspector's duties now include supervision of the weigh stations in addition to mediating mobile home warranty complaints.

The State Personnel Rules, 2.04.2, require each appointing authority to report to the Division of Personnel, material changes in the duties and responsibilities of existing positions. Memorandums in the employees' personnel files indicate that these changes in duties and responsibilities are temporary, however, based on our review and discussions with employees, the changes appear to be more permanent in nature. We recognize the difficulties encountered by management in the transition of becoming a full division. However, the job descriptions and duties should now be changed to reflect the actual duties and responsibilities of these positions to decrease the confusion and misunderstandings within the Division.

B. DMS should utilize promotional eligibility lists to the extent possible.

In July, 1982, DMS assumed the responsibility of the weigh stations from the Department of Public Safety. Twenty-eight commercial vehicle inspectors were transferred from the Department of Public Safety to DMS, however, DMS did not receive a transfer of any supervisory personnel. In order to provide sufficient supervision of the weigh stations, DMS upgraded three of the commercial vehicle inspector positions from a range 12 to a range 15. The incumbents in two of the upgraded positions became supervisors while the other inspectors were not afforded the opportunity to interview for the positions.

The State Personnel Rules, 3.01.3, state where adequate competition exists among permanent employees qualified for promotion an examination may be announced on a promotional basis.

DMS should utilize the promotional eligibility list in future situations where sufficient competition warrants to ensure the selection of the most qualified person for the position and to afford equity in their hiring practices.

Recommendation No. 5

The Department should seek legislation to transfer the Mobile Home Warranty Program to the Consumer Protection Section of the Department of Law.

We reviewed the function of the Mobile Home Warranty Program and the activity from July, 1981, through March, 1983. Based on our review we noted the following:

1. The Mobile Home Inspector acts as a mediator between the consumer and the dealer and/or manufacturer in order to resolve complaints.
2. During Fiscal Year 1982, DMS received 26 mobile home warranty complaints.

3. As of March, 1983, DMS had received nine complaints in Fiscal Year 1983.
4. The Consumer Protection Section receives and investigates mobile home complaints from consumers. According to a memorandum dated March 17, 1983, from an assistant attorney general, the Consumer Protection Section had five complaints currently under investigation.

Since the Consumer Protection Section is the agency which the public looks to for resolution of consumer problems and the Mobile Home Warranty Program deals with consumer protection warranty laws, it appears that the program could be more efficiently and effectively administered by the Consumer Protection Section.

We understand the Department has signed a reimbursable services agreement with the Department of Law to transfer the Program. The Department of Law plans to draft and initiate the necessary legislative change.

Recommendation No. 6

The Department should seek removal of DMS staff as delegates to the National Conference of States on Building Codes and Standards.

The Director and the Mobile Home Inspector are delegates to the National Conference of States on Building Codes and Standards, Incorporated (NCSBCS). The assessment fee of the NCSBCS is \$2,000 which DMS remits annually. During the period from May, 1981, through January, 1983, the Director attended five meetings related to NCSBCS which were held in Seattle, WA; Denver, CO; Boston, MA; Atlanta, GA; and New Orleans, LA. The Mobile Home Inspector also attended the meetings at Seattle and New Orleans. According to correspondence from NCSBCS, delegates must be active in and have responsibilities for building regulations.

DMS duties and responsibilities relating to building codes and standards were greatly diminished with the repeal of the State mobile home standards in September, 1980, and the enactment of the Mobile Home Warranty Program. Furthermore, current activity in the Mobile Home Warranty Program does not warrant involvement of DMS in NCSBCS.

Recommendation No. 7

DMS should improve its procedures to ensure compliance with statutory requirements.

We noted two areas of statutory compliance in which DMS should improve their procedures. Our recommendations are as follows:

- A. DMS should provide sufficient documentation that office and field standards (official test devices) are verified in accordance with law.

We could not find sufficient documentation to determine if DMS is in compliance with AS 45.75.060 which requires verification of office and field standards on an annual basis.

In addition, we determined that it is a DMS policy not to verify field standards in remote locations on an annual basis due to the high transportation costs and infrequent use of the standards.

In order to provide sufficient documentation, DMS should develop a complete inventory of all office and field standards with identifying numbers (where possible); the location of the standard; and the last date of verification. DMS should obtain a current State property list and utilize their word processing equipment to aid in the development of the inventory. In addition, the test lab's recording sheets should include sufficient identifying information to determine exactly which standard was tested.

- B. DMS should develop procedures to ensure that weight and measure devices are inspected and tested semiannually in accordance with law.

