

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7363 SENATE COMMUNITY & REGIONAL AFFAIRS

P.O. Box 113
Klawock, Alaska
99925

City of Klawock Alaska

Phone: (907) 755-2261
or: (907) 755-2262
FAX #: (907) 755-2403

"Site of the First Cannery in Alaska"

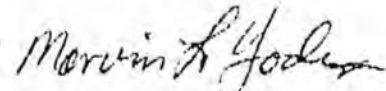
May 7, 1991

The Honorable Steve Frank
Juneau, AK

Dear Senator Frank,

The City of Klawock requests that you schedule a hearing on HB54 at your earliest convenience. Although it will not solve all our budget problems, it is needed to help us provide services to those who live in Klawock and work in the timber industry. Thanks for your consideration of this bill.

Sincerely,



Marvin L. Yöder
City Administrator

MY/cg

CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF '98"
P. O. BOX 415 SKAGWAY, ALASKA 99840
(PHONE) 907-983-2267
(FAX) 907-983-2151

May 7, 1991

Senator Steve Frank, Chairman
Senate Community and Regional Affairs Committee
P.O. Box V
Juneau, AK 99811

RE: HB 54

Dear Senator Frank;

This letter urges your consideration of scheduling House Bill 54, pertaining to Forest Service receipts, for a committee hearing in order that this legislation may proceed toward adoption.

The City of Skagway supports adoption of HB 54. This legislation will allow distribution of federal funds to communities effected by National Forest operations or located in the vicinity of the National Forest.

These funds are federal funds intended for distribution to communities for schools and roads. The chief benefit of receiving a share of these funds in Skagway would be to help the community fund its local school.

Again, we urge your consideration of hearing this legislation.

Sincerely,



Thomas Healy
City Manager

cc: Senator Richard Eliason
Representative Jerry Mackie

**CITY OF THORNE BAY**

P. O. BOX 19110
THORNE BAY, ALASKA 99919
(907) 828-3380
FAX (907) 828-3374

April 7, 1991

The Honorable Steve Frank
Alaska State Senate
Community & Regional Affairs Committee
P. O. Box
Juneau, Alaska 99-11

Re: Bill 54 - National Forest Receipts

Dear Senator Frank:

The City of Thorne Bay requests your support and assistance in scheduling the above-referenced bill for hearing by the Community & Regional Affairs Committee. The City strongly urges passage of this bill during this legislative session and any assistance you can render in this regard will be greatly appreciated.

Thank you for your consideration of this request.

Sincerely,

Daniel A. Wagner
Mayor

DAW:cq

cc: The Honorable Richard I. Eliason

LEGISLATIVE TELECONFERENCE NETWORK

HB 54



SIGN-IN SHEET



SPONSOR: _____

SUBJECT: _____

START/END TIME: _____ DATE: _____

PLEASE PRINT

	NAME/REPRESENTING	ADDRESS	PHONE #	TESTIFY	OBSERVE	BILL #
1	DAVE CARLSON	PETERSBURG COUNCILMAN/BUSINESSMAN				
2	BOB WEINSTEIN	(KTN) Southeast Island School Dist				
3	GINNY TIERNEY	THORNE BAY CITY ADMINISTRATOR				
4	TOM BRIGGS	MAYOR OF CRAIG				
5	JOHN HOLST	CRAIG SUPERINTENDENT				
6	MORRIS DERDERS	KLAWOCK SUPT.				
7	JOHN ANTONEN	HOONAH SUPT.				
8	PAUL FISHER	WRANGELL				
9	WALT BROMENSCHENKEL	(METLAKATLA) ANNETTE ISL. SCHOOL SUPT.				
10						
11						
12						
13						
14						
15						
16						
17						
18						

PARTICIPANT LIST

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. BOB WEINSTEIN, SOUTHEAST ISLAND SCHOOL DISTRICT	P. O. BOX 8340 KETCHIKAN 99901	225-9658	HB 54
2. ANITA HALL, SOUTHEAST ISLAND SCHOOL DISTRICT			HB 54
3.			
4.			
5.			

OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. MAYNARD E. WILBURN	P. O. BOX 147 THORNE BAY 99919	828-3924	HB 54
2.			

TESTIFIED: 1
UNABLE: 0

OBSERVED: 2
TOTAL: 3

START TIME: 3:30 PM

END TIME:

HB

87

DATE: 2/25/91

FURTHER: Judiciary

DATE TURNED INTO OFFICE: _____

C&RA Committee considered HOUSE BILL NO. 87 am

"An Act requiring the street address of real property to be included in certain notices of sale and notices of default used to execute or foreclose on real property interests."

and recommended:

- replace with _____ CS _____
 - or adopt _____ CS _____
 - attached amendment(s)
 - _____ letter of intent adopted
- same title
 - new title
 - technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____
Court System 2/19/91

Governor's bill w/fiscal note

SIGNING DO PASS:

Cecilia Stupulovich
[Signature]
[Signature]
[Signature]

OTHER RECOMMENDATIONS:

Mark Do Pass
Chair: Signature and Recommendation

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. HB 87

Revision Date: _____ Department Affected: Community & Regional Affairs

Title: "An Act..street address of real property..notices of sale.." BRU: _____

Sponsor: House Judiciary Committee Component: _____

Requestor: _____ COMPONENT SERIAL NO.

0	6	8	7
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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						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Administrative Services Date: 2/12/91

Approved by Commissioner: _____
 Agency: Community & Regional Affairs Date: _____

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 87

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act requiring the street address of BRU: Trial Courts
real property to be included in certain notices of sale... Components: _____
 Sponsor: Judiciary
 Requestor: Judiciary COMPONENT SERIAL NO.

000 000	000 768
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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						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0


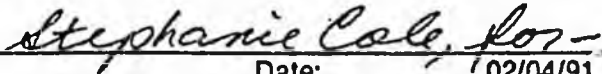
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 02/04/91
 Approved by: Arthur H. Snowden, II, Administrative Director  Date: 02/04/91
 Agency: Alaska Court System

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

FISCAL NOTE

..o. 1

Bill Version: HB 87

(H) Publish Date: 2/19/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act requiring the street address of BRU: Trial Courts
real property to be included in certain notices of sale... Components: _____
 Sponsor: Judiciary
 Requestor: Judiciary COMPONENT SERIAL NO.

000 000	000 768
-----------	-----------

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
 Division: Alaska Court System Date: 02/04/91

Approved by: Arthur H. Snowden, II, Administrative Director *Stephanie Cole, for*
 Agency: Alaska Court System Date: 02/04/91

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

Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

M E M O R A N D U M

TO: Senator Steve Frank, Chair
Senate Community and Regional Affairs Committee

FROM: Representative Dave Donley, Chair **D**
House Judiciary Committee

RE: Request for hearing on HB 87, "requiring the street address to be included in certain notices of sale and notices of default used to execute or foreclose on real property interests."

DATE: March 1, 1991

I would greatly appreciate it if you would schedule HB 87 for a hearing at the earliest possible opportunity. This bill would require a street address, if there is one, to be included in the legal description of real property in notices of sale upon execution and notices of default.

This is a simple bill in the public interest and supported by the Department of Community and Regional Affairs.

Thank you for your attention to this request.

DD/hk

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

HB 87

SPONSOR STATEMENT

Present state law requires that notices of sale of real property on execution and notices of default used to execute or foreclose on real property describe the property. The description used is the legal description with which you are all familiar.

Unless a person is a party at interest in a particular sale or default, an ordinary citizen would never know the actual physical location of the real property from its legal description.

In the interest of providing meaningful notice to the general public, the House Judiciary Committee felt that, whenever possible, the legal description of real property should include the property's street address, if any.

I ask your support for this technical, but meaningful, change in our real property laws.

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 12, 1991

POSITION PAPER

RE: House Bill No. 87

SPONSOR: House Judiciary Committee

Program Effects of Bill

This bill would have no major effect on the Department of Community and Regional Affairs.

Comments

The Department of Community and Regional Affairs (DCRA) supports the amended language described in Section 1 and Section 2 of this legislation.

Notice of sale on execution [AS 09.35.140 (1)] deals only with execution on personal property after a judgment has been obtained through the judicial foreclosure process. The Department has the right to pursue this type of collection; however, to date, we have chosen not to execute on personal property. The area in which the property is located usually does not provide storage for personal property.

AS 09.35.140 (2). This section is strictly adhered to by the attorneys representing DCRA through our seller/servicers.

AS 09.34.20.070 (b). The Department adheres to this section whenever possible. DCRA deals strictly with rural areas of the state, and not all properties have a street address. Frequently the address will appear "NHN" and street name, or even just a legal description. A street address is included whenever possible.

Ed. Blatchford

Edgar Blatchford, Commissioner

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 30, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2-13-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 87

HOUSE BILL NO. 87

FORECLOSURE/EXECUTION NOTICE REQUIREMENTS

"An Act requiring the street address of real property to be included in certain notices of sale and notices of default used to execute or foreclose on real property interests."

RECOMMENDATIONS:

[] the same title
be replaced with _____ [] a new title

[] have attached amendments(s)

[X] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Inter.

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

[X] zero fiscal note Ak. Court System

[] zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
Bettye Davis				
John C. Samples				
Lybil Phillips				
Harold M. ...				
Cheri Davis				
Jay M.				

Jay M.
Chairman's Signature

(7)

Date Referred: February 19, 1991

FURTHER REFERRALS:

Date of Committee Action: 2-20-91

The JUDICIARY Committee considered:

HB 87

HOUSE BILL NO. 87

FORECLOSURE/EXECUTION NOTICE REQUIREMENTS

"An Act requiring the street address of real property to be included in certain notices of sale and notices of default used to execute or foreclose on real property interests."

RECOMMENDATIONS:

be replaced with _____ [] the same title
[] a new title

[] have attached amendments(s)

do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

[] fiscal impact _____

[] fiscal note(s) _____

[] zero fiscal note _____

zero fiscal note(s) AK. Court System 2-19-91

~~SIGNING DO PASS:~~

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<u>Dave Douley</u>				
<u>H. Ellis</u>				
<u>Mark Stanley</u>				
<u>Larry Martin</u>				

Dave Douley
Chairman's Signature

HB

1 2 8

SENATE COMMITTEE REPORT

DATE: 3/9/92

FURTHER:

DATE TURNED INTO OFFICE: _____

CRA Committee considered

CS FOR HOUSE BILL NO. 128 (CRA)

"An Act relating to the office of municipal clerk."

and recommends:

replace with S CS CS HB128 (CRA)

or adopt previous _____ CS _____ ()

attaches amendment(s)

same title
 new title
 technical
title change
(HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes DCRA/3/31/92

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

DO PASS:

OTHER RECOMMENDATIONS:

David D. Pass
Chair: Signature and Recommendation

FISCAL NOTE

Jo. 2
 Bill Version: CSHB 128(CRA)
 (H) Publish Date: 3-4-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: 1/15/92
 Title: "...relating to the office of municipal clerk."
 Sponsor: Rep. C.Davis, et al
 Requestor: House Judiciary

Department Affected: Community and Regional Affairs
 BRU: Local Government Assistance
 Component: Statewide Assistance

COMPONENT SERIAL NO.

0	6	7	6
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Changes in SCS CSHB128 (CRA) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.
3/3/92 date CA/STH Comte Aide (initial)

Prepared By: Remond Henderson
 Division: Administrative Services Division

Phone: 465-4708
 Date: 1/15/92

Approved by Commissioner: [Signature]
 Agency: Department of Community and Regional Affairs

Date: 1/15/92

COMMITTEE COPY




Official Business

Alaska State Legislature

P.O. Box V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

To: Senate Community and Regional Affairs Committee
Members

From: Senator Steve Frank 

Re: Proposed Senate CS for CS HB 128 (CRA)

Date: March 30, 1992

The proposed Senate CRA committee substitute, amends CSHB 128 (CRA), by adding "or the chief administrator" to line 6-7, page 2.

The amendment is in keeping with existing law of AS 29.20.380 (a)(6).

7-LS0598J ✓
Cook
3/27/92

SENATE CS FOR CS FOR HOUSE BILL NO. 128 (CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES C.DAVIS, Ellis, Taylor, Koponen, Navarre, Hudson, B.Davis, Davidson, Kubina, Bruckman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the office of municipal clerk."

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

3 * Section 1. AS 29.20.380(a) is repealed and reenacted to read:

4 (a) The municipal clerk shall

5 (1) attend meetings of the governing body and its boards and committees as
6 required and keep the journal;

7 (2) have custody of the official municipal seal;

8 (3) assure that notice and other requirements for public meetings are complied
9 with and assure that public records are available for public inspection as required by law;

10 (4) manage municipal records and develop retention schedules and procedures for
11 inventory, storage, and destruction of records as necessary;

12 (5) maintain an indexed file of all permanent municipal records, provide for
13 codification of ordinances, and authenticate or certify records as necessary;

14 (6) prepare agendas and agenda packets as required by the governing body;

- 1 (7) administer all municipal elections;
- 2 (8) assure that the municipality complies with 42 U.S.C. 1971-1974 (Voting
- 3 Rights Act of 1965, as amended);
- 4 (9) take oaths, affirmations, and acknowledgements as necessary;
- 5 (10) act as the parliamentary advisor to the governing body;
- 6 (11) perform other duties required by law, the governing body, or the chief
- 7 administrator.

FISCAL NOTE

lo. 2
 Bill Version: CSHB 128 (CRA)
 (H) Publish Date: 3-4-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: 1/15/92
 Title: "...relating to the office of municipal clerk."
 Sponsor: Rep. C. Davis, et al
 Requestor: House Judiciary

Department Affected: Community and Regional Affairs
 BRU: Local Government Assistance
 Component: Statewide Assistance

COMPONENT SERIAL NO.

