ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8269 SENATE HEALTH EDUCATION & SOCIAL SERVICES

would prefer that no distinction be made by the terms of the statute, but that, instead, the proceeds from all the granted sections be set aside for the common support of the schools and the University and that the Territorial government be given discretion in the distribution of proceeds between these two educational purposes.(Aandahl to Rep. Engle, U.S. House, National Archives, RG 233, Box 113, H.R. 6242)

The bill to grant school and university sections directly to the Territory failed, as did another measure introduced by Bartlett in 1955 which would have granted millions of acres directly to the Territory of Alaska without waiting for statehood. This bill would have repealed the 1915 school and university reservation, and simultaneously granted the Territory the right to select up to 20 million acres from the public domain, approximately the amount of land that could have been reserved under the 1915 act.

The Interior Department agreed with the spirit of Bartlett's bill, which called for in-place grants to be replaced with a quantity grant.

A grant of school sections in place is a grant of lands widely dispersed on a geographical basis. Such a grant gives the recipient, within limits, a fair proportion of the various classes of lands within its boundaries, the good as well as the bad. Since the grantee's holdings are distributed over a wide area, large-scale exchange programs are required, as we have learned by experience, to bring the holdings together into manageable and economical units...

A very large proportion of the land in Alaska does not appear to promise, for the reasonably near future, any substantial economic return. A grant of school sections in place would, therefore, leave the Territory with a large body of widely dispersed holdings, needing management and protection and yielding little in the way of revenues. (Assistant Secy to Rep. Engle, RG 233, U.S. House, National Archives, Box 97A, H.R. 246)

Though the Interior Department favored quantity grants in principle, the department opposed revoking the 1915 school and university section reservation on the grounds that the Territory was not yet ready to manage 20 million acres. Rather, the Assistant Secretary of the Interior suggested granting three million acres immediately to the Territory as the first installment of a large quantity grant that would eventually replace the 1915 reservations. Furthermore, Interior Department officials suggested that the revenue from the three million acres be divided as follows:

20%—public schools
20%—University of Alaska
20%—University of Alaska Teacher Training
40%—discretion of the legislature
(Assistant Secy to Rep. Engle, 23 May 1956, RG 233, U.S. House, Box 97A, H.R. 246)

UA Campaign for Additional Grant Land

Charles Bunnell's successors as University of Alaska president, Terris Moore (1949-1953) and Ernest Patty (1953-1960), both recognized the necessity for the university to gain additional land if it was to be placed on a secure financial footing. President Patty noted in 1955 that the university had virtually no income at all from its small amount of surveyed Section 33 land in the Tanana Valley, which he claimed was predominantly "moose pasture" anyway. He estimated the UA's total income from the Tanana Valley land reservation was only about $20 a year. (Patty to Sen. Anderson, 21 July 1955, UA Pres Papers, 1955/56, Box 5, File 93)

President Patty made the acquisition of additional grant land and the repeal of the restrictions on existing university land—especially the prohibition against selecting mineral lands, and the ten-year leasing limit, which eliminated the possibility of any private investments on educational land—primary goals of his admin-

istration. Under Patty for the first time in its history, the University actually designated a land manager to look after its holdings.

Starting in 1954, Patty made numerous proposals to the Secretary of Interior for more land, including a request that the U.S. government grant the university part of Naval Petroleum Reserve No. 4 on Alaska's Arctic coast, so that the school could participate in any bounties from future oil leases. In order to stimulate Alaskan economic development, Patty suggested in July 1954 that the Territory be immediately granted one million acres, instead of waiting to receive several million acres that could come with eventual statehood. (Land Manager Report, 20 May 1958, Pres. Papers, 1958/59, Box 6, File 88)

Since all recognized that the lack of surveys had effectively negated any effective land grants in the past, the University of Alaska Board of Regents unanimously passed an official resolution in October 1955, requesting the right to select half-a-million acres-including mineral rights—of unsurveyed lands, to support the institution. The resolution stated:

> WHEREAS, the Board of Regents, recognizing their responsibilities in the furnishing of higher education in Alaska, and whereas (sic) must continually maintain an adequate source of funds for the conduct of a good university, and
>
> WHEREAS, it is an accepted and desirable procedure for a state university to look to the income from land under its jurisdiction as a source of funds for the university, and
>
> WHEREAS, valuable lands in Alaska are not being developed because they have not been surveyed, and
>
> WHEREAS, the University is being denied an important source of income because mineral rights are withheld for land under its jurisdiction;
>
> THEREFORE, BE IT RESOLVED that the Congress of the United States is urged to enact appropriate legislation to grant the University of Alaska the authority to select land up to 500,000 acres with full mineral rights and permission to select non-surveyed land...
>
> (Minutes of UA Board of Regents, 24 October 1955) Congress failed to act on the Board of Regents' request.

Elimination of Dedicated Land Grants

Initially, university officials were not particularly alarmed at the prospect of losing the 1915 reservation with the coming of statehood. Most statehood bills would have given the university an additional one million acres—almost four times the amount of land that the institution would have lost with the abolition of the Tanana Valley educational reserve. In the final push towards statehood in 1957-1958, however, the internal improvement grants of 2,550,000 acres—including the 500,000 acres for the University and 500,000 acres for the University's teacher training programs—were consolidated into the 100 million acre general grant, leaving the disposition of all 102,550,500 acres at the discretion of the legislature.

Beyond eliminating the specific grant of one million acres for higher education, the final statehood bill also cancelled the 1915 education reserve (though it did confirm the university's rights to the few thousand acres of Section 33 land that were already reserved and surveyed). The congressional intent clearly was that the massive unrestricted quantity grant substituted for the 1915 reserve. As Assistant Secretary of the Interior Hatfield Chilson wrote in March 1957, "In view of the quantify grants contained in the bill, we agree that section 1 of the 1915 act should be repealed. As of the present time, only a small percentage of the Territory has been surveyed, and we suggest that, as to such lands, the sections which have been reserved for educational purposes should be granted to the State of Alaska to be used by it for the purposes for which they were reserved." (U.S. House 1957: 25)

Apparently, the elimination of the designated internal improvement grants from the statehood bill for the University of Alaska and other essential state services was done with the full support and backing of Alaska Delegate Bob Bartlett, who had long

opposed attempts to dedicate state land for specific purposes. Looking back on the issue in 1964, then Senator Bartlett explained his reasoning to Gov. William A. Egan. He had always opposed dedicated land grants, he said, because he did not want to see the chaotic inter-agency bickering which had plagued Alaska during Territorial days, the same fear which led Alaska's constitutional framers to create a powerful executive branch. Bartlett continued:

> *I have a particularly strong feeling on this because at many times during consideration of the statehood bill, efforts were made to set aside this amount of land or that amount of land for the common schools and for other educational uses. I always resisted these and, as it turned out, successfully. My conviction was—and is—that notwithstanding the possible need for such reservations in the early statehood bills, the reasons for such have long since evaporated. I suspect that in those days there was not the dedication or devotion to education which has since come into being and it was felt that an assured source of income must be provided for the schools. That is not so in these days... (I)f dedication is made for one institution or one purpose, what argument could be made against expanding? None, of course. The philosophy here is closely akin, as I believe, to board control of a state agency with the Governor serving only as a figurehead. If it is done for one department of government, then almost necessarily it must be done for all. Once we are there, we have the chaos of territorial days all over again. (Bartlett to Egan, 8 June 1964, UA Pres Papers, 1963/64, Box 14, Folder 212)*

V. THE LAND-GRANT COLLEGE WITHOUT THE LAND

Loss of a Quarter-million Acres Due to Statehood

The passage of the Statehood Act in 1958, without any provision for land specifically dedicated for the support of the University of Alaska, ended for the time being at least the possibility of getting additional land from the federal government. But even more critical from the point of view of the university was its loss of the balance of the Tanana Valley Section 33 reservation-more than a quarter million acres. The statehood act cancelled the 1915 reservation of educational lands, stopping any further lands under the act from being reserved once they were surveyed, though reaffirming the university's rights to any acreage already surveyed, selected, and reserved.

University attorney Ed Merdes wrote Secretary of the Interior Fred Seaton in early 1960 to clarify the status of the Section 33 lands. Merdes wrote that one interpretation of the statehood act, could be that all Section 33s were still in fact reserved, pending a survey. Merdes argued:

> *From a reasonable interpretation of the language of the Act, it appears that Section 33 continues to be reserved, subject only to being surveyed; and that upon the survey of these lands, title to the same immediately passes to the state for the University of Alaska. It is not clear whether such lands are included in or in addition to the grant of 102 (sic) million acres specified in Section 6(b) of the Statehood Act and although we would like to think it is "in addition to", we suspicion (sic) it is "included in" the 102 million acres. (Merdes to Seaton, 7 March 1960, Pres Papers, 1959/60, Box 6, File 90)*

The Secretary's answer has not been found in the files, however, it is clear from the historical record that the government maintained the Section 33 land could not be reserved until surveyed and selected. Therefore, any lands not surveyed prior to the statehood act, could in no way be still considered reserved.

The UA did make an effort to keep it rights to some of the disputed Section 33 land. During the week before President Eisenhower signed the statehood act on January 3, 1959, UA land manager Donald Eyinck filed 64,000 acres of indemnity selections chosen in lieu of surveyed Section 33 land in the Tanana Valley which had been denied to the university. Eyinck filed the applications, as attorney Merdes wrote, "to keep alive any possible rights the University might have to these lands," despite

the repeal of the 1915 reservation by the statehood act. Merdes said the filing was also done because he thought it might possibly "be the basis for either grandfather rights or legislation that would grant the University additional lands, seemingly lost by said repeal." (Merdes to Wood, 15 November 1960, Pres Papers, 1959/60, Box 6, File 85; Board of Regents Minutes, 20-22 October 1960)

The Bureau of Land Management rejected the university's 64,000 acre indemnity selections on the grounds that the selections were not timely. BLM argued that as of January 3, 1959, the official day Alaska became a state, the reservation was no longer in existence. Since, by that date, the lands had not yet been reserved, title could not be transferred. It is unclear from the record, however, precisely why applications filed prior to January 3 would have been automatically disallowed and not given some grandfather rights.

Merdes contacted now Senator Bartlett's legislative assistant, Joe Josephson, about the impact of the statehood act on university land selections in the Tanana Valley. Based on his research in unpublished Congressional hearings, and discussions with Senator Bartlett, Josephson replied unequivocally that Congressional intent in the statehood act had been for the new state government to address the issue of the size of the university's land grant. In a memo to Merdes, Josephson wrote:

> *The theory of the land-grant provisions in the statehood act was that they would replace inter alia [among other things] the reservations authorized in 48 U.S.C. 353 and that the state university would petition the state government to satisfy the needs of the University which previously to statehood were met in part by 48 U.S.C. 353. (Josephson to Merdes, 10 November 1959, Pres Papers, 1959/60, Box 6, File 85)*

Besides the legal issue, Josephson argued that it would be politically disastrous to ask Congress to reopen such a major clause of the statehood compact as the land grant.

> *Such a decision would encompass broad issues of tactics affecting all the legislation which relates to the welfare of Alaska. Unfortunately, there may still be members of Congress who look at the admission of Alaska with a disapproving eye and who would seize upon proposed legislation to make the terms of the Act of Admission more generous from the state's point of view to prove that their position against statehood was correct and, possibly, to justify rejection of other programs. (Josephson to Merdes, 10 November 1959, Pres Papers, 1959/60, Box 6, File 85)*

Merdes accepted Josephson's reasoning, and recommended the university drop the 64,000 acre claim against the federal government and concentrate on getting additional land from the state government. "For even if the lands were reserved," Merdes wrote in a memo to the university president, "let alone merely filed upon, there still would be no chance of success, since the intent of Congress was to repeal 48USCA 353, and thereby permit the University to obtain future lands from the State under the generous grant given to Alaska in the Statehood Act, rather than as an individual entity." (Merdes to Wood, 10 November 1960, Pres Papers, 1959/60, Box 6, File 85)

Legislative Approval of One Million Acres for UA

The university sought redress for its land deficiencies from the state of Alaska. Probably the clearest evidence that many Alaskans assumed that the new state would designate additional lands for the support of the university was the passage by the first state legislature in the spring of 1959 of a measure authorizing the state to reserve one-million acres for the UA.

