ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8072
9223 HOUSE JUDICIARY

The Republican Party of Alaska

February 25, 1998

TO: Republican Legislators
FROM: Pete Hallgren, Chair, RPA

RE: HJR 5, Freedom of Conscience Amendment

Folks,

Terry Martin has pointed out a serious oversight in the Alaska State Constitution. Most state constitutions express a "right of freedom of conscience" for their citizens. And though I had assumed that all Alaskans were guaranteed freedom of conscience, I was surprised to find out that it is nowhere guaranteed in our state Constitution.

At the 1996 National Republican Convention in San Diego, the Republican Party of Alaska had two excellent members participate in the drafting of the National Platform, and I, as Party Chair, attended nearly all of the Platform-drafting sessions.

That document is an excellent exposition of Republican ideals; excellently suited to this Last Frontier. The drafters felt that freedom of conscience is so fundamental as to merit a paragraph in the Preamble to the 1996 Republican Platform.

"None of the extraordinary things about our country are gifts of government. They are the accomplishments of free people in a free society. They are achievements, not entitlements - and are sweeter for that fact. They result when men and women live in obedience to their conscience, not to the state."

A constitutional amendment protecting Alaskans' freedom of conscience is fully consistent with the ideals and policies of the Republican Party of Alaska. I would request that you pass on to the voters an appropriately worded Constitutional amendment.

Headquarters: 1001 West Fireweed Lane • Anchorage, AK 99503 • (907) 270-4407 - Fax 270-0425

Rhode Island's Charter of 1663 used the analogous term--'liberty of conscience.' It protected residents from being 'in any ways molested, punished, disquieted, or called into question, for any differences in opinion, in matters of religions and do not actually disturb the civil peace of our said colony.' The charter further provided that residents may 'freely, and fully have and enjoy his and their own judgments, and conscience in matters of religious concernments . . . ; they behaving themselves peaceably and quietly and not using this liberty to licentiousness and profaneness; nor to the civil injury, or outward disturbance of others.'

"The principles expounded in these early charters reemerged more than a century later in state constitutions that were adopted in the flurry of constitution drafting that followed the American Revolution. By 1789 every state but Connecticut had incorporated some version of a free exercise clause into its constitution. These state provisions, which were typically longer and more detailed than the federal Free Exercise Clause, are perhaps the best evidence of the original understanding of the Constitution's protection of religious liberty. After all, it is reasonable to think that the states that ratified the First Amendment assumed that the meaning of the federal free exercise provision corresponded to that of their existing state clauses. The precise language of these state precursors to the Free Exercise Clause varied, but most guaranteed free exercise of religion or liberty of conscience, limited by particular, defined state interests.

"For example, the New York Constitution of 1777 provided: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this state, to all mankind: provided that the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.'

"Similarly, the New Hampshire Constitution of 1784 declared: Every individual has a natural and ualienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained in his person, liberty or estate for worshipping God, in the manner and season most agreeable to the dictates of his own conscience . . . provided he doth not disturb the public peace, or disturb others, in their religious worship.'

"The Maryland Declaration of Rights in 1776 read: "No person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless, under color of religion, any man shall disturb the good order, peace or safety of the state, or shall infringe the laws of morality, or injure others, in their natural, civil, or religious rights' (Maryland Constitution, Declaration of Rights, Art. XXXIII).

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 2/27 ISSUE: moved HJR 5 (failed) not

	YEA	NAY	PRESENT
Representative Croft		✓	
Representative Rokeberg	✓		
Representative Porter			—
Representative James	✓		
Vice Chair Bunde		✓	
Representative Berkowitz		✓	
Chairman Green	✓		
TOTALS:			

PASSED _____ FAILED 3-3

HJR

7

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HJR 7

Revision Date
Title: Const. Amdt.: Relating to Voter Approval for
New Taxes
Sponsor: Representative Martin
Requester: House State Affairs

Dept. Affected: Office of the Governor
BRU: Elective Operations
Component: General and Primary Elections
Component Serial No.: #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

Full-time		0				
Part-time		0				
Temporary		0				

ANALYSIS: *(Attach a separate page if necessary)*

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a singie ballot card. If this measure requires printing an additional ballot card, the costs will increase by $56.0.