0	6	7	6
---	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson
 Division: Administrative Services Division

Phone: 465-4708
 Date: 1/15/92

Approved by Commissioner: [Signature]
 Agency: Department of Community and Regional Affairs

Date: 1/15/92

COM

FISCAL NOTE -DCRA

ALASKA STATE LEGISLATURE

ELECTIVE DISTRICT 1

HYDER
KETCHIKAN
KUPREANOF
MEYERS CHUCK
PETERSBURG
SAXMAN
WRANGELL.



HOME

P.O. BOX 5724
KETCHIKAN, AK 99901
PHONE 225-6304

DURING SESSION

P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3424

Representative Cheri L. Davis

MEMORANDUM

TO: Sen. Steve Frank
Chairman of Senate C & R A

FROM: Rep. Cheri Davis *Cheri Davis*

DATE: March 12, 1992

RE: Scheduling of CSHB 128

Please accept this memorandum as my official request for CSHB 128 to be scheduled in Senate Community and Regional Affairs Committee.

The bill was introduced at the request of the Alaska Association of Municipal Clerks and the legislation is supported by the Alaska Municipal League as stated in their "Policy Statement."

CSHB 128 is not intended to infringe on the rights of local government. Current statutes spell out specific duties the municipal clerk is to perform. This bill clarifies those duties and brings them "up to date." The duties in this bill are not unattainable, Ketchikan, for example, has the borough clerk currently assuming all the duties outlined in this legislation.

Thank you for your consideration.

SPONSOR REQUEST/SUMMARY

(d) Unless otherwise provided by ordinance, a utility board shall
 (1) choose its chairman and secretary;
 (2) appoint the manager of the public utility for a term not longer than five years and set the manager's salary;
 (3) formulate and enforce the general rules and policies of the utility. (§ 7 ch 74 SLA 1985)

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 540 et seq. 62 C.J.S., Municipal Corporations, § 699.

Public utility acts as applicable to municipal corporations owning or operating waterworks. 10 ALR 1432; 18 ALR 946. Constitutionality of statute or ordi-

nance for protection of water supply. 72 ALR 673.

Power of municipal corporation to sell equipment to consumers as adjunct to utility service furnished. 108 ALR 1454.

Municipality's power to sell, lease, or mortgage public utility plant or interest therein. 60 ALR2d 695.

Sec. 29.20.320. Other boards and commissions. (a) The governing body may by ordinance establish advisory, administrative, technical, or quasi-judicial boards and commissions.

(b) Members of boards and commissions, except for members of the board of adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed by the governing body. (§ 7 ch 74 SLA 1985)

Article 5. Other Officials and Employees.

Section
 300. Appointment of officials
 370. Municipal attorney
 380. Municipal clerk

Section
 390. Municipal treasurer
 400. Departments
 410. Personnel system

Sec. 29.20.360. Appointment of officials. Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrator. Unless otherwise provided by ordinance, an official described in this section serves at the pleasure of the appointing authority and, if appointed by the chief administrator, must be confirmed by the governing body. (§ 7 ch 74 SLA 1985)

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 231-336.

Sec. 29.20.370. Municipal attorney. The municipal attorney is the legal advisor of the governing body, the school board, and the other officials of the municipality. The municipal attorney represents the municipality as attorney in civil and criminal proceedings. The school board may hire independent counsel when in its judgment independent counsel is needed. (§ 7 ch 74 SLA 1985)

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 282.
 62 C.J.S., Municipal Corporations, § 695.
 Attorney's authority to compromise suit

for municipality. 66 ALR 110; 30 ALR2d 944
 Attorney's compensation for services in matters involving municipalities. 143 ALR 829; 56 ALR2d 13.

Sec. 29.20.380. Municipal clerk. (a) The municipal clerk shall
 (1) give notice of the time and place of meetings of the governing body to the governing body and to the public;
 (2) attend meetings of the governing body and keep the journal;
 (3) arrange publication of notices, ordinances, and resolutions;
 (4) maintain and make available for public inspection an indexed file containing municipal ordinances, resolutions, rules, regulations, and codes;
 (5) attest deeds and other documents;
 (6) perform other duties specified in this title or prescribed by the chief administrator or by the governing body.
 (b) The governing body may combine the office of clerk with that of treasurer. If the offices are combined, the clerk-treasurer shall, as required of the treasurer, give bond to the municipality for the faithful performance of the duties as clerk-treasurer. (§ 7 ch 74 SLA 1985)

NOTES TO DECISIONS

No liability for unintentional error in performing discretionary duty. — When a public officer was charged with duties which called for an exercise of his judgment and discretion, he was not liable

for an erroneous performance under a former, similar provision, unless he had been guilty of willful wrong, malice, or corruption. Churchill v. McKay, 17 Alaska 633, 163 F. Supp. 339 (D. Alaska 1958).

Collateral references. — 62 C.J.S., Municipal Corporations, § 699.

Sec. 29.20.390. Municipal treasurer. (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. The treasurer shall keep an itemized account of money received and disbursed. The treasurer shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum that the governing body directs. (§ 7 ch 74 SLA 1985)

Collateral references. — 62 C.J.S., Municipal Corporations, §§ 697, 1880.

AS 29.20.380
MUNICIPAL CLERK

March 2, 1992

Position Paper

CS for HB 128 (CRA) - Offices of Municipal Clerk

The Alaska Municipal League supports the Committee Substitute for House Bill 128, an Act relating to the offices of municipal clerk with one small amendment. On page 2, Line 6, insert "or prescribed by the chief administrator" between "law" and "or by the governing body."

The AML's 1992 Policy Statement states, "The League supports legislation that would update and clarify the powers and duties of the municipal clerk." CS for HB 128 (CRA) carries out this request. The amendment is in keeping with existing law and recognizes that a municipal clerk may report to the chief administrator or the governing body of the municipality.

Title 29 provides a checklist of municipal clerk responsibilities which has not been updated in twenty years. The CS for HB 128 incorporates amendments proposed by the Alaska Association of Municipal Clerks and delineate functions and duties which are and have been exercised by municipal clerks across the state for many years. The AML supports these changes to recognize the traditional roles of the municipal clerk as determined locally.

The AML supports CS for HB 128 (CRA) with one amendment.

REP. Cheri Davis
P.O.Box V,
Juneau, AK 99811

Fax 465 2299

Dear Cheri;

I've reviewed CSHB 128 (CRA) and am in accord with the language changes.

Please indicate to the committee I encourage forward movement of the bill and passage by the Legislature.

Sincerely



Carroll G. Fader
Box 5794, Ketchikan, AK 99901

Member, Ketchikan Gateway Borough Assembly
Former Borough Mayor--1975-84
AML Past President

2/20/92

LETTERS OF SUPPORT

312 Front Street
Ketchikan, AK 99901
April 30, 1991

The Honorable Arliss Sturgulewski
Alaska Senate
P.O. Box V
Juneau, Ak 99811

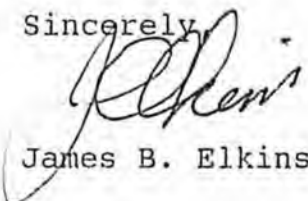
Dear Arliss:

In response to a request from Borough Clerk Georgianna Zimmerle, I would also like to add my vote in favor of urging you to sponsor a companion Senate bill to CSHB 128.

You know of my long-standing and continued involvement in local, state and federal government both as an interested Alaskan and as a member of Ketchikan's business community. As a former Assemblyman of the Ketchikan Gateway Borough, I can attest to the fact that this is a responsible bill. I personally know at least fourteen former elected officials and several incumbent elected officials who, as individuals, support this as a good piece of legislation.

It was clear that the Borough Assembly's actions on this bill involved a hidden agenda and did not focus on the merits of the bill at all. As long as Title 29 clearly spells out the duties of the clerks and managers and allows these employees to be directly responsible to the assembly, it will safeguard the checks and balances which are so important to local government.

Sincerely,



James B. Elkins



CITY CLERK
POST OFFICE BOX 1397, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8636
FAX (907) 486-8600

April 22, 1991

Honorable Arliss Sturgulewski
Alaska State Senate
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Arliss:

Enclosed is a copy of CSHB128(CRA) sponsored by C.DAVIS, Ellis, Taylor, Koponen, Navarre, Hudson, B.Davis, Davidson, and Kubina. It is now in House Judiciary. I respectfully request you consider sponsoring a companion bill. I understand how busy you are and the number of vital bills you must act upon before the end of this session, but please take a moment to review the enclosed material.

Since many of the smaller municipalities throughout the State rely on Title 29 to provide basic guidelines for local government, it is imperative the municipal clerk's duties and responsibilities be updated. A companion bill filed now would be in a good position for passage early in the second session.

Thank you for taking the time to consider this request.

Sincerely,

CITY OF KODIAK

MARCELLA H. DALKE, CMC/AA
City Clerk

MHD/ms

P.O. Box 7022
Ketchikan, AK 99901
February 20, 1992

The Honorable Members of House Judiciary
House of Representatives
P.O. Box V
Juneau, AK 99811

SUPPORT CSHB 128(CRA) RELATING TO THE OFFICE OF MUNICIPAL CLERK

This bill is now before you in the House Judiciary Committee. I urge you to support Committee Substitute for House Bill-128. The House Community and Regional Affairs Substitute Bill has done away with a "mandatory" appointment of municipal clerk which was in the original bill. The Committee substitute was suggested by and is supported by the Alaska Association of Municipal Clerks.

The intent of the substitute bill is supported by the 1991 Alaska Municipal League (AML) Policy Statement and continues to be supported by the 1992 AML Policy Statement. Both of these Policy Statements were voted on and approved by local government representatives throughout the State of Alaska. AML Executive Director Scott Burgess testified to the CRA Committee in support of the legislation.

It is my belief with the change of composition on the Ketchikan Gateway Borough Assembly this past October, the odds are this Assembly will change its position and support the committee substitute. It is scheduled for the March 2, 1992 agenda. In addition several of Ketchikan's prominent citizens, former and current elected officials have given positive support to the bill.

The major objection raised at the CRA hearing on the bill seems to be that it tends to infringe upon local government's ability to prescribe the duties of the municipal clerk. This is true. Title 29 does likewise with the duties of the chief administrator. General law municipalities have legislative powers conferred by law. The legislative purpose or intent of Title 29 is "to permit local government to function more

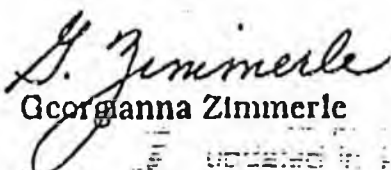
02/20/92

The Honorable House Judiciary Committee
February 20, 1992 - Page 2

effectively."¹ When the time comes for a municipality to function more independently, Title 29 prescribes the means for it to become a home rule municipality which has all legislative powers not prohibited by law or charter. Most general law municipalities consider Title 29 a guide and resource rather than a detriment. (See testimony of C. Thomas Beck, former Mayor of Thorne Bay, CRA file)

A "laundry list" of municipal clerk's duties has existed in Statute for many years. Enclosed are copies of pages from the Alaska Statutes over the years describing those duties. You can see this section has not changed much in thirty years. It is apparent that these statutes have existed for these many years without problem or concern. The language in the old Title 7, Boroughs, which mandates the appointment of a "person" to serve as a clerk makes a lot of sense. These duties must be carried out by someone regardless of the title.

Municipal clerks in both general law and home rule municipalities are supporting this legislation. Even though it is not applicable to home rule municipalities, it will become a base line for consideration in future municipal charters, job descriptions and the like. Your support would be much appreciated!


Georgianna Zimmerle

Enclosures

¹Section 1, ch. 74, SLA 1985



City and Borough of Sitka

304 LAKE STREET. SITKA, ALASKA. 99835

February 20, 1992

Representative Dave Donley, Chairman
House Judiciary Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Donley:

In November, 1992, during the annual meeting of the Alaska Association of Municipal Clerks, the membership as a whole voted to confirm our support of CS for HB No. 128 (CRA). A list of the membership is attached.

It should be noted that the 1992 Alaska Municipal League Policy Statement continues to support the intent of CS for HB No. 128 (CRA).

If you have any questions prior to the hearing on Monday, February 24, 1992, I would be more than happy to receive your phone call at 747-3294.

Sincerely,

Melinda L. Jenkins

Melinda L. Jenkins, President
Alaska Association of Municipal Clerks

cc: Todd Clevenger
Georgianna Zimmerle

ALASKA ASSOCIATION OF MUNICIPAL CLERKS

Aleutians East Borough
P.O. Box 349
Sand Point, Alaska 99611
Lynn Ramsey, Clerk/Admin. Asst.

