

ALASKA

LEGISLATURE COMMITTEE FILES

1991-1992

8672

7345

SENATE COMMUNITY & REGIONAL AFFAIRS

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* DELIVER TO: LIGCBL5
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* ORIGINAL
* SENT: 02/12/91 TIME: 15:54
* FROM: LTCCSOL
* SUBJECT: 91-02-037, PL#1-SB70; 2-12
* PRINT DATE: 02/12/91 TIME: 15:54
*
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SUBJECT LINE TO READ: TC NO.; PL/FS; SHORT SUBJECT; DATE

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T/C NO: 91-02-037
DATE: 2-12-91
SPONSOR: SENATE COMMUNITY & REGIONAL AFFAIRS
SUBJECT: SB 70
MODERATOR: ALYSON
SITE: SOLDOTNA

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PARTICIPANT LIST

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TESTIFIED

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NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

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*****
OBSERVED

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NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. JERRY C. HOBART/	KENAI BOROUGH ASSESSING	262-4441	SB70
2.	144 N. BINKLEY SOLDOTNA	99669	
3.			
4.			
5.			

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TESTIFIED:

UNABLE:
OBSERVED:
TOTAL:

START TIME:

END TIME:

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 507
Mail Stop 3101

MEMORANDUM

February 6, 1991

SUBJECT: Municipal Taxation of Property of Governmental Entities
(SB 70)

TO: Senator Drue Pearce

FROM: Tamara Brandt Cook
Director TBC

Here is the sectional summary you requested for SB 70.

Sec. 1. Removes the exemption from municipal taxation for property of a state entity acquired through foreclosure or deed in lieu of foreclosure and retained as an investment. This provision does not apply to property of the Teachers' Retirement Fund or the Public Employees' Retirement System. Provides that property of an entity of the United States is exempt from municipal taxation only to the extent required by federal law.

Sec. 2. Foreclosure procedures do not apply to property of governmental entities that is taxable under the first section of the bill. A municipality may bring an action in superior court to compel payment of the taxes.

Sec. 3. Modifies the current tax exemption provision of the statutes dealing with the Alaska Industrial Development and Export Authority to recognize the power of a municipality to impose taxes on some property under the first section of the bill. Although other exemption statutes are not specifically modified in the bill, the taxing authority granted to municipalities under the first section of the bill will have priority over those statutes. For example, property of the Alaska Permanent Fund Corporation that is taxable under section 1 will be taxable despite the general exemption for the corporation contained in AS 37.13.180.

Sec. 4. The bill takes effect January 1, 1992 to coincide with the beginning of the tax year.

TBC:gc
91-058.glc

JAN 31 1991



Matanuska-Susitna Borough

350 EAST DAHLIA AVE, PALMER, ALASKA 99645-6488 • PHONE 745-9680
BOROUGH ATTORNEY'S OFFICE PHONE 745-9679

January 28, 1991

The Honorable Drue Pearce
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

ATTENTION: Talley Johnson

Dear Senator Pearce:

SUBJECT: Taxation of Farmers Home Administration Properties

I have enclosed information related to the Matanuska-Susitna Borough's disagreement with Farmers Home Administration (FmHA) regarding the taxability of properties held by that agency. As you can see from the packet of information enclosed, Representative Larson has requested the attorney general's office to provide an opinion on the taxability of the property.

Please call if I can be of further assistance or if you require additional information on this matter.

Sincerely,
MATANUSKA-SUSITNA BOROUGH

A handwritten signature in cursive script that reads "Michael Gatti".

MICHAEL GATTI
Borough Attorney

MG:sah
16\012891-2

enclosures w/index

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

- 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
- 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679
- P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

December 5, 1990

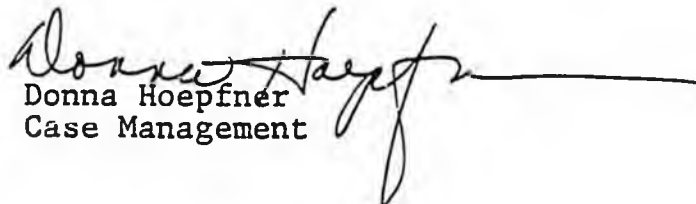
The Honorable Ronald Larson
Alaska State Legislature
House of Representatives
P.O. Box V
Juneau, AK 99811

Re: Attorney General's file # 663-91-0223

Dear Representative Larson:

This is to acknowledge receipt of your opinion request. We have assigned the request to Marjorie Odland and titled our file "Taxability of FmHA properties held for resales." Please refer to the file number listed above if you need to contact the attorney regarding this request.

Sincerely,


Donna Hoepfner
Case Management

Alaska State Legislature



Session Address:
STATE CAPITOL BUILDING
BOX V
JUNEAU, ALASKA 99811
(907) 465-3727

Interim Address:
BOX 53
PALMER, ALASKA 99645
(907) 745-3828 - Palmer
(907) 378-8628 - Wasilla

Representative Ronald L. Larson
District 16B

November 29, 1990

Douglas B. Baily, Attorney General
PO Box K
Juneau, Alaska 99811

Dear Mr. Baily:

A question has arisen regarding the local taxability of property held by the federal Farmers Home Administration (FmHA). At least two local governments assert that FmHA property, which reverts back to the federal government due to foreclosure or otherwise, is taxable while it is held by the federal government prior to resale. Conversely, the federal government claims that AS 29.45.030 exempts the FmHA from taxation notwithstanding the last sentence of Alaska State Constitution, Article IX, Section 4, and Article XII, Section 9.

I have attached a series of correspondence from various local governments and the U.S. Department of Agriculture which outline the positions on this issue.

Please provide me with a legal opinion as to the taxability of FmHA properties held by the agency for resale. I would appreciate your response within 30 days of the date of this letter. Please call if you have any questions or require any further information.

Sincerely,

A handwritten signature in cursive script that reads "Ronald L. Larson".
Ronald L. Larson
State Representative

enclosures

November 28, 1989 letter
To: Douglas B. Bailey
Re: Local Taxation of FmHA Property

INDEX TO ATTACHMENTS

1. November 6, 1990 letter of Timothy J. Binder (U.S. Dept/Agriculture) re: local taxation of FmHA property.
2. November 6, 1989 memorandum of Mary K. Osowski (Community Development Division) re: taxation of SFH inventory in Alaska.
3. October 6, 1989 letter of Michael Gatti (Matanuska-Susitna Borough) re: taxation of FmHA property.
4. July 24, 1989 letter of Michael E. Trow (U.S. Dept/Agriculture) re: local taxation of FmHA property.
5. May 31, 1989 letter of Michael E. Trow (U.S. Dept/Agriculture) re: local taxation of FmHA property.
6. May 23, 1989 letter of Michael Gatti (Matanuska-Susitna Borough) re: local taxation of FmHA property.
7. May 8, 1989 letter of Wayne Haerer, Jr. (Kenai Peninsula Borough) re: placement of FmHA properties on 1989 assessment roll.
8. May 20, 1988 memorandum of Roger E. Willis (U.S. Dept/Agriculture) re: payment of real property taxes FmHA Instruction 1955-B.
9. May 10, 1988 memorandum of Michael E. Trow re: payment of real property taxes - Alaska, FmHA Instruction 1955-B.
10. May 2, 1988 Memorandum of Kristine A. Schmidt (Kenai Peninsula Borough) re: tax exemption of FmHA.
11. November 19, 1987 memorandum of Kristine A. Schmidt re: tax status of property owned by certain federal and state loan agencies.
12. May 5, 1987 memorandum of Deborah Vogt, Asst. AG re: tax-exempt status of state foreclosed upon properties.



United States
Department of
Agriculture

Office of
General
Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 326-3115 (FTS 423)
(FAX) 326/423-3807

November 6, 1990

Michael Gatti
Borough Attorney
Matanuska-Susitna Borough
P. O. Box 1608
Palmer, Alaska 99645-1606

RE: Local Taxation of Farmers Home Administration Property

Dear Mr. Gatti:

Back in October I contacted the Matanuska-Susitna Borough Assessment Office (Borough) concerning the assessment of taxes on property held by FmHA. They said that they would be talking with you about this matter. Since I have heard nothing back, I have taken the liberty to write to you directly. I understand that you have been involved in this matter, having written at least one letter to Michael E. Trow detailing your position on this matter.

Since that time, this office has sent the question back to our Washington, D.C. office to obtain an independent view of the subject. The Washington, D.C. office has stated that under the present law, FmHA is not authorized to pay taxes assessed by the Borough in Alaska. As I understand the present situation, FmHA, upon such advise, has refused to pay such taxes. The Borough has continued to issue assessment notices relating to taxes assessed for periods during which FmHA held title to the real property. This has caused some degree of consternation to purchasers of FmHA property.

Under the Supremacy Clause of the Federal Constitution, the United States is immune from taxes imposed by State or local authorities. *McCulloch v. Maryland*, 4 Whet. 316 (1819); See *Minneapolis Star v. Minnesota Comm. of Rev.*, 460 U.S. 575, 589 n. 12 (1983) ("[t]he Supremacy Clause has prohibited . . . any direct taxation of the Federal Government."). This immunity may be waived by Congress but any such waiver must be "narrowly construed because it defeats the immunity shielding the federal government." *National R.R. Passenger Corp. v. Pa. P.U.C.*, 848 F.2d 436, 439 (3rd Cir. 1986), cert. denied ___ U.S. ___, 102 L.Ed.2d 220 (October 11, 1988). Accordingly, the first question to be answered is whether and to what extent Congress has waived the sovereign immunity of the United States. The answer to this question must be narrowly construed against such waiver.

In 1977, Congress passed a provision which waived the Federal sovereign immunity from State and local taxes for certain property held by FmHA. 42 U.S.C. 1490h. However, in accordance with the narrow construction given to such statutes, this statute has been interpreted to grant authority to States and local governments to tax rural housing projects, but it does not, by itself, impose taxes. *Dawson v. Childs*, 665 F.2d

705, 711 (5th Cir. 1982). One must look to State law to determine whether the property, in fact, is subject to taxes.

I note that in your letter on this subject, you distinguish the Dawson case and conclude that our reading of the case was in error. However, I note that our reading of the case is identical to that given to the case by the Court of Appeals for the Seventh Circuit. *United States v. County of Cook, Ill.*, 725 F.2d 1128, 1131 (7th Cir. 1984). The Court, in that case, interpreting a different statutory waiver of tax immunity, followed the rationale of the Dawson case, in holding that the statute did not supersede a state law prohibiting such taxation. The applicable statute in that case stated: "With respect to any interest in real property acquired under the provisions of this section, the same shall be subject to State and local taxes until title to the same shall pass to the Government of the United States." 40 U.S.C. 602a(1). The Defendants argued that this provision superseded a State law which exempted such property from taxation. The Court rejected this argument, stating:

Section 602a(e) (sic) opens United States property to taxation, but it does not require local taxation of United States property. If the state of Illinois statutorily exempts from local taxes property being acquired under purchase contract by the United States, then the United States is certainly entitled to take advantage of that exemption.

(Emphasis in the original.)

Based upon the above opinions, it is my view that the Congressional waiver of sovereign immunity does nothing more than open the Government property to taxation. One must look to the applicable State law to determine whether Government property, indeed, is subject to local taxes.

The applicable State law begins with the Constitutional provision found in Article IX, Section 4. That provision provides that the valid existing exemptions are retained "unless otherwise provided by law." You raised an argument that the Federal statute is other "law" for purposes of this provision. However, the Federal statute does not purport to address the matter of State exemptions. Nowhere in that statute is there any intimation that Congress intended to waive a valid exemption provided by Alaska law. The Federal statute addresses the issue of sovereign immunity, not State exemptions. See *County of Cook, supra*. Thus, although sovereign immunity has been waived, the question remains as to whether the State has chosen to tax such property.

The answer to this question is "no." Like Texas in the Fifth Circuit opinion and Illinois in the Seventh Circuit opinion, the State of Alaska has enacted a law granting immunity from taxes to property held by the Federal Government. AS 29.45.030(a)(1). That statute provides in relevant part: "The following property is exempt from general taxation: (1) municipal, state, or federally owned property . . ." I have been unable to find any State law waiving this exemption. Under the rule of the above opinions, this State law effectively bars local governments from taxing Federal property, notwithstanding the existence of a Federal

Local Taxation of FmHA Property
November 6, 1990
Page 3

statute making such property subject to taxation. (I note that there is an explicit State statute that makes property held by the Alaska Housing Finance Corporation subject to local taxation. AS 18.56.190.)

For the above reasons, would it be possible for you to revisit this issue. I would be happy to discuss the matter with you over the telephone. Or would it be possible for you to request an opinion from the State Attorney General's Office. I know that this issue has wider implications than your Borough, although it is your Borough that has continued to hold a view divergent from that of the FmHA.

I am concerned because it appears to me that the people we are attempting to help are being caught in the middle of this matter. FmHA borrowers often lack the resources to pay for the back taxes assessed against their property. I do not believe that they should be the ones who are required to bear the burden of resolving this matter. Yet, the taxes are being assessed against them because the United States does not believe it has the authority to pay such taxes under the present law. Since the dispute, if there is one, is between the United States and the Borough, it seems that we are the parties who should bear the burden of resolving the dispute.

In any event, I am looking forward to your reply. If I can be of any assistance to you in this matter, please contact me at the number listed above.

Sincerely,

ARNO REIFENBERG
Regional Attorney

Timothy J. Binder
Attorney

TJB/jc

6 - NOV 1989

Our Ref: LEG 5-2-1

TO: Ronnie O. Tharrington
Assistant Administrator - Housing
Farmers Home Administration

FROM: Mary K. Osowski, Attorney MARY K. OSOWSKI
Community Development Division

SUBJECT: Taxation of SFH Inventory in Alaska

We have reviewed your October 24, 1989 memorandum and its attachments on the above-captioned subject and have also spoken to Michael Trow in our Portland OGC office. We agree with the position of our Portland office that the Matanuska-Susitna Borough has no authority to impose property taxes on FmHA SFH inventory property. While § 528 of Title V of the Housing Act of 1949 waives the Federal Government's sovereign immunity from taxation of FmHA housing property in its possession, this waiver is not an unconditional one. It is conditional and the condition that applies here is the statement that the property shall be subject to State and local taxation "in the same manner and to the same extent as other property is taxed." Therefore, for example, if a State law exempts Federally owned property from taxation, our position has been that § 528 does not operate to negate or override this exemption.

Section 29.45.030(a)(1) of the Alaska Statutes clearly exempts Federally owned property from general taxation. Neither we nor our Portland office read the somewhat confusing language in Article IX, § 4 of the Alaska Constitution¹ as changing the meaning of § 29.45.030(a)(1) or somehow affecting (as the Borough's attorney contends) the conditional waiver in § 528 of Title V of the Housing Act of 1949.

Your memorandum asked us to inform you of what course we thought prudent for FmHA to follow in this matter. Apparently the Borough's attorney has threatened to bring a declaratory judgment action against FmHA if it continues to refuse to pay property taxes on its housing inventory properties. Your memorandum indicates that

¹ The last sentence of this section states that "[a]ll valid existing exemptions shall be retained until otherwise provided by law." Our Portland office's October 13, 1989 memorandum to Darwin Betts points out that this language is not self-executing and that § 29.45.030(a)(1) of the Alaska Statutes in fact does exempt Federally owned property from general taxation.

RECEIVED

NOV 1 1989

Office of the General Counsel, U.S.D.A.

our Portland office questions whether such an action could be successfully defended. Actually they are worried about the situation in which the Borough would not sue but would instead start to file tax liens against the property, forcing FmHA to sue to stop the practice. They wondered whether the United States Attorney's office would be willing to file such a suit. Nonetheless, we cannot advise FmHA to pay taxes under the circumstances in this matter because of the language in § 528 and the Alaska statute. We do wonder, however, why the Borough's attorney did not seek an Alaska Attorney General's opinion on the issue, especially on the effect of the Alaska Constitutional provision. While FmHA cannot ask for such an opinion itself, we know that in other situations FmHA has asked a sympathetic party such as a State legislator to request such an opinion. We suggest that avenue he explored here because, if the Alaska Attorney General agrees with our position, then the Borough's taxation efforts should cease and a lawsuit will have been avoided.