The original version of the university land bill (House Bill No. 176) declared the legislature's ultimate intent was eventually to grant the university five million acres "for the purpose of replacing those grants previously allowed under federal law...which has been superseded...and for the further purpose of establishing a means by which the University may be properly maintained and operated and direct state support thereby reduced." The measure specifically called for the UA to "select, accept or

secure by July 7, 1983" one million acres "from those lands granted the state by the federal government." Sixteen legislators from across Alaska—or 40 percent of the entire body—joined in sponsoring H.B. 176. Among others, the list of sponsors of the UA's land restitution bill included future Alaska governor Jay S. Hammond of Naknek, House Speaker Warren Taylor, the entire Fairbanks delegation, and other members from Anchorage, Nome, McKinley Park, Cordova, McGrath, Seward, and Point Barrow.

A committee substitute scaled down the legislative intent language to one million acres. "This reservation of land," the substitute bill stated, "shall be for the purpose of replacing grants of certain Sections 33 in the Tanana Valley previously allowed under federal law and now superseded" by the statehood act. (Committee Substitute for H.B. 176)

After a heated debate, the committee substitute passed the House on March 24, 1959 by a vote of 26-10, with four absences. One legislative observer noted that opponents of the bill were either "anti-university" (no one from Southeastern Alaska supported the measure) or were "anti-dedicated fund votes as they considered the granting of land another form of earmarking funds..." (Butler to Patty, 24 March 1959, Pres Papers, 1958/59, Box 6, File 93) In the state senate, the one million acre appropriation passed unanimously 20-0, after Senators changed the terminology in the bill from "granting lands" to "reserving lands for the support of." (Alaska Senate Journal, 1st Legislature, 1st Session, 1959: 859-860)

Egan's Veto of One Million Acre UA Reserve

It came as a shock to President Patty and the Board of Regents when Governor William A. Egan vetoed the one million acre bill on May 4, 1959. Egan gave numerous justifications for his rejection of the legislature's bill, and his veto message detailed his strong philosophical objections to it. His veto read in part:

> *I am vetoing COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 176, a bill intended to reserve lands for the support of the University of Alaska, because I believe it wrong in principle, inconsistent with constitutional concepts and not in the public interest. In so saying, I may add that I would act similarly on any bill which sought, as this does, to make special disposition of the proceeds of public lands in aid of one public function to the exclusion of others. For more than a century and a half, the United States has granted to new states, on admission, lands for particular purposes. These so-called 'internal improvement grants' have been made for a variety of purposes, i.e., public schools, universities, normal schools, capital building, penal institutions, etc., and have comprised in all, a hodge-podge of grants for varied purposes, without assurance that in selection, income potential, or quality, lands so earmarked would be equitably apportioned among state functions.*

Governor Egan correctly stated that traditionally federal lands were specifically earmarked for internal improvements such as penitentiaries, mental institutions, etc.. But as this report has demonstrated, the vast majority of federal land grants to states were for the support of education. Egan then gave the legislature his version of why the land provisions in the Alaska statehood were unique.

> *Some years ago, a Senate Committee headed by Senator O'Mahoney of Wyoming, while considering Alaska's proposed admission to the union, developed an entirely new concept of federal land grants to newly admitted states. That new concept sought, instead of the earmarked 'internal improvement' grants, to grant to the new state a specified total acreage for the support of state functions, yet earmarked for none. In short, the proceeds of such lands would go to the state treasury for suitable allotment of income by the legislature to the various state functions as circumstances might from time-to-time require.*

That proposal, in terms of lands, is consistent with Alaska's constitutional and budget concepts regarding public monies and their earmarking, and allows desired flexibility in meeting changed conditions from year-to-year.

The governor then explained the heart of the matter as far as he was concerned. If the university received its internal improvement grant, how could the state refuse similar land grants for other state functions? According to Egan, the university was no different from any other agency of state government.

If we are to return to the 'internal improvement' concept of earmarking state lands, can we in good conscience limit the practice to the University? Why not similar provision for common schools, public buildings, hospitals, penal institutions, highways, airports, aid to dependent children, and so on throughout the entire list of important state functions? Certainly, this bill invites similar treatment for other state responsibilities. By this bill, the door would be opened to an unplanned disposition, or dissipation, of the resource without regard to relative need and without regard to the clear constitutional and congressional intent.

Besides Egan's philosophical opposition to the state granting additional land to the university, he claimed UA leaders were mistaken in believing that unsurveyed Section 33 lands were ever truly University of Alaska lands. The confusion arose from the difference between surveyed reserved lands (such as the 1915 in-place Section 33 reservation) and granted lands (such as the 1929 quantity grant of 100,000 acres).

Prior to the passage of the statehood bill, certain Sections 33 in the Tanana Valley were reserved, not granted, to the territory on the condition that their rental proceeds go to the University...To suggest that those other areas, which, on survey some time in the distant future, would have become numbered Sections 33 in the Tanana Valley, but which have never been surveyed and, therefore, have never been reserved nor productive of income for the University, have now been lost, is to say that the University has lost something it never had.

In conclusion, Egan rejected what had long been the basic financial concept behind the land grant institution. "I wish to make it perfectly clear that I have great interest in the University of Alaska," he wrote, "and that this veto is motivated by good administrative practices alone. The University's financing will be sounder and more certain by reliance on the appropriation and bonding processes." (Alaska Senate Journal, 1st Legislature, 1st Session, 1098-1100)

Reaction to Egan's Veto

President Patty and the regents assumed that Egan's veto was based on the fact that the governor had been hospitalized with a severe illness when the measure was under discussion, and that he misunderstood the unique role and history of land-grant colleges in America. Following the passage of the bill by the legislature, Patty had never even bothered to contact Egan, thinking the governor was sure to sign it into law. As Patty wrote one legislator on June 15, 1959:

We were completely caught off base by the Governor's veto of the land bill. I think he made a very serious mistake which was based largely on the fact that he did not understand that there is historical precedent in every state of land grants to their land-grant university. Also, I feel he was not advised of the fact that the University lost potentially (sic) millions of acres of land under the Statehood act. (Patty to Erwin, 15 June 1959, Pres Papers, 1959/60, Box 6, Folder 96)

C.W. Snedden's *Fairbanks Daily News-Miner*, a key player in the battle for statehood, explained that Egan's veto left the "University in the slightly unique position of being a land -grant university without any land to speak of." *The News-Miner* continued:

Governor Egan may have lost sight of the fact that with the coming of statehood to Alaska, the University of Alaska lost its right to acquire almost a million acres of Alaska land.
The University's rights to this land, as has been stated by Dr. Ernest Patty, president of the University, have been 'washed out' in the bill which granted more than a hundred million acres of land to the new state. We agree with Dr. Patty in the belief that the theory behind depriving the University of this land was that Congress felt the state would provide adequately for the University through special land grants.
The assumption was proved correct when the legislature acted to ensure that a land area equivalent to that lost to the University by passage of statehood was restored... We do not believe that Governor Egan's veto of this bill has or will ever have the support of the Alaskan public. We feel the veto reflects a lack of appreciation for the importance of providing an independent source of revenue for our University—an ever growing asset not subject to the whims of future legislatures. (News-Miner, 7 May 1959)

THE UA'S "STARVATION GRANT"

Patty wrote Egan in February 1960 to renew the campaign for the university's land bill. "The Regents and I felt that this was the most forward looking Bill for the University that had ever reached the Legislature," Patty wrote, "and we were all surprised when you vetoed it. This veto came shortly after you returned from the hospital and I blamed myself for not making a special trip to Juneau to explain the background of the bill." (Patty to Egan, 8 Feb 1960)

In his six-page letter, President Patty highlighted for the governor ten reasons why the legislation was essential:

1. The history and theory behind the Morrill Act setting up a Land-Grant University in each state is based on the theory that each Land-Grant University would be given a land grant for the partial support of the University...
2. The Statehood Act for Alaska took away from the University the major portion of its original Land Grant.
3. The University now has only a minimal grant of land; much of this is of no immediate value and compared, area wise, to the other states, it is one of the smallest and (sic) unpromising grants of any state university.
4. Most universities now have a subsidiary income from lands or other property. This is generally used for research and for projects that cannot be readily financed from legislative appropriations. The income from lands should be invested in an endowment fund and only the income from this fund should be disbursed. The idea the University might possibly secure an income beyond its reasonable need is a misconception beyond the realm of possibility.
5. There may come a time in the history of the state when some great financial crisis will develop. If the university had, by that time, developed an important endowment, then the income from this might be very helpful in tiding the university through the difficult period.
6. To avoid duplication, the land granted to the university would be handled by the state Division of lands and there would be limitations on the amount of land which the university could acquire in any one year.
7. The land-grant idea is workable and has 100 years of history behind it.
8. A broad financial base is important.
9. (A) Strong state university is vital to growth of state...
10. A subsidiary endowment income will help to make the difference between a moderately good university and an outstanding university.

Patty detailed the history of the university's land grant. He recounted how the statehood act had cost the university some 259,296 acres of the total 268,800 acre reservation created in the Tanana Valley in 1915 and called it a "pathetic situation." The university's total income from its 1915 Tanana Valley land was only $243 a year.

Even with the 100,000 acre grant of 1929, which the statehood act had not affected, Patty calculated that the university's total land grant amounted to only 109,504 acres. "This is a starvation grant for a land-grant university located in a state containing 365 million acres," Patty wrote. "Actually the requested addition of one million acres is very modest and is less than one percent of the land which the state will acquire."

The university president then blasted what he called the "trickle down theory" as completely counter to the theory behind land-grant institutions.

> *Obviously, some of the state income from land will trickle down to the university, but this violates the original concept of the Land-Grant Act which sought to provide a partial and separate form of income to supplement the work of the university, which cannot always be financed by annual appropriations.*
>
> *The Board of Regents plan to use its land income as an endowment fund and to draw off only the income from this endowment. It would probably be 10 years hence before this endowment would yield an important income. Who knows, if we could build up an endowment of several million dollars the income would be vital in keeping the university alive, if lean years should come. At the present time, the endowment fund of the university, in the hands of the state treasurer, totals only $15,300.*

Patty scoffed at the idea that the university might end up with too much money if it received additional land. "This is beyond even the most remote possibility," he wrote. "The chances are many times better that you or I might win the Nenana Ice Classic." At that time, even the oil-rich University of Texas received only 39 percent of their budget from their endowment. "What a wonderful thing it would be for all Alaska if a great oil bonanza should be developed on university land and we could accumulate an endowment of 50 million dollars and use the income from this in perpetuity."

In conclusion, Patty suggested to Egan that the legislation allow the University of Alaska to select up to one million acres over the next 20 years. He predicted it could be a decade or longer before the endowment grew to any significant size. "However, I would expect that our grandchildren would conclude that we had great foresight."

Initially, Patty believed in early 1960 he was making progress convincing Egan of the rightness of the university's cause. In a memorandum to the Board of Regents in late February, Patty noted: "When I talked to the Governor several weeks ago he told me that he had been reluctant to veto the Bill and even suggested that if we would wait two or three years he might be willing to change his mind."

But on his next visit with Egan, Patty found the governor's position against the million acre grant had hardened. "Governor has become most adamant against this," he informed the regents, "and indicated that if the Legislature again passed this Bill he would veto it. Several members of the Legislature are anxious and willing to promote the Bill, but I did not encourage them for there seems to be no chance to pass the measure over the Governor's veto." (Patty to Regents, 29 February 1960, Pres Papers 1963/64, Box 14, File 206)

Continuation of Efforts in 1960s to Acquire Land

Governor Egan's steadfast opposition to granting the university additional land doomed the effort on the state level. Nevertheless, bills to provide the UA additional land continued to find support in the legislature and were regularly introduced throughout the 1960s.

Patty's successor as U/. President, Dr. William R. Wood, kept up the fight for a new land grant from either the state or the federal government, or both. According to Wood, state and federal authorities always agreed that the university should receive additional land and agreed that the other party should provide it.