Second Class Borough
383-2699
FAX 383-3496

Municipality of Anchorage
P.O. Box 196650
Anchorage, Alaska 99519-6650
Lejane Ferguson, Clerk

Unified Home Rule
343-4311
FAX 343-4780

Bristol Bay Borough
P.O. Box 189
Naknek, Alaska 99633
Betty J. Bonin, Clerk/Financial Assistant

Second Class Borough
246-4224
FAX 246-6633

Denali Borough
P.O. Box 480
Healy, Alaska 99743
Kristina M. Graham, Clerk/Treasurer

683-1330
683-1340

Fairbanks North Star Borough
P.O. Box 71267
Fairbanks, Alaska 99707
Mona Lisa Drexler, CMC, Clerk
Martha J. Harrell, CMC/AE, Deputy Clerk, AAMC Secretary

Second Class Borough
452-4761
FAX 452-3819

Haines Borough
P.O. Box 1209
Haines, Alaska 99827
~~Sharan Van Winkle, Clerk/Treasurer~~

Third Class Borough
766-2711
FAX 766-2716

City & Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801
Patty Ann Rolley, Clerk, AAMC Immediate Past President

Unified Home Rule
586-5278
FAX 586-5299

Kenai Peninsula Borough
144 North Binkley Street
Soldotna, Alaska 99669
Gaye J. Vaughan, CMC/AE, Clerk
Teresa Hudson, Deputy Clerk

Second Class Borough
262-4441
FAX 262-1892

Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901
Georgianna C. Zimmerle, CMC/AAE, Clerk
Susan L. Bethel, Deputy Clerk

Second Class Borough
228-6605
FAX 225-7282

Kodiak Island Borough
710 Mill Bay Road
Kodiak, Alaska 99615-6340
Donna F. Smith, Clerk
Judy Neilsen, Deputy Clerk

Second Class Borough
486-5736
FAX 486-2886

Lake & Peninsula Borough
P.O. Box 495
King Salmon, Alaska 99613
Mary Anne Wilson, Clerk

Home Rule Borough
246-3421
FAX 246-6602

Matanuska-Susitna Borough
P.O. Box 1608
Palmer, Alaska 99645
Linda Ann Dahl, CMC, Clerk
Kristie L. Van Gorder, Deputy Clerk

Second Class Borough
745-9685
FAX 745-0886

Northwest Arctic Borough
P.O. Box 1110
Kotzebue, Alaska 99752
Paulette Lambert, Clerk

First Class Borough
442-2500
FAX 442-2930

North Slope Borough
P.O. Box 69
Barrow, Alaska
Evelyn J. Donovan, Clerk

Home Rule
852-2611
852-0229

City & Borough of Sitka
304 Lake Street, Room 111
Sitka, Alaska 99835
Melinda L. Jenkins, Clerk, AAMC Vice President

Unified Home Rule
747-3294
FAX 747-7403

City of Akutan
General Delivery
Akutan, Alaska 99553
Zenia Borenin, Clerk
Ruth E. Kudrin, Deputy Clerk

Second Class City
698-2228
FAX 698-2202

City of Atqasuk
General Delivery
Atqasuk, Alaska 99791
Harold L. Ivanoff, Administrator/Clerk

Second Class City
633-6811
FAX 633-6812

City of Barrow
P.O. Box 629
Barrow, Alaska 99723
~~Ronald D. Brewer, Clerk~~

First Class City
852-5211
FAX 852-5871

City of Bethel
P.O. Box 388
Bethel, Alaska 99559
Anna L. McGowan, Clerk

Second Class City
543-2047
FAX 543-4171

City of Craig
P.O. Box 23
Craig, Alaska 99921
Helen Gray, CMC, Clerk

First Class City
826-3275
FAX 826-3278

City of Delta Junction
P.O. Box 229
Delta Junction, Alaska 99737
Robby Lee Benson, Clerk/Treasurer/Administrative Assistant

Second Class City
895-4656

City of Dillingham
P.O. Box 889
Dillingham, Alaska 99576
Vivian M. Braswell, CMC, Clerk

First Class City
842-5211
FAX 842-5691

City of Eagle
P.O. Box 1901
Eagle, Alaska 99738
Audrey J. Scott, Clerk

Second Class City
547-2282 (Mondays
only)

City of Elim
P.O. Box 39009
Elim, Alaska 99739
Luther D. Nagaruk, Clerk

Second Class City
890-3441
FAX 890-3091

City of False Pass
P.O. Box 50
False Pass, Alaska 99583
Joan Notti, Clerk

548-2319

City of Galena
Antoski Hall P.O. Box 149
Galena, Alaska 99741
Miss Vaughn D. Dayton, Clerk

First Class City
656-1769
FAX 656-1769

City of Grayling
P.O. Box 89
Grayling, Alaska 99590
Marilyn Deacon, Clerk

Second Class City
453-5148

City of Haines
P.O. Box 1049
Haines, Alaska 99827
Susan V. Johnston, Clerk

First Class City
766-2231
FAX 7866-3179

City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Mary L. Shannon, Clerk

First Class City
235-8121
FAX 235-3140

City of Hydaburg
P.O. Box 49
Hydaburg, Alaska 99922
Margaret O'Neil, Clerk
Mary A. Morris, Deputy Clerk

First Class City
285-3761

City of Kaktovik
P.O. Box 27
Kaktovik, Alaska 99747
Mary L. Sopl, Clerk/Treasurer

Second Class City
640-6313
FAX 640-6314

City of Kenai
210 Fidalgo
Kenai, Alaska 99611
Carol L. Freas, Clerk
Diane E. Craig, Deputy Clerk

Home Rule City
283-7539
FAX 283-3014

City of Ketchikan
334 Front Street
Ketchikan, Alaska 99901
Karen Miles, GMC/AAE, Clerk
Karen Sund, CMC, Deputy Clerk

Home Rule City
225-3111, Ext. 322
FAX 225-5075

City of King Cove
P.O. Box 37
King Cove, Alaska 99612
Cynthia Samuelson, CMC, Clerk/Treasurer
Frankie C. Mack, Deputy Clerk

First Class City
497-2340
FAX 497-2386

City of Kivalina P.O. Box 50079 Kivalina, Alaska 99750 Myra Adams, Clerk	Second Class City 645-2137 FAX 645-2175
City of Kodiak P.O. Box 1397 Kodiak, Alaska 99615 Marcella H. Dalke, CMC/AAE, Clerk S. Marie Stevenson, Deputy Clerk	Home Rule City 486-8636 FAX 486-8600
City of Kotzebue P.O. Box 46 Kotzebue, Alaska 99752 Helen P. Baker, Clerk	Second Class City 442-3401 FAX 422-3742
City of Koyuk P.O. Box 29 Koyuk, Alaska 99753 Nancy Nassuk, Clerk	Second Class City 963-3441 FAX 963-3442
City of Mekoryuk P.O. Box 29 Mekoryuk, Alaska 99630 D. Janet Hendrickson, Clerk	Second Class City 827-8314 FAX 827-8620
City of Nenana P.O. Box 70 Nenana, Alaska 99760 Karen Harvey, Clerk/Treasurer/Assessor	First Class City 832-5441 FAX 832-5503
City of Nome P.O. Box 281 Nome, Alaska 99762 Linda E. Conley, Clerk/Treasurer, AAMC Treasurer	First Class City 443-5242 FAX 443-5349
City of North Pole P.O. Box 55109 North Pole, Alaska 99705 Shelley Dugan, CMC, Clerk/Treasurer	Home Rule City 488-2281 FAX 488-3002
City of Old Harbor P.O. Box 109 Old Harbor, Alaska 99643 Annie Pestrikoff, CMC, Clerk/Treasurer Tillie Christiansen, Deputy Clerk	Second Class City 286-2204 FAX 286-2278

City of Pelican
P.O. Box 757
Pelican, Alaska 99832
Carol A. Bean, Clerk/Treasurer

First Class City
735-2202
FAX 735-2258

City of Petersburg
P.O. Box 329
Petersburg, Alaska 99833
Patricia L. Curtiss, Clerk
Frances A. Jones, Deputy Clerk

Home Rule City
772-4519
FAX 772-3759

City of Sand Point
P.O. Box 249
Sand Point, Alaska 99661
Debra K. Dushkin, CMC, Clerk/Treasurer
Gale D. McCarty, Deputy Clerk

First Class City
383-2696
FAX 383-2698

City of Savoonga
P.O. Box 188
Savoonga, Alaska 99769
Tuesday M. Toolie, Clerk

Second Class City
984-6614
FAX 984-6411

City of Saxman
Route 2, Box 1
Saxman via Ketchikan, Alaska 99901
Nora DeWitt, Clerk/Finance Officer

Second Class City
225-4166
FAX 225-4706

City of Selawik
P.O. Box 49
Selawik, Alaska 99770
Myra J. Davis, Clerk

Second Class City
484-2132
484-2209

City of Seldovia
P.O. Box 268
Seldovia, Alaska 99663
Roberta R. Hiatt, Clerk/Treasurer

First Class City
234-7643
FAX 234-7430

City of Seward
P.O. Box 167
Seward, Alaska 99664-0167
Linda S. Murphy, CMC/AE, Clerk
Patricia J. Jones, Deputy Clerk

Home Rule City
224-3331
FAX 224-3248

<p>City of Soldotna 177 North Birch Street Soldotna, Alaska 99669 Patricia C. Burdick, CMC, Clerk</p>	<p>First Class City 262-9017 FAX 262-1245</p>
<p>City of St. Mary's P.O. Box 163 St. Mary's, Alaska 99658 Thelma A. Johnson, Clerk/Treasurer</p>	<p>First Class City 438-2515 FAX 438-2719</p>
<p>City of Thorne Bay P.O. Box 19110 Thorne Bay, Alaska 99919 Harriet J. Edwards, Clerk/Treasurer</p>	<p>Second Class City 828-3380 FAX 828-3374</p>
<p>City of Togiak P.O. Box 99 Togiak, Alaska 99678 Marie (Pavian) Paul, Clerk</p>	<p>Second Class City 493-5820 FAX 493-5932</p>
<p>City of Unalaska P.O. Box 89 Unalaska, Alaska 99685 Shelley Blickenstaff, Clerk</p>	<p>First Class City 581-1251 FAX 581-1417</p>
<p>City of Valdez P.O. Box 307 Valdez, Alaska 99686 Jeanne D. Donald, CMC, Clerk, AAMC President Sheri Lynn Buen, Deputy Clerk</p>	<p>Home Rule City 835-4313 FAX 835-2992</p>
<p>City of Wainwright P.O. Box 9 Wainwright, Alaska 99782 Isabel M. Nashookpuk, Clerk</p>	<p>Second Class City 763-2815</p>
<p>City of Wasilla 290 East Herning Avenue Wasilla, Alaska 99687 Erling P. Nelson, CMC, Clerk Marjorie D. Harris, CMC, Deputy Clerk</p>	<p>First Class City 373-9066 FAX 373-0788</p>
<p>City of Wrangell P.O. Box 531 Wrangell, Alaska 99929 Franette A. Vincent, Clerk</p>	<p>Home Rule 874-2381 FAX 874-3952</p>

* * * * *

ASSOCIATE MEMBERS

Hughes, Thorsness, Gantz, Powell & Brundin 263-8251
William M. Walker, Esq. FAX 263-8320
509 West 3rd Avenue
Anchorage, Alaska 99501

Perkins Coie 279-8561
Attn: JoAnne E. Yerkes, Legal Assistant FAX 276-3108
1029 West Third Avenue, Suite 300
Anchorage, Alaska 99501

HB

130

SENATE COMMITTEE REPORT

DATE: 4/12/91

FURTHER: Judiciary

DATE TURNED INTO OFFICE: 5-3-91

C&RA Committee considered CSHB 130 (JUDICIARY) am

"An Act relating to immunity of a municipal ombudsman and staff and privilege of a municipal ombudsman and staff not to testify about certain matters."

and recommended:

- replace with _____ CS _____ same title
- or adopt _____ CS _____ new title
- attached amendment(s) technical title change (HB only)
- _____ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

- fiscal note(s) Dept/Date: _____
- zero fiscal note(s) _____
- appropriation-no fiscal note

APPROVES PREVIOUS:

- fiscal note(s) House Dept Date C&RA 2/22/91
- zero fiscal note(s) _____
- Governor's bill w/fiscal note

SIGNING DO PASS:

Arles Stangor
Tom R. Sharkey

OTHER RECOMMENDATIONS:

Arles Stangor
 Chair: Signature and Recommendation



April 30, 1991

Position Paper

CS HB 130 (Judiciary) am - Immunity of Municipal Ombudsman

The Alaska Municipal League, which represents 125 local governments and their citizens throughout the State of Alaska, supports CS HB 130 (Judiciary) am. This legislation would grant immunity from civil action and privilege not to testify about certain matters to a municipal ombudsman and the staff of the ombudsman's office.

Under the provisions of the bill, which are consistent with model legislation on ombudsmen, no civil action could be brought against either a municipal ombudsman or the ombudsman's staff for anything done, said, or omitted in performing the duties of the office as established by ordinance or charter, except in cases of gross negligence or reckless or intentional misconduct. In addition, they could not testify in court regarding a matter involving their official duties except as necessary to carry out the responsibilities of the office. The protection would apply only when the ordinance or charter establishing the office of ombudsman included specific provisions.

If enacted, HB 130 would not only afford protection to municipal ombudsmen and their staffs that is comparable to the protection granted to the state ombudsman's office, it would also help to ensure confidentiality for citizens seeking assistance from a municipal ombudsman comparable to the protection they would have if they sought assistance from the state ombudsman. HB 130 would correct the inequity that currently exists between citizens of municipalities that contract with the office of the state ombudsman for services and those that have established their own locally funded ombudsman's office.

AML supports the House Judiciary CS for HB 130, as amended.

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99518-6650
(907) 343-4433
TOM FINK,
MAYOR

OFFICE OF THE MUNICIPAL MANAGER

February 28, 1991

Senator Arliss Sturgulewski
Community and Regional Affairs Committee
P.O. Box V
Juneau, Alaska 99811

RE: SB 120, Municipal Ombudsman's Immunity

Dear Senator Sturgulewski:

Enclosed is the Municipality of Anchorage Administration's position paper on SB 120, an Act relating to immunity of a municipal ombudsman and staff and privilege of a municipal ombudsman and staff not to testify about certain matters.