DMS does not have sufficient documentation to determine that they are in compliance with AS 45.75.080 which requires all weights and measures in commercial use to be inspected and tested at least semiannually or more often as the Director considers necessary. We were able to review inspection dates for 110 businesses located in Southeastern Alaska. Of those 110 businesses, 43 received annual inspections, 23 received semiannual inspections, and the remaining 44 did not have sufficient information to determine the frequency of inspections.

Alaska Statute 45.75.050 states the Director may promulgate regulations which exempt classes of devices from the semiannual inspection and testing required by AS 45.75.080. These regulations should include schedules fixing the frequency required for retests of the exempted class of devices.

DMS staff indicated that the high cost of transportation hinders their ability to comply with the required semiannual inspections. We recognize this problem. However, DMS should compile an inventory of devices including location and the last date of testing. This will provide management with data to determine the extent of compliance possible within budgetary constraints. We recommend the use of DMS word processing equipment, where practicable, to facilitate the compilation and maintenance of the inventory list. In addition, DMS should promulgate regulations to reflect any exemptions of classes of devices from the requirements of AS 45.75.080.

C. DMS should develop a uniform method for compilation of weights and measures verification activity data.

An inspector, in order to verify a weight or measure device, performs an inspection which is an evaluation of the physical characteristics of the device, and a test which is the actual test for accuracy through the use of standards, e.g. test weights. We noted inconsistencies in the methods used by inspectors to count the number of devices, and inspections and tests of those devices.

When the Chief of the Weights and Measures Section was asked to explain the correct method of accounting for these activities, the method described did not agree with the instructions he gave the staff in a memorandum dated August 17, 1982. The Chief stated that the memorandum was incorrect. We also noted that the method described in the memorandum would inflate the actual number of devices verified by the inspectors.

In addition to the inconsistencies in accounting for activities, we noted that monthly activity information is not organized in a manner to facilitate managerial use of data for planning and budgeting purposes. The Fiscal Year 1982 activity data was entered into the DMS word processing system. According to DMS staff, this data was used to calculate the total number of devices tested in Fiscal Year 1982 reported in the Fiscal Year 1984 budget request. However, we could not reconcile the recorded amount of devices totalling 11,276 to the reported number of 16,500 (see Recommendation No. 3A). The Fiscal Year 1983 activity data has not been entered into the word processing system.

DMS should develop procedures to ensure activity data is accounted for in a consistent manner and that data is complete and organized in a manner which facilitates use by management.

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APPENDIX

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APPENDIX A
DISPOSITION OF ALLEGATIONS
ON DMS MANAGEMENT

Presented below are the allegations concerning the management of DMS along with our findings. We have not included questions for which there was no documentation to prove or disprove the allegation.

CONFLICT OF INTEREST

Question No. 1

Has DMS hired a mobile home inspector who is related to proprietors of mobile home dealerships in Anchorage?

Finding

We determined the Mobile Home Inspector is related to owners of mobile home dealerships in Anchorage (see Recommendation No. 2(1)).

Question No. 2

Did the Director hire a person as a Weights and Measures Inspector who had been convicted for price fixing of gasoline prices in Anchorage?

Finding

A person convicted of a misdemeanor was hired by the Weights and Measures Section in March, 1981 (see Recommendation No. 2(3)).

Question No. 3

Was the 1978 directive from DMS, to all fish processors and buyers, disallowing the use of hydraulic type scales in the best interests of the State?

Finding

In May, 1978, a legislative bill (House Bill No. 964) was introduced which would have required fish processors to use electronic hanging scales to determine the weight of fish sold. However, a directive was issued by the Weights and Measures Section (now DMS) before any action was taken on the legislation. The directive stated it had been determined that the hydraulic type scales would not hold the tolerances set by Title 3, Chapter 32 of the Alaska Administrative Code. According to the directive, hydraulic type scales were not to be utilized after January, 1980.

We discussed the issue with the Alaska manager of the Pacific Seafood Processors Association. He stated there had been a problem with the accuracy of hydraulic type scales. The processing companies in the organization were not happy about the idea of having to expend monies to replace their hydraulic scales. However, he believes it was in the best interests of the industry. In addition, we sent questionnaires to 78 seafood processors operating in Alaska. Of the 29 questionnaires returned, 9 did not believe the replacement of hydraulic type scales was necessary; 4 believed it was necessary; and 16 had no opinion.

FINANCIAL MANAGEMENT

Question No. 4

Has DMS reported accurate information for performance indicators in their budget requests?

Finding

In a review of the Fiscal Year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in Fiscal Years 1981 and 1982 was not accurate (see Recommendation No. 3A).