If you have any questions about this memorandum, please call me on 447-5220.

cc: Arno Reifenberg, Associate R/A, Portland, Oregon Attn: Michael Trow

Note to Reifenberg: Nice job done on the research memos on this issue

OGC:CD:MKOSOWSKI:11/3/89:CD-95:Ak-Tax:S.0-A



Matanuska-Susitna Borough

P.O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-9780

BOROUGH ATTORNEY'S OFFICE

October 6, 1989

Michael E. Trow, Attorney
U.S. Dept. of Agriculture
Office of General Counsel
1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204

RE: Taxation of Farmers Home Administration Property

During the assessment cycle for fiscal year 1989/1990, the question of taxation of Farmers Home Administration (FmHA) property has been raised. Previously such property was omitted from the Borough tax rolls for an indiscernible reason. On May 20, 1988 a memorandum from the United States Department of Agriculture, Farmers Home Administration, Roger E. Willis, State Director, asserts that property held by FmHA is not taxable. Director Willis' conclusion is based upon a May 10, 1988 legal memorandum from attorney Michael E. Trow of the Office of General Counsel for the U.S. Department of Agriculture. In that memorandum Mr. Trow concludes that AS 29.45.030(a)(1) does not pre-empt 42 U.S.C. §1490h waiving FmHA's sovereign immunity from taxation. (The memo incorrectly cites the federal statute as §1491h.) It is my understanding that the FmHA holds approximately 90 properties in the Borough for a total assessed valuation of \$3,486,500 which equals approximately \$23,952 of real property tax revenue for fiscal year 1989 at a mill rate of 6.87 and \$32,075 of real property tax revenue for fiscal year 1990 at a mill levy of 9.2.

ANALYSIS

A general rule of law associated with the taxation of property agencies and instrumentalities of the United States government is that in the absence of a Congressional waiver of sovereign immunity, there is immunity from state and local taxation of these areas. 70 Am.Jur.2d, State and Local Taxation, §221. In determining whether there is any governmental tax immunity for an agency or instrumentality of the federal government, one court has pointed out that:

In considering the immunity of federal instrumentalities from state taxation, two factors may

Michael E. Trow
October 6, 1989
Page 2

be of importance which are lacking in the case of claimed immunity of state instrumentalities from federal taxation. Since the acts of Congress . . . constitutional powers are supreme, the validity of state taxation of federal instrumentalities must depend (a) on the power of Congress to create the instrumentality and (b) its intent to protect it from state taxation. Helvering v. Gerhardt, 304 U.S. 405, 82 L.Ed. 1427, 58 S.Ct. 969, Rehearing denied 305 U.S. 669, 83 L.Ed. 434, 59 Sup.Ct. 56. 19__.

Even though the instant case deals with local government taxation of property held by an agency of the federal government by analogy, the same principle expressed in the foregoing case should apply.

With respect to the first prong of the test announced above, clearly Congress has the power to create the Farmers Home Administration. The second prong of the test, that is Congress' intent to protect Farmers Home Administration from state taxation may be determined from the provisions of 42 U.S.C. §1490h which provides for the taxation of Farmers Home Administration-held property. It provides:

All property subject to a lien held by the United States or the title to which is acquired or held by the Secretary under this title other than property used for administrative purposes shall be subject to taxation by a State, Commonwealth, territory, possession, district, and local political subdivisions in the same manner and to the same extent as other property is taxed: Provided, that no tax shall be imposed or collected on or with respect to any instrument if the tax is based on--

(1) the value of any notes or mortgages or other lien instruments held by or transferred to the Secretary;

(2) any notes or lien instruments administered under this title which are made, assigned, or held by a person otherwise liable for such tax; or

(3) the value of any property conveyed or transferred to the Secretary, whether as a tax on the instrument, the privilege of conveying or transferring, or the recordation thereof; nor shall the failure to pay or collect any such tax be a ground for refusal to record or file such instruments, or for failure to impart notice, or prevent the enforcement of its provisions in any state or federal court.

The preamble to 42 U.S.C. 1490h provides that all Farmers Home property is subject to taxation by a state or political subdivision in the same manner and to the same extent as other property is taxed. There are three exceptions to the general rule, all of which apparently are concerned with the taxation of the value of any notes or mortgages or lien instruments held or assigned to the Secretary or the value of any property conveyed or transferred to the Secretary, whether a tax on the instrument, the privilege of conveying or transferring or the recordation thereof. It is important to note that the exceptions are based on the value of any property conveyed or transferred to the Secretary and not the property itself. The plain meaning of the phrase "value of any property" means that proceeds generated from the conveyance or transfer of the property to the Secretary are not taxable. This phrase does not exempt from taxation the property itself, whether held by a private individual or FmHA.

The waiver of intergovernmental tax immunity set forth in 42 U.S.C. §1490h means exactly what it says. FmHA property is taxable but the monetary value derived therefrom is not.

THE DOCTRINE OF PRE-EMPTION IS IRRELEVANT TO THE QUESTION
OF EXPRESSED CONGRESSIONAL WAIVER OF SOVEREIGN IMMUNITY
FROM TAXATION OF FmHA PROPERTY

AS 29.45.030(a) provides the following property is exempt from general taxation:

1. Municipal, state or federally-owned property, except that a private leasehold interest, or other interest in the property is taxable to the extent of the interest.

The enabling authority for AS 29.45.030(a) is set forth in Alaska Constitution, Article IX, Sec. 4, Exemptions. This article provides:

The real and personal property of the state or its political subdivision shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of property used exclusively for non-profit, religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law. (Emphasis added.)

Article IX of the Alaska Constitution states that private leasehold interests and contracts or interest in land or property owned or held by the United States, the state, or its political subdivisions shall be taxable to the extent of those interests. The last sentence of Article IX, Sec. 4 provides that "all valid existing exemptions shall be retained until otherwise provided by law." The constitutional framers thus saw fit to authorize the waiver of governmental sovereign immunity from taxation if "otherwise provided by law." 42 U.S.C. §1490h waives sovereign immunity from local taxation of FmHA property since it is a statute which is "otherwise provided by law" and within the contemplation of the exception to the general exemption rule. This provision must be strictly construed against the property holder and in favor of the taxing authority. McKee v. Evans, 490 P.2d 1222 (1971). A federal statute is law as is a state statute or local ordinance. In other words, a law is a law whether it is federal, state or local law. 42 U.S.C. 1490h clearly provides that, within three narrowly crafted exceptions, FmHA property is taxable by a local government.

**DAWSON v CHILDS DOES NOT STAND FOR THE PROPOSITION EXPRESSED
IN THE GENERAL COUNSEL'S MEMORANDUM OF MAY 10, 1988**

The General Counsel cites the case of Dawson v. Childs, 665 F.2d 705 (1982) for the proposition that 42 U.S.C. 1490(h) does not pre-empt the general exemption from general taxation contained in As 29.45.030(a). A close reading of Dawson clearly establishes that the General Counsel's conclusion is erroneous. In Dawson, FMHA acquired property it had made direct loans on through foreclosure or by a voluntary conveyance in lieu of foreclosure. The property remained in FmHA's inventory for awhile pending sale. In 1977 the FmHA conveyed the property to the Dawsons with a provision in the warranty deed related to the payment of taxes which effectively amounted to a contract whereby the government agreed to pay any taxes against the property during the time of its ownership, provided that the property was subject to Texas local statutes and taxes. The corollary to this proposition is that government would have no liability if the property were not subject to Texas local statutes. In October 1977, Congress amended the Housing Act of 1949, 42 U.S.C. §1472 et seq., waiving sovereign immunity from taxation on certain property, including Farmers Home Administration held property, 42 U.S.C. 1490h. The amendment was retroactive to January 1, 1977. The Dawsons tendered payment for a portion of the 1977 property taxes when they owned the property. The local taxing authority refused the payment and demanded payment for the entire year as for tax year 1976 during which the United States

Michael E. Trow
October 6, 1989
Page 5

possessed title. The court held that the amendments to 42 U.S.C. 1471 et seq. did not take effect until January 1, 1977, therefore, sovereign immunity before that date shielded the FmHA property from local taxation. The court further held that the Texas statutory exemption exempted "all property" from taxation. The Texas exemption cited in Dawson is substantially distinguishable from the Alaska exemption contained in AS 29.45.030(a) and the express language of Article IX, Sec. 4 of the Alaska Constitution authorizing exceptions to the exemption of federal property from local taxation in its last sentence. FmHA property is therefore subject to Borough property taxes.

UNEQUAL TREATMENT

The Borough disagrees with FmHA's position that taxation of Farmers Home property results in unequal treatment. There are numerous examples of local taxation of state and federally held property within the state. FmHA property is subject to taxation just as other federally and state held property is subject. Alaska Constitution, Article IX, §1,4,5.

ESCAPED PROPERTY

In Municipality of Anchorage v. Alaska Distribution Company, 725 P.2d 692 (Alaska 1986), the Alaska Supreme Court held that public policy required all taxpayers to bear their fair share of taxes and thereby disallow windfalls due to the tax assessor's errors. This principle is known as the recapture of escaped property and it authorizes a municipality to seek back taxes on property that escaped taxation for up to six years. AS 09.10.120; AS 29.45.100(a); AS 29.45.110(a); AS 29.45.220; Municipality of Anchorage v. Alaska Distribution Company, supra. Accordingly, the Borough Assessor may assess taxes against FmHA property that were not paid for the last six years.

CONCLUSION

For the reasons cited above, FmHA property is subject to real property taxation by the Matanuska-Susitna Borough. Even though the subject FmHA property is subject to taxation by the Borough, my client has authorized me to tender an offer to you to compromise a disputed claim. The Borough will forebear from filing a declaratory judgment action for delinquent taxes, penalties and interest, including the assessment of FmHA for six years of escaped property in exchange for FmHA tendering payment to the Borough for delinquent 1988 and 1989 taxes, penalty and

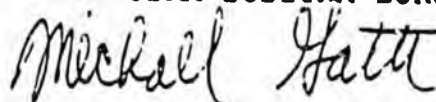
Michael E. Trow
October 6, 1989
Page 6

interest on the property. The 1988 and 1989 delinquent taxes, penalty and interest on the subject property are as follows:

	<u>Taxes</u>	<u>Interest</u>	<u>Penalty</u>
1988	\$ 810.69	\$ 57.57	\$ 81.87
1989	\$30,922.12	\$102.22	\$2,514.94

Please advise the Borough of your client's position on this matter within thirty days.

Sincerely,
MATANUSKA-SUSITNA BOROUGH



MICHAEL GATTI
Borough Attorney

cc: Gary Lewis, Borough Assessor

MG:sah

5-092689-1



United States
Department of
Agriculture

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July 24, 1989

Michael Gatti
Borough Attorney
Matanuska-Susitna Borough
P. O. Box 1608
Palmer, Alaska 99845-1608

RE: Local Taxation of Farmers Home Administration Property

Dear Mr. Gatti:

Please refer to my letter of May 31, 1989. Farmers Home Administration has expressed concern because your assessor has begun to levy taxes on its inventory property. Where that property is now in the process of being sold to low income third parties, the end result will only be to preclude sale because neither those parties nor the agency has funds with which to pay the taxes.

I must reiterate the agency's position that while it holds title to the subject properties, they are immune from local taxation. I have again reviewed Alaska General Law, AS 29.45.030(a)(1), together with the constitutional and federal statutory law applicable to taxation of federal entities. There are two reasons why I conclude that Farmers Home Administration inventory property continues to be exempt from the imposition of these taxes. First, AS 29.45.030(a)(1) expressly exempts property of the United States from taxation. Second, because the statute exempts state and municipal property too from general taxation, the Borough may not discriminate by taxing only property of the United States.

Under the Supremacy Clause of the Federal Constitution, the United States is immune from taxes imposed by State or local authorities. McCulloch v. Maryland, 4 Whet. 316 (1819); see also Minneapolis Star v. Minnesota Comm. of Rev., 460 U.S. 575, 589 n.12 (1983) ("the Supremacy Clause has prohibited... any direct taxation of the Federal Government"). This immunity may be waived by Congress but any such waiver must be "narrowly construed because it defeats the immunity shielding the Federal Government." National R.R. Passenger Corp. v. P.A. P.U.C., 848 F.2d 436, 439 (3rd Cir. 1988), cert denied ___ U.S. ___, 102 L.Ed.2d 220 (Oct. 11, 1988).

In 1977, Congress amended the Housing Act of 1949, adding a provision which waived the federal sovereign immunity from state and local taxes for certain property held by Farmers Home Administration. 42 U.S.C. §1490h. This waiver was limited in three respects: (1) federal property used for administrative purposes could not be taxed, (2) federal property could be taxed only in the same manner and to the same extent as other properties were taxed, and (3) no tax could be assessed on instruments or the privilege of conveying or transferring or the liquidation thereof, if that tax is based on the value of the property conveyed.

The second of these restrictions, at issue here, is in line with the general constitutional standard that discriminatory taxes are not permitted. As stated in Memphis Bank & Trust Co. v. Garner, 459 U.S. 392, 397 n.7 (1983): "[S]tate taxes are constitutionally invalid if they discriminate against the Government." The point of comparison in determining whether taxes discriminate against the federal government is not the general public, but the state. A state constitutionally may not enact laws granting to itself or those in privity with it privileges with respect to tax laws which it does not also grant to the Federal Government. Davis v. Michigan Department of Treasury, ___ U.S. ___, 103 L.Ed.2d 891, 905, n.4 (March 26, 1989); Phillips Chemical Company v. Dumas Independent School District, 361 U.S. 376 (1960).

However, before Farmers Home Administration property can be made subject to non-discriminatory state and local taxation, Alaska must enact enabling legislation. It has not done so. To the contrary, AS 29.45.030(a)(1) expressly exempts the agency's property from taxation. In Dawson v. Childs, 665 F.2d 705, 711 (5th Cir. 1982), the court considered this very issue. The appellant argued that the waiver of federal sovereign immunity provided by 42 U.S.C. §1490h pre-empted the state's exemption of United States property from taxation under Texas statute. The court was unpersuaded, finding that the exemption granted by Texas statutes prevented the taxing of Farmers Home Administration property even though the federal government had removed the constitutional barrier to such taxation.

Turning to the discrimination issue, AS 29.45.030(a)(1), in a straight forward manner, appears to grant immunity equally to municipal, state, and federally-owned property. Under Davis, Alaska and the Matanuska-Susitna Borough may not exempt the property owned by them from taxation, while at the same time taxing the property of Farmers Home Administration. 42 U.S.C. §1490h states that federal property may be taxed "in the same manner and to the same extent as other property is taxed." As with the state statute at issue in the Davis case, it is safe to assume that this language also was designed to incorporate the constitutional doctrine of non-discrimination in defining the scope of immunity in 42 U.S.C. §1490h. Having reached this conclusion, we must reach the further conclusion that under

Michael Gatti
Taxation of FmHA Property
Page 3

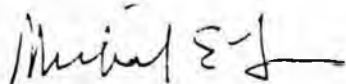
Davis, Farmers Home Administration property is subject to taxation only in the same manner and to the same extent that state or borough property is subject to taxation. Because the state of Alaska retains tax immunity for itself and its municipalities property, see AS 29.45.030(a)(1), tax immunity for Farmers Home Administration property is also retained. The State may not favor itself in its taxing scheme in relation to the federal government. Davis, 193 L.Ed.2d at 903-905.

Please advise your assessor that under Davis and Dawson, Farmers Home Administration inventory property is not subject to taxation until Alaska enacts a statute to the effect that the United States and its agencies and instrumentalities and their property are declared to be taxable to the extent permitted under the laws of the United States and to the extent that State and municipal properties are taxed.

Your assessor needs to be advised at once that there is simply no basis in law for the borough to tax Farmers Home Administration inventory property.