Wood found the possibility of acquiring new land particularly appealing, because, for the first time in its history, the university finally started to earn a sizeable income from its land holdings in 1961 when it began selling oil leases on its Kenai Peninsula land. In its first 43 years, the university's cumulative income from land was only $16,256.03. But with the start of oil leasing in FY 60/61, the UA earned $604,470 in one year alone, or about 38 times what it had earned since 1917. No oil was ever struck on university land, however, and thereafter the amount netted from oil leasing steadily declined. (UA Permanent Fund Statement, 1917-1971, Pres Papers, 1971/72, Box "Higher Ed...", File, Land—July-Dec)

In April 1964, when Congress was grappling with relief efforts for the Good Friday Earthquake, President Wood wired Sen. Bartlett if it would be "presumptuous" to request amending the statehood act and give the university three million acres. "This could provide base for much-needed sustained support of the university now central to development of state's resources and nationally valuable as regional environmental research center." (Wood to Bartlett, 25 April 1964) Bartlett's administrative assistant Mary Lee Council dashed Wood's hopes. "Since any omnibus or other legislation will relate strictly to the disaster," she wrote, "I would doubt very much whether legislation of the kind you mention would be entertained." (Council to Wood, 28 April 1964, Pres Papers, 1963/64, Box 14, File 212)

President Wood Lobbies for North Slope Land

Continuing discussions with both state and federal officials, President Wood tried a new approach to acquire the three million acres he believed the university required for financial security. Wood proposed to Senator Bartlett that the university be given land from either "within the Arctic Wildlife Range, from Naval (Petroleum Reserve) No. 4, when and if the Reserve is eliminated or diminished in size, from the existing public domain, or from lands already acquired or to be acquired by the state." Before taking up Wood's suggestion with Secretary of Interior Stewart Udall, Bartlett conferred with Roscoe Bell, director of the state Division of Lands. "I am reminded that Governor Egan once vetoed a bill involving the university lands," Bartlett wrote, "but my memory on the subject is somewhat hazy..." (Bartlett to Bell, 14 May 1964)

Lands Director Bell informed Bartlett that the state would continue to oppose giving the university new lands from the public domain, simply because it would merely take away land from the State of Alaska. Already the Division of Lands faced a difficult challenge finding land that would in fact produce any revenue. "Any new authorizations for university land selection from open public domain would appear unacceptable," Bell wrote Bartlett, "because such would in effect, reduce other state land suitable for selection. (The acreage of land having apparent value seems far below the state's entitlement of 103,000,000 acres." Bell then reiterated Egan's long-standing objections. He wrote Senator Bartlett,

> *I am sure that you understand perfectly the state's past position in opposing a university land selection of several million acres of valuable land, which could result in a situation where the university has valuable lands producing more revenue than would be needed while other state functions were neglected because of lack of funds. (Bell to Bartlett, 27 May 1964)*

However, there was one idea for giving the University of Alaska land to which Bell and Governor Egan responded enthusiastically: taking it from a pre-existing federal reserve, such as the nine million acre Arctic Wildlife Range (now known as the Arctic National Wildlife Refuge or ANWR) created in 1960.

Bell complained that though the Arctic Wildlife Range was supposed to be "subject to multiple use management," such a hope was unrealistic. The U.S. Fish and Wildlife Service, he charged, "is of necessity more or less beholden to conservationists, some of whom are radical and articulate single-use wilderness proponents (sic)." However, he speculated, "Perhaps revocation of the withdrawal could be accomplished if it were to permit a university selection for conservation and

management as a 'great Arctic Wildland Management Laboratory.'" Bell explained his proposal in some detail, by which the Arctic Wildlife Range would be supplanted by a university laboratory.

> *The University and its motives in management could not be questioned. The University likewise has the potential for tapping foundation monies as well as entering into cooperative agreements with federal agencies under which it might be possible to develop a program of Arctic Wildlife Research and Resource Management without unbearable cost to the state of Alaska. As 'university land,' the land would be under the full management control of the university. At the same time, multiple-use management and revenue production would be a possibility without violation of the primary purpose of the 'laboratory.' Because it appears that the state would have little probability getting the land restored to the public domain to permit normal selection and management procedures, and since the land does offer some possibility of producing revenue ultimately to help support the university, such a program might possibly be supportable by the state. Enabling state legislation would be required to authorize such a university selection of several million acres. To be acceptable, such a selection would probably be limited to lands made available by revocation of the Arctic wildlife refuge. (Bell to Bartlett, 27 May 1964)*

Governor Egan supported Bell's proposal that the Arctic Wildlife Range be replaced in whole or in part by a University of Alaska Management Laboratory. Thus, the state of Alaska had no objection to the University of Alaska receiving millions of acres of additional land, if it came from a federal reserve closed to exploration and development, that would otherwise be unavailable for general state selection. There is no evidence in the record, however, that federal authorities ever showed any support for the plan.

After the Land Freeze

With the defeat of Governor Bill Egan by Walter Hickel in the 1966 election, Hickel promised a new era of Alaskan economic development. Yet the land freeze instituted by Secretary of Interior Udall in December 1966 virtually brought state land selections to a dead stop and extinguished the fading hope that the University of Alaska might be able to receive an additional land grant in the foreseeable future. Legally and politically the Alaska land picture grew more complex year-by-year. Within the next 15 years the open public domain in Alaska would essentially vanish, as the entire state was parceled off among development interests, environmental interests, and Native groups, with settlement of the Native Land Claims issue in 1971, construction of the Trans-Alaska Pipeline from 1974-1977, and passage of the Alaska National Interest Lands Conservation Act in 1980.

Now that Alaska's land issues have been somewhat resolved, university supporters have again proposed that additional lands be granted to the University of Alaska from either the state or the federal government, or both, to resolve the financial issue which continues to haunt the land-grant college without the land.

VI. Sources

1. BOOKS AND PERIODICALS

Atwood, Evangeline. 1979.
Frontier Politics: Alaska's James Wickersham. Portland: Binford and Mort.
Carstensen, Vernon., 1963.
The Public Lands: Studies in the History of the Public Domain. Madison: University of Wisconsin Press.
Daily Alaska Dispatch (Juneau).
Eddy, Edward D., 1957.
Colleges for Our Land and Time: The Land-Grant Idea in American Education. New York: Harper and Brothers.
Fairbanks Daily News-Miner.
Gates, Paul Wallace., 1943.
The Wisconsin Pine Lands of Cornell University. New York:
Cornell University Press.
Gruening, Ernest H., 1954.
The State of Alaska. New York: Random House.
Hibbard, Benjamin H., 1939.
A History of the Public Land Policies. New York: Peter Smith.
Land Grant Fact Book: Centennial Edition., 1962. Washington: National Association of State University and LandGrant Colleges.
Madsen, David., 1976.
"The Land-Grant University: Myth and Reality," pp. 23-48, in G. Lester Anderson, ed., Land-Grant Universities and Their Continuing Challenge. Michigan State University Press, 1976.
Naske, Claus-M.,1972.
"103,350,000 Acres," Alaska Journal, Autumn 1972.
Naske, Claus-M.,1979.
Edward Lewis "Bob" Bartlett of Alaska: A Life in Politics. Fairbanks: University of Alaska Press.
Naske, Claus-M.,1985.
A History of Alaska Statehood. Maryland: University Press of America.
Peffer, E. Louise The Closing of the Public Domain: Disposal and Reservation Policies 1900-50. Stanford: Stanford University Press.
Ross, Earle D., 1969.
Democracy's College: The Land-Grant Movement in the Formative State. New York: Arno Press and the New York Times.
Taylor, Howard Cromwell., 1969.
The Educational Significance of the Early Federal Land Ordinances. New York: Arno Press and the New York Times.

2. GOVERNMENT DOCUMENTS

Alaska Senate Journal., 1959.
Chipperfield, W.A., 1954.
Report: Alaska Territorial Department of Lands.
Congressional Record.
Ducker, James H., 1992.
BLM Alaska Historical Chronology (Draft). Anchorage: State Office of Bureau of Land Management.
Stein, Gary., 1987.
"Promised Land": A History of Alaska's Selection of its Congressional Land Grants. Anchorage: Alaska Dept. of Natural Resources.
U.S. Dept. of Interior., 1939.

School Lands: Land Grants to States and Territories For Educational and Other Purposes. Information Bulletin, 1939 Series, No. 1.

U.S. House, 1915.

Reservation of School Lands in Alaska. Report No. 1280, 63rd Congress, 3rd Session.

U.S. House, 1947.

Statehood for Alaska: Hearings before the Subcommittee on Territorial and Insular Possessions of the Committee on Public Lands, April 16-24, 1947, 80th Congress, 1st Session, Committee Hearing No. 9.

U.S. House, 1949.

Statehood for Alaska: Hearings before the Subcommittee on Territorial and Insular Possessions of the Committee on Public Lands on H.R. 331, March 4, 8, 1949, 81st Congress, 1st Session, Committee Hearing Serial No. 3.

U.S. House, 1953.

Providing for the Admission of Alaska Into the Union. Report No. 675, 83rd Congress, 1st Session.

U.S. House., 1957.

Statehood for Alaska: Hearings before the Subcommittee on Territorial and Insular Affairs of the Committee on Interior and Insular Affairs, March 11-29, 1957, 85th Congress, 1st Session, Serial No. 6.

U.S. Senate., 1929.

Additional Grant of Lands to Agricultural College and School of Mines, Territory of Alaska. Report No. 1419, 70th Congress, 2nd Session.

U.S. Senate, 1950.

Alaska Statehood: Hearings before the Committee on Interior and Insular Affairs, April 24-29, 1950, 81st Congress, 2nd Session.

U.S. Senate, 1954.

Providing for the Admission of Alaska Into the Union. Report No. 1028, 83rd Congress, 2nd Session.

U.S. Senate, 1954a.

Alaska Statehood: Hearings before the Committee on Interior and Insular Affairs on S. 50, Jan 20-Feb 24, 1954, 83rd Congress, 2nd Session.

3. ARCHIVAL RECORDS

University of Alaska Archives (Fairbanks)

- Anthony J. Dimond Collection
- Charles E. Bunnell Collection
- Dan Sutherland Collection
- E. L. "Bob" Bartlett Collection
- William A. Egan Collection
- General Correspondence of the Alaska Territorial Governors
- Minutes of the Board of Regents of the University of Alaska
- Papers of the Presidents of the University of Alaska

National Archives, Washington D.C.

- RG 48, Office Files of the Secretary of Interior
- RG 233, Records of the House of Representatives
- RG 46, Records of the United States Senate

AMENDMENT

IN THE SENATE

TO Senate Bill 217

Page 1, line 2, after "land" insert

"and providing for an effective date."

Page 7, after line 17, insert new *Section 7 to read:

***Sec. 7.** This Act takes effect upon a final court determination which resolves all outstanding issues in *Weiss v. State* [court docket #]

AMENDMENT

IN THE SENATE

TO Senate Bill 217

Page 6, after line 10

Insert new *Section 6 to read:

***Sec. 6.** A.S. 14.40 is amended by adding a new section to read:

AS 14.40.401. Income from the University of Alaska endowment trust fund established by AS 14.40.400(a) is subject to the Executive Budget Act (A.S. 37.07).

Renumber sections accordingly

#13

AMENDMENT

IN THE SENATE

TO Senate Bill 217

Page 6, after line 3, insert new *Sec. 5 to read:

***Sec. 6.** AS 14.40 is amended by adding a new section to read:

Sec. 14.40.366. DISPOSITION OF INCOME FROM EXISTING ENCUMBRANCES. Income from land selections by the University of Alaska under AS 14.40.365 which are subject to encumbrances listed in AS 14.40.365(a)(1)(A)-(E) shall be transmitted to the State of Alaska during the pendency of the primary term of the lease, contract, claim, sale or permit. Equitable title to such selections shall vest with the University of Alaska only upon fulfillment of the primary term of said lease, contract, claim, sale or permit.

Renumber sections accordingly

#4

AMENDMENT

IN THE SENATE

TO Senate Bill 217

Page 6, after line 3, ins .t new subsection (h) to read:

(h) Notwithstanding other provisions of this subsection, if the University selects land within the boundaries of an organized municipality which has not completed its municipal land selections under AS _____, the commissioner shall hold university selections in abeyance for three years, or until completion of municipal selections, whichever comes first. Municipal selections under AS _____ shall have precedence over university selections under this subsection.