Question No. 5

Has DMS inflated the amount budgeted for State vehicle expense?

Finding

DMS budgeted and received funds in excess of 36% of actual State vehicle costs (see Recommendation No. 3B).

Question No. 6

Were State funds used to purchase seafood for members of the Western Weights and Measures Conference?

Finding

DMS purchased seafood in August, 1981, and September, 1982, totalling \$100 and \$548, respectively (see Recommendation No. 3C).

Question No. 7

Did DMS expend a 1979 appropriation for field test weights and a 1978 appropriation for commercial fishing scale inspections on the Alaska Peninsula and the Aleutian Chain in accordance with legislative intent?

Finding

We determined that DMS received an appropriation totalling \$33,200 in Chapter 50, SLA 1980, to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska". Through a review of the related expenditures we found that \$8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska (see Recommendation No. 3D).

Question No. 8

Did DMS expend \$10,000 to purchase food for the 1980 Western Weights and Measures Conference held in Juneau?

Finding

DMS budgeted and received \$4,000 in Fiscal Year 1981 for the State's contribution to the costs of the 1980 Western Weights and Measures Conference held in Juneau. In August, 1980, DMS issued a warrant for the \$4,000 to the Western Weights and Measures Conference. Additional costs of the Conference, according to DMS staff, were paid for by sources of funding other than the State.

Question No. 9

Did DMS rent facilities in Seattle for fishing scale inspections in Fiscal Years 1982 and 1983?

Finding

DMS budgeted \$900 for Fiscal Year 1982 and \$1,000 for Fiscal Year 1983 to rent facilities in Seattle to conduct fishing scale inspections and conduct a seminar. However, DMS did not rent any such facilities in either fiscal year. According to DMS staff, they could not find rental space in Seattle for either budgeted amounts, however, space was provided free of charge to the State by a scale company and seafood processor. DMS is not requesting funds in their Fiscal Year 1984 budget for rental facilities in Seattle.

Question No. 10

Have personal long-distance telephone calls been charged to the State?

Finding

We reviewed a sample of telephone charges occurring between July 1, 1982, and January 31, 1983. It was determined that internal control over long-distance telephone calls was non-existent prior to January, 1983.

Effective August, 1979, the Department policy and procedures manual requires a record be kept of all long-distance telephone calls indicating date, number, person contacted, and purpose of the call. The recorded telephone calls are to be reconciled to the monthly billing. This procedure was implemented by DMS in January, 1983.

Question No. 11

Was DMS appropriated \$40,000 to purchase electric meter test equipment which actually cost \$5,000?

Finding

DMS received a capital appropriation totalling \$49,500 through Chapter 25, SLA 1982, which was effective August 1, 1982. Through a review of the capital budget request submitted by DMS and discussions with the staff, we determined that approximately \$36,000 of the \$49,500 was for the purchase of new electric meter test equipment and the remaining funds were to be used for the purchase of a mass comparator with a 500 pound capacity.

As of December 31, 1982, DMS had expended \$14,962 of the appropriation. Instead of purchasing new electric meter test equipment, DMS purchased used equipment costing \$5,000. DMS staff stated they knew about the used equipment when they requested the \$36,000 but were not sure it would still be available when DMS received the appropriation. Therefore, DMS budgeted and requested the \$36,000 rather than the \$5,000. In addition, DMS has purchased field weight standards costing \$9,692 to be stored mainly in the Aleutian Islands and Bristol Bay areas to facilitate the testing of fishing scales in those areas. Also, DMS has encumbered \$9,535 for the purchase of a mass comparator with a capacity of 5 to 60 pounds for the Juneau laboratory.

Question No. 12

What was the cost of the truck mounted liquid petroleum prover purchased by DMS and why were funds budgeted for its purchase in both Fiscal Years 1982 and 1983?

Finding

DMS requested \$37,500 in their Fiscal Year 1982 budget for the purchase of a new prover. However, the Legislature did not fund the full request of \$41,000 for equipment purchases but instead only funded \$3,400 making it impossible for DMS to purchase the prover in Fiscal Year 1982. Again in Fiscal Year 1983, DMS requested funds to purchase a prover. The amount requested decreased to \$28,700 due to instructions from the Department to pare down the request. As a result, DMS could not purchase a new prover but instead purchased a used prover for the \$18,750.

Question No. 13

Did DMS properly expend funds for the purchase of office equipment and furniture in Fiscal Year 1983?