Sincerely,

ARNO REIFENBERG
Regional Attorney



Michael E. Trow
Attorney

cc: Darwin Betts
FmHA - Alaska

MET/jc:8907073



United States
Department of
Agriculture

Office of
General
Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 326-3115
(FTS) 423-3115
(FAX) 326/423-3807

Law Office
Received

May 31, 1989

Michael Gatti
Borough Attorney
Matanuska-Susitna Borough
P. O. Box 1608
Palmer, Alaska 99645-1608

RE: Local Taxation of Farmers Home Administration Property

Dear Mr. Gatti:

I have reviewed your letter of May 23, 1989 and my May 10, 1988 letter to Roger E. Willis, State Director, FmHA, Alaska. My position remains that, while Congress has waived FmHA's sovereign immunity from taxation, see 42 USC 1490h, FmHA inventory property is not subject to local taxation because Alaska General Law, AS 29.45.030(a)(1) expressly exempts "[f]ederally owned property, except that a private leasehold, contract, or other interest in the property is taxable to the extent that the interest."

Alaska Constitution Article IX, Section 4 provides, in pertinent part:

Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law.

You feel that 42 USC 1490h which waives the federal government's sovereign immunity from taxation of FmHA property somehow is other law which removes that property from within the "valid existing exemption" provided by AS 29.45.030(a)(1).

Notwithstanding the 42 USC 1490h waiver of sovereign immunity, until the cited state statute is amended, FmHA owned property is within the existing state law exemption. This was exactly the issue decided in Dawson v. Childs, 665 F2d 705, 711 (5th Cir. 1982): 42 USC 1490h does not preempt valid existing state law

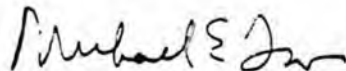
-2-

exemptions. Accordingly, it remains FmHA position that until Alaska repeals its statute, your borough has no authority to tax FmHA's property.

Please call me if you wish to discuss this matter further.

Sincerely,

ARNO REIFENBERG
Regional Attorney



Michael E. Trow
Attorney

cc: Darwin Betts
FmHA - Alaska

MET/jc:8905139



Matanuska-Susitna Borough

P.O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-4301

May 23, 1989

Mr. Michael Trow
U.S. Department of Agriculture
Office of General Counsel, Rm. 1734
1220 S.W. Third Avenue
Portland, Oregon 97204

Dear Mr. Trow:

Subject: Local taxation of Farmers Home Administration Property

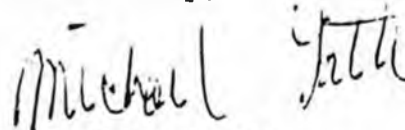
In your opinion of May 10, 1988, you conclude that Farmers Home Administration property is exempt from taxation notwithstanding 42 U.S.C. 1490(h). Your conclusion is based, in part, on the case of Dawson v. Childs, 665 F.2d 205 (1982) which stands for the proposition that congress has waived Farmers Home Administration's sovereign immunity from taxation pursuant to 42 U.S.C. 1490(h). Since your opinion does not cite Alaska Constitution Article IX, Section 4 exemption, you may wish to re-evaluate your position in light of this section which provides:

"The real and personal property of the state or its political subdivision shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of property used exclusively for non-profit, religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law." (Emphasis added.)

Clearly 42 U.S.C. 1490(h), which is otherwise provided by law, waives the federal government's sovereign immunity from taxation of Farmers Home Administration property in its possession. Please re-evaluate your opinion in light of this new information. Since this property is taxable, the assessor has placed it upon the Borough's assessment rolls. Your representative in Palmer has been previously supplied with a Notice of Taxation.

Please call if you have any questions or require any further information on this issue. I look forward to your response which I expect to receive in approximately five days of receipt of this letter. Also, please notify your client agency that the property is subject to taxation.

Sincerely,

Handwritten signature of Michael Gatti in cursive script.

Michael Gatti
Borough Attorney

cc: Gary Lewis, Borough Assessor

MG:sah

L\52389-3



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA 99669
PHONE (907) 262-4441

DON GILMAN
MAYOR

May 8, 1989

Matanuska-Susitna Borough
P.O. Box B
Palmer, AK. 99645

Att: Karl D. Borglum

Dear Karl:

I am responding to your inquiry of May 3, 1989, wherein you asked if the Kenai Peninsula Borough has placed Farmers Home Administration properties on the assessment roll for 1989.

The answer is no, not the original roll. It was an inadvertent oversight and the plan is, to place these (six total) properties on the 1989 supplemental roll.

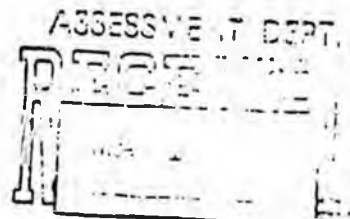
I have elected to place these properties on the assessment roll as taxable for two reasons.

- (1) My legal staff, through exhaustive research, feel very confident as to our legal authority to tax. Oral and written communication from them has instilled my confidence in their findings.
- (2) In the spirit of equality and fairness, I cannot maintain taxability of all the other State and Federal agencies that qualify and overlook Farmers Home Administration.

I hope this clarifies my position on this matter and serves some positive reinforcement to your endeavors. I might suggest that, perhaps you should have your legal counsel contact Kristine Schmidt, Kenai Peninsula Borough, Deputy Borough Attorney on this matter.

With Best Regards,

Wayne D. Haerer, Jr.
Director of Assessing



WDH/mch

Page 2

cc: Lenny Reagin, Assessor
Fairbanks North Star Borough

Steve Van Sant, Assessor
Municipality of Anchorage

Mike Worley, State Assessor
Community and Regional Affairs

For Administrative Use Only

Alaska AN No. 67(1955)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
PALMER BUSINESS PLAZA
634 SOUTH BAILEY, SUITE 103
PALMER, ALASKA 99645

Subject: Payment of Real Property Taxes
FmHA Instruction 1955-B

May 20, 1988

To: Area Loan Specialists
Assistant Area Loan Specialists
Loan Assistants
Alaska

The Office of General Counsel for the Department of Agriculture on May 10, 1988 issued an opinion concerning local taxation of FmHA inventory properties.

Simply stated, AS 29.45.030(a)(1) exempts from general taxation all federally owned property in Alaska. Unless this statute has recently been amended (in 1988) local boroughs are precluded from taxing FmHA owned inventory property. If you are approached by the local authorities concerning taxation, you should ask for the citation authorizing that action. Also, in that event, feel free to contact the RH section for further guidance.

Roger E. Willis
ROGER E. WILLIS
State Director

EXPIRATION DATE: 05-23-89

FILING INSTRUCTIONS: PRECEDING
FmHA Instruction 1955-B

MAY 20 1988



United States
Department of
Agriculture

Office of
General
Counsel

1734 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 221-3115
(FTS) 423-3115

May 10, 1988

TO: Roger E. Willis
State Director
FmHA - Palmer, Alaska

FROM: Michael E. Trow *met*
Attorney

SUBJECT: Payment of Real Property Taxes - Alaska
FmHA Instruction 1955-B

Please refer to your memorandum of May 3, 1988. The local boroughs tell you they plan to begin taxing FmHA on its inventory real property. In 1977 Congress waived FmHA's sovereign immunity from taxation. See 42 U.S.C. §1491h, copy attached. However, as far as I can tell Alaska has exempted from general taxation all federally-owned property. See AS §29.45.030(a)(1) (1986). I have looked through the 1987 amendments to the Alaska statutes and find this statute to still be good law. I do not have any 1988 Alaska legislative materials from which to discern whether the statute has recently been changed.

Even though Congress has consented to the taxation of FmHA held property by local political subdivisions, in Dawson v Childs, 665 F.2d 705, 711 (5th Cir. 1982) the Fifth Circuit held that FmHA property was taxable only if the Congressional waiver pre-empted the Texas statutory exemption at issue. The Texas statute exempted "[a]ll property, whether real or personal, belonging exclusively to this state, or any political subdivision thereof, or the United States" As the Fifth Circuit held the statute says "all." Until the state repealed its statute the local political subdivision had no authority to tax FmHA's property. In other words, the state statute was not pre-empted by 42 U.S.C. §1490h.

Likewise, unless AS §29.45.030(a)(1) has recently been amended, the local boroughs are without power to tax FmHA-held property. This is simply for the reason that §29.45.030(a)(1) precludes them from doing so. Please ask one of the local boroughs that has advised you that it will be begin to tax FmHA-held property to cite you some authority for it to do so. If it only cites you to 42 U.S.C. §1490h, cite Dawson v Childs as authority for the proposition that it is without power to tax FmHA property.

MET/c

- 5 1988

MEMORANDUM

TO: Jack Cline, Borough Appraiser

FROM: *KAS* Kristine A. Schmidt, Deputy Borough Attorney

DATE: May 2, 1988

SUBJECT: Tax Exemption of Farmers Home Administration ("FMHA")

I understood that Farmers Home Administration foreclosed property was TAR'd last fall, based on a letter from Leland Aley dated October 19, 1987 (copy attached). Subsequently, Don Thomas asked me for a legal opinion on the taxability of several state and government agencies, including the Farmers Home Administration.

I sent my opinion November 19, 1987 (copy attached). In that opinion I stated that: "... property foreclosed on pursuant to a loan agreement with [Farmers Home Administration] under 42 U.S.C. Sec. 1471, et seq., and acquired or held by FMHA, even if the foreclosure deed states that the grantee is the United States on behalf of [Farmers Home Administration], is taxable, as intended by Congress when it enacted 42 U.S.C. Sec. 1490(h)."

The FMHA tried to assert that its foreclosed property was tax exempt from municipal taxes in the case of Dawson v. Childs, 665 F.2d 705, 708 (5th Cir. 1982). The federal court in that case ruled that Congress specifically waived tax immunity for FMHA property acquired at foreclosure and held by FMHA. Although AS 29.45.030(a)(1) exempts federal property, it does so based on the immunity of the federal government from taxes in general. Where the federal government has waived its tax exemption, then federal property is taxable.

This analysis is similar to the state tax situation. The Alaska Constitution and state law (AS 29.45.030(a)(1)) provide that state property is exempt; however, where the state statutes provide that state property is taxable, they have waived this exemption.

At a March meeting between Don Thomas, you and myself, we discussed the FMHA tax exemption and I thought we were agreed that these properties were to be returned to the tax rolls.

On April 29, 1988, I received a phone call from Debra Braga, Asst. Borough Attorney of the Fairbanks North Star Borough. She said that her opinion was the same as mine, and that the FNSB intended to tax FMHA on its tax rolls (see attached letter). Based on what I thought was my understanding, that we

Memo to Jack Cline
Re: Tax Exemption of FMHA

May 2, 1988
Page Two

also had put FMHA-foreclosed property back on the tax rolls, I informed her that we also do not exempt such property. However, when I asked Wendy Kitchens to confirm this, she said that you had decided to continue to give FMHA a tax exemption.

It is the Borough's responsibility to strictly interpret tax exemptions. Where there is a question about whether property qualifies for tax exempt status under law, we should decide against tax exemption. Therefore, I strongly recommend that you return FMHA-foreclosed properties to the tax rolls, and send a 1988 Notice of Assessment to FMHA. I would also recommend that you reverse the TARs done in the fall of 1987, so that FMHA does not escape liability for 1987 taxes. Although it is too late to put the property in this year's foreclosure judgment, the 1987 liability will show up on next year's foreclosure list, if not paid.

RAS/bg
attachments
cc/attach: Thomas R. Boedeker, Borough Attorney

MEMORANDUM

TO: Don Thomas, Borough Assessor
Bob Walston, Asst. Borough Assessor

FROM: *KAS* Kristine A. Schmidt, Deputy Borough Attorney

DATE: November 19, 1987

SUBJECT: Tax Status of Property Owned By Certain Federal and State Loan Agencies.

You have requested an opinion on the taxability of property acquired in foreclosure actions and owned or held by various state and federal agencies. Based on my research of federal and state statutes, my opinion is as follows:

1. Alaska Housing Finance Corporation (AHFC). This agency is liable for taxes on real property of which it is fee owner. A.S. 18.56.190(a).

2. Farmers Home Administration (FHA). ^{"FHA" 4/6} Property subject to a lien held by the United States or the title to which is acquired and held by the FHA under the farm housing loan statutes, other than property used for administrative purposes, is subject to local property taxes to the same extent as any other property. 42 U.S.C. Sec. 1490(h).

I understand that FHA claims exemption based on the fact that the trustee's deed to the property was in the name of the United States. I would argue for taxability based on 42 U.S.C. Sec. 1490(h), even in this situation, because Congress intended to tax property acquired and held by the FHA, whether the grantee of the property is the United States on behalf of the FHA or not.

In addition, at least one Federal appeals court has ruled that 42 U.S.C. Sec. 1490(h) is a waiver of tax exemption for property acquired at foreclosure and held by the FHA. Dawson v. Childs, 665 F.2d 705, 708 (1982). Therefore, it is my opinion that property foreclosed on pursuant to a loan agreement with FHA under 42 U.S.C. Sec. 1471, et seq, and acquired or held by FHA, even if the foreclosure deed states that the grantee is the United States on behalf of FHA, is taxable, as intended by Congress when it enacted 42 U.S.C. Sec. 1490(h).

3. Federal Deposit Insurance Corporation (FDIC). Real property of the Corporation is subject to local taxation to the same extent as other real property. 12 U.S.C. Sec. 1825.

4. Federal Home Loan Mortgage Corporation (FHLMC). ^{"FHLMC" 4/6} Real property of the Corporation is subject to local taxation to the same extent as other real property. 12 U.S.C. Sec. 1452(d).

Tax status--Federal/State agencies
November 19, 1987

Page 2

5. Federal Land Banks or Federal Land Bank Associations. Real property held by land banks or land bank associations are taxable to the same extent as other property. 12 U.S.C. Sec. 2053.

6. Federal Savings and Loan Insurance Corporation (FSLIC). Real property of the Corporation is subject to local taxation to the same extent as other real property. 12 U.S.C. Sec. 1725(e).

7. Department of Housing and Urban Development (HUD). The Secretary is authorized to enter into payments in lieu of tax agreements with respect to property acquired or owned under any loan or grant by the Department. 42 U.S.C. Sec. 3535(1).

8. National Housing Act. Property acquired and held by the Secretary of HUD pursuant to the National Housing Act, 12 U.S.C. Sec. 1701, et. seq., especially housing renovation and modernization projects (42 U.S.C. Sec. 1701-1706) and mortgage insurance projects (42 U.S.C. Sec. 1707-1715) is taxable. See especially 42 U.S.C. Sec. 1706(b) and 42 U.S.C. Sec. 1714.

Property of the Government National Mortgage Association ("Cinnie Mae") and Federal National Mortgage Association ("Fannie Mac") is similarly taxable. 42 U.S.C. Sec. 1723(a)(c).

9. Small Business Administration (SBA). Property held by the SBA in fee simple is exempt from taxation. U.S. v. City of Roanoke, 258 F. Supp. 415 (W.D.Va. 1966); U.S. v. Schwartz, 278 F. Supp. 329 (S.D.N.Y. 1968); U.S. v. Joe Murray's Point Lookout, Inc., 359 F. Supp. 335 (D.C.N.Y. 1973).

Property may be taxable when it is held as security by the SBA (but not owned in fee simple). U.S. v. City of Roanoke, supra, p. 418.

Municipal tax liens have priority over SBA loans on property mortgaged to the SBA. 15 U.S.C. Sec. 646. Therefore, delinquent property tax liens can be enforced on property currently owned by the SBA but formerly owned by someone else, as long as the liens attached before the SBA acquired title.

10. Veteran's Administration (VA). The Veteran's Administration may purchase or take title to property, including through foreclosure, and property acquired or held under the VA loan statutes is subject to state civil laws, including tax laws. 39 U.S.C. Sec. 1820(a)(6). Therefore, the VA-foreclosed property is taxable by the Borough.