8-LS0468\E.1
Chenoweth
1/26/94

AMENDMENT

OFFERED IN THE SENATE BY SENATOR FRANK

TO: SB 217

Page 1, line 1, after "**Alaska**":

Delete "**and**"

Insert ","

Page 1, line 2, after "**land**":

Insert "**, and defining net income from the University of Alaska's endowment trust fund as 'university receipts' subject to prior legislative appropriation**"

Page 6, following line 10:

Insert new bill sections to read:

"* **Sec. 6.** AS 14.40.400(e) is amended to read:

(e) **Subject to legislative appropriation, the** [THE] Department of Administration shall disburse the net income from the trust fund upon vouchers approved by the president and treasurer of the University of Alaska specifying the purpose for which the money is to be used and showing it is to be used in conformity with this section.

* **Sec. 7.** AS 14.40.491 is amended to read:

Sec. 14.40.491. DEFINITION OF UNIVERSITY RECEIPTS. In AS 14.40.120 - 14.40.491, "university receipts" includes

(1) student fees, including tuition;

(2) receipts from university auxiliary services;

(3) recovery of indirect costs of university activities;

(4) **the net income of the trust fund established in AS 14.40.400 and** receipts from sales and rentals of university property;

(5) federal receipts;

(6) gifts, grants, and contracts; and

(7) receipts from sales, rentals, and the provision of services of educational activities."

Renumber the following bill section accordingly.

8-LS0468\E.2
Chenoweth
1/26/94

AMENDMENT

OFFERED IN THE SENATE BY SENATOR FRANK

TO: SB 217

Page 1, line 2, following "**land**":

Insert "**; and providing for an effective date**"

Page 4, line 28, through page 5, line 12:

Delete all material and insert:

"(d) The commissioner may not convey title to any land selection made by the university under this section if the commissioner determines that the proposed selection

(1) includes land for which, at the time of its selection under this section, a municipality has made a selection under AS 29.65, unless the land selection is, at a later date, rejected by the commissioner of natural resources or relinquished by the municipality;

(2) is not in the best interests of the state; in making a determination under this paragraph as to whether a selection by the university is in the best interests of the state, the commissioner shall consider

(A) the interest of the general public in retention of the land in state ownership;

(B) ensuring an appropriate diversity in the character of land owned by the state and by the university;

(C) the public benefits achieved by conveyance of the land to the university;

(D) the probable potential for the development of the land and its resources and the probable income to the university from the conveyance of the land;

(E) benefits to the university from the conveyance of the land

to it; and

(F) the efficiency of the management of the land resulting from the conveyance of the land."

Page 7, following line 17:

Insert new bill sections to read:

"* Sec. 7. APPLICABILITY OF UNIVERSITY SELECTION RIGHTS UNDER AS 14.40.365 TO LAND. In addition to the land that, under AS 14.40.365(d), the commissioner of natural resources may not convey to the University of Alaska, the commissioner of natural resources may not convey land for which, at the time of its selection by the university,

(1) is subject to conveyance to the Alaska Mental Health Trust Authority under sec. 54, ch. 66, SLA 1991;

(2) is land that the commissioner of natural resources reasonably believes should be conveyed to the Alaska Mental Health Trust Authority under sec. 55, ch. 66, SLA 1991, as compensation to that trust for original mental health trust land not available for return to the corpus of the trust; or

(3) is land described in sec. 56, ch. 66, SLA 1991, as listed in "Lands Hypothecated to the Mental Health Trust, May 1991" located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska, that has been hypothecated to secure reconstitution of the mental health trust; however, as the reconstitution of the mental health trust is accomplished and the hypothecated land is released on a pro rata basis, the University of Alaska may select the land and the commissioner may convey it.

* Sec. 8. LEGISLATIVE INTENT. It is the intent of the legislature that, if sec. 7 of this Act takes effect after the effective date of secs. 1 - 6 of this Act, the commissioner of natural resources reject, as inconsistent with the best interests of the state, selections of land by the University of Alaska under AS 14.40.365, added by sec. 4 of this Act, of land described in sec. 7 of this Act.

* Sec. 9. Section 7 of this Act takes effect on the effective date of ch. 66, SLA 1991."

8-LS0468\E.3
Chenoweth
1/26/94

AMENDMENT

OFFERED IN THE SENATE BY SENATOR FRANK

TO: SB 217

Page 5, line 18, after "conveyance.":

Delete "The"

Insert "Except for the annual rent or other form of consideration received for land under lease, the"

Page 5, line 19, after "interest.":

Insert "The lessee shall continue to pay annual rent or other form of consideration due for land under lease to the state department that was entitled to it before the conveyance, and the state is entitled to receive the consideration due under the leasehold interest for the duration of that interest."

Library

FISCAL NOTE

STATE OF ALASKA — BILL NO. SB217

1994 LEGISLATIVE SESSION

Revision Date: Original — Dept Affected: Natural Resources

Title: "An Act relating to land of the University of Alaska and authorizing the University of Alaska to select additional..." — BRU: Resource Development — Component: Land Development

Sponsor: Senator Frank

Requestor: Senator Frank — Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	873.6	773.6	754.6	647.4	647.4	647.4
TRAVEL	6.0	6.0	6.0	6.0	6.0	6.0
CONTRACTUAL	92.5	192.5	192.5	192.5	192.5	92.5
SUPPLIES	15.0	15.0	15.0	13.0	13.0	13.0
EQUIPMENT	64.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1,051.1	987.1	968.1	858.9	858.9	758.9
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	** SEE NOTE IN ANALYSIS BELOW.					

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,051.1	987.1	968.1	858.9	858.9	758.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	1,051.1	987.1	968.1	858.9	858.9	758.9

Estimate of any current year (FY94) cost: $ None (assume effective date 7/1/94 or later)

POSITIONS

FULL-TIME	16	14	14	12	12	12
PART-TIME	3	4	4	3	3	3
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

** Note: Transferring one million acres of the best revenue-producing land to the University would decrease the general fund by the same amount it increases revenue to the University. It is impossible to project the exact amount without knowing what lands are transferred to the University.

Prepared by: Ron Swanson, Director — Phone: 762-2692

Division: Land — Date: 25-Jan-94

Approved by Commissioner: Harry A. Noah — Date: 25-Jan-94

Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

(SB217.XLS Rev 1/25/94) For further distribution information call the Governor's Legislative Office

BACKGROUND FOR SB217 FISCAL NOTE

Assumptions and background

- 6-year project to adjudicate the selections (takes process to the grant of management authority; need for survey and conveyance work will continue for many years)
- Staff consolidated in Anchorage for efficiency
- 640 acres average parcel size for adjudication (1,000,000 acres=166,167 acres/year=260 parcels/year=640 acres/day each year)
- No planning or selection work needed. University selections come from existing state-selected or state-owned land, and are exempt from AS 38.04.
- AS 14.40.365(c) says, "The university shall bear all costs of survey of the land." We assume this means they pay the surveyor's costs, but have included one half-time CSAII for survey instructions and plat review.
- Realty Services will prepare cost projections for title and conveyance work; LRIS will prepare cost projections for LAS, GIS, and other information services.
- Cost projections are level - no inflation is assumed
- State pays for phase 1 environmental audit

Item	Code	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Project management and adjudication (NRMI, 3 NROI, NRTI/II)	100	263.5	263.5	263.5	263.5	263.5	263.5
Survey support (½CSAII)	100	28.0	28.0	28.0	28.0	28.0	28.0
Realty services (NROII, 3 NROI, 2 NRTI/II, CTIII, DPC)[1]	100	350.1	350.1	350.1	261.9	261.9	261.9
Business Programming (A/PIV)[2]	100	75.0	38.0	19.0	0	0	0
GIS support (A/PIII)[3]	100	66.0	33.0	33.0	33.0	33.0	33.0
Status graphics support (NRMI-1 mo/yr, ¼NROII for year 1 only, NROI)	100	77.0	61.0	61.0	61.0	61.0	61.0
SUBTOTAL	100	858.60	773.60	754.60	647.40	647.40	647.40
Travel (Proj. mgr., adjudication, realty)	200	6.0	6.0	6.0	6.0	6.0	6.0
Public notices under AS 38.05.945	300	7.5	7.5	7.5	7.5	7.5	7.5
Realty services - BLM computer runs, etc.	300	10.0	10.0	10.0	10.0	10.0	10.0
Office space - Realty Services	300	75.0	75.0	75.0	75.0	75.0	75.0

[1]Years 1-3 include all listed staff; years 4-6 assume slowdown while surveys are completed, and assume staff = NROII, 2NROI, NRTI/II, CTIII, and DPC only.

[2]Full-time in year 1, half-time in year 2, one-quarter time in year 3

[3]Full-time in year 1, half-time in years 2-6

Phase 1 environmental audit/hazardous materials survey[4]	300	0	100.0	100.0	100.0	100.0	0
SUBTOTAL		92.50	192.50	192.50	192.50	192.50	92.50
Supplies - Adjudication and project management	400	4.0	4.0	4.0	4.0	4.0	4.0
Supplies - Realty Services	400	8.0	8.0	8.0	6.0	6.0	6.0
Supplies - LRIS	400	3.0	3.0	3.0	3.0	3.0	3.0
SUBTOTAL		15.00	15.00	15.00	13.00	13.00	13.00
Computers for adjudicators and tech	500	16.0	0	0	0	0	0
Computers for realty services	500	48.0	0	0	0	0	0
SUBTOTAL		64.00	0.00	0.00	0.00	0.00	0.00
TOTAL		1,036.10	987.10	968.10	868.90	858.90	758.90

[4]Assumes university selections would be identified in years 1-4 and surveyed for environmental hazards in years 2-5. Based on costs of environmental audit for mental health lands. Process would use primarily air photos and existing data to screen sites, with site-specific follow-up only as needed.

SB

221

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/10/94

FURTHER: Judiciary

Date of 5-Day Notice: 1/13/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 1/24/94

HES Committee considered SENATE BILL NO. 221

"An Act relating to arrest of a person for illegal possession, consumption, or control of alcohol; and providing for an effective date."

and recommends:

[ ] replace with _____ 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

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
Dept of Law	1/18/94	⊖	
Public Safety	1/17/94	⊖	
Administration Advocacy	1/24/94	⊖	
Administration Public Defender	1/24/94	⊖	

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

[ ] Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Kay M Moore
Lyle Hillhouse
Loren D. Leman

OTHER RECOMMENDATIONS:

Jay Ellis no rec.
Judith E. Salo No Rec

Allen A Rogers DO Pass
Chair Signature and Recommendation

Alaska State Legislature

Senate Majority Leader
Chair, Judiciary Committee
Vice Chair, Community & Regional Affairs

Member, State Affairs Committee
Committee on Committees
Western States Legislative Forestry Task Force
Legislative Council

Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

SPONSOR STATEMENT

SENATE BILL 221

I introduced Senate Bill 221 at the request of concerned parents, law enforcement agencies in the First Judicial District and Alaskans for Drug-Free Youth.

In May of last year, State Troopers and municipal police departments were directed not to arrest minors under the minor consuming statute unless the arresting officer actually sees the minor consume alcohol. The directive was issued after two judicial officers ruled that merely being under the influence in the officer's presence is not reason enough to make an arrest.

The District Attorney's directive stated that "officers who encounter minors under the influence should issue citations, rather than make arrests".

The court ruling left law enforcement officers in the position of either leaving such a minor on the street or taking the minor into protective custody. Past practise had been to arrest the minor and turn the youth over to parents or legal guardians.

SB 211 would add minor consuming to the list of crimes that allow for warrantless arrest. While the court ruling currently impacts only the First Judicial District, it could be extended to other jurisdictions.

My goal in sponsoring this bill is not to increase the number of minor consuming arrests or convictions. I don't believe the Legislature ever intended for a police officer to simply write a ticket and walk away from a minor who is under the influence. This bill is more about protecting our young people than prosecuting them.

DISTRICT ATTORNEY, STATE OF ALASKA
P.O. Box 110300
Juneau, AK 99811
Phone: (907) 465-3620

To: AST
Municipal Police Departments, First Judicial District

From: Richard A. Svobodny
District Attorney

Date: May 26, 1993

Subject: Citations rather than arrests for Minor Consuming cases.