Finding

As of December 31, 1982, DMS had expended \$13,944 on various types of office equipment and furniture, including desks, chairs, bookcases, transcribers, tape recorders, etc. These expenditures have been charged against the \$28,700 operating appropriation allocation for equipment, which was requested for the purchase of the truck mounted prover discussed in Question No. 12 and an additional \$7,800 transferred from the Department of Public Safety with the permit and weigh station functions.

We conclude that DMS has properly expended funds to purchase office equipment and furniture.

Question No. 14

Has DMS equipped a weights and measures testing laboratory in Juneau in addition to the one maintained in Anchorage?

Finding

DMS has either purchased or transferred from the Anchorage metrology laboratory equipment totalling \$19,220 for the Juneau laboratory. This equipment will be used to verify the DMS field standards and the standards (test weights) of the fishing and construction industries used in Southeastern Alaska. We conclude that the use of this equipment will result in a cost savings to the State and the industries due to the elimination of costly transportation expenses to transport the standards to Anchorage for verification.

Question No. 15

Has DMS properly budgeted for program revenues?

Finding

DMS budgeted program revenue for Fiscal Years 1981 and 1982 totalling \$10,100 and \$11,300, respectively. The revenue was to be collected from processors and contractors who requested scale inspections which had not been scheduled by DMS. Actual revenue collected for reimbursement of per diem, transportation, and/or mileage totalled \$10,223 in Fiscal Year 1981 and \$2,805 in Fiscal Year 1982 leaving an unrealized balance of \$8,495. DMS budgeted \$12,300 in program revenue for Fiscal Year 1983 none of which has been collected.

DMS staff stated they had discontinued the policy to request reimbursement for unscheduled scale inspections and would not be collecting the program revenue budgeted for Fiscal Year 1983. The Fiscal Year 1984 budget request reflects a decrease resulting from the change in policy.

PERSONNEL MANAGEMENT

Question No. 16

Has a Weights and Measures Inspector IV and the Mobile Home Inspector been performing duties and responsibilities different from those described on their job descriptions and class specifications?

Finding

We determined that material changes have occurred in the duties and responsibilities of these two positions since the formation of the Division (see Recommendation No. 4A).

Question No. 17

Did DMS select supervisors of the weigh stations in accordance with the State Personnel Rules?

Finding

The selection of the weigh station supervisors was in compliance with the State Personnel Rules. However, we recommend DMS utilize the promotional eligibility list in future situations where sufficient competition warrants to ensure the selection of the most qualified person for the position and to afford equity in hiring practices (see Recommendation No. 4B).

Question No. 18

Did DMS comply with the State hiring procedures in the selection of the Chiefs of the Weights and Measures Section and the Permits and Weigh Stations Section?

Finding

We reviewed the personnel records and determined that these positions were filled in accordance with the State Personnel Rules. In addition, the Office of the Ombudsman reviewed the selection of the Chief of the Permits and Weigh Stations Section. In a letter dated January 23, 1983, the Ombudsman concluded that the person hired was within the top five available eligibles, as required by Personnel Rule 5.02.2. None of the other persons in the top five were considered.

The Ombudsman stated that even though the Personnel Rules do not require consideration of all persons within the top five, the Department would benefit by adopting a policy which requires the appointing officers to consider those persons. Such a practice would improve the quality of appointments by bringing the best qualified applicant to the attention of the appointing officer.

Question No. 19

Was a Weights and Measures Inspector IV position held open approximately one year while the Division attempted to qualify a staff member for the position?

Finding

A Weights and Measures Inspector IV position was vacant from May to December, 1980. On December 8, 1980, a Weights and Measures Inspector trainee was promoted to the Weights and Measures Inspector IV position. The employee's application had been rewritten to include work experience not previously included on his application submitted for the trainee position.

Question No. 20

Has DMS complied with the State Personnel Rules and the State Administrative Manual concerning employee moving expenses?

Finding

In November, 1981, a Weights and Measures Inspector I was promoted and transferred from Anchorage to Kenai to operate the field office. He accepted the promotion with the understanding that his moving costs could not be reimbursed by the State due to the agency's fiscal constraints. Then in July, 1982, DMS promoted a Weights and Measures Inspector III to Chief of Weights and Measures Section. DMS transferred him and his family from Juneau to Anchorage reimbursing all moving expenses.

According to the Deputy Director of the Division of Personnel, an agency may offer a promotional transfer without reimbursement of moving expenses if the agency has fiscal constraints and/or the position could be filled by advertising in the area where the position is vacant.

We conclude that DMS has complied with State Personnel Rules and procedures concerning reimbursement of employee moving expenses.

Question No. 21

Is overtime pay properly approved, supported, and recorded in the State accounting records?