The Administration opposes SB 120, however, if this legislation is to go forward, we recommend the amendments outlined in the attached position paper.

Sincerely,

Handwritten signature of Larry D. Crawford in cursive script.
Larry D. Crawford
City Manager

Position Paper on SB 120

The Administration of the Municipality of Anchorage opposes SB 120, "An Act relating to immunity of a municipal ombudsman and staff and privilege of a municipal ombudsman and staff not to testify about certain matters." If this legislation is to go forward, at the minimum, the Administration recommends adoption of the following amendments:

1. On line 9, following "or charter", add the following new language: "unless the act, statement or omission constitutes gross negligence or reckless or intentional misconduct."

Rationale: The bill, as currently written extends blanket immunity to municipal ombudsmen and their staff. This is extraordinary and should not be granted without compelling justification. No such justification exists in the case of municipal ombudsmen. The proposed new language would limit the proposed immunity to acts, statements or omissions done with ordinary negligence. Acts, statements or omissions performed with gross negligence under the circumstances, or with recklessness or intention would not be immune.

The existing provisions of Title 24 also should include consideration of this amendment and the amendments set out below.

2. On line 9, following "or charter.", add the following sentence: "This subsection does not preclude liability for civil damages for public statements reflecting adversely upon a named individual without affording the individual a right to a written reply prior to making the statement."

Rationale: One of the great potentials for abuse of immunity granted to an ombudsman is to permit the ombudsman to make public statements regarding a named individual which may do great harm to the reputation of the individual, without affording the individual an opportunity for a reply. As currently written, this kind of immunity could be deemed a "license to defame", as the immunity is absolute and there is no requirement that statements be true. This kind of conduct, be it by a ombudsman or any person should not be licensed by statute.

If this amendment is added, the ombudsman remains free to issue reports and make recommendations regarding any action by the government or its agencies so long as individuals are not named.

3. On line 11, following "involving the exercise", delete "or purported exercise".

Rationale: The privilege not to testify in court may arguably make sense if it involves the actual exercise of responsibilities pursuant to statute. However, to extend that privilege to "purported exercises" of the ombudsman's responsibilities is unwarranted. Does such a privilege attach to acts undertaken in bad faith or with malice simply because they might constitute or "purport" to be within the ombudsman's responsibilities? This language is simply inappropriate. If there is to be a privilege not to testify, it should be confined to the exercise of actual duties.

4. Following line 13, add a new section to read as follows:

*Section 2. This act shall not apply to any act, statement or omission committed prior to the effective date of this act, nor shall it apply to any judicial or administrative proceeding commenced prior to the effective date of this act.

Rationale: Makes clear that if this bill is enacted into law, it will not have a retroactive effect.



STATE OF ALASKA
OFFICE OF THE GOVERNOR

FEB 20 1991

BILL ANALYSIS

DEPARTMENT DCRA	DIVISION MRAD	BILL NUMBER SB 120	SPONSOR Senator Collins
SHORT TITLE OF BILL An Act relating to immunity of a municipal ombudsman and staff...			
DEPARTMENT POSITION The department has no position.			
PREPARED BY Patrick Poland, Deputy Director	DATE 2/19/91	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2-20-91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL. Unknown
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Very few other states, if any, give total immunity to their ombudsmen.

ANALYSIS OF BILL/PROGRAM EFFECTS

This bill would make a municipal ombudsman and staff immune from legal suit over actions taken on behalf of the municipality. To qualify for immunity, the action must be one that falls within the parameters of the charter or ordinance authorizing the office of municipal ombudsman.

The bill also exempts a municipal ombudsman from having to testify in court regarding any action taken as a municipal ombudsman.

Since this bill has no direct impact on the department, we are not taking an active position for or against the bill. The department does feel that public employees in general should be accountable for their actions. We would note also that, presently, firemen are the only municipal employees specifically cited in statute as being exempt from personal suit (AS 09.65.070[c]). All other municipal employees, from grader operators to policemen, are subject to the provision of AS 09.65.070.

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

ALASKA LEGISLATURE

Committees

JUDICIARY
LABOR & COMMERCE
BUDGET SUBCOMMITTEE
ADMINISTRATION

JURIEAU
BOX V
JURIEAU, ALASKA 99511
(907) 465-2647
ANCHORAGE
BOX 10-1776
ANCHORAGE, ALASKA 99510
(907) 562-1776

Kevin "Pat" Parnell
Representative
University-Midtown, Anchorage

MEMORANDUM

TO: Senator Steve Frank, Chair
Senate Community and Regional Affairs Committee

FROM: Representative Kevin "Pat" Parnell *Kevin Pat Parnell
4-22-91*

DATE: April 22, 1991

SUBJECT: Request for scheduling HB 130, relating to Municipal Ombudsman Immunity

I respectfully request that you consider scheduling an early hearing for CSHB 130 (JUD), which provides immunity for a municipal ombudsman and staff in the same fashion as granted to the state ombudsman in Alaska. It is sponsored by me and co-sponsored by representatives Donley, Koponen, Gruenberg, Grussendorf, Larson, Ivan, Davidson, Hudson, and Baker.

Passage will ensure that a municipal ombudsman in this state carry out his/her duties as prescribed by law without reservation. The potential was recognized for an ombudsman to hesitate to investigate certain matters, or reserve criticism of agencies and officials, based on a threat or fear of civil action being brought as a result of carrying out their official duties.

Passage will also provide citizens who wish to report matters to a municipal ombudsman, or witnesses coming before an ombudsman, the confidentiality to which they are entitled.

The American Bar Association adopted a resolution with model ombudsman ordinance statutes that include similar provisions. The courts have ruled valid the statutes protecting the ombudsman.

If you have any questions please let me know.



Official Business

Alaska State Legislature

Senate

SENATOR VIRGINIA COLLINS

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senator Steve Frank, Chair
Senate Community and Regional Affairs Committee

FROM: Senator Virginia Collins *VC*

DATE: April 22, 1991

RE: Request for hearing for HB 130, "An Act relating to immunity of a municipal ombudsman and staff and privilege of a municipal ombudsman and staff not to testify about certain matters"

I respectfully request that you schedule the above referenced bill for hearing at your earliest convenience. This bill is the companion bill to the one which I introduced, SB 120.

SB 120 passed out of your committee March 1, 1991 with 3 "do-passes," but is still in the Senate. Since the House companion bill, HB 120, has already passed the House and I feel this legislation is good and necessary legislation, I urge you to schedule HB 120 for hearing.

Thank you. Please do not hesitate to call me or Marveen at 465-2828 if you have any questions.

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4433

TOM FINK,
MAYOR

OFFICE OF THE MUNICIPAL MANAGER

April 30, 1991

Senator Steve Frank, Chairman
Community and Regional Affairs Committee
P.O. Box V
Juneau, Alaska 99811

RE: HB 130, Municipal Ombudsman's Immunity

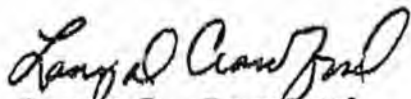
Dear Senator Frank:

HB 130 seeks to extend immunity from suit and a privilege not to testify to municipal ombudsman. Although a similar provision exists for the State ombudsman and the ombudsman of a couple of other states, the rationale for these privileges is not clear. With regard to the immunity that this proposed, it should be kept in mind that it is blanket immunity and extends to all acts of an ombudsman or member of the ombudsman staff. Therefore, even if acts involving gross negligence or intentional misconduct are involved, an individual harmed by those acts could not bring an action against the ombudsman or a member of the ombudsman's staff. This is unwarranted.

With regard to the privilege from testifying granted in the legislation, that privilege apparently extends even to criminal proceedings. Thus, if an ombudsman or member of an ombudsman's staff has knowledge of facts relevant to a criminal investigation, that individual can decline to testify before a grand jury. The search for truth in a criminal investigation should not be hampered this way.

The amendments to the original legislation in the House do not solve any of these problems, which have not been fully discussed by the Legislature. We believe it is poor public policy to create a special class of individual who is unaccountable for his or her actions and we urge you to address these issues during your deliberations on this bill.

Sincerely,

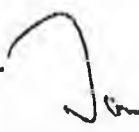

Larry D. Crawford
Municipal Manager

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

ASD MEMORANDUM #336 (90-91)

April 8, 1991

TO: SCHOOL BOARD

FROM: OFFICE OF THE SUPERINTENDENT 

SUBJECT: A RESOLUTION SUPPORTING STATE LEGISLATION TO PROVIDE MUNICIPAL OMBUDSMEN AND STAFF IMMUNITY AND PRIVILEGE NOT TO TESTIFY

RECOMMENDATION:

It is recommended that the School Board adopt the attached resolution entitled "A Resolution Supporting State Legislation To Provide Municipal Ombudsmen And Staff Immunity And Privilege Not To Testify."

PERTINENT FACTS:

The attached resolution supports state legislation that would provide Municipal Ombudsmen and staff immunity and privilege not to testify about certain matters (Attachment A). This information was forwarded to the Anchorage School District by the Municipal Ombudsman for action.

The immunity provision is intended to encourage impartial and independent investigations by an ombudsman by avoiding retaliatory or collateral attacks intended to influence his or her decisions. This legislation would not protect the ombudsman from accusations of "Official misconduct" or "Misuse of confidential information" (AS 11.56.850 and .860), or any other criminal statute.

The privilege not to testify provides citizens the right to confidentiality upon bringing an issue before an ombudsman, and protects the confidentiality of records obtained by an ombudsman, such as those that may be obtained from the Anchorage School District, that have privileged status.

Attachment B is a position paper on the subject which provides justification for the addition of those provisions for local ombudsmen. The American Bar Association, for example, includes the civil immunity provision as an essential element in establishing an ombudsman which they have encouraged for state and local governments.

The Anchorage Assembly passed unanimously a resolution, AR No. 91-45, in support of this legislation (Attachment C). House Bill No. 130 has passed through both the Community and Regional Affairs Committee and the Judiciary Committee where an amendment was added to define a municipal ombudsman along normally accepted standards (Attachment D). The companion Senate Bill No. 120 is awaiting their Judiciary Committee where it may face some difficult challenges (Attachment E).

TCO/GGB/cl

Attachments

PASSED BY THE
ANCHORAGE SCHOOL BOARD
APRIL 8, 1941, 9:00pm

ANCHORAGE SCHOOL BOARD

*A Resolution Supporting State Legislation To Provide
Municipal Ombudsmen And Staff Immunity And
Privilege Not To Testify*

Whereas, legislation has been introduced before the Alaska State Legislature in both the House and Senate to provide a municipal ombudsman and staff immunity from civil action and privilege not to testify about certain matters; and

Whereas, these two provisions are in the state statute which established the state ombudsman; and

Whereas, citizens seeking assistance from a municipal ombudsman should be afforded the same rights to confidentiality as if they sought assistance from the state ombudsman who also serves, under contract, a number of local communities; and

Whereas, these provisions may only be established by state statute rather than by local ordinance; and

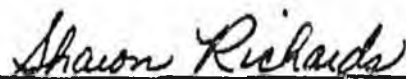
Whereas, these provisions are consistent with the American Bar Association's Model Statute on Ombudsmen and the United States Association of Ombudsmen guidelines; and

Whereas, the legislation is in harmony with the Anchorage Municipal Charter and the Alaska State Constitution and will further enhance the benefits that citizens of this municipality have come to appreciate by having an ombudsman within their local government.

Now Therefore Be It Resolved, that the Anchorage School Board endorses legislation providing municipal ombudsmen and staff immunity and privilege not to testify, and urges passage by the Seventeenth Alaska State Legislature.

Passed And Approved this 8th day of April, 1991.

ANCHORAGE SCHOOL BOARD



Sharon Richards, President

Vince Casey
Cabot Christianson
Walter Featherly

Darryl Jordan
Theresa Obermeyer
Carol Stolpe

Thomas C. O'Rourke, Superintendent

Post-It [™] brand fax transmittal memo 7671		# of pages	1
To	Rep. <i>Panoff / Beckley</i>		
From	<i>Mike Mills</i>		
Co.	<i>House</i>		
Co.	<i>MOA Ombudsman</i>		
Dept.	Phone # <i>343-4461</i>		
Fax #	<i>463-5661</i>		
	Fax # <i>343-4780</i>		

Submitted by: Assembly Members
Evans, Flynn
Prepared by: Ombudsman
For reading: March 5, 1991

ANCHORAGE, ALASKA
AR NO. 91-45

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A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING STATE LEGISLATION TO PROVIDE MUNICIPAL OMBUDSMEN AND STAFF IMMUNITY AND PRIVILEGE NOT TO TESTIFY

WHEREAS, legislation has been introduced before the Alaska State Legislature in both the House and Senate to provide a municipal ombudsman and staff immunity from civil action and privilege not to testify about certain matters; and

WHEREAS, these two provisions are in the state statute which established the state ombudsman; and

WHEREAS, citizens seeking assistance from a municipal ombudsman should be afforded the same rights to confidentiality as if they sought assistance from the state ombudsman who also serves, under contract, a number of local communities; and

WHEREAS, these provisions may only be established by state statute rather than by local ordinance; and

WHEREAS, these provisions are consistent with the American Bar Association's Model Statute on Ombudsmen and the United States Association of Ombudsmen guidelines; and

WHEREAS, the legislation is in harmony with the Anchorage Municipal Charter and the Alaska State Constitution and will further enhance the benefits that citizens of this municipality have come to appreciate by having an ombudsman within their local government.

NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

That this body endorses legislation providing municipal ombudsmen and staff immunity and privilege not to testify, and urges passage by the Seventeenth Alaska State Legislature.