Tax status--Federal/State agencies
November 19, 1987

Page 3

I understand the VA has sent an opinion to the Borough that states that the VA is not liable for late penalties or interest on property taxes. I disagree with that opinion based on the intent of Congress in 38 U.S.C. 1820(a)(6) that all state civil laws apply to VA-acquired property, including tax laws; and state civil tax laws include tax penalties and interest provisions. It is therefore my opinion that VA-acquired property should be treated like all other property; and if penalties and interest accrue on a VA-held parcel, that the VA is liable.

Last, there is an issue about an apparent conflict between the Alaska Constitution, Art. IX, Sec. 4 (exempting state property from taxes unless the legislature provides otherwise), A.S. 29.45.030(a)(1) (exempting municipal, state, and federal property from taxes), and the state and federal statutes above that specifically make state and federal loan agency property taxable. It is my opinion that A.S. 29.45.030(a)(1) can be interpreted to allow a waiver of that exemption by state or federal law; and that the statutes specifically allowing taxation are such waivers. Therefore, it is not a conflict, in my opinion, to tax state or federal property where specifically allowed to by statute; regardless of A.S. 29.45.030(a)(1).

KAS/bg/bl

MEMORANDUM

State of Alaska *fill*

TO: Milt Barker
Deputy Commissioner
Department of Revenue

DATE: May 5, 1987

FILE NO.: 663-86-0528

THRU:

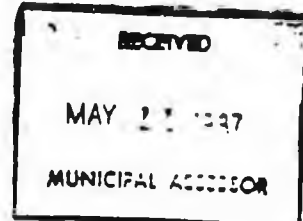
TELEPHONE NO.: 465-3600

FROM: Grace Berg Schaible
Attorney General

SUBJECT: Tax-exempt status
of state foreclosed
upon properties

By: Deborah Vogt *DV*
Assistant Attorney General
Department of Law

*Copy to
Barb
Bill
Ellen
Maithu
me*



You have asked for an analysis of the municipal tax liability on real property that is foreclosed upon by the state. 1/

As a general rule, municipal property taxes are a lien on the property involved. If the state forecloses upon property on which a lien has arisen, the property is taken subject to the lien. 2/ I understand that there is no dispute regarding prior years: if the state takes property, for example, in April of 1986 and the 1985 taxes have not been paid, the tax lien must be satisfied before the state can give clear title to the property to a third party. 3/

1/ The property at issue has been foreclosed upon by the Public Employees Retirement System (PERS) and the Teachers' Retirement System (TRS). Property foreclosed upon by the Alaska Housing Finance Corporation (AHFC) is subject to the provisions of AS 18.56.190, which states that such property is exempt from taxation "except taxes on real property of which the corporation is fee owner." Thus, AHFC pays municipal property tax on property owned by the corporation.

2/ AS 29.45.300(b) provides that "[p]roperty taxes, together with penalty and interest, are a lien upon the property assessed...."

3/ The existence of a lien does not imply that a municipality may enforce a lien against the state during the period that the state owns the property. Although we have not analyzed this question, it is likely that the state's sovereign immunity would prohibit a municipality from enforcing a lien against the state.

R **U** **D**

MAY 05 1987

MRAD
DEPT OF COMMUNITY
AND REGIONAL AFFAIRS

Milt Barker, Deputy Commissioner
Department of Revenue
663-86-0528

May 5, 1987
Page 2

Nor should there be any dispute about the fact that municipalities cannot tax the property when it belongs to the state. The Alaska Constitution provides that "[t]he real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law." Art. IX, sec. 4. AS 29.45.030 provides for required exemptions from municipal property taxation, and exempts "state ... property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest..." AS 29.45.030(a)(1). Although it might be argued that property owned by PERS or TRS is not state property, we have previously advised that such property is nonetheless statutorily exempt from property taxes. 1984 Inf. Att'y Gen. Op. (July 31; 663-84-0327). Thus, if the state owns property throughout an entire year, there can be no municipal tax liability for that year.

Your question is how to handle the current year's property taxes when the state becomes the owner mid-year. You have asked whether the property tax liability can be prorated between exempt and non-exempt status during a year, and if not, when the tax liability arises. Our answers are that the tax liability may not be prorated, and that exempt status should be determined as of January 1 of the tax year.

Courts that have faced these issues have come to wide ranging conclusions. Only two principles emerge: first, in the absence of specific statutory authority to do so, proration cannot be implied. Second, the time that the tax liability arises is determined by the applicable statute.

Although proration of taxes is certainly the custom in transfers of land between two private owners, and although it would certainly seem logical to do so when the state acquires property, I have found no case in which, in the absence of statutory authority, a court has permitted proration. The cases hold that the tax liability for a year either exists or does not exist; it does not partly exist. 4/

4/ In rejecting the proration of taxes, one court noted that "[a] power in the courts to relieve against property taxes lawfully assessed under explicit legislative authority is, at the least, not a familiar weapon in the judicial arsenal..." District of Columbia v. Sussman, 352 F.2d 683, 685 (D.C. Cir. 1965).

The question then becomes, when does the tax liability for a year arise; or, when does an exemption from taxation attach. Unfortunately, the cases here are of little help. They are unanimous only in that they look to the relevant statute for guidance. Again unfortunately, our statute does not address the question of when the lien for property taxes arises or when an exemption attaches.

Our statutes require that property be assessed at full and true value as of January 1 of the assessment year. AS 29.45.110. A municipality must determine the rate of levy by June 15, and mail tax statements setting out the rate and the date when taxes become delinquent by July 1. AS 29.45.250. Property taxes are a lien upon the property assessed. AS 29.45.300. AS 29.45.320 and 29.45.330 deal with the enforcement of "delinquent real property tax liens." No provision states clearly the date on which the lien arises.

The only provision of the statutory scheme dealing with the timing of an exempt status is AS 29.45.030(f), which deals with the senior citizen and disabled veteran exemption. That provision requires that an application be filed for the exemption by January 15 "of the assessment year," and similarly requires separate applications for each "assessment year." Although the provision does not explicitly state that the exempt status should be determined as of January 1 for the entire assessment year, that interpretation is apparently universally applied by assessing officers.

Some courts that have addressed this question have held that the tax liability is enforceable against the government only if the liability has ripened into a lien. Of these cases, some hold that a lien cannot arise until the tax rate has been set, or until the time that the taxes are due. Utah Parks Co. v. Iron County, 380 P.2d 924 (Utah 1963), Adams Co., Inc. v. Nist, 411 N.Y.S.2d 504 (1978), Rochester Housing Authority v. Sibley Corp., 351 N.Y.S.2d 934 (1974), City of St. Louis v. Ford Motor Co., 158 F.2d 354 (8th Cir. 1946). Others hold that the lien relates back to the assessment date. See e.g., State v. Snohomish County, 128 P. 667 (Wash. 1912), Huntington City v. Peterson, 518 P.2d 1246 (Utah 1974). Other courts have found the tax liability to depend not on the formal existence of a lien, but rather simply on whether the property was exempt as of a "tax status" date, or the assessment date. Lutheran High School Ass'n v. City of New York, 288 N.Y.S. 855 (1968), Appeal of Title Services, Inc., 252 A.2d 585 (Pa. 1969).

Milt Barker, Deputy Commissioner
Department of Revenue
663-86-0528

May 5, 1987
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The two most helpful cases that we have located focus, in the absence of clear statutory guidance, on the practical realities of municipal budgeting. These cases, District of Columbia v. Sussman, 352 F.2d 683 (D.C. Cir. 1965) and City of East Orange v. Palmer, 220 A.2d 679 (N.J. 1966) each involve controversies between the local government and the state -- or the district (which the court found to be in the same status as a state). In each case the court points out that a municipal government sets the tax rate to be levied on real property as a function of its revenue needs; it may set its budget to stay within certain rates, or establish rates to generate a certain amount of revenue, but in either case the rate is a direct function of the taxable value of property within its jurisdiction. The municipality needs to know with certainty what that value is. If property changes from taxable to exempt status within a tax year, the municipality will have miscalculated its revenue. For largely this reason, both courts conclude that the tax status at the beginning of the tax year is determinative for the entire year.

In the District of Columbia case, the tax year ran from July 1 through June 30. Assessments were made beginning in the preceding January, and finalized in May. The assessment role was finalized on July 1. The United States had condemned property as of July 26, and had argued that taxes were due only for the period between July 1 and July 26. The appeals court held that the taxes were due for the entire tax year. This statutory scheme differs slightly from Alaska's in that there assessments are made and finalized before the tax year begins while in Alaska assessments are made and finalized within the tax year.

The New Jersey statutory scheme is more similar to Alaska's. There, the tax year runs from January 1 through December 31. The assessment date is the preceding October 1, with the assessment role being finalized in January. The tax rate is set in July and taxes are due in February, May, August and November. Since two installments of taxes are due before the rate is set, the previous year's lev^y is used as an estimate. The court held that a transfer of property after January 1 would not affect the tax liability for that year. It reserved its opinion on property acquired between October 1 and December 31.

Since Alaska's statutory scheme is silent on the question at issue, and since it is not identical with the statutes of other jurisdictions that have faced this question, it is not possible to predict with any degree of certainty how Alaska's court would answer the question. Since a variety of answers seemed at least arguably permissible, I suggested that

Milt Barker, Deputy Commissioner
Department of Revenue
663-86-0528

May 5, 1987
Page 5

the Commissioners of the Departments of Revenue and Community and Regional Affairs meet and discuss the policy implications. The commissioners met on March 23, 1987, and agreed that a January 1 "tax status" date should be used. In addition, the State Assessor indicated that this question had been raised at a meeting of the Alaska Association of Assessing Officers, and that the members of that body agreed that a January 1 "tax status" date should be used. In our opinion, that result may be legally required under existing law; if it is not required, it is certainly legally permissible.

Thus, unless and until the legislature provides otherwise, the state should treat property acquired after January 1 of a year as taxable property for that entire year. Conversely, when selling or disposing of property that has attained tax-free status because it was owned by the state on January 1, that status for the current tax year should be reflected in the sales price.

DV:jf

cc: David Hoffman
Commissioner
Department of Community & Regional Affairs

Karen Carlson
Division of Treasury
Department of Revenue

Mike Worley
State Assessor
Department of Community & Regional Affairs

S B

9 6

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/1/91

FURTHER: Finance

Date of 5-Day Notice: 2/7/91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/14/91

C&RA Committee considered SB 96

Authorizing compensation for members of the state Local Boundary Commission; efd.

and recommended:

replace with _____ CS _____ same title

attached amendment(s) new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____
C&RA / 2/13/91

zero fiscal note(s) _____

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

Carlo Stangorli

OTHER RECOMMENDATIONS:

Anna Hylle

do not do pass
Chair: Signature and Recommendation

FISCAL NOTE

No. 1
 Bill Version: SB 96
 (S) Publish Date: 2-19-91

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Community & Regional Affairs
 Title: "An Act..compensation for members of the State Local Boundary Comm.." BRU: Local Government Assistance
 Component: Local Boundary Commission
 Sponsor: Senate C&RA
 Requestor: Senate C&RA

COMPONENT SERIAL NO.

0	6	7	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	18.75	18.75	18.75	18.75	18.75	18.75
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	18.75	18.75	18.75	18.75	18.75	18.75

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	18.75	18.75	18.75	18.75	18.75	18.75
FEDERAL FUNDS						
OTHER						
TOTAL	18.75	18.75	18.75	18.75	18.75	18.75

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: No fiscal impact in FY 91

ANALYSIS: (Attach a separate page if necessary.)
 This fiscal note assumes 25 days of meetings per year with compensation at \$150 per day per member (5 members).

Prepared By: Remond Henderson Phone: 465-4708
 Division: Administrative Services Date: 2/13/91
 Approved by Commissioner: EC, 1/14/91
 Agency: Community & Regional Affairs Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska State Legislature

Al Adams
District L



Official Business

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3707

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

3111 C Street
Anchorage, Alaska 99503
(907) 561-7622

March 4, 1991

The Honorable Walter Hickel
Governor
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Governor Hickel:

This is to let you know that I share your concern with economic problems that surround the various state boards and commissions and to offer a fix.

I see several issues at hand. One has to do with the sheer number of boards and commissions. Another has to do with their costs. A facet of their costs is the vast disparity in compensation for expenses, time and expertise. This latter notion has become particularly pointed with legislation again before the Seventeenth Legislature to provide salaries or elevated salaries to certain boards. Salary and honorarium has become a matter of some boards convincing legislators that its activities warrant a salary. Amounts range from \$50 to \$400 per meeting. I have enclosed for your review summaries of the various boards and compensation allowances. Clearly, there is no constructive correlation between salary, time involved or expertise required.

Several policy calls need to be made to address these problems. Some boards should be eliminated and some should be joined together. A policy for travel, per diem, salary and honorarium needs to be established. A policy is required on whether state employees or those who work for political subdivisions of the state should take leave without pay for meeting attendance.

I believe a short term task force would be well suited to investigate the possibilities of board elimination and fusion, how to divert "double dipping" of state employees serving on boards and recommend appropriate compensation. Since the establishment of such standards would involve multiple statutory changes it would seem appropriate that the task force could have answers to place before the Second Session of the Seventeenth Legislature.

I hope you find these ideas useful.

Sincerely,

A handwritten signature in cursive script, appearing to read "Al Adams".

Senator Al Adams

BOARDS AND COMMISSIONS WITH COMPENSATION OTHER THAN STANDARD TRAVEL AND PER DIEM

-KAF

Board/Commission Name	# Members	# Meetings	Compensation
Commercial Fisheries Entry Commission	3	120 days	Salaried
Commercial Fishing & Agricultural Bank, Bd. of Directors	7	7 days	\$250/day maximum
Board of Fisheries	7	4-6x; 40-85 days	\$150/day-regular meetings \$100/day-other meetings
Board of Game	7	2x (35-40 days)	\$150/day-regular meetings \$100/day-other meetings
Historical Records Advisory Board, State	9	3 days maximum	Federal funding
Alaska Housing Finance Corporation	7	16 days maximum	\$100/day + necessary expenses
Alaska Industrial Development & Export Authority	5	1x/month; most via telecon.	\$100/day
Medical Indemnity Corporation of Alaska	9	4x (15-30 days)	Necessary expenses
Alaska Municipal Bond Bank Authority	5	5 days total	Actual expenses
Occupational Safety & Health Review Board	3	Approx. 4x/yr.	\$50/day
Oil & Gas Conservation Commission	3	N/A	Salaried
State Board of Parole	5	4x/yr. minimum	Set by Governor
Permanent Fund Corporation, Board of Trustees	6	10+/yr. (40 days)	\$400/day
Board of Pharmacy	7	3x (9 days total)	Actual expenses
Alaska Public Offices Commission	5	5x (15 days max.)	\$50/day
Railroad Corporation, Board of Directors	7	4x/yr. minimum	\$400/day
Teachers' Retirement Board	9-13	2x (approx. 6 days)	Actual expenses
Public Employees Retirement Board	9-13	2x/yr.	4-8 physician members entitled to hourly compensation at rate consistent with their normal hourly earnings
Alaska Public Utilities Commission	5	Continuous	Salaried
Western Interstate Commission for Higher Education	3	2x (10 days max.)	Actual expenses
Alaska Workers' Compensation Board	11	125 days total	\$50/Day

SOURCE: 1991 Boards and Commissions Book, Office of the Governor

Example of ...

u 2 ...