Prepared by: Dana LaTour — Phone: 465-5347
Division: Division of Elections — Date: 2/24/97
Approved by Co Agency: Lt. Governor Fran Ulmer — Date: 2/24/97
Office of the Lieutenant Governor

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CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HJR 7

Revision Date		Dept. Affected	Office of the Governor
Title	Const. Amdt.: Relating to Voter Approval for	BRU	Elective Operations
New Taxes		Component	General and Primary Elections
Sponsor	Representative Martin		
Requester	House State Affairs	Component Serial No.	#22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

Full-time		0				
Part-time		0				
Temporary		0				

ANALYSIS: *(Attach a separate page if necessary)*

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Prepared by	Dana LaTour	Phone	465-5347
Division	Division of Elections	Date	2/24/97
Approved by Co Agency	Lt. Governor Fran Ulmer Office of the Lieutenant Governor	Date	2/24/97

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HOUSE JUDICIARY STANDING COMMITTEE

(move out of committee)

DATE: 1/28/98 ISSUE: HJR 7

	YEA	NAY	PRESENT
Vice Chair Bunde		—	
Representative Berkowitz		—	
Representative Croft	—		
Representative James			—
Representative Porter		—	
Representative Rokeberg	— (amend)		
Chairman Green	— (amend)		
TOTALS:	3	3	

PASSED _____ FAILED 3-3

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HJR7

Revision Date
Title: Const. Amdt.: Voter Approval of New Taxes
Sponsor: Representative Martin
Requester: House Judiciary

Dept. Affected: Office of the Governor
BRU: Elective Operations
Component: General and Primary Elections
Component Serial No.: #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

Full-time		0				
Part-time		0				
Temporary		0				

ANALYSIS: *(Attach a separate page if necessary)*

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by $56.0.

Prepared by: Dana LaTour — Phone: 465-5347
Division: Division of Elections — Date: 4/15/97
Approved by Co: Lt. Governor Fran Ulmer — Date: 4/15/97
Agency: Office of the Lieutenant Governor

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HJR7

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor

Title Const. Amend: Prohibiting the imposition of state personal income tax without approval of voters

BRU Elective Operations

Component Elections

Sponsor Representative Martin

Requester House Judiciary Committee

Component Serial No. #21

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by $56.0.

Prepared by Gail Fenumiai Phone 465-3935

Division Division of Elections Date 1/23/98

Approved by C. Lt. Governor Fran Ulmer Date 1/23/98

Agency Office of the Lieutenant Governor

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HJR 7
1/29/98

THE 1992 CASE AGAINST INCOME TAXES

READ ABOUT:

1. HISTORY OF TAXES IN ALASKA.
2. WILLIAM PITT FATHERS INCOME TAX.
3. TARIFA HARBOURS THE TARIFF
4. WILL TAXING THE WORKING - CLASS CONTROL GOVERNMENT SPENDING?
5. INCOME TAXES VS. PERMANENT FUND DIVIDEND!

"Blessed Be A State Without Income Tax"

Terry Martin - April 15, 1992

THE 1992 CASE AGAINST INCOME TAXES IN ALASKA

They say it was individual pride of achievement that developed Alaska. The miracle of Alaska was forged when the dreams of men and women put on work clothes. As pioneers, they set forth armed with self-esteem, ambition, and the resolve to compete and excel on their own.

How ironic it is today that some of these same people and their children are demanding larger cash handouts because they arrived first.

Edward Gibbon wrote about the Athenians, "They wanted comfortable life and they lost it all - security, comfort and freedom. When they finally wanted not to give to society, but for society to give to them; when the freedom they worked for was freedom from responsibility, Athens ceased to be free and was never free again." They learned that when the people failed to exercise their control over government, the public servants turned to public masters.

The question is - when does a welfare state destroy the free society that established it? It is the sober truth that as long as government cares for the people, the people will not care for themselves. From great societies of the past: Rome, Athens, Great Britain, our forefathers instilled in their people the principle that nothing is free; that socialism pulls few up, but drags many down; and a completely unnecessary tax, used to prop up such a system, is nothing more than punishment for working.