PASSED AND APPROVED by the Anchorage Assembly this 5th day of March, 1991.

Jim Kufitz
Chair

ATTEST:
Lizanne Ferguson
Municipal Clerk
Deputy

UNANIMOUSLY APPROVED ON MARCH 5, 1991



State of Alaska
Ombudsman
Duncan C. Fowler

February 19, 1991

Representative Jerry Mackie, Chairman
Community and Regional Affairs Committee
Alaska State Legislature
Post Office Box V
Juneau, Alaska 99811-3100

RE: HB 130, Municipal Ombudsmen

Dear Representative Mackie:

Please consider this letter to be in support of HB 130. Its passage will provide protections to ombudsmen established by municipal ordinance similar to those granted ombudsmen in state government.

The Alaska Ombudsman Act, which established this office, and the statutes which established the Long Term Care Ombudsman have provisions similar to the proposed HB 130. Both laws grant the ombudsmen offices immunity from civil action, excuse the ombudsmen from testifying in court and have strict confidentiality provisions preventing the disclosure of file materials. HB 130 would insure municipal ombudsmen have similar protections.

The immunity from civil action, assurance of confidentiality of investigative files, and immunity from testifying in court are common elements in model ombudsman legislation promoted by both national and international organizations. These provisions are cited as being desirable by the International Bar Association's Ombudsman Committee, the American Bar association model law and the model ombudsman act proposed in the Harvard Law Review.

There are several practical effects of such provisions. Ombudsmen, by the nature of their work, continually deal with situations where two persons are in disagreement. Some citizens believe the way to resolve disagreements is in the courts. If possible, they would sue the ombudsman if they disagreed with the office's findings and recommendations. Although the ombudsman only has the power to recommend change, the information we obtain during the course of an investigation would be valuable to persons interested in suing the state. Some attorneys would like to rely on ombudsman staff to do their paralegal work.

It is important that ombudsmen have clear access to agencies and their records in order to make factual findings and practical recommendations. This can only be done if the agencies have confidence the ombudsman will be able to maintain the confidentiality of the materials. The investigative files should not be subject to subpoena nor the subject of testimony by ombudsman staff.

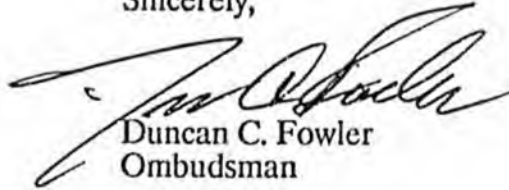
Reply to:

- P.O. Box 102638
Anchorage, AK 99510-2638
(907) 277-8848
(800) 478-2624
- P.O. Box WO
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970
- P.O. Box 74358
Fairbanks, AK 99707-4358
(907) 452-4001
(800) 478-3257

February 19, 1991

In summary, I do support the passage of HB 130. I believe passage will provide municipal ombudsman offices with protections that are consistent with model ombudsman laws. Please let me know if you have any other questions regarding ombudsmen and the effect of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Duncan C. Fowler". The signature is fluid and cursive, with a large initial "D".

Duncan C. Fowler
Ombudsman

DCF:pjc

Position Paper

AN ACT TO PROVIDE MUNICIPAL OMBUDSMEN IMMUNITY AND PRIVILEGE NOT TO TESTIFY (SECTION 09.65.075)

A. Confidentiality / Privilege Not To Testify

The ability for an ombudsman to effectively investigate complaints depends primarily on the ability to determine the facts surrounding the issue. Common among nearly all ombudsman offices is their authority to access essentially all information within their jurisdiction. Along with this power comes the requirement to protect information received which is confidential or privileged by law. Similarly, in an effort to ensure that an ombudsman is provided the most factual information possible from complainants or witnesses, their confidentiality is protected.

In order for an ombudsman to guarantee that these confidentiality laws are not violated and that citizens can continue to enjoy their right to speak freely to their ombudsmen, it is necessary to establish the privilege for an ombudsman and their staff not to testify in court regarding matters involving an ombudsman's official duties.

There is precedence for establishing this privilege not to testify for ombudsmen both on a national and international level. The State of Alaska specifically restricts the Ombudsman from testifying (Sec. 24.55.260); and the State of Nebraska prevents the Ombudsman from being required to testify or produce evidence (Sec. 81-8,253).

Common among nearly every classical ombudsman office is the provision to protect the confidentiality of certain individuals and information. The inclusion of specific language within a statute provides further clarification that an ombudsman should not be required to divulge information, or the identity of a complainant or a witness, which was received with the expectation of privacy. Case law is supportive of this protection at the state level, with Alaska contributing toward the courts' respect for the provisions contained within ombudsman statutes. Notwithstanding the limitations of states' statutes, the U. S. federal courts have exhibited considerable efforts in respecting the confidentiality provisions of state ombudsmen.

B. Immunity From Civil Action

The structure of the classic ombudsman is designed to ensure that the ombudsman be provided the freedom to investigate any act or failure to act by an agency, official, or public employee with only specific exceptions. One of the essential provisions which the American Bar Association recommended in its 1969 Resolution promoting the establishment of ombudsmen within state and local governments was to provide immunity for ombudsmen and their staff from civil liability on account of official actions. Apparently the potential was recognized for an ombudsman to hesitate to investigate certain matters, or reserve criticism of agencies and officials, based on a threat or fear of civil action being brought as a result of carrying out their official duties.

The Immunity provision has been previously established at the local level as exemplified in the Charter of the City of Detroit (Sec. 4-315). The majority of classic ombudsman offices at state, provincial and national levels are provided protection from civil suits according to survey results from the International Ombudsman Institute. Many of these offices are protected from criminal suits as well; Hawaii and Puerto Rico among them. The Hawaii State Ombudsman also has jurisdiction over local governmental units.

SUMMARY

The proposed amendments essentially allow duly established municipal ombudsmen the same protection from civil suits, and the privilege not to testify, as afforded our State Ombudsman. The benefits of these provisions within the Alaska State Ombudsman Statute have already reached certain local governments in this State by virtue of their contracting with the State Ombudsman for ombudsman services (i.e. Juneau). It would be consistent to include similar provisions as proposed for municipal ombudsmen.

Passage will ensure that municipal ombudsmen in this State carry out their duties as prescribed by law without reservation; and provide citizens who wish to report matters to an Ombudsman, or witnesses coming before an Ombudsman, the confidentiality to which they are entitled. . . .

The appendices, including model statutes from the American Bar Association and the Harvard Journal on Legislation, provide significant justification for passage of this legislation.

Prepared by:
Michael P. Mills
Municipal Ombudsman, Anchorage
(Past President, U. S. Association of Ombudsmen)

THE HOME RULE CHARTER

For
The Municipality of Anchorage, Alaska

by
Anchorage Area
Charter Commission



September 16, 1975

PREAMBLE

We, the People of Anchorage, in order to eliminate waste and duplication in government, to achieve common goals, to support individual rights, to form a more responsive government, and to secure maximum local control of local affairs, hereby establish this Charter.

ARTICLE I NAME AND BOUNDARIES

Section 1.01 Name

The municipality shall be known as Anchorage.

Section 1.02 Boundaries

The boundaries of Anchorage shall include all areas within the Greater Anchorage Area Borough on the date of ratification of this Charter. The boundaries may be altered in the manner provided by law.

ARTICLE II BILL OF RIGHTS

This Charter guarantees rights to the people of Anchorage that are in addition to rights guaranteed by the Constitution of the United States of America and the Constitution of the State of Alaska. Among rights guaranteed by this Charter are:

- (1) The right of initiative; the right of referendum; and the right to recall public officers, as herein provided.
- (2) The right of immunity from the creation or alteration of a service area, except upon a vote within the area affected.
- (3) The right to establish local community councils to assure maximum community self-determination, exercised in conjunction with others and without infringement upon the rights of other persons.
- (4) The right of immunity from sales taxes, except upon approval by a majority of qualified voters voting on the question.
- (5) The right of immunity from official actions of the Assembly taken after twelve midnight and before seven o'clock a.m., actual time.
- (6) The right to the assistance of a municipal ombudsman in dealing with grievances and abuses.
- (7) The right to opportunities in housing, public accommodations, employment, and education without regard to race, religion, sex, color, national origin, marital status, or physical handicap; and the right to an Equal Rights Commission at the municipal level in aid thereof.
- (8) The right to a locally directed, ongoing planning process that is based upon the community's goals, objectives and policies for the future.
- (9) The right—whether as a taxpayer, as a municipal employee, or both—to a comprehensive personnel classification and procedures system created by ordinance and based upon merit.
- (10) The right to be heard at public hearings prior to adoption of proposed six-year plans of the school system and the municipality, or approval of the annual budget or any ordinance (except an emergency ordinance as defined herein).

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ffective August 1, 1979)

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effective August 1, 1979)

Annotations

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ve damage award. *Shane v. Rhines*, Op.
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vidence Illegally Obtained.

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-ution for perjury if it is relevant
nocence and if the prosecution
-evidence was not obtained in sub-
-rights.

4 effective August 1, 1979)

Annotations

wful, fact that arresting officer uses exces-
- the evidence obtained as a result of the
-ality. *Martin v. State*, Op. No. 2298, 623

ence may be considered in fashioning a
-ally seized evidence is reliable, when the
- in obtaining the evidence does not shock
-art, and when it is clear that the evidence
-poses of influencing the sentencing judge.
-40, 633 P2d 292 (Alaska App. 1982).

The traditional requirement of standing has not been abrogated
in search and seizure cases by adoption of this rule. *G.R. v. State*,
Op. No. 61, 638 P2d 191 (Alaska App. 1982).

Defendant did not have standing to argue that his confession
should be suppressed on the ground that it was the product of an
illegal arrest and detention of his companion. *G.R. v. State*, Op. No.
61, 638 P2d 191 (Alaska App. 1981).

Defendant had no standing to object to police officers' contact
with his building manager and no right to seek suppression of the
evidence derived from her even if the contact was the result of a
trespassory entrance into the apartment building. *Hubert v. State*,
Op. No. 62, 638 P2d 677 (Alaska App. 1981).

Defendant had standing to contest the illegal arrest of codefend-
ant which led to defendant's confession. *Unger v. State*, Op. No. 65,
640 P2d 151 (Alaska App. 1982).

This rule, which permits evidence illegally obtained to be used
under certain circumstances in perjury prosecutions, applies to
such evidence regardless of the basis for determining that it was
illegally obtained. *Wortham v. State*, Op. No. 69, 641 P2d 221
(Alaska Op. No. 1982).

Suppression of illegally obtained evidence in defendant's
cocaine prosecution was not res judicata nor did it collaterally estop
the state from using the evidence in defendant's subsequent perjury
prosecution where there was no suggestion that this rule was consid-
ered at the first suppression hearing. *Wortham v. State*, Op. No. 69,
641 P2d 223 (Alaska App. 1982).

Illegally obtained tape recording of conversation between
defendant and undercover police agent which was properly sup-
pressed at defendant's drug trial was admissible at defendant's
subsequent perjury trial where the recording was made in good faith
and was not an intentional violation of the law. *Wortham v. State*,
Op. No. 214, 657 P2d 856 (Alaska App. 1983).

Although this rule is not necessarily limited to violations of
constitutional rights, it does not automatically apply to violations
of all statutes. *Harker v. State*, Op. No. 2665, 663 P2d 932 (Alaska
1983).

Illegally obtained tape recording of conversation between
defendant and undercover police agent was admissible at defend-
ant's perjury trial. *Wortham v. State*, Op. No. 2697, 666 P2d 1042
(Alaska 1983).

This rule contains a standing requirement for search and sei-
-zure violations, but under the Alaska Constitution there are excep-
-tions to the requirement. *Waring v. State*, Op. No. 2719, 670 P2d
357 (Alaska 1982).

A defendant has standing to assert the violation of a co-defend-
ant's fourth amendment rights if he or she can show (1) that a police
officer obtained the evidence as a result of gross or shocking mis-
conduct, or (2) that the officer deliberately violated the co-defend-
ant's rights. *Waring v. State*, Op. No. 2719, 670 P2d 357 (Alaska
1983).

Assuming, without deciding, that the warnings received by
defendant regarding his testimony at a coroner's inquest were less
than adequate to safeguard his right to remain silent, his testimony
was nevertheless not involuntary or the product of coercion; there-
fore, his testimony at the coroner's inquest could be used against
him in subsequent trial for perjury. *Esmailka v. State*, Op. No. 721,
740 P2d 466 (Alaska App. 1987).

ARTICLE V. PRIVILEGES

Rule 501. Privileges Recognized Only as Provided.

Except as otherwise provided by the Constitution
of the United States or of this state, by enactments of

the Alaska Legislature, or by these or other rules
promulgated by the Alaska Supreme Court, no per-
son, organization, or entity has a privilege to:

- (1) refuse to be a witness; or
- (2) refuse to disclose any matter; or
- (3) refuse to produce any object or writing; or
- (4) prevent another from being a witness or dis-
-closing any matter or producing any object or writ-
-ing.

(Added by SCO 364 effective August 1, 1979)

Rule 502. Required Reports Privileged by Statute.

A person, corporation, association, or other orga-
-nization or entity, either public or private, making a
return or report required by law to be made has a
privilege to refuse to disclose and to prevent any
other person from disclosing the return or report, if
the law requiring it to be made so provides. A public
officer of an agency to whom a return or report is
required by law to be made has a privilege to refuse
to disclose the return or report if the law requiring it
to be made so provides. No privilege exists under
this rule in actions involving perjury, false state-
-ments, fraud in the return or report, or other failure
to comply with the law in question.