With certain exceptions (felonies, DWI cases, cases arising under AS 11.41, 11.46.330 11.56.740, 11.61.120), AS 12.25.030 does not authorize arrests for crimes not committed or attempted in the presence of the person making the arrest. The crime of Minor Consuming is defined as follows in AS 04.16.050:

> A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051(b).

Against arguments by our office that the word "possess", as it is used in that statute, should be interpreted to include possession by consumption, two judicial officers in the First Judicial District have now ruled that it does not, that an officer who contactss a minor under the influence of alcohol may not arrest the minor unless he or she actually sees the minor consume the alcohol, possess the alcohol outside of the minor's body, or control the alcohol. Merely being under the influence in the officer's presence is not enough.

For the above reasons, officers who encounter minors under the influence should issue citations, rather than make arrests, unless they see the minors possess, consume, or control the alcohol involved. Of course, a person may be taken into protective custody under the procedures of Title 47 if the person appears to be incapacitated by alcohol in a public place.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 221

Revision Date:
Dept. Affected: Administration
Title: "An Act relating to arrest of a person for illegal possession, consumption, or control of alcohol..."
BRU: Public Defender Agency
Component: Public Defender Agency
Sponsor: Senator Taylor
Requestor: (S) HES
COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Salemi, Director
Phone: 264-4400
Division: Public Defender Agency
Date:

Approved by Commissioner: Nancy Bear Usera
Date: 1/24/94
Agency: Administration

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

(Rev 10/93) ai 1/24/94

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 221

Revision Date:
Title: "An Act relating to arrest of a person for illegal possession, consumption, or control of alcohol; and providing..."
Sponsor: Senator Taylor
Requestor: (S) HES

Dept. Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: None

POSITIONS:

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

ANALYSIS: (Attach a separate page in necessary)

Prepared by: Brant McGee
Phone: 274-1684
Division: Office of Public Advocacy
Date:

Approved by Commissioner: Nancy Bear Useral
Date: 1/20/94
Agency: Administration

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

(Rev. 10/93)

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 221

Revision Date: January 18, 1994
Title: "...relating to arrest of a person for illegal possession, consumption or control of alcohol..."
Sponsor: Senator Taylor
Requestor: Senator Taylor

Department Affected: Department of Law
BRU: Prosecution, Legal Services
Component: Prosecution - All
Legal Services - Operations
COMPONENT SERIAL NO. 0085 through 0090, 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard L. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: January 18, 1994

Approved by Commissioner: Richard L. Pegues /FOR/ Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: January 18, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 221

ANALYSIS CONTINUATION:

SB 221 amends AS 12.25.030(b) to provide that a peace officer may arrest a person under the age of 21 without a warrant when the peace office has reasonable cause to believe that the person unlawfully possessed, consumed, or controlled alcohol. This bill has the effect of overruling a recent superior court decision that held the person must be caught in the act unlawfully consuming alcohol before an arrest could be made. The bill will not have a fiscal impact becuase it returns the law to its former interpretation prior to the superior court's deicison.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: SB 221

Revision Date: _____ Dept. Affected: Public Safety

Title: "An Act relating to the arrest of a person for illegal possession of alcohol."

BRU: Alaska State Troopers

Component: Detachments

Sponsor: Senator Taylor

Requestor: S. HES

COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( )	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: $ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691

Division: Alaska State Troopers Date: 01/12/94

Approved by Commissioner: [signature] Date: 01/17/94

Agency: Richard L. Burton, Dept. of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,

Plaintiff,

v.

IVAN SABON

Defendant.

Case No. 1JU-S92-386 Cr.

CERTIFICATION

[ ] This document and its attachments do not contain information that is confidential under AS 12.61.110 or the name of a victim of a crime listed in AS 12.61.140.

OPPOSITION TO MOTION TO DISMISS

FACTS

Officer Worth responded to the Senate Building on March 14, 1992 in response to a report of a person passed out in the restroom. Upon arrival at 1706 hours Worth discovered the defendant (Sabon) sitting on a toilet in an unconscious condition with his pants down. Worth's attempts to awaken Sabon proved difficult. Sabon had an odor of alcohol about his person and had bloodshot watery eyes. Sabon would not identify himself. Worth and Sergeant Herrera arrested Sabon for minor consuming based on Herrera's knowledge of Sabon's identity and presumably his age, although the police report doesn't indicate they knew his age.

ARGUMENT

The defendant argues in his memorandum that because the officers didn't see Sabon consume the alcohol the arrest is unconstitutional and the case must be dismissed. This does not

in any way explain why the court should go beyond the requirements of the "exclusionary rule" of evidence illegally seized to the more drastic step of dismissing the case. Elson v. State, 659 P.2d 1195 (Alaska 1983) and State v. Sears, 553 P.2d 907 (Alaska 1976); Mapp v. Ohio, 367 U.S. 643; 81 S. Ct. 1684, 6 L.Ed.2d 1081 (1961).

An illegal arrest is not a valid basis for dismissal of the action or suppression of the evidence. McConnell v. State, 595 P2d 147, 156 (AK 1979) See also fn. 26 at 155. (question of whether probable cause existed for defendant's arrest for MICS 3d not addressed given above-cited law). The remedy lies with the civil courts. See Ingraham v. Wright, 430 U.S. 651, 680 n. 48, 97 S.Ct. 1401 (1977).

Nor is outrageous conduct involved in this matter. Vaden v. State, 768 P2d 1102 (Alaska 1989) discusses outrageous conduct. While the Alaska Supreme Court noted in Vaden that judicial intervention for outrageous conduct is not limited to entrapment cases, the court nowhere in the opinion set out a standard for outrageous conduct outside of the entrapment situation. The court did, however, include a footnote at page 1108 (No. 13) which discusses outrageousness outside of entrapment. The standard is the malum in se standard i.e. the conduct must be inherently evil, immoral in its nature, illegality founded on principles of natural, moral and public law.

In this case the officers arrested a drunken teenager who

had passed out in a restroom, there is nothing inherently evil or immoral about such conduct. From a philosophical perspective one would be hard pressed to say such actions violate moral or public law. The law of the land is that if an officer were to have deprived Lawrence of his liberty improperly he would have been able to bring a 1983 Civil Rights action. Furthermore, had the officers left Sabon in the building and he later wandered in front of a car, the court knows the likely outcome.

In this case the court should focus on whether suppressing evidence is applicable not dismissal. The purpose of the exclusionary rule is two-fold, the preservation of the integrity of the judicial system and to dissuade law enforcement from a lawless invasion of a citizen's constitutional rights. Terry v. Ohio, 392 U.S. 1; 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968); Sears, 553 P.2d at 912. Assuming arguendo that there was an illegal arrest in this matter then the remedy is the exclusionary rule prohibiting the introduction of any evidence from the time of the arrest onward, not the dismissal of the case.[1]

Not all contacts between police officers and citizens involve a seizure of a person. The difference between a permissible encounter and a seizure is explained in Florida v. Rover, 103 S. Ct. 1319, 75 L.Ed.2d 229 (1983), when the United States Supreme Court said:

---

[1] The defendant in citing the Minnesota case of State v. Abu-Shanab, 440 N.W.2d 557, relates to the sufficiency of evidence at trial rather than the exclusionary rule or dismissal.

> Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions . . . Nor would the fact that an officer identifies himself as a police officer, without more convert the encounter into a seizure requiring some level of objective justification . . . .

Here, there is no seizure of a person when a police officer approaches him and asks him questions and as a result of those questions later arrests the person.

There is nothing illegal about this arrest. The defendant argues that the court of appeals decision in State v. Thronsen, 809 P.2d 941 (Alaska App. 1991), should be applicable here. This is a case where the defendant was specifically charged with "possession" of cocaine by having the cocaine in his bloodstream. The court said that "possession" in one's bloodstream was not the exercise of dominion or control over the cocaine required by AS 11.81.900(b)(42) and hence the state had not, when it specifically charged possession in the bloodstream, met its burden of proof at trial. The court went on to say that the possession of cocaine in the bloodstream was circumstantial evidence of the person's possession before it got to the bloodstream. But in this instance, that is not how the crime was charged. A violation of AS 11.71.040 of "possession" of a controlled substance is a substantially different crime than a violation of AS 04.16.050. The essential elements of a violation

of AS 11.71.040 are: (1) at the time and place charged; (2) the defendant knowingly possessed a substance; and (3) that substance was a schedule IIA controlled substance. The essential elements of a violation of AS 04.16.050 are: (1) at the time and place charged; (2) the defendant was under 21 years of age; (3) that he knowingly consumed or possessed, or controlled an alcoholic beverage. Hence in this instance the definition of "possess" found in AS 11.81.900(b)(42) is only applicable to one of three ways that one can commit this offense.[2] In this instance, the defendant had consumed an alcoholic beverage as distinct from possessed an alcoholic beverage. The argument is that because the statute is written in the present tense, it does not include "consumed." If this were so, none of the criminal statutes would be applicable unless the crime was committed in the officer's presence. Take for example AS 11.41.100, murder. "A person commits the crime of murder in the first degree if with the intent to cause the death of another person the person causes the death of any person." If the defendant's argument were applied to murder, no one could be charged with the commission of the offense unless it occurred directly in the officer's presence because the charge would be that the person caused the death of

---

[2] The definition found at AS 11.81.900(b)(42) reads: "'possess'" means having physical possession or the exercise of dominion or control over property. However, very specifically this definition is limited to Title 11. The preamble to the definition section says "for purposes of this Title," that is, Title 11. Therefore, possess may mean something substantially different for Title 4. However, the court need not reach this issue because possess is only one of three ways of committing this offense.

another person. The charge alleges something that occurred in the past. The very first legislature to compile Alaska laws in 1962 recognized that the absurd argument made here might arise and enacted AS 01.10.050 which says: "Words in the present tense include the past and future tenses and words in the future tense include the present tense." Consequently, no matter what creative use one puts Webster's New World Dictionary (2d edition, 1982), the Alaska State Legislature has indicated that the crime set forth in AS 04.16.050 includes the past tense of consuming an alcoholic beverage.

Sabon cites State v. Hornaday, 713 P.2d 71, 74 (1986) for the proposition that an arrest for minor consuming can't be made unless the officer sees the consuming. Hornaday is not an Alaska case. The proper citation is, State v. Hornaday, 713 P.2d 71 (Washington 1986), Under the revised code of Washington the Washington Supreme Court held that consume did not include the past tense. The RCW apparently does not include a provision such as AS 01.10.050. Because Alaska's statutory scheme is different, Hornaday does not apply.

The dissent of Hornaday is ,however, instructive. J. Brachtenbach suggested,

> Common sense is not a bad precedent. To hold that an admittedly intoxicated person is not in possession of intoxicants is an exercise in sophistry beyond my comprehension unless we, like spiders, are content to spin fine buy temporary webs.

J. Brachtenbach went on to quote from Francis Bacon's "Of Judicature" Essays from (1625),

> Judges must beware of hard constructions and strained inferences, for there is no worse torture than the torture of laws.

Sabon's citation to State v. Abu-Shanab, 448 N.W. 2d 557 (Minn. App. 1989) isn't applicable because the issue there was whether the state proved venue at trial in a border town incident.

Neither is State v. Sorensen, 758 P.2d 466 (Utah App. 1988) applicable, where the issue was no evidence of intoxication at trial other than defendant's breath smelling of alcohol.

CONCLUSION

The defendant argues that this case should be dismissed, citing no authority for the dismissal of a case assuming an illegal arrest. Assuming an illegal arrest under Alaska law, the proper remedy is the application of the "exclusionary rule" from the time of the arrest into the future. There is no prospective application of the exclusionary rule found in any case. The arrest in this case is permissible in that the defendant was committing a misdemeanor by having consumed alcohol. For the above-stated reason the defendant's motion should be denied.

DATED at Juneau, Alaska this _____ day of May 1992.

CHARLES E. COLE
ATTORNEY GENERAL

By:_____
J. Ron Sutcliffe
Assistant District Attorney

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,
Petitioner,

vs.

JOSEPH JIM,
Respondent.

Case No. 1JU-92-609CR

MEMORANDUM AND ORDER

The petition for review is denied.