BOARDS AND COMMISSIONS
WITH NO COMPENSATION OTHER THAN TRAVEL AND PER DIEM

BY SENATOR ADAMS

3.01.91

SOURCE: 1991 BOARDS AND COMMISSIONS BOOK

BOARD	MEETING DAYS PER YEAR
PUB ACCOUNTANCY	12 DAYS TOTAL
AG REV. LOAN FUND BOARD	25 DAYS
ALCOHOL BEVERAGE CONTROL	11-14 DAYS
ALCOHOLISM AND DRUG ABUSE	12 DAYS
AMATEUR SPORTS AUTHORITY	AT LEAST QUARTERLY
ARCHITECTS, ENGINEERS, AND LAND SURVEYORS	4 MEETINGS
ALASKA COUNCIL ON THE ARTS	12-15 DAYS MAXIMUM
ASSESSMENT REVIEW BOARD	2-3 DAYS
ATHLETIC COMMISSION	1 MTG/YEAR
BALD EAGLE PRESERVE ADVISORY COUNCIL	7 DAYS
BOARD OF GOVERNORS ALASKA BAR	10 DAYS
BARBERS AND HAIRDRESSERS	"AS OFTEN AS NECESSARY"
BIG GAME COMMERCIAL SERVICES	14 DAYS MAX
BLOCK GRANTS ADVISORY COMMITTEE	4-6 DAYS
PUBLIC BROADCASTING	15 DAYS
CHILDREN AND YOUTH	4 MTGS PER YEAR
CHIROPRACTIC EXAMINERS	6 DAYS MAX
CLEMENCY ADVISORY COMMITTEE	APPROX 4 MEETINGS PER YEAR
CLINICAL SOCIAL WORKERS	1 MEETING PER YEAR
COASTAL POLICY COUNCIL	10 DAYS
COMPENSATION COMMISSION/STATE OFFICERS	EVERY OTHER YEAR
CORRECTIONAL INDUSTRIES COMMISSION	4 MTGS PER YEAR
DENTAL EXAMINERS	4 MTGS PER YEAR

BOARDS AND COMMISSIONS WITH NO COMPENSATION OTHER THAN TRAVEL/PER DIEM

DISPENSING OPTICIANS	4 DAYS
DOMESTIC VIOLENCE AND SEXUAL ASSAULT	16 DAYS MAX
BOARD OF EDUCATION	30 DAYS MAX
ELECTICAL EXAMINERS	1 MTG PER YEAR
EMERGENCY MEDICAL SERVICES	6 DAYS MAXIMUM
EMERGENCY RESPONSE COMMISSION	4 MTGS PER YEAR
EMPLOYMENT OF PEOPLE W/ DISABILITIES	14 DAYS MAX
EMPLOYMENT SECURITY ADVISORY COUNCIL	8 DAYS MAX
ALASKA ENERGY AUTHORITY	12 MTGS PER YEAR/ 48 DAYS MAX
ADVISORY COMMISSION ON FEDERAL AREAS	AT LEAST 2 MTGS PER YEAR
FISHERMENS FUND ADVISORY AND APPEALS COUNCIL	10 DAYS MAX
FORESTRY	8 DAYS
GEOGRAPHIC BOARD	9 DAYS
HANDICAPPED AND GIFTED	15 DAYS
HAZARDOUS SUBSTANCE SPILL TECHNOLOGY	AT CALL OF CHAIR
HEALTH CARE TASK FORCE	AS SCHEDULED W/ DH&SS
HISTORIC SITES ADVISORY COMMITTEE	8 DAYS MAX
HISTORICAL COMMISSION	16 DAYS MAX
HOUSING AUTHORITY	12 DAYS
HUMAN RIGHTS	8-10 DAYS
HUMANITIES FORUM	8-10 DAYS
INCENTIVES AWARD	AS NEC
JOB TRAINING COUNCIL	AS NEC
JUDICIAL CONDUCT	4-6 DAYS
JUDICIAL COUNCIL	4-8 DAYS
JUVENILE JUSTICE AND FAMILY SERVICES	4 DAYS
LABOR RELATIONS AGENCY	15 TO 20 TIMES PER YEAR
LIBRARIES	5-6 DAY MAX
MARINE PILOTS	1 MTG PER YEAR
MECHANICAL EXAMINERS	2-3 MTGS PER YEAR
MEDICAID RATE COMMISSION	10 TIMES PER YEAR
MEDICAL BOARD	4 TIMES PER YEAR

BOARDS AND COMMISSIONS WITH NO COMPENSATION OTHER THAN TRAVEL/PER DIEM

MEDICAL INDEMNITY	15-30 DAY MAXIMUM
MENTAL HEALTH BOARD	12 DAYS
MENTAL HEALTH TRUST	4 MTGS PER YEAR
MINERALS COMMISSION	AS CALLED
MUNICIPAL BOND BANK	5 DAYS
N. PACIFIC AND BERING SEAS FISHERIES	4-5 MTGS PER YEAR
NURSING	4 MTGS PER YEAR
NURSING HOME ADMINISTRATORS	SEMI-ANNUALLY
OLDER ALASKANS COMMISSION	12 DAYS MAXIMUM
OPTOMETRY	4 DAYS
PACIFIC MARINE FISHERIES	6 DAYS MAX
PACIFIC SALMON COMMISSION	3 7-10 DAY MTGS
PERMANENCY PLANNING	2 MTGS PER YEAR
PERSONNEL BOARD	4 DAYS
PHARMACY	9 DAYS
PHYSICAL THERAPY AND OCC THERAPY	2 MTGS PER YEAR
PIONEERS HOMES ADVISORY BOARD	15-16 DAYS
POLICE STANDARDS COUNCIL	8 DAYS MAXIMUM
POST SECONDARY EDUCATION	10 DAYS MAX
PRIVATE INDUSTRY COUNCIL	8 DAYS MAX
PROFESSIONAL TEACHING PRACTICES	3-4 MTGS PER YEAR, 2-5 DAYS EACH
PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE	3 MTGS PER YEAR, 2 DAYS
REAL ESTATE APPRAISERS	AS NEEDED
REAL ESTATE COMMISSION	3-4 TIMES/YEAR, 2 DAYS EACH
RECREATION RIVERS	NO COMP MEET 4-6 TIMES PER YEAR
BOARD OF REGENTS	7 TIMES PER YEAR
RATNET	1-2 MTGS PER YEAR/ 1-2 DAYS EACH
SAFETY ADVISORY COUNCIL	6 DAYS
SCIENCE AND ENGINEERING ADVISORY	AS CALLED
SEAFOOD MARKETING	8-10 DAYS
SENTENCING COMMISSION	AS CALLED
SOIL AND WATER CONSERVATION	4 DAYS MINIMUM

BOARDS AND COMMISSIONS WITH NO COMPENSATION OTHER THAN TRAVEL/PER DIEM

STORAGE TANK ASSISTANCE	3 DAYS
STUDENT LOAN	AT CALL OF CHAIR
SUBSISTENCE RESOURCE COMMISSION	2 MTGS PER YEAR
SUBSISTENCE USE OF FISH AND GAME	NOT YET SET
TELECOMMUNICATIONS INFORMATION COUNCIL	4 TIMES PER YEAR
TOURISM MARKETING COUNCIL	4 MTGS PER YEAR
TRANS-ALASKA PIPELINE LIABILITY FUND	ONCE EVERY 6 MONTHS
VETINARY EXAMINERS	3 TIMES PER YEAR
VIOLENT CRIMES COMPENSATION COMMISSION	4-5 MTGS AND 10 HEARINGS PER EYAR
VOCATIONAL AND CAREER EDUCATION	8 DAYS
WATER AND WASTEWATER WORKS	1-2 TIMES PER YEAR/4-5 DAY MA
WATER RESOURCES	2 TIMES PER YEAR/ 1-3 DAYS EACH
WESTERN INTERSTATE FOR HIGHER ED	10 DAYS MAX
WOMENS COMMISSION	AT CALL
WOOD-TIKCHIK STATE PARK	8 DAYS
YUKON RIVER DELEGATION	2 MTGS PER YEAR

7-LS0593D
Luckhaupt
3/1/91

**CS FOR SENATE BILL NO. 96 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing compensation for members of the state Local Boundary Commission;
2 and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * Section 1. AS 44.47.579 is repealed and reenacted to read:

5 Sec. 44.47.579. **COMPENSATION AND EXPENSES.** A member of the Local Boundary
6 Commission is entitled to compensation at a rate of \$150 for each day the member is attending
7 a meeting of the commission. A member who is an employee of the state or a local government
8 is entitled to the \$150 per day compensation only for a day on which the member takes annual
9 leave or leave without pay from the state or local government position. A member is also
10 entitled to receive per diem and travel expenses authorized for members of boards and
11 commissions under AS 39.20.180.

12 * Sec. 2. This Act takes effect July 1, 1991.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

February 26, 1991

POSITION PAPER

RE: Senate Bill 96

SPONSOR: Senate Community and Regional Affairs Committee

Program Effects of Bill

Currently the Alaska Local Boundary Commission receives no compensation for time spent attending Commission meetings. Senate Bill No. 96 will provide compensation at a rate of \$150 to each member for each day the member attends a Commission meeting.

Comments

In each of the past four years bills have been before the legislature which would have provided compensation to the Commission. The rate of compensation would have been \$150/day for each day any member attended a meeting. Such bills were approved by the Senate in 1988 and 1990. However, the measures failed to gain approval in the House. In 1990, the bill made it through all committees of referral in the House except the Rules Committee.

The Department of Community and Regional Affairs supports SB 96 just as it has supported its predecessors. The justification for a bill of this nature has become increasingly evident to the Department over the many years it has provided staff support to the Commission. The reasons are straightforward and many.

1. One of only four boards established by the Alaska Constitution in 1959, the Local Boundary Commission is one of the oldest and longest standing volunteer bodies in the state today. The Commission has evolved over these years from a body who originally met only three or four times a year to address boundary issues in fewer than 30 municipal governments, to one today who convenes an average of 25 meetings each year and rules on matters in 164 municipalities.

2. The amount of travel required by the Commission is tremendous. Intentionally seeking local input, the Commission meets whenever possible, where proposals originate. For example, during 1990 the Commission held meetings in Fairbanks, Juneau, Palmer, Nenana, Anchorage, Healy, Central, Fort Yukon, Livengood, McGrath, Tanana, Cantwell, McKinley Park and Anderson. It traveled to several of these communities more than once. In total, the Commission met 25 times last year. Anyone familiar with Alaska does not have to be told that this travel frequently occurred under hazardous weather conditions.

3. The volume of decisions and extent of travel alone do not fully account for the demands placed on the Commission today. Procedures which were simple thirty years ago have grown much more complex. For example, during its first fourteen years the Commission operated under only 3 pages of regulations. Today, its regulations consume more than 50 pages in the Alaska Administrative Code. Many of the provisions were mandated by the State Supreme Court. Commission procedures are further complicated by the requirement for U.S. Justice Department review and approval of every municipal boundary change ruled upon by the Commission.

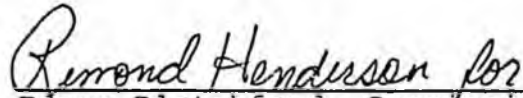
4. Compounding the duties of the Commission is the tendency of the public to litigate disputes. Given the typically controversial nature of the issues before the Commission, it is not surprising that its decisions occasionally end in court. They have in fact, been the subject of six landmark rulings by the State Supreme Court. A host of other Supreme and Superior Court decisions affect each and every action of the Commission.

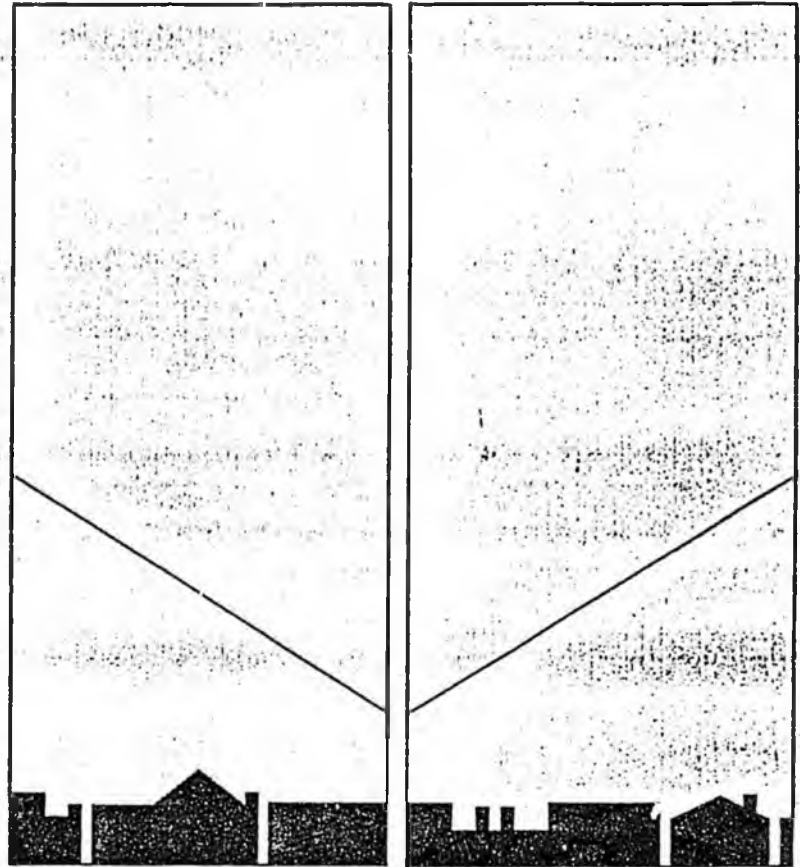
5. All of these circumstances combine to create a very demanding challenge. Today's Commission members must maintain a level of knowledge and energy expected of only the most dedicated. The Commission's rulings have significant implications for residents throughout Alaska. Its decisions frequently determine how fundamental services such as education will be delivered. To carry out their duties responsibly, each member typically spends at least sixteen hours preparing for each meeting.

These volunteers serve five year terms and are typically willing to accept reappointment. In every instance they are professionals able to command premium value for their time and talents. Yet all members forego their pay each day they travel to and from Commission meetings and each day they attend these meetings. Over a year's period this translates into thousands of dollars of lost personal income.

Position Paper - Senate Bill 96
February 26, 1991
Page Three

With these considerations in mind, the Department believes that compensation for Commission members is long overdue. If the State expects to keep qualified citizens who are willing to donate hundreds of hours every year, who are capable of making decisions in the face of intense pressure, who are willing to travel from one end of Alaska to the other under extreme weather conditions, and who can appreciate the significance of their rulings, then the State must recognize their value. Recognizing that it takes time for members of the Commission to develop expertise in this complex field, it is in the State's interest to recognize the importance of this Commission. The Department finds that SB 96 is a good effort toward this recognition.