(Added by SCO 364 effective August 1, 1979)

Rule 503. Lawyer-Client Privilege.

(a) Definitions. As used in this rule:

(1) A client is a person, public officer, or corpora-
-tion, association, or other organization or entity,
either public or private, who is rendered profes-
-sional legal services by a lawyer, or who consults a
lawyer with a view to obtaining professional legal
services.

(2) A representative of the client is one having
authority to obtain professional legal services and to
act on advice rendered pursuant thereto, on behalf of
the client.

(3) A lawyer is a person authorized, or reason-
-ably believed by the client to be authorized, to prac-
-tice law in any state or nation.

(4) A representative of the lawyer is one
employed to assist the lawyer in the rendition of
professional legal services.

(5) A communication is confidential if not
intended to be disclosed to third persons other than
those to whom disclosure is in furtherance of the
rendition of professional legal services to the client
or those reasonably necessary for the transmission of
the communication.

most privileges are such that they can be equally well served by the creation of substantive rights by the legislature or procedural rights by the courts. There may be cases in which a determination of their character—*i.e.*, procedural or substantive—will have to be made in order to decide whether article IV, section 15 of the Alaska Constitution has been satisfied (requiring a two-thirds vote of the legislature to supersede rules of practice and procedure promulgated by the Supreme Court). But such cases may never arise and it would be premature to comment upon them in advance.

Rule 501. Privileges Recognized Only As Provided.

This rule codifies the existing law that privileges are not recognized in the absence of statutes or rules specifically providing for them. No attempt is made in these rules to incorporate the constitutional provisions which relate to the admission and exclusion of evidence, whether denominated as privileges or not. Similarly, privileges created by specific statutes generally are not within the scope of these rules. *E.g.*, AS 09.25.150-220 (public officials, reporters); AS 24.55.260 (ombudsman).

Although Federal Rule 501 adopts state created privileges whenever state law governs with respect to any element of a claim of defense, this Rule does not adopt the converse; *i.e.*, except in unusual cases, federal privileges will not govern in Alaska courts even though federal law provides the rule of decision with respect to any element of a claim or defense. Some commentators have suggested that the approach taken by this rule is so plainly correct that explanation is unnecessary. *See, e.g., Hart, The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 508 (1954) ("The general rule . . . is that federal law takes the state courts as it finds them . . . [S]tate rules . . . may ordinarily be applied also to federal claims and defense . . ."); Ladd, *Privileges*, 1969 *Law & Social Order* 555, 560 ("If the action arose in a state court upon a matter involving a federal question, it would appear impossible to prevent the state court from using state privileges . . ."). But, in view of *Dice v. Akron, Canton & Youngstown R.R.*, 342 U.S. 359, 96 L. Ed. 398 (1952), and *Brown v. Western Ry.*, 338 U.S. 294, 94 L. Ed. 100 (1949), a few words are in order.

In the vast majority of federal cases, state law issues are not so intertwined with federal questions that deference to state policies that both govern primary human conduct and possibly affect the outcome of litigation in important ways imposes much of an incremental burden on the judges who must determine state substantive law. Indeed, Congress has not only restricted the power of the Supreme Court to modify state created substantive rights, 28 U.S.C.A. § 2072 (West Cum. Supp. 1978), but has itself demonstrated respect for state law in Rule 501.

On the other hand, federal law, especially federal constitutional questions, may arise throughout state litigation. To separate federal and state issues could be an enormous burden on state judges. Federal issues have been decided by state courts from the nation's beginning. There is no indication that the Congress is unhappy with the results. Since state law governs most conduct of most citizens, its rules of privilege are especially important to citizens seeking guidance as to what is and is not privileged. Hence, state privilege law will govern in all litigation in Alaska state courts, unless the supremacy clause of the United States Constitution requires otherwise.

This rule is drawn from proposed federal rule 501. However, it adds language to make clear that *persons* protected by privileges can include organization and government entities.

Despite these rules, claims of privilege at times may have to give way to constitutionally protected rights, especially in criminal cases. *See, e.g., Salazar v. State*, 559 P.2d 66 (Alaska 1976).

On the other hand, claims of privilege themselves may have roots in the Constitution. The attorney-client privilege is not unrelated to the right to counsel guaranteed all citizens in all but the most petty criminal cases. And the marital communications privilege reflects an ideal of privacy and special relationship that has received constitutional protection in other contexts. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479, 14 L.Ed.2d 510 (1965). The communications to clergymen privilege and the political vote privilege are related to first amendment concepts. Recently, the Alaska Supreme Court has suggested that the doctor-patient privilege has constitutional overtones. *See, e.g., Falcon v. Alaska Public Offices Commission*, 570 P.2d 469 (Alaska 1977).

Rule 502. Required Reports Privileged by Statute.

This rule provides that any person, organization, or entity required by law to furnish certain information to the government has a privilege to refuse to disclose the information provided, if such a privilege is provided for by the governing statute. A claim of privilege can be invoked to prevent any person from disclosing the information, and a public officer or agency that receives information may refuse to disclose it if the governing legislation so provides. The rule extends to reports required by the federal government, the State of Alaska, and other states.

In light of Rule 501, Rule 502 is redundant in its reference to the State of Alaska. Rule 501 establishes that privileges can be created by these rules or by enactments of the Alaska legislature. It is therefore clear that even without Rule 502 any privilege provided for by statute would be recognized. *See, e.g., AS 28.35.120*. Despite the redundancy, Rule 502

Article 6. Abuse of Public Office.

Section

850. Official misconduct

860. Misuse of confidential information

Collateral references. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 346-359.

67 C.J.S., Officers, §§ 120-126, 255-263.

Infamous crime or one involving moral turpitude constituting disqualification to hold public office, 52 ALR2d 1314.

Official oppression, what constitutes offense of, 83 ALR2d 1007.

Personal liability of policeman, sheriff, or similar peace officer or his bond, for injury suffered as a result of failure to enforce law or arrest law breaker, 41 ALR3d 700.

Removal of public officer for misconduct during previous term, 42 ALR3d 691.

Validity and construction of statute authorizing grand jury to submit report concerning public servant's noncriminal misconduct, 63 ALR3d 586.

Sexual misconduct or irregularity amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 ALR4th 614.

Sec. 11.56.850. Official misconduct. (a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant

(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or

(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

(b) Official misconduct is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Sec. 11.56.860. Misuse of confidential information. (a) A person who is or has been a public servant commits the crime of misuse of confidential information if the person

(1) learns confidential information through employment as a public servant; and

(2) while in office or after leaving office, uses the confidential information for personal gain or in a manner not connected with the performance of official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, "confidential information" means information which has been classified confidential by law.

(c) Misuse of confidential information is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Section

900. Definitions

Sec. 11.56.900 requires otherwise.

(1) "improperly witness to

(A) testify false hold testimony in

(B) avoid or attempt to testify in an official proceeding has issued;

(C) be absent from a proceeding after having been summoned;

(D) engage in conduct which is

(2) "judicial officer" means a justice of the supreme court, a district court judge, a

(3) "juror" means a person who is sworn to try a case or a person who has been sworn to try a case

(4) "physical evidence" means any object, document, or other thing of value in a case

(5) "testimony" means any oral or written statement made by a witness in a proceeding

(6) "witness" means a person who is sworn to testify in a proceeding

(A) a witness summoned to a proceeding

(B) a person who is sworn to testify in an official proceeding

§ 20 ch 12 SLA 1978

Cross references. — terms used in this title,

Applied in State v. F 613 (Alaska Ct. App. 1988)

Quoted in State v. Jo (Alaska Ct. App. 1988)

Sec. 24.55.200. Publication of recommendations. Within a reasonable amount of time after the ombudsman reports the opinion and recommendations to an agency the ombudsman may present the opinion and recommendations to the governor, the legislature, a grand jury, the public or any of these. The ombudsman shall include with the opinion any reply made by the agency. (§ 1 ch 32 SLA 1975)

Sec. 24.55.210. Notice to the complainant. After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by the ombudsman and by the agency. (§ 1 ch 32 SLA 1975)

Article 5. Miscellaneous.

Section	Section
220. Misconduct by agency personnel	270. Letters to or from ombudsman
230. Annual report	275. Contract procedures
240. Judicial review	280. Time for judicial review of agency action
250. Immunity of the ombudsman	290. Penalty
260. Ombudsman's privilege not to testify	

Sec. 24.55.220. Misconduct by agency personnel. If the ombudsman believes there is a breach of duty or misconduct by an officer or employee of an agency in the conduct of the officer's or employee's official duties, the ombudsman shall refer the matter to the chief executive officer of the agency or, when appropriate, to a grand jury or to another appropriate official or agency. (§ 1 ch 32 SLA 1975)

Sec. 24.55.230. Annual report. The ombudsman shall submit to the legislature and the public an annual report of the ombudsman's activities under this chapter. (§ 1 ch 32 SLA 1975)

Sec. 24.55.240. Judicial review. A proceeding or decision of the ombudsman may be reviewed in superior court only to determine if it is contrary to the provisions of this chapter. (§ 1 ch 32 SLA 1975)

Sec. 24.55.250. Immunity of the ombudsman. A civil action may not be brought against the ombudsman or a member of the ombudsman's staff for anything done, said or omitted in performing the ombudsman's duties or responsibilities under this chapter. (§ 1 ch 32 SLA 1975)

Sec. 24.55.200. Ombudsman's privilege not to testify. The ombudsman and the staff of the ombudsman may not testify in a court regarding matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter. (§ 1 ch 32 SLA 1975)

Sec. 24.55.270. Letters to or from ombudsman. A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman. A letter from the ombudsman to a person held in custody by an agency shall be delivered immediately, unopened, to the person. (§ 1 ch 32 SLA 1975)

Sec. 24.55.275. Contract procedures. The ombudsman shall adopt by regulation procedures consistent with AS 24.23 to be followed by the office of the ombudsman in contracting for services. However, the procedure for requests for proposals does not apply to contracts for investigations under AS 24.55.100. (§ 4 ch 144 SLA 1982)

Sec. 24.55.280. Time for judicial review of agency action. This chapter in no way extends the time limit in which judicial review of agency action must be sought. (§ 1 ch 32 SLA 1975)

Sec. 24.55.290. Penalty. A person who wilfully hinders the lawful actions of the ombudsman or the staff of the ombudsman, or who wilfully refuses to comply with their lawful demands, or who wilfully violates AS 24.55.270, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000. (§ 1 ch 32 SLA 1975)

Article 6. General Provisions.

Section	Section
300. Administrative Procedure Act	330. Definitions
310. Conflict of interest	340. Short title
320. Municipalities	

Sec. 24.55.300. Administrative Procedure Act. The administrative acts of the ombudsman are not subject to the provisions of the Administrative Procedure Act (AS 44.62), except as provided in AS 24.55.090. (§ 1 ch 32 SLA 1975)

Sec. 24.55.200. Publication of recommendations. Within a reasonable amount of time after the ombudsman reports the opinion and recommendations to an agency the ombudsman may present the opinion and recommendations to the governor, the legislature, a grand jury, the public or any of these. The ombudsman shall include with the opinion any reply made by the agency. (§ 1 ch 32 SLA 1975)

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Sec. 24.55.250. Immunity of the ombudsman. A civil action may not be brought against the ombudsman or a member of the ombudsman's staff for anything done, said or omitted in performing the ombudsman's duties or responsibilities under this chapter. (§ 1 ch 32 SLA 1975)

Sec. 24.55.260. Ombudsman's privilege not to testify. The ombudsman and the staff of the ombudsman may not testify in a court regarding matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter. (§ 1 ch 32 SLA 1975)

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Appendix

- A. University of Miami Law Review (Spring 1975)
American Bar Association Model Ombudsman Statute for State Governments
Q. Section 17. Ombudsman's Immunities and C. Section 3. Definitions
Comment by Bernard Frank, Chairman, Ombudsman Committee, ABA.

- B. American Bar Association Model Ombudsman Statute *Background Summary*
Ombudsman Committee Chairman Bernard Frank.

- C. American Bar Association Resolution (1969).
Dealing with Establishment of an Ombudsman

- D. Harvard Journal on Legislation (June 1965)
A State Statute to Create the Office of Ombudsman
Sections 603, 604 & 605, and Comment.

- E. International Bar Association, Ombudsman Committee Letter (November 1978)
Chairman Bernard Frank to MOA Ombudsman, Karla L. Forsythe
Necessity of State Statute for Municipal Ombudsman Protection.

- F. Anchorage Municipal Attorney Memorandum (July 1990)
Lack of Privilege Not to Testify.

- G. Alaska Statute: *Sec. 24.55.240-260, Office of The Ombudsman*

- H. Alaska Statute: *Sec. 44.21.231, 235 & 236, Long Term Care Ombudsman*

- I. International Ombudsman Institute Report (July 1986)
Court Cases of Special Interest to the Ombudsman Institution
(Excerpts from United States court cases)

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BERNARD FRANK*

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I. INTRODUCTION

Year after year, Ombudsman proposals have been introduced in a majority of the state legislatures in the United States.¹ Legislation has been passed for state-wide Ombudsmen in Hawaii, Nebraska, Iowa, and Alaska.² The word "Ombudsman," Swedish in origin, means...

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STATE OMBUDSMAN LEGISLATION

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Q. Section 17. Ombudsman's Immunities

(a) NO PROCEEDING, CONCLUSION, RECOMMENDATION, OR REPORT OF THE OMBUDSMAN OR MEMBER OF HIS STAFF SHALL BE REVIEWABLE IN ANY COURT;

(b) THE OMBUDSMAN AND HIS STAFF SHALL HAVE THE SAME IMMUNITIES FROM CIVIL AND CRIMINAL LIABILITIES AS A JUDGE OF THIS STATE.