The defendant in this case was charged with Minor Consuming Alcohol and moved in the district court to dismiss as the arrest for the offense took place after the offense was completed and the offense did not take place in the officer's presence. The State opposed dismissal and urged that suppression was all that should occur. The District court denied the motion to dismiss but suppressed evidence that was collected after the arrest.

The State petitions for review and the defendant opposes.

The State fails to address the critical issue in the District Court's order with respect to AS 12.25.030. The State's reading of AS 01.10.050 does not, ipso facto repeal the requirement that an arrest for a misdemeanor take place in the officer's presence.[1]

While there may be some issue as to whether an officer may

[1] Except for noted amendments pertaining to domestic violence and driving while intoxicated.

"seize" a person to preserve evidence of consumption, without a warrant in exigent circumstances, that seizure, under Alaska law, may not be for arrest to bring charges but only for obtaining evidence. Neither the State nor the defendant raised the issue and this court does not decide it.

Officers, of course, may be under a legal obligation to take an alcohol-incapacitated minor into protective custody if the minor is unable to care for his or her self.[2] The officer may also issue a citation.[3]

Dated July 8, 1992

Larry Weeks
Superior Court Judge

I certify that I served J.Ron Sutcliffe and David Seid the above pleading on this 9th day of July 1992 by placing it in their court box.

Marqie Anderson
Secretary to Judge Weeks

[2] Busby v. Anchorage, 741 P.2d 230 (Alaska 1987)

[3] AS 12.25.180

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,

Plaintiff,

v.

JOSEPH RANDALL JIM,

Defendant.

RECEIVED
Jun 26 1992
DEFENDER, JUNEAU

FILED IN THE TRIAL COURTS
STATE OF ALASKA, FIRST DISTRICT
AT JUNEAU
JUN 26 1992
By _____ Depur

No. 1JU-92-609 CR

MEMORANDUM AND ORDER

This matter is before the court on defendant's motion to dismiss. Defendant filed no reply to the State's opposition and neither party has requested oral argument.

Defendant was arrested at 10:26 p.m. on June 2, 1992, for the offense of minor consuming alcohol, a misdemeanor. The factual record concerning the circumstances of the arrest is somewhat vague, but it is undisputed that the defendant was not consuming alcohol in the presence of the officer. At most, he had consumed it some time before he was contacted by the officer.

Whether or not one construes AS 04.16.050 to cover both the past and present tense or not and whether or not one engages in the "exercise in sophistry" (see State v. Hornaday, 713 P.2d 71 (Washington 1986), Brachtenbach, J. dissenting) necessary to hold that one who has consumed is not in possession, it is clear that the act of consuming charged in the complaint was complete before

defendant was arrested, and not in the presence of the arresting officer. AS 12.25.030 requires that the misdemeanor be committed in the officer's presence before he or she can arrest without a warrant.

Having determined that the arrest is illegal, the court must still deny the motion to dismiss. No persuasive argument is advanced by defendant in support of his request to dismiss, and the court is aware of none. The arrest clearly was not outrageous conduct. The officer had probable cause and, indeed, may have taken defendant to the Lemon Creek Jail at defendant's request. In any event, suppression of any evidence seized as a result of the illegal arrest appears to be both the remedy supported by precedent and quite an adequate remedy in the circumstances of this case.

IT IS SO ORDERED.

Dated at Ketchikan, Alaska, this 23rd day of June, 1992.

Thomas E. Schulz
Superior Court Judge

CERTIFICATION

The undersigned certifies that on the 26th day of June, 1992, a true copy of this document was served on the following attorneys: J. Ron Sutcliffe; Donna McCready.

By: [illegible]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,

Plaintiff,

vs.

IVAN SABON,

Defendant.

Case No. 1JU-S92-00053 CR

MEMORANDUM DECISION/ORDER

ON MOTION TO DISMISS

I. FACTUAL AND PROCEDURAL BACKGROUND

On 10 January 1992 , the Defendant, Ivan Sabon, was charged with having violated AS 04.16.050 on or about the same date. The allegation are that "Sabon was found extremely intoxicated on S. Franklin St., hardly able to stand up." The Uniform Summons and Complaint Form filed by police officer Steffel states that Mr. Sabon was "incarcerated." (Complaint, JPD case no. 92000455).

On 11 February 1992, Mr. Sabon, filed a Motion To Dismiss. The Defendant's statement of facts include the following:

> that police officer Steffel approached Mr. Sabon as he was walking on the sidewalk along S. Franklin Street;
> that the officer alleges she smelled alcohol on Mr. Sabon's person and observed Mr. Sabon's eyes to be bloodshot;
> that officer Steffel seized Mr. Sabon, charged him with minor consuming, and transported him to the Juneau Police Department; and
> that police officers conducted a search of Mr. Sabon's pockets, and confiscated a bus pass which did not appear to belong to Mr. Sabon.

Mr. Sabon asserts that his arrest was unlawful as the alleged illegal in violation of due process of law under Alaska Constitution, Art. I, Sec. 14. Mr. Sabon submits that he did not "consume, possess, or control alcoholic beverages" under AS 04.16.050 in the "presence" of the arresting officer. As such, Mr. Sabon contends his arrest without a warrant was contrary to the relevant arrest statute AS 12.25.030. (Motion, pp. 1-6).

On 13 February 1992, the State of Alaska filed its Opposition To Motion To Dismiss. The State declares even if this were an illegal arrest "(and it isn't in the state's view)", such is not a valid basis for dismissal of the action or suppression of the evidence. The defendant's remedy, contends the State, rests with the civil courts. (Opposition, p. 1).

On 13 February 1992, Mr. Sabon filed an Amended Memorandum In Support Of Motion To Dismiss. This amended pleading submits additional authority for Mr. Sabon's position. (Supp. p. 6-7).

It is noteworthy that the State's has <u>not</u> provided a statement of facts which in any way contradicts the defendant's factual statement. Also, the State has <u>not</u> explained their view that Mr. Sabon's arrest was legal. The State merely states their belief without support. In any event, the State seeks to minimize the merits of Mr. Sabon's position by characterizing it to be a "waste of time responding to the law school exam question posed by Sabon." (Opposition, p. 1). Instead, the State declares it is "not opposed to suppressing all evidence seized following Sabon's arrest."

(Opposition, p. 1-2).

II. POINTS AND AUTHORITIES

The Alaska Constitution, Art. I, Sec. 14 provides:

> [t]he right of the people to be secure in their person, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

The offense with which Mr. Sabon stands charged in violation of AS 04.16.050 declares:

> A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages....

The relevant arrest statute, AS 12.25.030, provides in pertinent part as follows:

> (a) A private person or a peace officer without a warrant may arrest a person
> (1) for a crime committed or attempted in the presence of the person making the arrest;....

"An arrest for a misdemeanor made by an officer without a warrant is valid if the offense is committed in his presence." Miller v. State, 462 P.2d 421, 425 (Alaska 1969). When a person is arrested on a misdemeanor, "the lawfulness of the arrest depends on whether the arresting officer was present at the commission of the offense." Rubey v. City of Fairbanks, 456 P.2d 470, 475 (Alaska 1969). The Alaska Supreme Court has recognized "that the grounds for arresting a person without a warrant for a misdemeanor committed in the presence of an officer are considerably more

restricted than those which would constitute probable cause for a felony arrest without a warrant." Miller v. State, 462 P.2d at 426, fn.3.

Whether a seizure has occurred is a question of fact. In Waring v. State, 670 P.2d 357, 364 (Alaska 1976), the test for determining whether a seizure occurred was explained:

> [W]e will employ an objective standard to determine whether or not a seizure has occurred, i.e., whether or not a reasonable person would believe that he or she was free to go....Such a confrontation, therefore, will amount to a seizure 'only if the officer added to those inherent pressures by engaging in conduct which a reasonable man would view as threatening or offensive even if coming from another private citizen.' 3 W.LaFave,"Search and Seizure: A Treatise on the Fourth Amendment," Sec.9.2, at 53, 54 (1978). The critical inquiry would be whether the policeman, although perhaps making inquiries which a private citizen would not be expected to make, has otherwise conducted himself in a manner consistent with what would be viewed as a offensive contact if it occurred between two ordinary citizens.

III. APPLICATION AND ANALYSIS

In the instant case, there seems to be little dispute over the fact that Mr. Sabon was arrested. He was transported to the Juneau Police Department. His pockets were searched by police officers. He was incarcerated at Lemon Creek Correctional Center. His arraignment was the next day. It is clear that a reasonable man in Mr. Sabon's situation would view as threatening or offensive the police conduct in this case. As such, the police had "seized" Mr. Sabon who had been placed under "arrest."

The significance of Mr. Sabon's arrest is that under AS

12.25.030 the police were only authorized to make such a misdemeanor arrest of Mr. Sabon if the alleged crime of minor consuming had been committed or attempted in the police officer's presence. The common understanding of the term "consume" is "to eat or drink up." Webster's New World Dictionary 305 (2ed. 1982). The statutory definition of the word "possess" is "having physical possession or the exercise of dominion or control over property." AS 11.81.900 (45). There is sufficient grounds for a misdemeanor arrest when the alcohol is in the minor's immediate dominion and control. see, Miller v. State, 462 P.2d 421, 427 (Alaska 1969) (open case of beer on the floor behind the driver's seat). Additionally, the power of a person to control or possess an alcoholic beverage ends once the person swallows the alcohol. see, State v. Thronsen, 809 P.2d 941, 943 (Alaska App. 1991) (affirming the trial court's rationale that "mere presence in the body cannot support a criminal conviction for possession).

On the present facts, officer Steffel did not actually see Mr. Sabon drink any alcohol. Additionally, the officer did not report observing any alcoholic beverages in Mr. Sabon's presence. Mr. Sabon was not witnessed as having any dominion or control over alcoholic beverages. The odor of alcohol on Mr. Sabon was circumstantial evidence that Mr. Sabon in the past may have consumed, possessed, or controlled alcohol. The mere smell of alcohol, however, did not give the police officer sufficient reason to believe that the crime of AS 04.16.050 was being committed in

the officer's presence. As such, Mr. Sabon's arrest was not in compliance with the limitations of AS 12.25.030, and was a violation of Mr. Sabon's constitutional rights under Art.1, Sec. 14 to be secure against unwarranted searches and seizures. Cf., A.B.A., Standards for Criminal Justice, vol.II, (2ed. 1986), sec. 10-2.2 (mandatory issuance of citation).

The conclusion reached above is not precluded by AS 01.10.050 which states: "Words in the present tense include the past and future tenses and words in the future tense include the present tense." This statute may have some application in whether charges can be filed against an accused. This statute, however, does not apply to whether a misdemeanor arrest can lawfully be made under AS 12.25.030. The purpose for the limitations of misdemeanor arrest are clear. The statutory intent would be rendered null and void if a police officer was able to arrest a person for a misdemeanor crime previously committed. Any such use of AS 12.25.030 would be contrary to reason, policy, and precedent.

Beyond the above-referenced rationale construing Alaska's right against unwarranted search and seizure, several other decisions dealing with related rights under the Alaska Constitution compel a strict application of article I, section 14. In Breese v. Smith, 501 P.2d 159 (Alaska 1972), the supreme court interpreted article I, section 1 of the Alaska Constitution, which includes the guarantee "that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their

own industry." Relying on this provision's affirmative grant of the right to "liberty," the supreme court held:

> [T]he term "liberty" is an elusive concept, incapable of definitive, comprehensive explication. Yetr at the core of this concept is the notion of total personal immunity from government control: the right "to be let alone."

Bresse vs. State, 501 P.2d at 168.

The court normally will use the exclusionary remedy as the primary means of effectuating certain basic constitutional rights. The rationale for the exclusionary rule is deterrence of unconstitutional methods of law enforcement; and the imperative of judicial integrity which requires that the courts not be made "party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions." see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 (1961); and Terry v. Ohio, 392 U.S. 1, 13, 88 S.Ct. 1868, 1875 (1968). The court.

> In short, police misconduct which shocks the conscience, or is of a nature that calls for the judiciary, as a matter of judicial integrity, to disassociate itself from benefits derivable therefrom, would lead us to invoke the exclusionary rule.