Edgar Blatchford, Commissioner



ALASKA LOCAL BOUNDARY COMMISSION
ANNUAL REPORT 1990

Prepared with assistance from

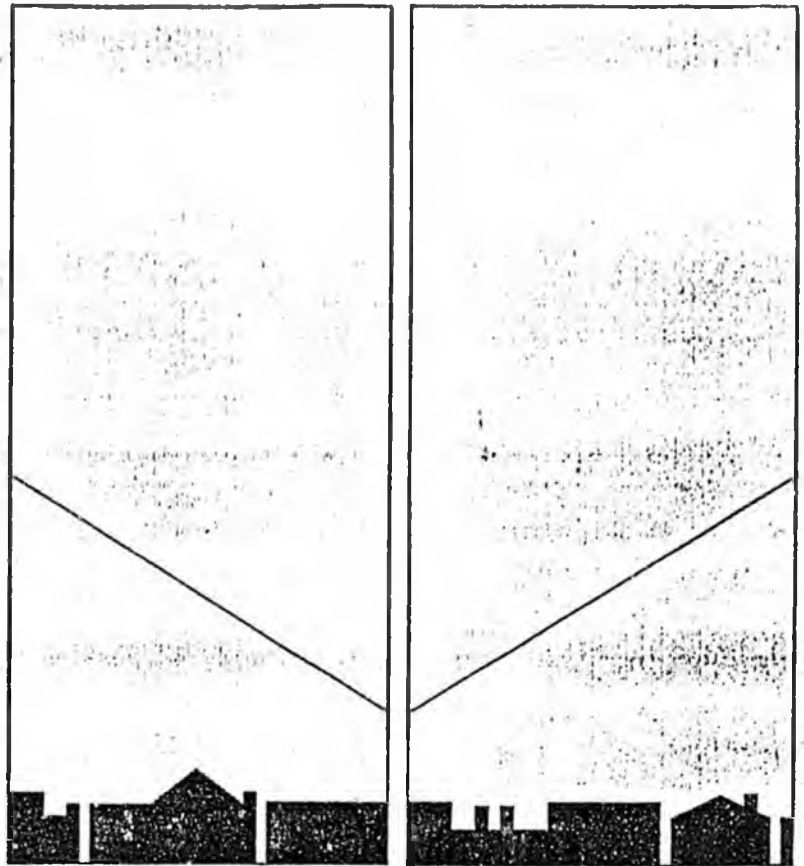
The State of Alaska
Department of Community and Regional Affairs

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CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



**ALASKA LOCAL BOUNDARY COMMISSION
ANNUAL REPORT 1990**

Prepared with assistance from
The State of Alaska
Department of Community and Regional Affairs

**ALASKA LOCAL BOUNDARY COMMISSION
1990 ANNUAL REPORT TO**

THE STATE LEGISLATURE

**State of Alaska
Walter J. Hickel, Governor**

**Department of Community and Regional Affairs
Edgar Blatchford, Commissioner**

**Municipal and Regional Assistance Division
Marty K. Rutherford, Director**

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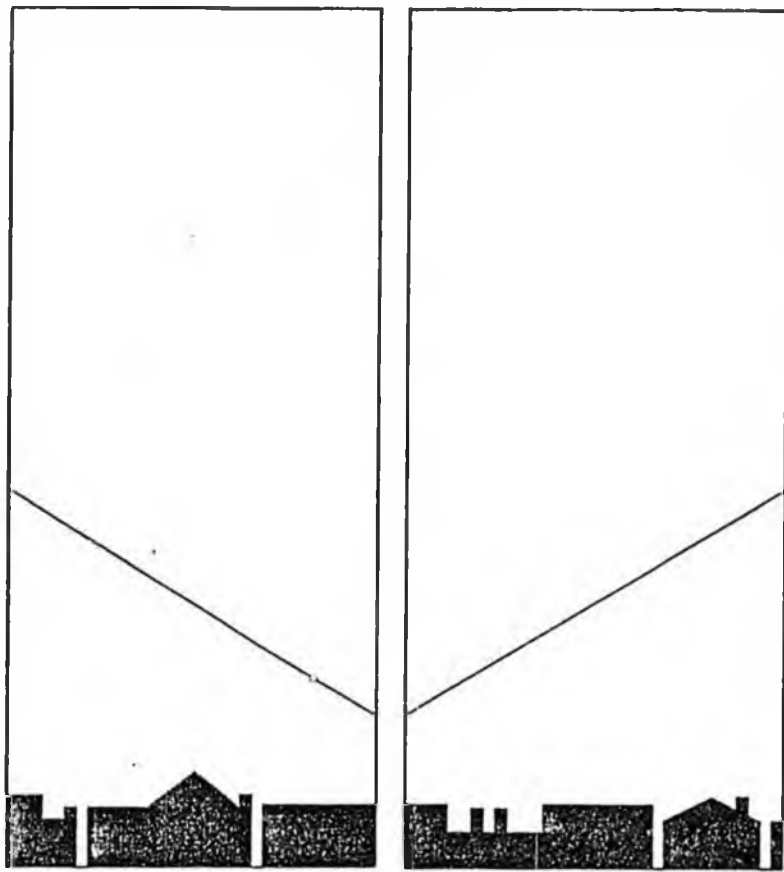
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Chapter 1

The Commission

The Alaska Local Boundary Commission (LBC or Commission) has played a pivotal role in the life of Alaska's local governments since statehood. In 1955, the delegates to the State's Constitutional Convention recognized that the creation and revision of municipal boundaries should be the responsibility of the State. To execute these duties, the delegates allowed that:

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change . . . (Article X, Section 12, Alaska Constitution)

Shortly after statehood, the Alaska Supreme Court summed up the issues which led the Convention delegates to their position. The Court wrote:

An examination of the relevant minutes of [a series of 31 meetings of the Committee on Local Government at the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee -- "lies in placing the process at a level where areawide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively." (Fairview Public Utility District No. 1 v. City of Anchorage; 368 P.2d 540)

Thus, it is the Alaska Local Boundary Commission who represents the collective interests of the state's residents in local government boundary decisions. Specifically, the Commission rules on proposals for municipal incorporation, dissolution, annexation, detachment, merger and consolidation. It also has the express authority to study local government boundary problems.

Commission Members

Members of the Commission are appointed by the Governor on the basis of their interest in public affairs, good judgment, knowledge and ability. Their selection insures statewide representation since one member is appointed from each of the four Alaska Judicial Districts. The Chair is chosen from the state at-large. The Vice-Chair is elected from and by Commission members. All Commissioners serve on a strictly voluntary basis while fulfilling five year overlapping terms.

C.B. Bettisworth; Chair. Mr. Bettisworth joined the Commission in 1980. As a consequence, he has served under the administrations of four Governors. In 1987 he was appointed to the Chair. He owns and manages an architecture, planning and project development firm in Fairbanks. His term with the Commission expires January 31, 1992.

Shelley Dugan; Vice-Chair. Ms. Dugan was appointed to the Commission in 1987 serving from the Fourth Judicial District. Reappointed in 1990, her term expires January 31, 1995. She is the Clerk/Treasurer for the City of North Pole and she lives in Fairbanks.

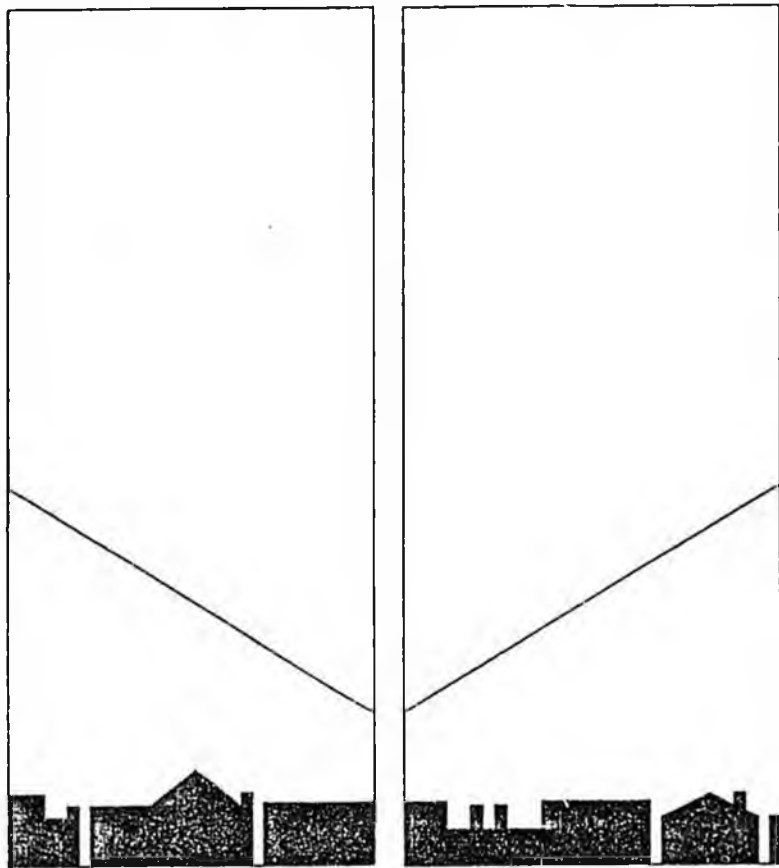
Jo Anderson. A resident of Wrangell, Mrs. Anderson has been a member of the Commission representing the First Judicial District since 1975. As a result, her term with the Commission has spanned the administrations of four Governors. She is an employee of the Alaska Department of Health and Social Services and her term with the Commission ends January 31, 1991.

Lamar Cotten. Mr. Cotten was appointed to the Commission in 1988 serving from the Third Judicial District. He is the Administrator for the Aleutians East Borough with his residence in Anchorage. His term with the Commission expires January 31, 1993.

Jeff Smith. A resident of Kotzebue and the Second Judicial District, Mr. Smith was appointed to the Commission in 1990. He sits on the Assembly of the Northwest Arctic Borough and he owns and manages a consulting business serving governmental and business clients. His term on the Commission expires January 31, 1994.

Technical Support

The Alaska Department of Community and Regional Affairs, Municipal and Regional Assistance Division (DCRA or the Department), provides technical and administrative support to the Commission. Its major responsibilities are to analyze proposed actions and prepare written reports and recommendations to the Commission; to review petitions for compliance with laws and regulations; to conduct informational meetings; to assist the LBC in conducting hearings; to aid local governments and others in bringing actions before the Commission; to prepare and maintain legal records of the Commission's proceedings; and to research and prepare studies and reports as directed by the Commission.



Chapter 2

The Year

1990

Competing Petitions for Boundary Action

The year 1990 was an active one for the Commission. A new city was voted into existence, while another one was formally dissolved. Voters approved the creation of the state's fifteenth borough. Several annexations were proposed and the majority approved by the Commission. Nine potential detachments surfaced, but no proposals were submitted. Several first class and home rule cities in the unorganized borough inquired about reclassifying to second class status, while two second class cities showed interest in reclassifying to first class status.

In 1990, the Commission was presented with a situation unique to local boundary deliberations. It had before it three simultaneous petitions for significant boundary actions on essentially the same territory. These competing petitions affected the area from the northern boundary of the Matanuska-Susitna Borough to and including the City of Nenana.

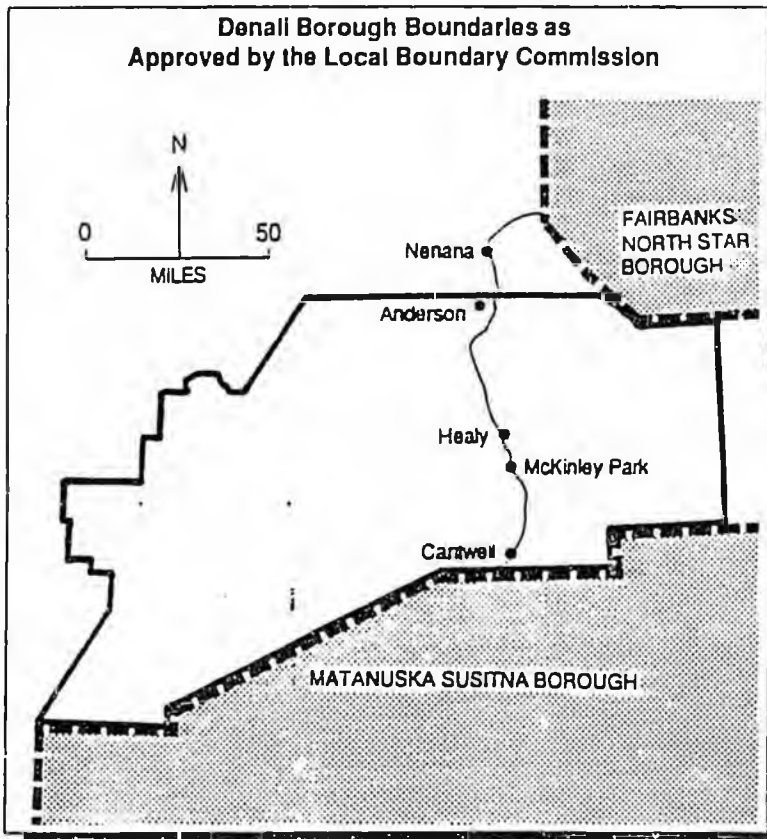
Matanuska-Susitna Borough (Mat-Su Borough). In May, 1989, the Mat-Su Borough formally petitioned for annexation of approximately 9,844 square miles north of its northern boundary. The territory included that part of the Denali National Park presently outside the Borough's boundaries and contained an estimated 1,000 residents in Cantwell, McKinley Park and Healy.

Denali Borough. The following October, a petition for incorporation of the 'Denali Borough' was filed with the Commission. The proposed boundaries included much of the area within the Railbelt Regional Educational Attendance Area (REAA) plus Mount McKinley. Not coincidentally, the area overlapped most of the area proposed for annexation by the Mat-Su Borough. The boundaries differed significantly though since the 'Denali Borough' proposal included the community of Anderson.

Valleys Borough. Later that same October, a petition for incorporation of the 'Valleys Borough' was filed. The boundaries encompassed that area from Cantwell to Nenana, most of the area petitioned for annexation by the Mat-Su Borough, and the majority of the area petitioned for incorporation as the 'Denali Borough'. The Valleys Borough proposal was different from the Denali proposal in that it included the community of Nenana.

Because of the competing status of these three actions, the Department and the Commission conducted extensive meetings in the region. Following release of its report on the three proposals, the Department held informational meetings in Healy, Nenana, Anderson, McKinley Park and Cantwell. A month later, the Commission gathered testimony at public hearings in Palmer, Anderson, McKinley Park, Fairbanks, Cantwell, Healy and Nenana.

On April 21, 1990, the Commission held a decisional meeting to rule on the competing petitions. It denied the petition for annexation by the Mat-Su Borough and it denied the petition for incorporation of the Valleys Borough. The Commission then amended the boundaries of the proposed Denali Borough (see following map) and approved the incorporation initiative conditioned upon voter approval of a 4% bed tax.



Placed before the voters on November 6, 1990, the incorporation measure was approved. Thus, the Denali Borough became the state's fifteenth regional government upon certification of the election results on December 7, 1990.

Municipal Incorporations

Beyond the Commission's decisions on the Denali and Valleys Boroughs, there was one successful city incorporation. In addition, two petitions for city incorporations and one petition for borough incorporation are pending before the Commission.

False Pass. Residents of False Pass petitioned for second class city incorporation in mid-1989. Following release of the Department's required report, staff conducted an informational meeting in the community in April, 1990. On June 1, 1990, the Commission held a public hearing on the proposal. Following testimony, the Commission amended the boundaries of the proposed city to encompass 66 square miles rather than the 186 square miles originally proposed. It then approved the incorporation conditioned upon voter approval of a 2% sales and use tax. The matter was put before the voters on October 2. The incorporation initiative and the 2% sales and use tax passed. Thus, False Pass became the state's one-hundred and sixty-third municipality on October 19, 1990.

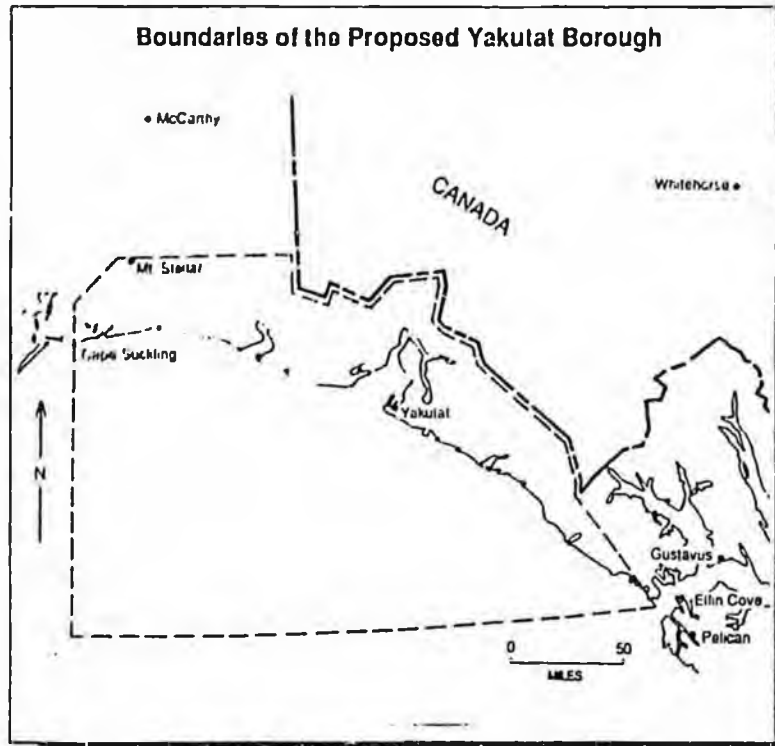
Egegik. The community of Egegik also petitioned for second class city incorporation in mid-1989. Following release of the Department's draft report, an informational meeting was conducted in the community. The Commission expects to hear public testimony on the petition in March, 1991. If approved, a local election will be scheduled.