(c) THE OMBUDSMAN AND HIS STAFF SHALL NOT BE COMPELLED TO TESTIFY OR PRODUCE EVIDENCE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING WITH RESPECT TO ANY MATTER INVOLVING THE EXERCISE OF THEIR OFFICIAL DUTIES EXCEPT AS MAY BE NECESSARY TO ENFORCE THIS ACT.

ABA
MODEL
STATUTE

COMMENT. (a) Sub-section (a) precludes judicial review of the Ombudsman's work, unless, of course, he has violated the Act.

(b) This sub-section avoids litigation and harassment by an uncooperative agency, but does not preclude

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prosecution for serious misconduct, or removal from office (§ 8(a)).

(c) This sub-section acts with § 11(h) to protect the secrecy and confidentiality of information obtained—in order to instill public confidence in his work; it also prevents unnecessary interruptions of his work to testify, while allowing him to proceed in court whenever necessary (§ 11(i)).

Section 17(a) precludes judicial review of the proceedings, conclusions, recommendations, or reports of the Ombudsman or members of his staff. Judicial review is likewise forbidden in the Nebraska statute and the Hawaii statute except if in Hawaii the Ombudsman contravenes the provisions of the statute.⁷⁹ The Iowa law is silent on the subject. It would seem to be implicit in the ABA Model Statute and the Nebraska statute that if the Ombudsman violates the Ombudsman statute his actions are subject to court review.

Section 17(b) further provides that the Ombudsman and staff shall have the same immunities from civil and criminal liabilities as a judge of the state. Somewhat similar language is used in the Hawaii statute except staff are omitted.⁸⁰ Iowa provides for no civil action except removal from office under Iowa law against the Citizens' Aide or his staff unless an act or omission is actuated by malice or is grossly negligent.⁸¹ There is no provision in the Nebraska statute with respect to immunity from civil and criminal liabilities.

Section 17(c) specifically gives the Ombudsman and his staff immunity from being compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except such testimony or evidence that might be necessary to enforce the Act. Somewhat similar language is used in the Nebraska statute as to both judicial or administrative proceedings and in the Hawaii and Iowa statutes as to court proceedings.⁸² As written, the Ombudsman and his staff may voluntarily testify, but cannot be compelled to do so at least in the state courts. It is the inability to compel the Ombudsman and his staff to testify in the state courts which protects the confidentiality of the information obtained by the Ombudsman. Application of the privileged communication immunity by statute to the activities of the Ombudsman is important to the Ombudsman office. However, it is submitted that the state Ombudsman and his staff can be compelled to testify in the federal courts^{82a}—a problem which would have to be

79. NEB. REV. STAT. § 81-8,253 (Supp. 1969); HAWAII REV. STAT. § 96-17 (1968).

80. HAWAII REV. STAT. § 96-17 (1968).

81. IOWA CODE ANN. § 601G.20 (Supp. 1974).

82. NEB. REV. STAT. § 81-8,253 (Supp. 1969); HAWAII REV. STAT. § 96-17 (1968); IOWA CODE ANN. § 601G.20 (Supp. 1974).

82a. Raymond A. Cornell, Deputy Citizen's Aide for Corrections, Iowa, was subpoenaed to

resolved by appropriate federal legislation.⁸³ That a complaint-handling official appointed by, responsible to, and serving at the pleasure of the executive has no immunity at all, is one of the reasons the use of the term "Ombudsman" should be confined to those coming within the definition given at the outset of this article.

C. Section 3. Definitions

AS USED IN THIS ACT,

(a) "AGENCY" MEANS ANY DEPARTMENT, ORGANIZATION, BOARD, COMMISSION, COUNCIL, INSTITUTION OR OTHER GOVERNMENTAL ENTITY OF _____ [NAME OF STATE], AND ANY OFFICIAL, OFFICER, EMPLOYEE, OR MEMBER THEREOF ACTING OR PURPORTING TO ACT BY REASON OF HIS CONNECTION WITH _____

[NAME OF STATE], EXCEPT:

(1) ANY COURT, OR JUDGE AND APPURTENANT JUDICIAL STAFF;

(2) THE LEGISLATURE, ITS MEMBERS, ITS COMMITTEES, ITS STAFF AND ITS EMPLOYEES;

(3) THE GOVERNOR AND HIS PERSONAL STAFF;

[(4) (ALTERNATE A) ANY POLITICAL SUBDIVISION OF THE STATE;]

[(4) (ALTERNATE B) MAYORS, COUNCIL MEMBERS, AND JUDGES OF ANY POLITICAL SUBDIVISION AND THEIR PERSONAL STAFFS;]

(5) ANY MULTI-STATE GOVERNMENTAL ENTITY.

(b) AN "ACT OF AN AGENCY" MEANS ANY ACTION, DECISION, FAILURE TO ACT, OMISSION, RULE OR REGULATION, INTERPRETATION, RECOMMENDATION, POLICY, PRACTICE OR PROCEDURE OF ANY AGENCY.

(c) "PERSON" MEANS ANY INDIVIDUAL, AGGREGATE OF INDIVIDUALS, CORPORATION, PARTNERSHIP, OR UNINCORPORATED ASSOCIATION.

COMMENT.

1. ...

4. Local government exclusion from or inclusion in the Ombudsman's jurisdiction is left to the decision of the legislature. If political subdivisions are to be excluded (as in Nebraska), appropriate language is recommended in the ABA Model Statute. If local government is to come within the jurisdiction of the Ombudsman, then the ABA Model Statute recommends that the phrase "and local" be included in the legislative purpose (section one) and further that consideration be given to exclude in the section three definition of "agency" certain local officials. Both Iowa and Hawaii have jurisdiction over

19. IOWA CODE ANN. § 601G.1-2(a) (Supp. 1974); NEB. REV. STAT. § 81-3,240(1) (Supp. 1969).

20. HAWAII REV. STAT. § 96-1(a)(1) (Supp. 1974).

21. HAWAII REV. STAT. § 96-1(a)(2) (1968); IOWA CODE ANN. § 601G.1-2(b) (Supp. 1974).

22. NEB. REV. STAT. § 81-3,240(1)(b) (Supp. 1969).

23. HAWAII REV. STAT. § 96-1(a)(1) (Supp. 1974).

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local government, but only the Hawaii law makes provision (by a 1974 amendment) for an exclusion for mayors and councils of the various counties.²⁴

It is appropriate to discuss at this point several problems in connection with local government. It is obvious that omitting local government from the jurisdiction of the state Ombudsman does not prevent the creation of the office by a political subdivision of the state. On the other hand, the comment to section one does raise the question (originally posed by Professor L. Harold Levinson, a member of the Ombudsman Committee) whether inclusion of local government will be interpreted as preempting to the state jurisdiction over both state and local agencies to prevent a local government from establishing its own local Ombudsman. The ABA Model Statute does not address this point, but this writer believes that the question must be answered in the affirmative. The problem of immunities of the local Ombudsman discussed hereafter under section 17 points to the desirability of state legislation covering the subject of local government. Either a state should give its Ombudsman jurisdiction over both local and state agencies or a state should have several statutes, one permitting local government to establish a local Ombudsman under the detailed provisions of a state statute and the other establishing a state Ombudsman without local jurisdiction.²⁵

Another possible alternative suggested by Professor Levinson is to have a statute provide for a state-wide Ombudsman without local jurisdiction but to give enabling authority for any local government to establish a local Ombudsman with essentially the same attributes and powers, subject to some variations.²⁶

5. It is made clear in the ABA Model Statute and the three state statutes that multi-state government entities are exempt from the jurisdiction of the Ombudsman.²⁷ However, the language of the ABA Model Statute and the Hawaii statute is preferable, because of its simplicity, to the language of the Nebraska and Iowa statutes, the latter stating, "any instrumentality formed pursuant to an interstate compact and answerable to more than one state."

6. The ABA Model Statute like Iowa does not specify an exclusion for federal agencies because it was deemed superfluous in view of constitutional limitations. However, the Hawaii and Nebraska statutes do contain such an explicit exclusion.²⁸

24. HAWAII REV. STAT. § 96-11(a)(7)(8) (Supp. 1974).

25. For example, the Georgia legislature passed in 1974, H.B. 85 amending the Atlanta City Charter providing for an Ombudsman. On opinion of the City Attorney to the effect that the state law was improper, the City Council passed its own Ombudsman ordinance.

26. Letters from Professor L. Harold Levinson to Bernard Frank, Oct. 30, 1973, and Jan. 11, 1974.



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You will find attached a Model Ombudsman Statute for State Governments (pages 1-15), the American Bar Association resolution on the Ombudsman (page 16), and a recommended bibliography on the Ombudsman (pages 17-19).

The Ombudsman Committee, Section of Administrative Law, American Bar Association, concluded several years ago that a uniform State Ombudsman Act was not needed in this country but that a Model Ombudsman Statute would serve a very useful purpose.

At the request of the Ombudsman Committee, Yale Legislative Services undertook to prepare a Model Ombudsman Statute for State Governments. Edward G. Grossman, a student at Yale University Law School, acted as project co-ordinator and prepared a first draft of a Model Ombudsman Statute for State Governments. The Model Statute as prepared by Yale Legislative Services was reviewed by a special committee of the Ombudsman Committee and the comments of the committee members are reflected in the final draft of the Model Statute attached hereto. The Model Statute draws heavily on Professor Walter Gellhorn's Unofficial Model Ombudsman Statute. Professor Gellhorn, who is a member of the special committee, gave his consent to the use of his Unofficial Model Ombudsman Statute as a base to prepare the Model Ombudsman Statute for State Governments.

The Model Ombudsman Statute for State Governments meets the twelve (12) essentials of an Ombudsman Statute set forth in the resolution adopted by the House of Delegates of the American Bar Association in 1969 as recommended by the Ombudsman Committee then headed by Professor Kenneth Culp Davis and amended in 1971.

This Model Ombudsman Statute for State Governments is issued by the Ombudsman Committee, Section of Administrative Law, American Bar Association, but represents a joint work product of the Yale Legislative Services and the Ombudsman Committee, Section of Administrative Law, American Bar Association. The bibliography was prepared by Mr. Grossman.

The Ombudsman Committee extends its appreciation to Yale Legislative Services and to Edward G. Grossman.

Bernard Frank, Chairman
Ombudsman Committee
Section of Administrative Law
American Bar Association
931 Hamilton Mall

American Bar Association Resolution

The following Resolution dealing with the establishment of an Ombudsman was adopted by the American Bar Association at the Midyear Meeting of the House of Delegates in 1969:

Be it Resolved, That the American Bar Association recommends:

1. That state and local governments of the United States should give consideration to the establishment of an ombudsman authorized to inquire into administrative action and to make public criticism.

2. That each statute or ordinance establishing an ombudsman should contain the following twelve essentials: (1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff; (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body; (3) appointment by the legislative body or appointment by the executive with confirmation by a designated proportion of the legislative body, preferably more than a majority, such as two-thirds; (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body, such as two-thirds; (5) a high salary equivalent to that of a designated top officer; (6) freedom of the ombudsman to employ his own assistants and to delegate to them, without restraints of civil service and classification acts; (7) freedom of the ombudsman to investigate any act or failure to act by any agency, official, or public employee; (8) access of the ombudsman to all public records he finds relevant to an investigation; (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee; (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize; (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement; (12) immunity of the ombudsman and his staff from civil liability on account of official action.

3. That for the purpose of determining the workability of the ombudsman idea within the Federal government, the Federal government should experiment with the establishment of an ombudsman or ombudsmen for limited geographical area or areas, for a specific agency or agencies or for a limited phase or limited phases of Federal activity.

4. That establishment of a Federal government-wide ombudsman program should await findings based upon the experimentation recommended.

Be it Further Resolved, That the Section of Administrative Law is authorized to present the views of the Association and to encourage the establishment of ombudsmen in accordance with the provisions of this Resolution, by all necessary and appropriate means.

A State Statute to Create The Office of Ombudsman

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*Harvard Journal on Legislation**SECTION 603. Judicial review.*

No proceeding or decision of the Ombudsman may be reviewed in any court, unless it contravenes the provisions of this Act.

SECTION 604. Immunity of the Ombudsman.

The Ombudsman has the same immunities from civil and criminal liability as a judge of this state.

SECTION 605. Ombudsman's privilege not to testify.

The Ombudsman and his staff shall not testify in any court with respect to matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this Act.

COMMENT

SECTION 603. Judicial Review.

This section prevents an agency or official from securing judicial review of the Ombudsman's recommendations. Since the Ombudsman has no power to revise agency actions, it is unlikely that anyone would be held to have standing to object to his recommendations. However, since the institution is new in this country, one cannot be certain how the law will develop. This provision is included to guarantee that the Ombudsman will not be frequently involved in litigation when an agency disagrees with his appraisal of its actions.

SECTION 604. Immunity of the Ombudsman.

The Ombudsman is given the immunities from civil and criminal prosecution that are enjoyed by a state judge. The most significant of these is immunity from liability for defamation arising out of statements made in the exercise of his duties.

SECTION 605. Ombudsman's privilege not to testify.