State v. Sears, 553 P.2d 907, 914 (Alaska 1976).

However, the court is not limited to the remedy of the exclusionary rule. The court may on its own motion "and in furtherance of justice," order an action be dismissed. see, Cr.R. 43 (c); see also, Cr.R. 1 and 2. Because of the small number of criminal cases which actually go to trial, the deterrent effect of

the exclusionary rule is severely limited if the remedy for lawless conduct of the police is restricted to the exclusionary rule. Furthermore, the aggravated facts and circumstances of a particular case may lead the court to the conclusion that dismissal is warranted in the furtherance of justice, judicial integrity, and deterrence. The admittedly extreme measure of dismissal is appropriate when the government's outrageous conduct has egregiously violated fundamenatal constitutional rights.

The authors of the constitution did not believe that any one branch of government could be relied upon to honor or make effective the fundamental guarantees contained in the Constitution and the Bill of Rights. The prohibition against unlawful search and seizure is a positive expression of restraint against the abuse of governmental power. The role of the judicial system is vital to the preservation of the fundamental rights. James Madison, in an address to Congress, stated:

> [I]ndependent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights. 1 Annals of Congress 439 (1789).

Courts can not direct the daily operations of government and law enforcement. The judiciary can respond only to those issues brought before it in a case-by-case procedure. Indeed, the protection of fundamental constitutional rights frequently has been

achieved by refusing to validate unlawful police conduct. see, Fresneda v. State, 458 P.2d 134, 139-40 (Alaska 1969).

If courts allow unlawful action by other branches of the government in the enforcement of law, then the judiciary becomes party to the wrong. When courts condone the unlawful and unconstitutional arrests, they render the statutory and constitutional guarantees a nullity.

As Mr. Justice Brandeis observed in his historic dissent in Olmstead v. United States, 277 U.S. 438, 48 S.Ct.564, 575 (1928):

> In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

In the same case, Mr. Justice Holmes declared:

> [W]e must consider the two objects of desire both of which we cannot have and make up our minds which to choose....We have to choose, and for my part I think it is less evil that some criminals should escape than that the government should play an ignoble part.
> ....If the existing code does not permit district attorneys to have a hand in such dirty business it does not permit the judge to allow such iniquities to succeed.

Unless actions are subject to dismissal in the furtherance of justice for flagrant violations of constitutional rights, we engage in governmental hypocrisy in a significant fashion. We are not dealing with "law school exams" (see, State Opposition, p.1). Rather, we are addressing important constitutional principles. Freedom from unlawful search and seizures (and warrantless arrest)

goes to the very heart of our constitutional history. The right of privacy and to "be let alone" is at issue. Protection from the government's unlawful search and seizure is at stake. Our discussion is not a "waste of time" (see, State Opposition, p.1). The values and rights in question are basic to our governmental structure.

Constitutional rights become simply words without content unless there is a meaningful consequence for their violation. The judiciary fails to support and defend the constitution (as we are sworn to do) if we permit official lawlessness.

In the instant case, Mr. Sabon was not only unlawfully arrested without a warrant, but also he was incarcerated and his pockets were searched. The indignity resulting from the arrest of Mr. Sabon was compounded by his subsequent incarceration and search. The government's action was an affront both to Mr. Sabon and the constitution. The aggravated nature of this lawless police conduct in violation of fundamental statutory and constitutional rights mandates a remedial response. Mr. Sabon's right to be let alone was violated. Further, the State's conduct amounted to a illegal search and seizure of Mr. Sabon. It is the opinion of this court in the interest: (1) of deterring such police conduct in the future, (2) of preserving the integrity of the judiciary, (3) of protecting fundamental constitutional rights, and (4) of furthering justice, that the present action is subject to the exclusionary rule and also to dismissal.

In summary, Mr. Sabon was arrested without a warrant for the misdemeanor offense of minor consuming. The arresting officer did not observe Mr. Sabon consume or possess alcohol. Mr. Sabon's arrest was not in accord with AS 12.25.030 and violated Alaska Constitution, art. I, section 14. The exclusionary rule leads to the suppression of evidence obtained following Mr. Sabon's arrest. The interests of police deterrence, judicial integrity, constitutional rights and furtherance of justice together with insufficient evidence, as a matter of law, call for dismissal of the present charges.

IV. CONCLUSION

Therefore, based on all of the above, and for good cause having been shown,

It Is Hereby Ordered, Adjudged, and Decreed:

That any and all evidence seized following Mr. Sabon's arrest shall be suppressed;

That Defendant's Motion To Dismiss is Granted; and

That the present case is Dismissed with prejudice.

Dated this 2 March 1992.

In The District Court At Juneau

J. W. Sivertsen Jr.

John W. Sivertsen, Jr.

Magistrate

CERTIFICATION

The undersigned certifies that on the 2 day of March, 1992, a true copy of this document was served on the following attorneys:

Ron Lutchkey Esq > court box

Diana McCready Esq > court box

By [illegible] Secretary

SB

225

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/10/94

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 1/27/94
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: 2-4-94

HES Committee considered SENATE BILL NO. 225

"An Act relating to credits against certain insurance taxes for contributions to certain educational institutions; and providing for an effective date."

and recommends:

[ ] replace with ________ CS SB 225 (HES)

[✓] same title
[ ] new title
[ ] technical title change (HB only)

[ ] attaches amendment(s)

[ ] adopts ________ Letter of Intent

[ ] further referral to the ________

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
Commerce & Economic	1/20/94		(900.)
Revenue	1/31/94	✓	

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

[ ] Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Loren S. Leman

Alan Rugi

OTHER RECOMMENDATIONS:

Mike Miller No Rec

Judy Salo No Rec

Bob Sharp No Rec

Chair: Signature and Recommendation

SPONSOR STATEMENT S.B. 225

TAX CREDITS FOR INSURANCE COMPANIES

SENATOR JAY KERTTULA

THIS BILL WILL ALLOW AUTHORIZED INSURANCE AND TITLE INSURANCE COMPANIES TO CREDIT THEIR STATE TAX LIABILITY WITH AN AMOUNT EQUAL TO DONATIONS THEY MAKE TO QUALIFIED HIGHER EDUCATIONAL INSTITUTION IN THE STATE.

AN INSURANCE COMPANY WILL BE ABLE TO TAKE A CREDIT FOR 50% OF THE FIRST $100,000 AND 100% OF THE NEXT $100,000 UP TO A LIMIT OF $150,000 (OR 50% OF THEIR TAX LIABILITY WHICHEVER IS LESS) THAT THEY DONATE TO A QUALIFIED INSTITUTION. THIS BILL BROADENS TO THE INSURANCE INDUSTRY THE ALREADY EXISTING TAX CREDITS AVAILABLE FOR OTHER INDUSTRIES IN THE STATE TO SUPPORT HIGHER EDUCATION.

I UNDERSTAND THAT THERE ARE MANY INSURANCE COMPANIES DOING BUSINESS IN THE STATE, SOME OF WHICH HAVE A VERY LIMITED MARKET. THIS IS WHY I HAVE ADDED THE 50% OF TAX LIABILITY LIMITATION, IN ORDER TO ENSURE THAT EACH COMPANY HAS A

MINIMAL AMOUNT OF INTERACTION WITH THE DIVISION OF INSURANCE. IN ADDITION, THE DIVISION OF INSURANCE IS FUNDED ENTIRELY BY THE TAXES AND FEES THE INSURANCE COMPANIES PAY TO THE STATE. SO, IN ORDER TO ENSURE A STABLE BUDGET ARENA FOR THE DIVISION, I HAVE LIMITED THE CREDIT TO 50% OF THE TAX LIABILITY.

I BELIEVE THIS BILL WILL HAVE A POSITIVE AFFECT ON EDUCATIONAL INSTITUTIONS IN THE STATE BY PROVIDING AN INCENTIVE TO THE INSURANCE INDUSTRY TO SUPPORT ALASKA EDUCATIONAL INSTITUTIONS.

8-LS1268\J
Chenoweth
2/3/94

CS FOR SENATE BILL NO. 225(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR KERTTULA

A BILL

FOR AN ACT ENTITLED

"An Act relating to credits against certain insurance taxes for contributions to certain educational institutions; and providing for an effective date."

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

* Section 1. AS 21.09.210 is amended by adding a new subsection to read:

(j) The provisions of AS 21.89.070 apply to a taxpayer who is required to pay a tax due under this section.

* Sec. 2. AS 21.66.110 is amended by adding a new subsection to read:

(b) The provisions of AS 21.89.070 apply to a taxpayer who is required to pay the tax due under this section.

* Sec. 3. AS 21.89 is amended by adding a new section to read:

Sec. 21.89.070. INSURANCE TAX CREDIT FOR GIFTS TO COLLEGES. (a) A taxpayer is allowed a credit against the tax due under AS 21.09.210 or AS 21.66.110 for cash contributions for direct instruction, research, and educational support purposes, including library and museum acquisitions, and contributions to

endowment, that are accepted by a nonprofit, public or private, Alaska two-year or four-year college or university accredited by a regional accreditation association or that are accepted by an Alaska university foundation that supports a university or college that could receive a contribution for which a taxpayer may obtain a credit under this section. The amount of the credit is the lesser of

(1) an amount equal to

(A) 50 percent of contributions of not more than $100,000; and

(B) 100 percent of the next $100,000 of contributions; or

(2) 50 percent of the taxpayer's tax liability under this title.

(b) By September 30 of each year, the Department of Commerce and Economic Developmen shall report to the Legislative Budget and Audit Committee on the credits taken during the preceding state fiscal year under this section. Each public college and university shall include in its annual operating budget request contributions received and how the contributions were used.

(c) A contribution claimed as a credit under this section

(1) may not be claimed as a credit under more than one provision of this title; and

(2) may not, when combined with credits taken during the taxpayer's tax year under AS 43.20.014, AS 43.55.019, AS 43.56.018, AS 43.65.018, or AS 43.75.018, exceed $150,000.

* **Sec. 4.** AS 43.20.014(d) is amended to read:

(d) A contribution claimed as a credit under this section

(1) may not be claimed as a credit under another provision of this title;

(2) may not also be allowed as a deduction under 26 U.S.C. 170 against the tax imposed by this chapter; and

(3) may not, when combined with credits taken during the taxpayer's tax year under <u>AS 21.89.070,</u> AS 43.55.019, AS 43.56.018, AS 43.65.018, or AS 43.75.018, exceed $150,000.

* **Sec. 5.** AS 43.55.019(d) is amended to read:

(d) A contribution claimed as a credit under this section may not

(1) be claimed as a credit under another provision of this title; and

(2) when combined with credits taken during the taxpayer's tax year under AS 21.89.070, AS 43.20.014, AS 43.56.018, AS 43.65.018, or AS 43.75.018, exceed $150,000.

* **Sec. 6.** AS 43.56.018(d) is amended to read:

(d) A contribution claimed as a credit under this section may not

(1) be claimed as a credit under another provision of this title; and

(2) when combined with credits taken during the taxpayer's tax year under AS 21.89.070, AS 43.20.014, AS 43.55.019, AS 43.65.018, or AS 43.75.018, exceed $150,000.

* **Sec. 7.** AS 43.65.018(d) is amended to read:

(d) A contribution claimed as a credit under this section may not

(1) be claimed as a credit under another provision of this title; and

(2) when combined with credits taken during the taxpayer's tax year under AS 21.89.070, AS 43.20.014, AS 43.55.019, AS 43.56.018, or AS 43.75.018, exceed $150,000.

* **Sec. 8.** AS 43.75.018(d) is amended to read:

(d) A contribution claimed as a credit under this section may not

(1) be claimed as a credit under another provision of this title; and

(2) when combined with credits taken during the taxpayer's tax year under AS 21.89.070, AS 43.20.014, AS 43.55.019, AS 43.56.018, or AS 43.65.018, exceed $150,000.

* **Sec. 9.** This Act is retroactive to January 1, 1994, and applies to contributions made under AS 21.89.070, added by sec. 3 of this Act, after December 31, 1993.