Pilot Point. On October 31, 1990, residents of the community of Pilot Point submitted a petition for incorporation as a second class city. Currently before the Commission, a hearing will be held in the early part of 1991. A decision will follow shortly afterward.

Yakutat Borough. In December, 1990, a petition for incorporation of the "City and Borough of Yakutat" was filed with the Commission. The proposal includes concurrent dissolution of the City of Yakutat and incorporation of the Borough. The boundaries of the borough would extend from Cape Suckling to Cape Spencer as shown on the map at the top of the next page.

This petition raises a number of policy issues for the Commission. Chief among these are the possibility of a single-community borough with a relatively small population and competing land management interests in the area.

The Commission is expected to deliberate the proposal and rule on the petition by July, 1991.



During the year, the LBC considered eight municipal annexation proposals. Six of these were approved; two were denied. Among those denied was the petition for annexation by the Mat-Su Borough. Additionally, an annexation that had been ruled on by the Commission in 1989, was legislatively approved in early 1990.

Municipal Annexations

Fairbanks North Star Borough (FNSB). In May, 1989, the FNSB petitioned for annexation of approximately 216 square miles of territory north of its northern border. Included within the area was sixteen miles of the trans-Alaska pipeline and one pump station (#7).

In May, 1990, the Commission held a series of hearings throughout Interior Alaska to take public testimony on the proposed annexation. At the same time it gathered public comments on the 'ideal' boundaries of the FNSB and adjacent regions. These boundaries are discussed later in this chapter as part of the report on the Commission's model boundaries project. See pages 16 through 20.

While the hearings were conducted on-site in Fort Yukon, Tanana, McGrath, Livengood, Central and Fairbanks, it was arranged for all communities * in the Yukon Flats, Yukon-Koyukuk and the Iditarod REA A's to be connected by teleconference. However, due to either technical difficulties or the absence of site coordinators, eight** of the twenty-eight communities were not connected.

On July 14, 1990, the Commission held a decisional session to rule on the 'ideal' boundaries of the FNSB and the proposed annexation. It adopted the boundaries of a 4,918 square mile area as the 'ideal' northern and western boundaries of the FNSB. Included within these 'ideal' boundaries are the communities of Livengood, Central and Circle Hot Springs; the White Mountains National Recreation Area and the Steese National Conservation Area; and the 216 square mile area petitioned for annexation by the FNSB.

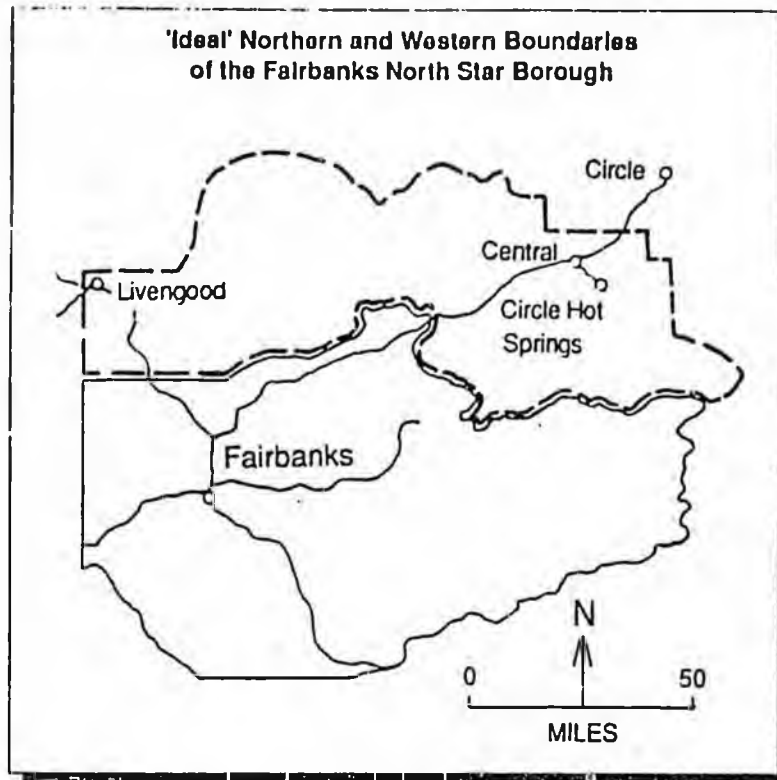
At that same meeting, the Commission denied the proposed annexation. Upon its own motion, it agreed to reconsider this decision. So, on September 6, 1990, the LBC met in Fairbanks to, among other things, further examine the annexation. Following public comment and testimony on the issue, the Commission again voted. The annexation was denied once more.

On October 8, 1990, the Commission adopted its Statement of Decision denying the proposed annexation and presenting the 'ideal' northern and western boundaries of the FNSB. A map of these boundaries is displayed on the following page.

City and Borough of Juneau (CBJ). In June, 1989, the CBJ petitioned for annexation of a portion of Admiralty Island which included the Greens Creek Mine. This uninhabited territory en-

*Nikolai, Takotna, Lime Village, Telida, Holy Cross, Anvik, Shageluk, Grayling, Nenana, Minto, Manley Hot Springs, Galena, Ruby, Kaltag, Nulato, Koyukuk, Huslia, Hughes, Allakaket, Bettles, Rampart, Stevens Village, Circle, Birch Creek, Beaver, Chalkyitsik, Venetie and Arctic Village.

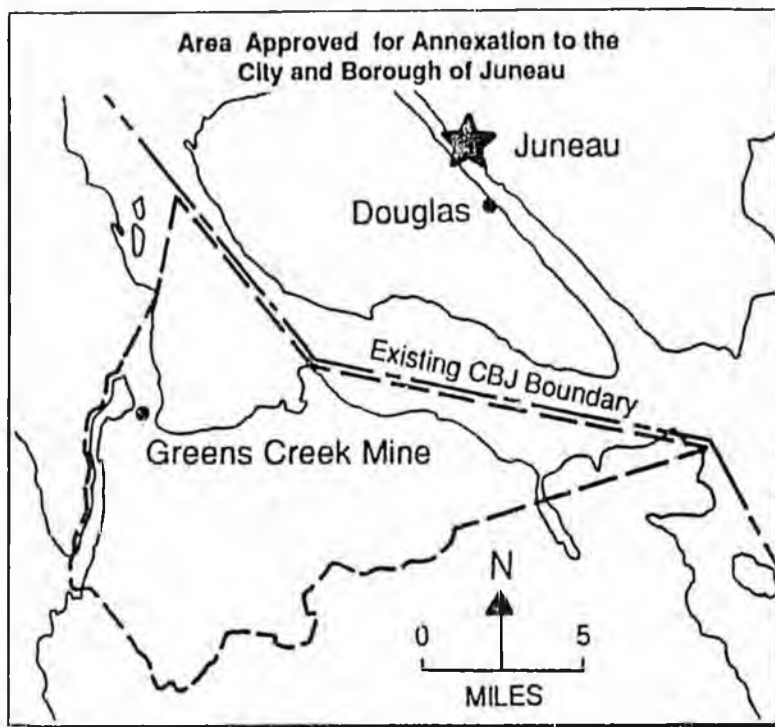
**Nikolai, Shageluk, Huslia, Minto, Koyukuk, Circle and Chalkyitsik. Stevens Village was also not connected, but residents were later able to share their comments with the Commission.



compassed an estimated 140 square miles. On June 22, 1990, the Department issued its report and recommendation to the Commission.

In July, 1990, the Commission conducted a public hearing on the issue. Following consideration of testimony, it approved annexation of the 140 square mile area originally requested (see map of approved boundaries on the following page). However, following this decision, the Commission received a request for deferral of the effective date of the annexation. The request was considered and denied. This placed the effective date of annexation in early 1991.

After the Commission adopted its Statement of Decision on this matter, it heard testimony requesting reconsideration of the effective date of the action. On November 10, the LBC agreed to reconsider the annexation's effective date. Thus, the Commission will take up the matter once again in mid-May, 1991. Since this annexation will require the tacit approval of the state legislature, the Commission's reconsideration postpones legislative review of the proposal until 1992.



Fairbanks. The City of Fairbanks submitted two petitions for annexation of territory in the Riverside Park Subdivision. Ordinance No. 4878 annexed approximately .25 acres and Ordinance No. 4922 annexed approximately 2.14 acres. The Commission approved the first annexation on February 13, 1990, and the second on June 18, 1990. Concerned about the City's irregular boundaries, the Commission obtained a commitment from Fairbanks that it would develop a comprehensive approach to future annexations.

Ketchikan. On May 19, 1990, the Commission approved two annexation petitions from the City of Ketchikan. Ordinance No. 90-1180 annexed a 52 acre parcel and Ordinance No. 90-1185 annexed a 1.3 acre parcel.

North Pole. In 1989, the City of North Pole petitioned for annexation of a 1.3 mile segment of the Richardson Highway right-of-way adjacent to the city limits. Following a public hearing in the latter part of the year, the Commission approved the action.

A recommendation for annexation was presented to the Alaska Legislature in January, 1990. Tacitly approved, the annexation took effect March 3, 1990.

Palmer. On February 28, 1990, the City of Palmer petitioned for annexation of 60.23 acres of uninhabited territory under the process which requires tacit legislative approval. Following release of the Department's required report, the Commission convened a public hearing in Palmer on December 1, 1990. Following the hearing, the annexation was approved by the Commission. The LBC met on January 4, 1991, to adopt its Statement of Decision on the matter. Under separate cover, a recommendation has been presented for tacit approval by the 1991 Alaska Legislature in accordance with Article X, Section 12 of the State Constitution.

The year witnessed the first city dissolution under newly adopted regulatory standards, one pending dissolution petition, and six cities who inquired about dissolving. This brings the total number of communities showing interest in dissolution to sixteen. The Commission believes they are the most likely petitioners of future city dissolutions. In addition, there is a total of four cities whose entire councils have resigned in an effort to dissolve their local governments.

Akiachak. Residents of the City of Akiachak petitioned for dissolution in February, 1989. The following June, the Commission unanimously approved the petition upon the condition that a minor debt be paid. By October, 1989, the petitioner had satisfied the condition and an election for dissolution of the city was conducted on January 16, 1990. The dissolution was approved by a vote of 122 to 7 with 63.5% of the number of registered voters in the community casting ballots. This exceeded the number required for passage. Thus, the City of Akiachak was dissolved upon certification of the election results on January 31, 1990.

Napakiak. Residents of the City of Napakiak formally petitioned for dissolution on September 13, 1990. By year's end, the petition had been reviewed by the Department. Finding a number of deficiencies, it was returned to the petitioners. The Department is currently working with the community and a revised petition is expected in early 1991.

Municipal Dissolutions

Petitions for Dissolution

Abandoned City Councils

Since 1986, a small number of communities in the unorganized borough have abandoned their city governments. Most recently, Kasigluk, Atmautluak, Tununak and Newtok have notified the Department that they have walked away from their municipal governments. While the City of Chefomak advised the Department of its inactive city council in March of 1990, five individuals later took office pending formal city dissolution. The status of all these communities had not changed by the end of 1990.

Possible Dissolutions

In recent years a number of communities have expressed interest in city dissolution. In addition to those previously noted, Tuluksak, Fort Yukon, Aleknagik, Nightmute, Toksook Bay, Platinum, Quinhagak and Togiak have had city officials or residents inquire about dissolution. In 1990 an additional six communities showed similar interest. These were Kwethluk, Goodnews Bay, Eck, Akiak, Mekoryuk and Nunapitchuk. To date, no formal proposals have been submitted.

Municipal Detachments

With one exception, interest in detaching from existing governments was confined to Southcentral Alaska this year. Ten communities showed serious interest in the action. Of these, nine inquired about possible detachment from boroughs.

Kenai Peninsula Borough (KPB). At various times throughout the year officials of the Village of Tyonek requested information about detaching their community from the Kenai Peninsula Borough. They cited dissatisfaction with Borough service delivery as the reason. Reports at year's end suggested that officials of the Borough and the community had reconciled their differences. Thus, it appears unlikely that Tyonek will petition for detachment in the immediate future.

Earlier in the year, staff at the North Pacific Rim asked for detachment information on behalf of Port Graham and English Bay. Both communities appeared interested in detaching from the KPB. This request was followed by a similar inquiry from a resident of Clam Gulch. No formal actions have occurred.

Mat-Su Borough. In January, 1990, the Cities of Palmer and Wasilla reportedly appropriated \$20,000 to partially fund a study of

detaching the 'urban core' from the Mat-Su Borough. No further information was received by the Department or the Commission on what future action will be taken.

Residents of the communities of Talkeetna and Chase contacted the Department this year to inquire about detaching the area outside the urban core from the Mat-Su Borough. Dissatisfied with the Borough, residents are exploring a range of options. Should the communities petition for detachment, they would seek annexation to the newly created Denali Borough or incorporation of a new borough.

Haines Borough. A number of residents of Excursion Inlet have shown interest in detaching their area from the Haines Borough. No formal action was taken this year. However, residents in territory adjacent to the Inlet have stated that if they are ever forced into their own borough, Excursion Inlet should be part of it.

City of Wasilla. The owner of a 15 lot subdivision within the boundaries of the City of Wasilla is considering detachment of the property from the city. The property owner has requested road maintenance from the city. However, the city reports that in order to provide the service, its crew must drive 1.5 miles outside the city limits to reach the subdivision. Therefore delivery of this service is impractical.

Although the Commission plays no formal role in the reclassification of cities, it is important for the legislature to be aware of recent developments. In this instance, two second class cities in the unorganized borough have asked about reclassifying to first class status. The communities of Togiak and McGrath have noted a number of reasons for their interest in this action. They see it offering increased local control of schools, local ability to address special needs in education services and funding of more school facilities. No formal proposal to reclassify had been initiated by year's end.

Conversely, owing largely to the disparity in treatment under the school education foundation formula, two first class and one home

Municipal Reclassifications

rule city in the unorganized borough expressed interest in reclassifying to second class status. They are Galena, Hoonah and Nenana. This reclassification would eliminate the current obligations of these cities to operate their own school districts. See Chapter 3 for a more complete discussion of these circumstances.

Municipal Consolidations

Kodiak Island Borough. In January, 1990, the Assembly called for a special election in May to address preliminary questions on the consolidation of the Kodiak Island Borough with the City of Kodiak. The election, conducted on May 1, 1990, failed to secure the necessary votes to establish a charter commission. The matter has not been carried beyond this point.

Commission Regulations

In July of 1989, the Commission adopted amendments to its regulations modifying standards for dissolution of cities, ensuring a schedule of proceedings which allows extensive public input, establishing the effective date of a Commission decision, and creating a formal process for reconsideration. The Department of Law filed the regulations with the Lieutenant Governor's Office and they took effect April 21, 1990.

Litigation

Appeal of the Valleys Borough Decision. Following the Commission's denial of the Valleys Borough incorporation in April, 1990, the 'Valleys Borough Support Committee' filed an eleven count "complaint for declaratory and injunctive relief" against the Local Boundary Commission in State Superior Court. The complaint was followed by a formal appeal of the Commission's decision. Upon the motion of the Attorney General's Office, the Alaska Superior Court consolidated the complaint and appeal into one appeal which is now before the Court.

The lawsuit is based upon the belief of the appellant that the Commission's decision to accept the Denali Borough petition and deny the Valleys Borough petition was procedurally flawed. Supported by eleven counts, the appellant claims that the Commission's rejection of the Valleys Borough petition is void; it is an unconstitutional usurpation of power, and the Commission's actions are an unconstitutional infringement upon residents' right to petition and

vote upon a charter of their own choosing. Further, it is claimed that the exclusion of the Nenana area from the approved 'Denali Borough' denies the residents of the Nenana area forever the right to select a charter of their own choosing; and the exclusion of this same area constitutes a violation of the Federal Voting Rights Act.