Finding

We reviewed expenditures for overtime pay for Fiscal Years 1981, 1982, and 1983 (through January 31, 1983). Based on the results of our test, we determined that overtime pay is properly approved, supported, and recorded in the accounting records.

PROGRAM MANAGEMENT

Question No. 22

Is the Division's participation in the Western Weights and Measures Conference (WWMC) and the National Conference of States on Building Codes and Standards, Incorporated (NCSBCS) justifiable in terms of economy, efficiency, and effectiveness?

Finding

The participation by the Director and staff in the WWMC is directly related to their duties and responsibilities under AS 45.75, Weights and Measures Act. However, the duties and responsibilities of DMS relating to building codes and standards were greatly diminished in 1980 with the enactment of the Mobile Home Warranty Program. Furthermore, implementation of Recommendation No. 5 which recommends the transfer of the Program to the Consumer Protection Section, would remove all responsibilities relating to the building codes and standards. Therefore, we recommend the Department seek removal of DMS staff as delegates to the NCSBCS (see Recommendation No. 6).

Question No. 23

Have actions taken by the Mobile Home Inspector, relating to an investigation in 1982, resulted in a class action suit being filed against the State, the Director of DMS, and the Mobile Home Inspector?

Finding

Through inquiries of the Alaska Court System and the Office of the Attorney General, we determined that no suit has been filed naming the State, the Director of DMS, or the Mobile Home Inspector as defendants.

Question No. 24

Is DMS discontinuing safety inspections of commercial vehicles in March, 1983?

Finding

On July 15, 1982, the permit and weigh station functions of the Bureau of Vehicle Maintenance, Department of Public Safety, were transferred to DMS.

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The Legislature did not include the transfer of authority for safety enforcement. In order to fulfill the requirements of a federal contract for a safety demonstration project, DMS received a delegation of authority for safety enforcement from the Alaska Transportation Commission which was effective July 1, 1982. This allowed DMS to continue the safety inspections through the completion date of the federal contract, March 11, 1983.

This issue was reviewed by the Office of the Ombudsman and a letter report was issued January 28, 1983. The Ombudsman concluded that the statement which alleges the Department of Commerce is not fulfilling its statutory responsibility for enforcing commercial safety standards is "unsupported". Further, the Department does not have statutory responsibility for commercial safety enforcement. We concur with this conclusion of the Office of the Ombudsman.

Presently, the Director of DMS is working with the Commissioner of the Department of Commerce and Economic Development to provide alternative plans for a commercial vehicle safety program.

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

June 10, 1983

Gerald L. Wilkerson, Legislative Auditor
Legislative Affairs Agency
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Recommendation Number 1

The Department should take immediate action to improve the employee morale of the Division of Measurement Standards (DMS).

RESPONSE:

The Division of Measurement Standards acknowledges that some morale problems existed during the period of the audit and since the formation of the Division. Positive steps have been taken by both the Department and the Division to respond to the problems, to expand the lines of communications, and to ensure addressing individual concerns. The response to these increased efforts have been very positive and progress will be closely monitored to ensure achieving desired results.

The Division does not agree that the cause was a build up of problems that existed within the Weights and Measures Section over the past several years, with the exception of isolated personnel problems, the specific items identified by the Division's employees are of recent origin and the approach has been to provide solutions to these.

It may also be noted that only two employee grievances were filed in Weights and Measures in the five years preceding the transition to Division status.

Recommendation Number 2

DMS should avoid situations that give the appearance of a conflict of interest.

1. During the period from July 1, 1981 to January 21, 1983, the mobile home inspector received and mediated at least four

complaints involving the mobile home dealership owned by his father. We understand the father has voluntarily dissolved his business as part of an out-of-court settlement with the State's Consumer Protection Section. However, other relatives own mobile home dealerships in the State.

RESPONSE:

1. The mobile home warranty program has been transferred to the Department of Law, office of Consumer Protection.
2. During our review of contract procedures, we found that three contracts were awarded to a mobile home service and repair company. The DMS Mobile Home Inspector is a former employee of this business and his brother currently is employed there.

RESPONSE:

2. During the period when the contracts were awarded, neither the Mobile Home Inspector nor his brother were employed by the company providing the service.

Recommendation Number 3

DMS should improve its budgeting and financial management.

- A. DMS should ensure performance indicators in their budget requests are accurate.

In a review of the fiscal year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in fiscal years 1981 and 1982 was not accurate. The exceptions noted were as follows:

<u>Commodity items audited</u>
<u>Value of prepackaged goods found in violation</u>
<u>Devices tested</u>

The budget instructions state that the agency should select only measures of activities for which data is already being collected or reasonably can be collected in the budget year. In addition, they state that once a useful measure has been identified it is useful to look at the same measure from year-to-year.