* **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 225

Revision Date:
Title: Insurance Tax Credits: Gifts to Colleges
Sponsor: Kerttula
Requestor:

Department Affected: Commerce and Economic Development
BRU: Insurance
Component: Operations
COMPONENT SERIAL NO. 354

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	(900.0)	(900.0)	(900.0)	(900.0)	(900.0)	(900.0)

GF 1004 & 68515

FUND SOURCE						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: $ 0

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

ANALYSIS: (Attach a separate page if necessary.)

This bill provides for a maximum annual premium tax credit of $150,000 for cash gifts to Alaska colleges. Any tax credit will reduce general fund premium tax revenue (OMB 1004, SAS 68515) by a like amount. It is impossible to predict the amount of premium tax credits that would be applicable in any given year. However, if six companies claimed the maximum premium credit, the result would be a loss of $900.0 to the general fund.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance
Phone: 465-2597
Date: 1/20/94

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development
Date:

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Rev 11/93
JB/dgl262fn.jb

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 225

Revision Date:

Dept. Affected: Revenue

Title: Insurance Tax Credit: Gifts to Colleges

Div.: Revenue Operations

Component: Income and Excise Audit

Sponsor: Senator Kerttula

Requestor: (S) HES

COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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: General	**	**	**	**	**	**

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ 0

ANALYSIS: (Attach a separate page if necessary.)

** It is not feasible to determine how credits claimed under this bill will impact credits claimed under AS Title 43 because credits under both Title 21 and Title 43 are competing for the $150,000 total credit limitation. Amounts will vary depending on contributions made by taxpayers each year.

Prepared by: Larry E. Meyers Phone: 465-2320

Division: Income and Excise Audit Date: January 31, 1994

Approved by Commissioner: Darrel J. Rexwinkel Date: January 31, 1994

Agency: Department of Revenue

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM January 19, 1994

SUBJECT: Senate Bill 225 -- Sectional analysis (Work Order No. 8-LS1268\E)

TO: Senator Jalmar Kerttula
Attn: Carol Carrol

FROM: Jack Chenoweth
Legislative Counsel

The measure would extend to payers of taxes imposed under the statutory title which regulates the business of insurance (AS 21) the same opportunity to claim credits for gifts to state educational institutions as were authorized for payers of various taxes imposed under AS 43 by ch. 71, SLA 1991.

Bill section 1: The bill section adds a subsection (j) to AS 21.09.210 that authorizes a claim of the credit against taxes due and payable under the general levy imposed on direct insurance premium income.

Bill section 2: The bill section adds a subsection (b) to AS 21.66.110 that authorizes a claim of the credit against taxes due and payable under the levy imposed on title insurance premiums.

Bill section 3: This provision defines the credit, extending the opportunity to claim a credit against taxes for contributions to qualifying educational institutions. The language derives directly from the claim of the credit authorized by the taxes imposed under AS 43. In amount, the claim of credit is limited to the lesser amount of (1) one-half of the amount of contributions on the first $100,000 ($50,000) and the full amount of the contribution on the next $100,000, an effective maximum of $150,000, or (2) 50 percent of the taxpayer's tax liability under AS 21.

Bill sections 4 - 8: The amendments to these five sections conform the various sections under which the educational institution credit is authorized against the corporate income tax (AS 43.20), oil and gas production (i.e severance) tax and surcharge (AS 43.55), oil and gas property tax (AS 43.56), mining license tax (AS 43.65), and fisheries business tax (43.75). Cumulative claims of the credits

against all taxes--the insurance tax addressed in this bill and the five other taxes against which the claim may be made--during any one tax year may not, in total, exceed $150,000.

Bill section 9: This provision makes the insurance tax credit claimable retroactive to January 1, 1994, to allow for a claim of the full amount of the credit in the current calendar year.

Bill section 10 gives the bill an immediate effective date.

JBC:pl
94-050.plm

ALASKA PACIFIC UNIVERSITY

The President

FAX for Senator Jay Kerttula
Re: Education Tax Credit

Dear Senator Kerttula:

I write to support Senate Bill 225 which seeks to include within the Education Tax Credit legislation a group of Alaskan corporations who were inadvertently left out of the earlier legislation. I refer to insurance companies who do not pay state income tax but do pay a tax based on premiums.

The inadvertence was due to the fact that the insurance companies are included in a different part of the code. S225 seeks to remedy this oversight to make it possible for these companies to receive credits against certain insurance taxes for contribution to certain educational institutions in the same way that is available to other companies under paragraphs in AS43.

Insurance companies, interested in making gifts through the Education Tax Credit program, have urged us to seek a way for them to be included in the program.

This is very important especially to the two private institutions in the state, Alaska Pacific University and Sheldon Jackson College, and to the University of Alaska Foundation. It encourages corporations to support institutions that are totally dependent on private philanthropy. These institutions provide substantial service to the state by educating a significant percentage of Alaska's students with high quality programs.

I urge the passage of S225.

Cordially,

Tom -

F. Thomas Trotter
President

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Carol	From Tom Trotter
Co./Dept. Sen Kerttula's Off	Co. APU
	Phone # 564-8220
Fax # 465-5801	Fax #

4101 University Drive • Anchorage • Alaska 99508
Phone 907-561-1266 • Fax 907-562-4276

Wendy Redman, Vice President
University Relations
(907) 474-7562
(907) 474-7570 (FAX)

University of Alaska Statewide System
Fairbanks, Alaska 99775-6580

TO: Senate HESS Committee

FROM: Wendy Redman, Vice President

DATE: February 2, 1994

RE: SB 225 - Credits Against Certain Insurance Taxes

I am sorry that I am unable to testify in person, or by audio conference, in support of SB 225, but I ask that this letter be included in the proceedings of the meeting, and that the University of Alaska be shown as strongly in favor of passage.

The tax credit legislation passed several years ago has proved very helpful to the University of Alaska, to APU and to Sheldon Jackson College in seeking private funds in support of our academic programs. Corporations and businesses that are inclined to donate to higher education find it much more appealing because of the tax credit opportunity. It has been a significant asset for our fund-raisers in presenting their case to potential donors.

Legislation regarding the taxation of insurance companies doing business in Alaska precludes them from being able to utilize the current corporate tax credit. The legislation before you will extend the tax credit to this group of corporations and, we hope, make them more favorable to our solicitations.

As you know the legislature has been encouraging the University of Alaska to seek alternative revenue sources including private fund-raising. UAF has been particularly active, having just completed their first major campaign. The campus raised close to $12 million over the past two years, exceeding their goal by $2 million. The majority of these funds are in endowments that will provide benefits to students far into the future. UAA and UAS have engaged in smaller efforts, but they have each had notable success over the past year with several substantial gifts.

During discussion on the original legislation there were concerns that other private non-profit groups would be disadvantaged if donors were encouraged, by use of a tax credit, to give money to higher education. I believe that the pattern of private fund-raising in the state has shown that this is not true, and that corporations and businesses continue to make donations following their own internal priorities and principles. The tax credit is an advantage for securing donations that are already targeted for higher education but for one reason or another just haven't materialized.

Thank you for your interest and again, on behalf of the University of Alaska, I urge your support of this legislation, and ask for your vote to move SB 225 from the HESS Committee.

SB 229

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/10/94

FURTHER: Finance

Date of 5-Day Notice: 1/20/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 1/26/94

HES Committee considered SENATE BILL NO. 229

"An Act making an appropriation for the construction of a dormitory at the University of Alaska Anchorage; and providing for an effective date."

and recommends:

[ ] replace with _____ 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

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

[ ] Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS: Ellis "Go Seawolves"
Judith E Sabo

OTHER RECOMMENDATIONS:
Mike Miller No Rec
Duncan - Should be amended to include other campuses.
Drew A Lowan No Rec - need to look at consistency with financial plan
Bob Thorne - No Rec - needs to fit into overall UofA fiscal needs.

Steve Rieger No Recommendation
Chair: Signature and Recommendation

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE
SIXTEENTH ALASKA LEGISLATURE
EIGHTEENTH ALASKA LEGISLATURE

ALASKA STATE SENATE

SENATOR TIM KELLY

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3822

P.O. BOX 210001
ANCHORAGE, ALASKA 99521
(907) 561-7612

SPONSOR STATEMENT FOR SB 229: APPROPRIATING FUNDS FOR A NEW DORMITORY AT UAA

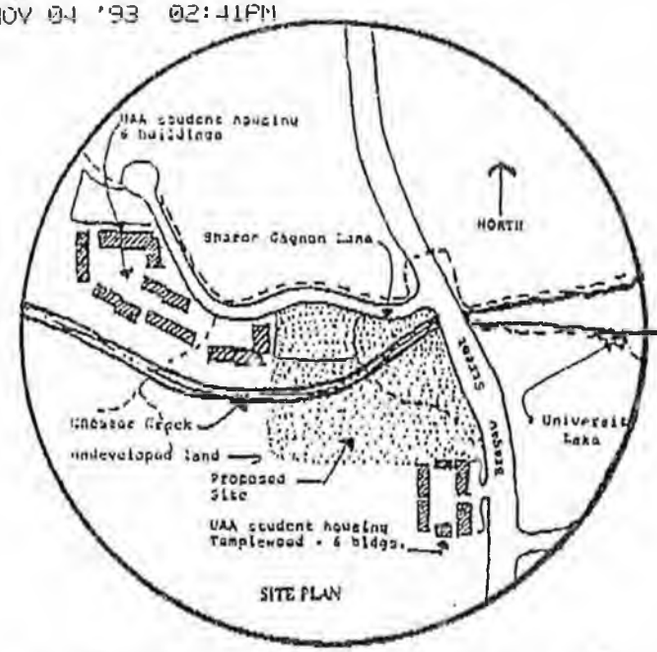
Senate Bill 229 (SB 229) would appropriate $28.5 million for the construction of a new 600 bed dormitory on the campus of the University of Alaska Anchorage (UAA).

Today, UAA has a student population of 16,000 credit students, which represents 64% of the total University of Alaska system-wide enrollment at the three main sites (Anchorage, Fairbanks, and Juneau). Yet UAA has only 384 beds, allowing them to provide housing to only 2.6% of their students. By contrast, the Fairbanks campus provides housing for 38.9% of their students and the Juneau campus 16.6%. Every fall, hundreds of Alaskans, both urban and rural, are denied on-campus accommodations at UAA due to insufficient space, and this gap between demand and availability is continually widening.

According to many studies, resident hall students do better in college, achieve more academically, develop better social skills, take more advantage of leadership opportunities, and become more committed alumni than their commuting classmates. In short, campus resident life brings a greater sense of community and diversity to the campus as a whole, resulting in superior student performance.

In a survey conducted in the spring of 1991, 26% of the student body indicated their desire to live on campus. Today this figure is likely higher given the high rental costs in an extremely tight rental market. Lack of housing for single students, Alaska Natives, married students, athletes, and international students is inadvertently forcing Alaskans to attend out-of-state institutions.

If UAA is to continue to develop as a university for and available to all Alaskans, additional housing must be built.



UNIVERSITY OF ALASKA ANCHORAGE STUDENT HOUSING DEVELOPMENT FY 95

project need:

The University of Alaska Anchorage needs and can support additional STUDENT HOUSING. UAA's Housing Master Plan projects housing growth to 1,436 beds in 1995, today there are 384 beds. The UAA housing office maintains substantial waiting lists throughout the semester for any available housing openings. UAA today provides housing to only 2.6 % of its students.

UAA today needs 600 additional beds. Dorm style housing is the most cost effective and efficient method to provide this number of beds. Additionally dorm style housing will provide UAA with a mix of housing types, that of dorm rooms and apartments.

This facility will include shared dorm rooms with associated toilet rooms, accessory spaces for study, lounge, laundry etc. and food service. A food service plan will be offered to dorm and apartment students and is an essential part of a campus residential life program.

project budget: $28,500,000

This appropriation will fund planning, design and construction costs. The facility would be constructed adjacent to the existing housing facilities on University land.

project benefit:

This additional student housing will benefit the University of Alaska Anchorage with additional beds, affording more students a residential campus life experience. Also, benefits will accrue to the Municipality of Anchorage and State of Alaska with more students spending money in the community for goods and services, creating economic benefit for those business translating into additional tax revenue.

The additional beds will provide the University of Alaska Anchorage a greater opportunity for summer educational conferences, which will bring educators from across the country translating into additional revenue to our community and the State of Alaska.