Whenever the government spends or taxes a single dollar more than it needs, it sprouts another seed of poisonous inflation.

Looking to government for "security" destroys the self-reliance that built America and Alaska. You cannot vote yourself security - you must earn it. You cannot bribe poverty to go away - you must work it to death.

The encouragement of pressure groups to "get theirs" at the expense of the working people - by threatening elected officials with defeat - will destroy the self-reliant class and the will to achieve. If the state legislature had more confidence in a hard-work, free-enterprise future than in a cash-for-vote present, there would be a glorious Alaskan future, and it could start now.

States Government was supported by internal taxes on distilled spirits, carriages, refined sugar, tobacco and snuff, property sold at auction, corporate bonds, and slaves. The high cost of the War of 1812 brought about the nation's first sales taxes on gold, silverware, jewelry, and watches. In 1817, however, Congress did away with all internal taxes, relying on tariffs on imported good to provide sufficient funds for running the Government."

The almanac continues by revealing that in 1862, "in order to support the Civil War effort, Congress enacted the nation's first income tax law. It was a forerunner of our modern income tax in that it was based on the principles of graduated, or progressive, taxation and of withholding income at the source. During the Civil War, a person earning from $600 to $10,000 per year paid tax at the rate of 3%. Those with incomes of more than $10,000 paid taxes at a higher rate. Additional sales and excise taxes were added, and an "inheritance" tax also made its debut. In 1866, internal revenue collections reached their highest point in the nation's 90-year history - more than $310 million, an amount not reached again until 1911."

"The Act of 1862 established the office of Commissioner of Internal Revenue. The Commissioner was given the power to assess, levy, and collect taxes, and the right to enforce the tax laws through seizure of property and income and through prosecution. His powers and authority remain very much the same today. "

"In 1868, Congress again focused its taxation efforts on tobacco and distilled spirits and eliminated the income tax in 1872. It had a short-lived revival in 1894 and 1895. In the latter year, the U.S. Supreme Court decided that the income tax was unconstitutional because it was not apportioned among the states in conformity with the Constitution."

The history concludes with discussion of taxes in the early Twentieth Century. The almanac states, "By 1913, with the 16th Amendment to the Constitution, the income tax had become a permanent fixture of the U.S. tax system. The amendment gave Congress legal authority to tax income and resulted in a revenue law that taxed incomes of both individuals and corporations. In fiscal year 1918, annual internal revenue collections for the first time passed the billion-dollar mark, rising to $5.4 billion by 1920. With the advent of World War II, employment increased, as did tax collections - to $7.3 billion. The

Still another character of the system then (and now) was the narrowness of the tax base. For example, the territorial tax commissioner reported that during the calendar years 1947 and 1948, some 91.25 percent of the tax revenues collected came from a mere five sources. The salmon industry contributed 21.25 percent, liquor excise taxes 21.31 percent, motor fuel and motor vehicles 15.65 percent, gross sales tax 28.8 percent, and the school head tax 4.12 percent.

Territorial residents had the habit of asking Congress to provide funds for any number of services. The federal government maintained Alaska's judicial system, managed its fish and game resources, paid the salaries and expenses of the Territorial Legislature, built its roads, trails and tramways and educated its Native children. The territory, it is true, made some minor annual contributions to some of these programs. By and large, however, the territory's hardy pioneers expected Uncle Sam to foot the bill for most activities normally conducted and paid for by territorial and local government.

Governor Gruening battled for 10 years, from 1939 until 1949, for a modern tax system. Finally, in the latter year, [the] Legislature passed a modern tax system, including a personal income tax."

From Reaching for a Star by Gerald Bowkett, an example of how Alaskans reacted to the imposition of the federal income tax:

TAXATION WITHOUT REPRESENTATION

FAIRBANKS, April 4, 1956 - (AP) - A federal court jury ... last night freed an Alaskan who had pleaded not guilty to ... income tax evasion on grounds that he did not believe in "taxation without representation."

Jack Marler ... was found innocent of charges that he willfully failed to file income tax returns...