RESPONSE:

- A. Some of the confusion associated with the figures are based on lack of understanding of the methods used to document activity and the value of certain information. The following is offered to clarify the information:

In conducting audits of commodities offered for sale, a representative sample of the total population is selected. The selected items are tested to ensure conformance to specified standards. The size of the sample is determined by the size of the estimated total population and the requirement to test sufficient items to achieve statistical accuracy for the inferences made.

Three units of measurement are generally used for documenting activity impact:

Inspections - The number of individual commodity items actually tested for compliance with standards.

Audits - The number of items in the total population.

Value - The cost of the individual items.

The inspection is a measure of the weights and measures officials productive activity. The audit defines the population available for consumption and the value denotes the dollar impact of the commodities. By considering all of these factors, we may analyze a range of management factors from the employee's productivity to their impact on the marketplace.

The misunderstanding stems from typographical errors in the FY 84 budget request. Correct performance indicator titles should be:

1. Commodity items cested
1. Commodity items audited

Devices tested:

Actual count of devices tested was 16,519. See response to recommendation 7(c).

As defined in the budget instructions, the purpose of a performance indicator is to "identify the extent of major BRU activities and functions." As program requirements and emphasis have changed and we have increased the availability of quantifiable management information, we have attempted to select indicators that would represent measures of both activity and economic impact. The intent was to provide a more comprehensive indication of the Division's involvement in the regulatory process. It has been the Division's goal to develop quantifiable measurement indicators that permit analysis of all activities.

- B. DMS should prepare their fiscal year budgets in accordance with the instructions provided by the Office or the Governor.

The State budget instructions require agencies to report transfers between line items with an expenditure category on a specific form provided. This allows the agency to develop a budget which reflects actual anticipated spending.

RESPONSE:

B. The Division of Measurement Standards will prepare all future budget requests in accordance with the instructions provided by the Office of the Governor.

DMS should ensure appropriations are expended in accordance with law.

DMS received an appropriation totaling \$33,200 through Chapter 50, SLA 1980 to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska." Through a review of the related expenditures, we found \$8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska.

In addition, DMS received another appropriation totaling \$39,100 through Chapter 120, SLA 1980, to implement the mobile home warranty program enacted by Chapter 104, SLA 1980. We determined that \$2,875 of these funds were expended on travel unrelated to the mobile home warranty program.

RESPONSE:

D. The audit team did not identify the specific trips that they considered inappropriate, therefore, a general explanation is offered in an attempt to clear up some possible misunderstandings.

Fish buying scales are a highly mobile device that are moved from the factory to the scale repair facility, to various locations throughout the state, depending on specific requirements and appropriate seasons. Every effort is made by the Division to test the maximum number of devices at the most economical cost. An example of device mobility is a particular scale may be used in Seward during the herring season and shipped to the Aleutian Chain for the salmon season. If we can test the device in Seward before it is shipped to the Aleutian Chain, the cost for the inspector's travel will be significantly lower. Another example of a very successful method is the Seattle inspection program. The fishing industry in the Aleutian Chain and Western Alaska normally ship all their scales to Seattle for rebuilding every two years. The Division sends an inspector to Seattle whenever the number of available devices warrant the expenditure, to test and certify fish buying scales at company headquarters and scale repair facilities. By utilizing this procedure, the devices are tested prior to being

shipped to Alaska and being placed into service. This program has permitted the Division to not only increase the number of devices tested prior to their being used in commercial transactions throughout the state and has reduced the cost to the industries involved, but has allowed us to increase the number of devices tested and certified that are used in the remote areas of the Aleutian Chain and Western Alaska.

Some of the trips to Seattle were charged to this supplemental account because it was more economical to test the devices there rather than wait until they had been shipped to the Aleutian Chain. We felt that the intent of the appropriation was to ensure that accurate devices were being used and our effort was directed toward testing the devices where ever they could be located. Some administrative trips were charged to both appropriations to coordinate program requirements.

Recommendation Number 4

DMS should improve its personnel management.

During our review we noted personnel matters which may have contributed to the low employee morale.