Fairbanks North Star Borough v. the Alaska Local Boundary Commission. In October, 1990, the FNSB initiated an appeal of the Commission's decision denying the proposed annexation of the 216 square mile area. The appellant claims that, among other points, the Commission's decision is arbitrary, capricious and an abuse of discretion; the Commission's decision had no reasonable basis; and the Commission has treated the application of the FNSB differently from similarly situated applications.

Nushagak Villages v. the Alaska Local Boundary Commission. In February, 1989, eleven parties filed a complaint for declaratory and injunctive relief against the Commission regarding the approval of the petition for incorporation of the Lake and Peninsula Borough. Since then, there has been no movement of the case. The Attorney General's Office has indicated that it will file a motion for the Court to dismiss this case.

The Commission has noted many times this past year that interest in borough government is mounting. Since 1986 there have been no fewer than twelve petitions either to incorporate boroughs or to significantly change borough boundaries. These formal actions have affected more than 100,000 square miles of territory or 20% of Alaska's unorganized borough.

There are a number of reasons for this new interest in boroughs. As a result of the 1990 Federal Census the state will face legislative reapportionment. It is likely that residents of the unorganized borough will lose representation in the process. Borough incorporation would restore a measure of the local control threatened by the loss of representation.

State budget cuts have impacted residents of the unorganized borough as well. With borough incorporation there would be a local means for generating revenue lost through these cuts.

Model Boundaries Determination

Residents too, are feeling the push from the state legislature for borough formation. Since 1987 there has been at least one proposal each session promoting the formation of boroughs in areas with adequate financial bases. To this point, each proposal has failed to garner the necessary votes for passage. It may be just a matter of time before one becomes law. Therefore, rather than allowing the legislature to dictate the boundaries of their local government, some residents have taken the initiative to propose their own borough with locally determined boundaries.

Not only have there been an unprecedented number of actions involving borough boundaries during these years, but they have been complicated by conflicting boundary proposals. Until recently, boundary adjustments have been of interest only to those directly affected by the action. However, more and more frequently petitions for changes to existing borough boundaries have been met with competing petitions for separate borough formation of the same territory.

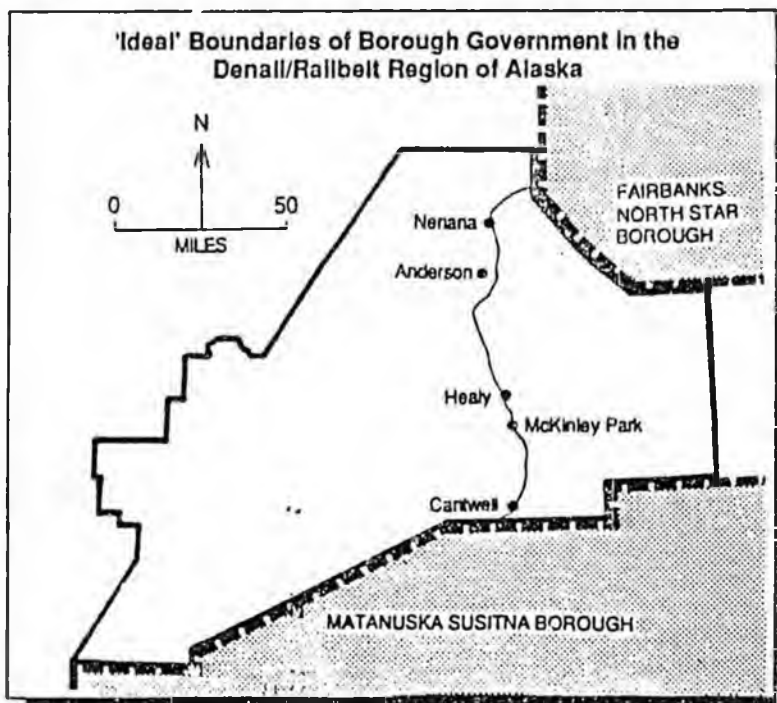
Thus, the Commission is becoming more frequently involved in decisions concerning the location of borough boundaries when competing interests are at stake. Fully aware that these decisions significantly affect people and their lives, the Commission has concluded it can no longer make decisions based solely upon isolated requests. Rather, determination and adoption of 'ideal' or 'model' boundaries considering broader interests will be the Commission's guide for the boundaries of future organized boroughs. A complete copy of the project's "statement of purpose" is appended to the report as Exhibit A.

Project Design

In November, 1989, the Commission began its determination of 'ideal' borough boundaries for all of the state's unorganized borough. The program elements and their sequence were the same for each of the ten identified regions. That is, an informational tabloid about the project was first prepared and distributed. Readers were asked to provide input on 'ideal' boundaries. The Department then investigated the region in light of boundary setting standards. A draft report was released and suggestions regarding 'ideal' boundaries were again invited. Following consideration of comments, a final report and recommendation was made. The Commission then conducted extensive hearings in the region to gather public com-

ment on 'ideal' borough boundaries. Following this comment period, the Commission deliberated the issues and adopted 'ideal' boundaries.

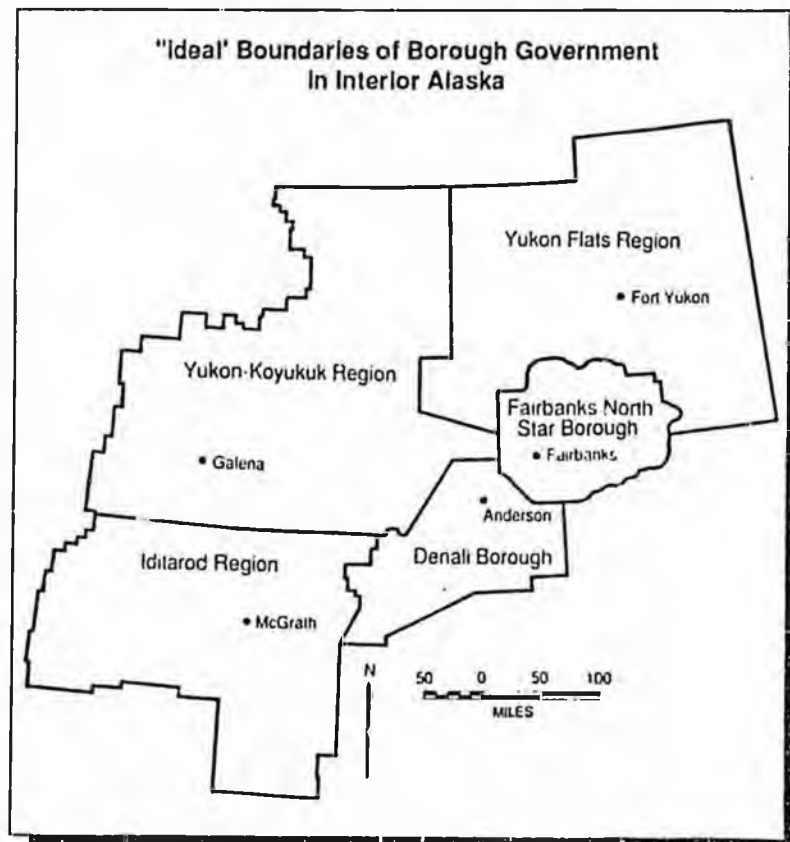
Denali/Railbelt. As discussed on pages 5 and 6, this region (the subject of three competing boundary actions) extended from the northern boundary of the Mat-Su Borough to and including Nenana. In March, 1990, the Department issued a final report that recommended 'ideal' boundaries for a borough government conforming to the Railbelt REAA boundary on the east; the Mat-Su Borough boundary on the south; the state Election District 17/Denali Park boundary on the west; and the Election District 17 boundary on the north. The Commission formally adopted these 'ideal' borough boundaries in its Statement of Decision issued September 22, 1990. A map of this configuration is shown here.



Northern and Central Southeast Alaska. As discussed on pages 9 and 10, the CBJ had filed a petition for annexation of Green's Creek Mine in 1989. While the Commission considered 'ideal' boundaries of the CBJ and adjacent potential boroughs at the same time, it has yet to adopt 'ideal' boundaries for any area, including the CBJ. Having completed a series of public hearings teleconferenced

to thirteen communities* in the region, the Commission may hold additional hearings before adopting boundaries in 1991.

Fairbanks/Interior Alaska. This region contained the Iditarod, Yukon-Koyukuk and the Yukon Flats REAA's, including the area petitioned for annexation by the FNSB as discussed earlier in the report. Following extensive hearings throughout Interior Alaska (see page 9 for a listing) the Commission convened a decisional session in July, 1990, to decide boundaries issues. At that time it denied the proposed annexation and adopted the 'ideal' northern and western boundaries of the FNSB. With minor deviations, it also adopted the existing REAA boundaries in the region as 'ideal' boundaries for future boroughs. The Commission met on October 8, and formally identified the 'ideal' borough boundaries of Interior Alaska as displayed below.



*Gustavus, Haines, Skagway, Yakutat, Tenakee Springs, Pelican, Sitka, Elfin Cove, Port Alexander, Angoon, Hoonah, Kake and Cube Cove.

Prince William Sound/Yakutat. In August, 1990, the Department issued a draft report on the 'ideal' boundaries of the Prince William Sound and Yakutat Region. Prior to the release of this document, the City of Yakutat had indicated that it would file a petition for incorporation of a borough whose boundaries stretched from Cape Spencer to Cape Suckling.

In its draft report, the Department concluded that the precedent established by allowing a single-community borough is contrary to the intent of the state constitution. The Department found also that the 'ideal' boundaries of a future borough in this region would extend from the eastern borders of the Kenai Peninsula Borough and the Municipality of Anchorage to Cape Fairweather. Among other findings, it was concluded that these 'ideal' boundaries may not preempt the formation of a smaller 'Yakutat Borough' if circumstances change so that the area someday meets the standards for borough government.

Following release of these findings, numerous comments were received from the Cities of Yakutat, Valdez and Cordova as well as from Chugach Alaska Corporation and the University of Alaska. A petition for incorporation of a Yakutat Borough was also submitted to the Commission. Its status is discussed on pages 7 and 8.

Recognizing the significance of the conflicts over this region, the Department is examining the issues again. It is expected that a final report on ideal boundaries, including a report on the proposed Yakutat Borough, will be released in the early part of 1991. The Commission will conduct public hearings in communities throughout Prince William Sound and in Yakutat following release of the report. 'Ideal' boundaries will be adopted at the completion of the public comment process.

Southeast Island/Ketchikan and Delta-Greely/Alaska Gateway/Copper River. The informational tabloids for these regions have been distributed for public comment. It is expected that the draft reports will be issued in the early part of 1991.

Bering Straits, Yukon/Kuskokwim, Bristol Bay and Aleutians West. Initial project tasks have not yet begun on these regions. The Commission expects to determine ideal boundaries by the end of June, 1992.

Chapter 3

Special Issues

Status of Regional Government in the State of Alaska

This chapter briefly raises those issues which the Commission feels should receive special consideration by this year's legislature. In this case, they are limited to two; the status of regional government in Alaska and the provision of compensation to the Commission.

From all indications, the current structure of regional government in the State of Alaska is undergoing a shake-up. Economic and political pressures to extend borough government to parts of the unorganized borough are playing havoc with the status quo. Organized boroughs, which have long been critical of disparities in state funding for local services, are turning to annexation in some cases to increase their tax bases. To counter annexation proposals, as well as to offset cutbacks in state aid which they too are experiencing, residents of some regions in the unorganized borough have initiated borough incorporation proposals of their own.

On the community level, first class cities in the unorganized borough, are for the first time in recent years, considering reclassification to second class status. They too are suffering the effects of inequities in state funding programs. They cite the state's education foundation formula as a primary example. Because of their first class status, they do not rely exclusively upon the state to deliver education services. Rather, they operate their own school district and fund their own services on the same basis as organized boroughs. Thus, they must provide a local contribution.

However, second class cities and unincorporated communities in the unorganized borough, face no local contribution requirement since the state provides education through the REAA's. In the current climate of reduced state and federal aid to local governments, there is little wonder that first class cities are turning to reclassification. It offers an attractive, if simplistic, solution; eliminate the local contribution without reducing the service.

While the Commission can appreciate the interest in reclassification, it does not believe this to be the answer to anyone's problem. State residents have clearly told the Commission the important alternative solutions. For many, reclassification, borough incorporation and borough annexation are simply not desirable. While residents of the unorganized borough 'don't want more government', most

agree that some change is inevitable. These Alaskans, who sometimes benefit most from the inequities in funding for schools and other services, readily admit the shortcomings of the system.

There are no easy answers to the problems associated with the current system of regional service delivery in Alaska. This is witnessed by the rather haphazard evolution of regional government in Alaska during 32 years of statehood. And while many residents of the unorganized borough may express a preference to pay taxes in support of their schools rather than form boroughs, a method of taxation which is easy to administer, efficient, equitable and capable of generating a suitable contribution may be elusive.

Thus, it is time that political leaders and public policy makers carefully examine the current system of service delivery. System inequities have stood for decades in Alaska. This is understandable when one considers that funding formulae in place today were designed for regional governments that were formed 25-30 years ago. Political and economic changes have occurred during this time which require that the formulae be re-examined by local and state officials. The Commission has witnessed the gradual awakening of the public to the current dilemma. In response, it has passed a resolution calling for a comprehensive examination of state funding formulae to promote equity among regions and to eliminate disincentives for borough incorporation and annexation. A copy is appended to this report as Exhibit B. The Commission would like to see the current legislature begin dealing with the situation.

In each of the past four legislative sessions, bills have been introduced which would have provided compensation to the Commission at the rate of \$150 per day for each day the member attends a meeting. Compensation bills were approved by the Senate in 1988 and 1990, however, the measures lagged in committees in the House. In 1990, the bill died in House Rules.

It is evident from the activities profiled in this report, that the Local Boundary Commission is an extremely active volunteer body. It is quite different from the original Commission who first gathered shortly after statehood. In fact, the state of Alaska was quite different then. When the Commission was first formed, there were

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for the
Commission

only about 30 municipal governments. Understandably, the Commission met only a few times each year and then made only a few decisions. By contrast, there are 164 municipalities today. The current Commission typically meets 25 times a year, and renders many more decisions. When it was first formed, the Commission traveled little. Today, as this report shows, the Commission can be found in any community from Barrow to Ketchikan. Frequently this travel occurs under hazardous weather conditions.

The increase in the number of municipal governments and the number of meetings or extent of travel alone do not fully account for the additional demands placed on the Commission. Procedures which were simple thirty years ago have grown much more complex. For example, the Commission operated without regulations until it was directed to create them by a ruling of the State Supreme Court in 1971. Today, the Commission's regulations take up more than 50 pages in the Alaska Administrative Code. Procedural responsibilities have further increased with the relatively recent requirement that the U.S. Justice Department review and approve every municipal boundary change. This includes incorporations, dissolutions and annexations.

Compounding the duties of the Commission is the tendency of the American public to litigate disputes. Given the typically controversial nature of the issues brought before the Commission, it is not surprising that decisions of the Commission are often challenged in court. They have in fact been the subject of six landmark rulings by the State Supreme Court. A host of other Supreme and Superior Court decisions affect each and every action of the Commission. The ever present threat of legal challenge demands that Commission members spend many days preparing for a single meeting. For example, the material considered by the LBC in the competing boundary actions (Denali Borough and Valleys Borough incorporations and Mat-Su Borough annexation) consisted of nearly 1,200 pages of text and weighed over four pounds.

Obviously, today's Commission members must maintain a level of expertise and perseverance beyond that to be expected of volunteers. Financial compensation is a modest request. In fact, the fiscal impact of the most recently proposed compensation would be minimal. Based upon 25 one-day meetings per year with compensation of \$150 per day, the total compensation to the Commission would amount to \$18,750.