The purpose of this section is to encourage people to cooperate with the Ombudsman, without fear that he will divulge information disclosed to him in confidence. This section also protects the Ombudsman and his staff from the embarrassment and interruption of having to testify in regard to cases they have investigated. However, since the Ombudsman may need recourse to the courts to perform his duties under this act, this privilege is not withheld from him. Its most likely use is to enforce his subpoena power under section 403. He may also testify in regard to the penalty for

International Bar Association

Ombudsman Committee

Chairman
Bernard Frank (USA)

Vice Chairman
Alex B. Weir (Canada)

November 17, 1978

Ms. Karla L. Forsythe
Ombudsperson
Municipality of Anchorage
Office of the Ombudsman
Pouch 6-650
Anchorage, Alaska 99502

Dear Ms. Forsythe:

Thank you for the copy of the letter to Peter Freeman. You raised two points:

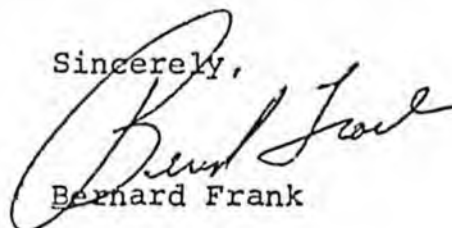
1. Confidentiality of communications between complainants and your office. This problem, please note pages 439 to 441 inclusive from my article on "State Ombudsman Legislation in the United States", Section 17, pages 13-14, of the Model Ombudsman Statute, and pages 47-48 of my article on the Nebraska Public Counsel. This problem was discussed at one of the workshops at the Dayton conference. The problem with local government is that the only item on the subject is a local ordinance and then the immunity extends only in those courts which are subject to the jurisdiction of the local governments. You will not have immunity in the state courts and certainly not in the federal courts. However, if I were you I would do what I could on the local level and you will note there are sections on immunity in the Flint Charter, page 20, and the Detroit Charter, Section 4-315. The state statute might be necessary to protect you in the state courts but this would, of course, not preclude being subpoenaed for a federal court. Your only hope there would be to have a federal statute to cover this subject. There remains a great deal of work in this particular area. I would suggest that you write to William P. Angrick, II, Office of the Citizens' Aide, 515 East Twelfth Street, Des Moines, Iowa, 50319, because his office has been involved in several cases involving freedom from subpoena in a federal court. The early part of this year, a Federal Judge upheld the confidentiality of the Iowa Ombudsman records on the basis that there was no federal interest involved and the state policy should prevail as reflected in the Statute granting immunity.

Ms. Karla L. Forsythe
Page 2
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2. With respect to provisions containing non-retaliation sections, I would refer you to page 44 of the Nebraska article, Section 13(e) of the Model Statute, and page 432 of the University of Miami article. Offhand, I found only a section on this in the Nebraska statute.

If you wish to discuss this further, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bernard Frank", is written over the typed name.

Bernard Frank

BF:dc

Enclosures

~~CONFIDENTIAL~~
Communication
Attorney/Clerk

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

RECEIVED

JUL 12 1990

DATE: July 6, 1990

TO: Michael Mills, Ombudsman

FROM: Kevin Finnigan, Assistant Municipal Attorney *KF*

THRU: James E. Ramsey, Deputy Municipal Attorney *JR*

THRU: Richard D. Kibby, Municipal Attorney *RDK*

SUBJECT: MOA v. Robert H. Stafford
Superior Court Case No. 3AN-89-7397 Civil

Office of the Ombudsman *W*

You have asked whether AMC 2.60.120(C) provides authority to exempt the Ombudsman from honoring a subpoena to testify at a trial.

SHORT ANSWER

AMC 2.60.120(C) does not provide a recognizable privilege exempting the Ombudsman from honoring a subpoena and testifying at trial. ||

FACTS

Mr. Stafford has advised the Ombudsman and his assistant that he would be issuing them a subpoena to appear and testify at his upcoming trial. Mr. Stafford had previously filed a complaint with the Ombudsman's office concerning alleged improprieties by an employee at the Parks and Recreation Department. The Ombudsman's office made an initial inquiry into the matter but did not investigate the matter because of pending litigation.

DISCUSSION

AMC 2.60.070(C) states:

The Ombudsman shall protect the confidentiality of complainants or witnesses coming before them except insofar as disclosure may be necessary to enable the Ombudsman to carry out his duties.

The above provision does not provide a privilege from honoring a subpoena or testifying in court. Instead, AMC 2.60.070(C) prohibits the Ombudsman from voluntarily disclosing information ||

Michael Mills, Ombudsman
July 6, 1990
Page 2

obtained from complainants and witnesses except insofar as disclosure may be necessary to enable the Ombudsman to carry out his duties. The State Ombudsman is afforded protections not given to the Municipal Ombudsman. AS 24.55.260 states that "the ombudsman and the staff of the ombudsman's office may not testify in a court regarding matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter." Based on AS 24.55.260, the State Ombudsman may refuse to testify as a witness. Alaska Rule of Court 501 recognizes certain privileges from testifying in court. Among those recognized are privileges provided in enactments of the Alaska Legislature. Alaska Rule of Court 501 thus would recognize the privilege of the State Ombudsman pursuant AS 24.55.260 from testifying as provided by state law. No such protection is recognized for the Municipal Ombudsman.

Please contact this office if we may be of further assistance.

KF:ld
M/MILLS1

ALASKA STATUTES

LEGISLATURE

Chapter 55. Office of the Ombudsman.

Sec. 24.55.240. Judicial review. A proceeding or decision of the ombudsman may be reviewed in superior court only to determine if it is contrary to the provisions of this chapter. (§ 1 ch 32 SLA 1975)

Sec. 24.55.250. Immunity of the ombudsman. A civil action may not be brought against the ombudsman or a member of the ombudsman's staff for anything done, said or omitted in performing the ombudsman's duties or responsibilities under this chapter. (§ 1 ch 32 SLA 1975)

Sec. 24.55.260. Ombudsman's privilege not to testify. The ombudsman and the staff of the ombudsman may not testify in a court regarding matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter. (§ 1 ch 32 SLA 1975)

ALASKA STATUTES

Article 4. Older Alaskans Commission.Sec. 44.21.231. Office of the long term care ombudsman.

(a) The office of the long term care ombudsman is established in the commission.

(b) The ombudsman shall be hired by the commission. A member of the commission who has a financial interest in a long term care facility in the state, or who has any other conflict of interest, may not participate in the hiring of the ombudsman. The ombudsman is a full-time position in the classified service.

(c) The ombudsman may not have a financial interest in a long term care facility in the state. The commission shall adopt regulations to ensure that the ombudsman, and employees and volunteers of the office, do not have a conflict of interest or an appearance of a conflict of interest. (§ 2 ch 108 SLA 1988)

Sec. 44.21.235. Confidentiality. (a) Records obtained or maintained by the ombudsman are confidential, are not subject to inspection or copying under AS 09.25.110 — 09.25.120 and, except as provided in (b) of this section, may be disclosed only at the discretion of the ombudsman.

(b) The identity of a complainant or an older Alaskan on whose behalf a complaint is made may not be disclosed without the consent of the identified person or the person's legal guardian, unless required by court order. (§ 2 ch 108 SLA 1988)

Sec. 44.21.236. Immunity from liability. (a) A person who, in good faith, makes a complaint described in AS 44.21.232 is immune from civil or criminal liability that might otherwise exist for making the complaint.

(b) The ombudsman, or an employee, volunteer, or other representative of the office, is immune from civil or criminal liability for the good faith performance of official duties. (§ 2 ch 108 SLA 1988)

INTERNATIONAL OMBUDSMAN INSTITUTE: CASES
July 24, 1986

UNITED STATES - ALASKA

"Kimberly Shinn v. Charles Dexter, et al."
4FA -81-1736-Civ. (Alaska S.C.) Order June 8, 1982

OMBUDSMAN OFFICES - CONFIDENTIALITY*

The plaintiff sought to compel the testimony of a staff member of the Office of Ombudsman for Alaska at trial. The Office of Ombudsman had investigated a complaint which related to the plaintiff's present legal action. The Office of Ombudsman brought a Motion to Strike the staff member's name from the Witness List and a Protective Order barring the production of witnesses on documents from the office of Ombudsman. The Ombudsman's motion was based primarily on the confidentiality provisions of the statute: AS 24.55.160(b) "The Ombudsman shall maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before him except insofar as disclosures may be necessary to enable him to carry out his duties and to support his recommendations."; and on AS 24.55.260 "The Ombudsman and his staff may not testify in a court regarding matters coming to their attention in the exercise or purported exercise of their official duties except as may be

necessary to enforce the provisions of this chapter." The Superior Court granted the Order striking the staff members name from the Witness List and a Protective Order barring the production of witnesses and/or documents from the Ombudsman Office was entered

INTERNATIONAL OMBUDSMAN INSTITUTE: CASES
July 24, 1986

UNITED STATES - IOWA

"Kelly v. Brewer"

RC Civil No. 73-177-2, order filed April 28, 1975

IOWA CITIZENS' AIDE* U.S. FEDERAL COURT SUBPOENA* OMBUDSMAN -
CONFIDENTIALITY*

The Iowa Citizens' Aide (Ombudsman) Mr. Thomas R. Mayer was served with a Federal Court subpoena. Mr. Mayer has tried to resist attempts to have his Ombudsman office used as a means of discovery for litigation. The only possible solution to the present dilemma facing State Ombudsmen in the United States would be Federal legislation granting immunity from Federal subpoena. The court ruling requiring a member of the Ombudsman's staff to testify in court was not appealed since an accord was worked out between the plaintiff's counsel and the Ombudsman's counsel enabling the testimony to be given "in camera" if the subpoena was withdrawn.

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UNITED STATES - IOWA

"Remmers et al. v. Brewer"

U.S. District Court, Southern District of Iowa, Judgment delivered
January 4, 1978 36 pagesCITIZEN'S AIDE FOR CORRECTION* U.S. FEDERAL COURT SUBPOENA* OMBUDSMAN -
CONFIDENTIALITY*

A prison ombudsman was subpoenaed to testify in United States District Court regarding Remmers v. Brewer. Litigation was to determine the status of a prison religion. The state was trying to prove no such religion existed, and the prison ombudsman's testimony was to provide proof through information gathered in the course of his duties. The Citizen's Aide objected, based on Iowa Code which stated that information gathered by the prison ombudsman was confidential. He wished to protect the confidentiality, credibility, and physical safety of the prison ombudsman and other staff while in the prisons. On November 29, 1977 a magistrate granted the motion to quash, because no serious federal interest overrode his statutory immunity from subpoena. The state's interest in protecting the confidentiality of the Ombudsman outweighed the defendant's need for the prison ombudsman's testimony. An appeal to the District Court was dismissed because "the state interest in the efficient operation of its administrative agencies as embodied in the Citizen's Aide concept would clearly be adversely affected by compelling Cornell (the prison ombudsman) to testify."

UNITED STATES -ALASKA

"Patricia v State of Alaska (Department of Health and Social Services, et al.)"

1985 Annual Report of Alaska Ombudsman, App. F 6pages, 161-167

Ombudsman-Non-Compellibility* Ombudsman Statute, A.S., s24.55.260*

The Ombudsman for the State of Alaska sought to quash a subpoena which had been issued requiring an employee of his office to provide a deposition, and for a further order enforcing the privilege of the Alaska Statute and barring any production of witnesses from The Office of the Ombudsman in the action. An employee of The Office of the Ombudsman, in the course of his employment, had investigated a complaint by the plaintiff against the State of Alaska, Department of Health and Social Services. The complainant had alleged that the department's hiring, practises contravened the State Personnel Act and Personnel Rules. The employee had completed the investigation and drafted a report which was issued to Ms. Williams and signed by the Ombudsman, Frank Flavin. Ms. Williams ultimately filed an action against The Department of Health and sought through the subpoena, information obtained during the course of the investigation. The Court reviewed the provisions of -The Ombudsman Act- regarding the confidentiality of the Ombudsman and the protection afforded him and members of his staff from testifying in respect to matters coming to their attention during the course of their investigation and concluded that the privilege was such that it should be recognized and accordingly ordered that the subpoena be quashed and a protective order issued. In coming to this conclusion, the Court viewed the privilege necessary in order to protect the confidentiality of information obtained by the Ombudsman, encourage co-operation on an investigation, and keep the Ombudsman out of vexatious litigation. In addition, the Court held that the plaintiff would have to establish the special need for the information. Finally, it concluded that the adverse impact in compelling testimony would be substantial. For all the above reasons the Court recognized the privilege from testifying and quashed the subpoena.

UNITED STATES -HAWAII

"Jake Lapin v. William C. Plowden, Jr., and Joshua C. Agsalud Re: Civil No. 84-0143, order filed April 10, 1984"

U.S. Federal Court Subpoena*

The State Ombudsman, Herman S. Doi, was served with a Federal Court subpoena which was issued at the request of a Plaintiff in a civil suit. A motion to quash the subpoena was filed to resist the attempt to have the Ombudsman testify and produce records in court pursuant to the subpoena. The motion was based on the premise that court may quash or modify the subpoena if it is unreasonable and oppressive. The memorandum in support of the motion cited section 96-9(b), Hawaii Revised Statutes (HRS), the Ombudsman is required to maintain secrecy in respect to all matters and identities of complainants and witnesses - section 96-17, HRS, the Ombudsman and his staff shall not testify in any court- and that the court should decide the issue by balancing State and Federal interest under Rule 501, Federal Rules of Evidence. Hawaii's interest, to protect the statutory privilege granted the Ombudsman, an officer of the legislature, prevailed and the subpoena was quashed by the magistrate hearing the motion. Plaintiff appealed the decision of the magistrate by filing a "Motion to Set Aside the Magistrate's Order Granting Motion to Quash Subpoena Pursuant to Rule 501" which motion was granted.