A. DMS should update job descriptions and classifications as required by the State personnel rules.

RESPONSE:

A. All the Division employees P-402's were updated prior to the period the audit was conducted. As noted, two personnel were assigned to special projects during the transition period when the Division was in the process of establishing the structure necessary to respond to its basic management requirements. It must be kept in mind that when the permits and weigh station program was transferred from the Department of Public Safety to the Department of Commerce and Economic Development, the management and administrative support staff was not included. With the establishment of the Division of Measurement Standards to consolidate the weights and measures and permits and weigh station functions, both the management and the support staff had to be recruited and trained while continuing the daily activities required by statute. This necessitated the utilization of existing personnel to perform diverse duties to ensure program continuity. This transition period is largely complete and the organizational structure has been redefined to be responsive to program needs. P-402's will be updated to reflect actual duties being performed when the Division structure has been clearly defined and those recently hired into supervisory positions are fully trained.

It should be noted that the opening statement referred to two instances in the five year period considered. It was also noted that these are not violations of the personnel rules. We find the negative implication of the statement to be unjustified.

Recommendation Number 7

DMS should improve its procedures to ensure compliance with statutory requirements.

We noted two areas of statutory compliance in which DMS should improve their procedures.

A. DMS should provide sufficient documentation that office and field standards (official test devices) are verified in accordance with law.

RESPONSE:

A. The Division does have the documentation necessary to identify its inventory of office and field standards and to determine date of verification. To ensure more convenient access to the information, the word processing equipment will be used.

B. DMS should develop procedures to ensure that weight and measure devices are inspected and tested semiannually in accordance with law.

DMS staff indicated that the high cost of transportation hinders their ability to comply with the required semiannual inspections. We recognize this problem. However, DMS should compile an inventory of devices including location and the last date of testing. This will provide management with data to determine the extent of compliance possible within budgetary constraints. We recommend the use of DMS word processing equipment, where practicable, to facilitate the compilation and maintenance of the inventory list.

RESPONSE:

B. This is already being accomplished using manual records. The word processing equipment will be utilized to the maximum extent possible with current administrative staff.

C. DMS should develop a uniform method for compilation of weights and measures verification activity data.

An inspector, in order to verify a weight or measure device performs an inspection which is an evaluation of the physical characteristics of the device, and a test which is the actual test for accuracy through the use of standards, e.g. test weights. We noted inconsistencies in the methods used by inspectors to count the number of devices, and inspections and tests of those devices.

In addition to the inconsistencies in accounting for activities, we noted that monthly activity information is not organized in a manner to facilitate managerial use of data for planning and budgeting purposes. The fiscal year 1982 activity data was entered into the DMS word processing system. According to DMS staff, this data was used to calculate the total number of devices tested in fiscal year 1982 reported in the fiscal year 1984 budget request. However, we could not reconcile the recorded amount of devices totaling 11,276 to the reported number of 16,500.

DMS should develop procedures to ensure activity data is accounted for in a consistent manner and that data is complete and organized in a manner which facilitates use by management.

RESPONSE:

- C. A management information system is in place. The annual reports are used for management planning. These reports are developed by counting the individual field test reports.

The monthly reports are utilized by the individual supervisors to compare actual to scheduled activities. A format is being developed that will permit entering the data from each field test report into the word processing system. Device and activity data will be maintained on this system, limited only by availability of administrative staff time.

There is not a point of confusion in where to count various types of field activity. As indicated by our verification of field test reports, the inspection activity and the testing activity are accounted for separately. An actual count of the reports provided the following activity for FY 82:

Device inspections - 14,200
Device tests - 16,519

As indicated previously, management decisions and budget requests are prepared based on activity data documented on field test reports. Additionally, every reasonable effort is made to verify data prior to drawing conclusions. We afforded the audit team this same opportunity by offering the field test reports to them to verify the data contained in the budget request. This offer was repeated during the audit team's exit briefing and the records are available if verification of accuracy is a concern. We do not feel that drawing conclusions from unverified data is justified. To reemphasize the activity indicator as reported in the FY 84 budget request of 16,500 devices tested, was reverified by the Division by individually counting the field test reports on May 17, 18, and 19, 1983.

APPENDIX A
DISPOSITION OF ALLEGATIONS ON DMS MANAGEMENT

Question Number 1

Has DMS hired a Mobile Home Inspector who is related to proprietors of mobile home dealerships in Anchorage?

Finding:

We determined the Mobile Home Inspector is related to owners of mobile home dealerships in Anchorage.

RESPONSE:

Relationship is acknowledged (see response to recommendation number 2).

Question Number 3

Was the 1978 directive from DMS. to all fish processors and buyers, disallowing the use of hydraulic type scales in the best interests of the State?