...The defendant's attorney, Edgar Paul Boyko of Anchorage, announced before the trial that he would make the case "a test of the income tax laws as applied to the Territory of Alaska."

A new adage was introduced to rationalize an income tax, namely "Who ever heard of representation without taxation?" I have and I see nothing wrong this. This the way our country has operated for more than 126 years, except for a brief period during the Civil War. What is really bad and certainly constitutionally questionable, is taxation without equal representation. Alaska is the only state where a simple majority in the legislature can impose a tax on its citizens - this means 21 members in the House of Representatives and 11 members of the Senate. Because our state is so malapportioned, the majority of legislators do not represent the majority of the citizens. This brings to mind the famous aphorism, "Power corrupts: absolute power corrupts absolutely." Few people realize the awesome power given to a few elected officials by Alaska's Constitution, Article IX, Section 1. One may wonder if the framers of the Alaska Constitution ever considered what the Boston Tea Party was all about.

The combination of taxes has become so burdensome that it is shackling America

Those who have the power of taxation are not necessarily the best informed. According to a special opinion editorial in the Washington Post on March 13, 1992 by George F. Will, the tax revolt of 1970s is alive and well in the 90s. In 1990 the people of New Jersey, the second richest state with a median household income over $40,000, elected Governor Jim Florio, a Democrat, on the promise of no new taxes and won (sound familiar!). Upon assuming office he promptly raised taxes far more than the deficit required. His tax increases had redistributive purposes, particularly for helping poor school districts.

The people of New Jersey did not feel as though they had anything extra for government to play with considering their style of living. They were most agitated about the $2.6 billion tax increase - the largest in their state history. Thus, last November 1991, when Democrats controlled both houses of the

prior to implementation of laws requiring new revenues.In Alaska the people are constitutionally prohibited from interfering with legislative appropriations and sources of revenue (taxes).

There are taxpayers' petition drives in a number of other states such as Arizona, Florida, North Dakota and Washington, but such is not allowed in Alaska. The last time a group of citizens tried this (1982), it was ruled as unconstitutional through an interpretation of an assistant attorney general that limiting the source of revenues for taxation would infringe on the untouchable powers of the legislature to appropriate. From this, one is to assume the powers of taxation are superior to the guaranteed right of petition in Alaska.

Obviously, Alaskans' right of petition is severely limited and the pro-tax legislators who defend the stand for additional taxation are bubbling with joy in recognition of the barrier preventing the petition drive. Many Alaskan are unaware that their rights have been stripped through liberal and undemocratic interpretations.

Taxing the working class and transferring the revenues to the non-working segment of a population is the worst sort of socialism a state government can practice. Can we not learn from the downfall of eastern Europe and the U.S.S.R.?

Every time the big spenders create a crisis in Alaska - "tax, tax, tax" is always their answer. They forward the idea that increased taxes reduces the size of government. People think the world of communism and socialism is over, unfortunately in Alaska the charms of these bells ring loudly in the halls of Juneau.

California's super crazy new cracker tax is another example showing that paying taxes does little to curtail the appetite of tax hungry liberal legislators. In order to balance the budget, or at least make a dent in the deficit, California increased the 6 percent sales tax by a cent and a quarter on sales of certain items such as magazines, ship and aviation fuel, bottled water, and snack foods. So what's a taxable snack? Not peanuts, pork rinds or doughnuts. All crackers are, except saltines, graham crackers, animal crackers and arrowroot. Granola bars are taxed, granola isn't. Hershey milk chocolate chips are exempt, a Hershey milk chocolate bar is taxed. Tostitos tortilla chips are exempt, Doritos

Misguiding assumptions were used to lead families and married couples into accepting the tax, instead of reducing the size of the PFD checks. The major misconception is not taking reality into computation. In the highest percentage of cases for families in Alaska both parents are working. Instances where a multi-member parent unit has only one breadwinner are clearly the exception, not the rule.

So, in computing how your family will actually advance in total income, be sure you include the tax to be paid by each working member of the family, and subtract it from the total dividends received.