Finding:

In May, 1978, a legislative bill (House Bill 964) was introduced which would have required fish processors to use electronic weighing scales to determine the weight of fish sold. However, a directive was issued by the Weights and Measures Section (now DMS) before any action was taken on the legislation. The directive stated it had been determined that the hydraulic type scales would not hold the tolerances set by Title 3, Chapter 32 of the Alaska Administrative Code. According to the directive, hydraulic type scales were not to be utilized after January, 1980.

We discussed the issue with the Alaska manager of the Pacific Seafood Processors Association. He stated there had been a problem with the accuracy of hydraulic type scales. The processing companies in the organization were not happy about the idea of having to expend monies to replace their hydraulic scales. However, he believes it was in the best interests of the industry. In addition, we sent questionnaires to 78 seafood processors operating in Alaska. Of the 29 questionnaires returned, 9 did not believe the replacement of hydraulic type scales was necessary; 4 believed it was necessary; and 16 had no opinion.

RESPONSE:

The issue that was not addressed by the audit team was whether the device was legal. This device is not legal for use for purchasing fish.

Question Number 4

Has DMS reported accurate information for performance indicators in their budget requests?

Finding:

In a review of the fiscal year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in fiscal years 1981 and 1982 was not accurate.

RESPONSE:

We do not agree that the information was not accurate (see response to recommendation number 3).

Question Number 10

Have personal long distance telephone calls been charged to the State?

Finding:

We reviewed a sample of telephone charges occurring between July 1, 1982 and January 31, 1983. It was determined that internal control over long distance telephone calls was nonexistent prior to January, 1983.

RESPONSE:

Long distance telephone logs are now being maintained.

Question Number 18

Did DMS comply with the State hiring procedures in the selection of the Chief of the Weights and Measures Section and the Permits and Weigh Stations Section?

Finding:

We reviewed the personnel records and determined that these positions were filled in accordance with the State personnel rules. In addition, the Office of the Ombudsman reviewed the selection of the Chief of the Permits and Weigh Stations Section. In a letter dated January 28, 1983, the Ombudsman concluded that the person hired was within the top five available eligibles, as required by personnel rule 5.02.2. None of the other persons in the top five were considered.

The Ombudsman stated that even though the personnel rules do not require consideration of all persons within the top five, the Department would benefit by adopting a policy which requires the

Gerald L. Wilkerson

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June 10, 1983

appointing officers to consider those persons. Such a practice would improve the quality of appointments by bringing the best qualified applicant to the attention of the appointing officer.

RESPONSE:

The finding that none of the other people in the top five were considered is incorrect. All available eligibles were interviewed and considered for both positions.

CONCLUSION:

Due to the public nature of the final audit report and the possibility that the statement would be construed to lend some validity to unspecified allegations, the Department feels that the opening statement to Appendix A should be limited to: "Presented below are the allegations concerning the management of DMS along with our findings."

Sincerely,



Richard A. Lyon
Commissioner

RAL:JS:cw

THE MOBILE HOME WARRANTY ACT
AND CONSUMER PROBLEMS WITH MOBILE HOMES

A Report by the Consumer Protection Section,
Department of Law,
February 4, 1984

Introduction

Mobile homes have become a major housing alternative for Alaskans, one which often involves considerable expense. Ranging in price from \$10,000 to well over \$100,000 (not including land), mobile homes in the state sold for an average of \$40,263 in mid-1984, as reported by the Alaska Housing Finance Corporation. Often mobile homes are purchased by consumers who lack the income needed for conventional housing and who are less able to protect themselves from defective products and unfair sales techniques. Yet unlike conventional housing, mobile home construction is not subject to regulation or inspection by local or state authorities, nor is the sale of mobile homes subject to professional licensing requirements.

Apart from the Department of Law's general enforcement powers against unfair or deceptive trade practices, state efforts to prevent and remedy the widespread problems confronted by mobile home purchasers rest solely on the mobile home warranty act, AS 45.30. The Consumer Protection Section's recent experience in administering this act shows that defects in mobile homes and consumers' problems in obtaining corrective action continue to be frequent occurrences and continue to demand significant efforts on the part of the section.

Background of the Mobile Home Warranty Law

In 1980, the Legislature acted to ensure that consumers receive adequate warranty protection when they purchase mobile homes. (Ch. 104, SLA 1980, amending AS 45.30.) This statute requires new mobile homes to be covered by a one-year written warranty against substantial defects in materials and workmanship. One important provision of the mandated warranty is that the dealer and manufacturer are each fully responsible for correcting defects, so that the consumer is not shuttled back and forth with no one taking responsibility. Another important provision is that the warranty must cover not only the structure of the mobile home but also all mechanical systems, equipment, and appliances included when it is sold.

The statute also establishes a method to enforce compliance. Written notices of violations may be issued by a