The second major factor to be aware of is that these comparisons are made on tax levels of 3.2% and 5.6%. Once the tax is voted into law, how quickly will it rise? If the most recent state tax level at 16% of federal is used, how then does your gross tax level compare with PFD income? Be careful in the use of terms when you evaluate the difference of 16% of federal tax and 4% or 5% of your gross income. The income tax may sound much less (at 4% or 5%) but keep in mind that it loses the innocence of the so-called "truth", when the true intent gouges out the most tax.

A vivid example of this would be to look at an individual whose gross earnings are $18,000. If this person is single with no dependents , whereas the federal tax would be $2,505.60 in one year, 16% would amount to approximately $400. This is compared to the wondrous savings of a personal income tax which would take 5% of the gross equalling $900. In the same respect, one who earns $36,000 gross would have $6927 removed for federal tax, 16% of which is approximately $1107 vs. the personal income tax of 5% on the gross amounting to $1,800. Obviously there is major discrepancy resulting in a much greater amount paid through the personal income tax method. Yet again, it is evident that those who have the power of taxation are not necessarily the best informed.

When one considers the tremendous amount of revenue the State of Alaska received during FY 1980s, it is illogical, irrational, unnecessary and, most importantly unjustifiable to tax the working people of this state. Should we reduce the workers of Alaska to slavery to a government that has billions of dollars in savings, and gives out hundreds of millions of dollars in "cold" cash that no other state would dream of doing

Some legislators reason it to be the purpose of government to equalize economic power. Can the working people of Alaska carry the increased burden of government spending to support the desires of a large non-working segment of our state who demand not only unnecessary services, but in addition, enormous amounts of cold cash to elevate their buying power? I find no reason why we must concern ourselves with the redistribution of the working people's personal income while we continue to give out hundreds of millions of dollars to every citizen who does nothing to earn it.

Now the question is, "How many non-workers can the workers support?" We have to know where the line of refusal to support stops in our system. Maybe it runs until it becomes impossible for the workers to handle the job any longer or when they see they can have a higher income by not working. Are we approaching the breaking point? Here are some of the figures for people who help increase the costs of government, but for obvious reasons contribute little to pay those costs: 179,939 under the age of 19; 25,000 college students in Alaska at full-time equivalency; 22,095 seniors over the age of 65, 3/4 of whom have no tax liability; 2,350 inmates in the state correction system; 17,300 average per year unemployed - a total of 229,384 individuals receiving permanent fund dividend checks (excluding felons who are now ineligible). In essence, this results in the employed workers of Alaska being forced to pay for almost 230,000 dividend checks distributed to individuals who are not working.

Taxing the working-class and giving the revenues to the non-working segment of a population is the worst sort of inflation a state government can put into the economy.

An interesting side note to this issue is that under the permanent fund dividend program "hold harmless" provisions, the state will pay $24 million in federal income taxes on behalf of certain low income PFD recipients to ensure that they will not be taxed, because they exceed their low income limits and thereby become ineligible for federal government programs they are currently covered under. An additional $5 million plus is allocated by the state to pay federal taxes under the hold harmless benefit for recipients of the longevity bonus, who would become ineligible for programs such as medicaid with the additional income. Each of the 158,000 taxpayers would have to pay $120 to pay this tax of the "poor".

Of course, these hold harmless provisions are just two tax exemption benefits allowed to certain groups of people. Another well-known state subsidy is the payment of $3 million in property taxes to

to tax ourselves $283 million just to get $17 million? Resident workers would pay 95% of the tax, while out-of-staters would pay 5%.

Another rationale for paying state income taxes is that they can be deducted from your federal tax. Because we have no state income tax, $86 million stays with the federal government each year (out of $399 million in federal taxes paid by Alaskans). This is termed the "federal tax leakage." In other words, if we had a state income tax, 22 cents out of every dollar in income tax paid to the IRS would stay in the state. Does it make sense to tax the working class $316 million to save the $86 million? If this is the case, then the same logic should apply to other leakages to the federal government. Why not stop giving out permanent fund dividends and save that $100 million leakage? Is this not a reasonable trade-off? And who will benefit? - the working people. With the PFD check increasing each year, the federal tax leakage will dramatically increase.

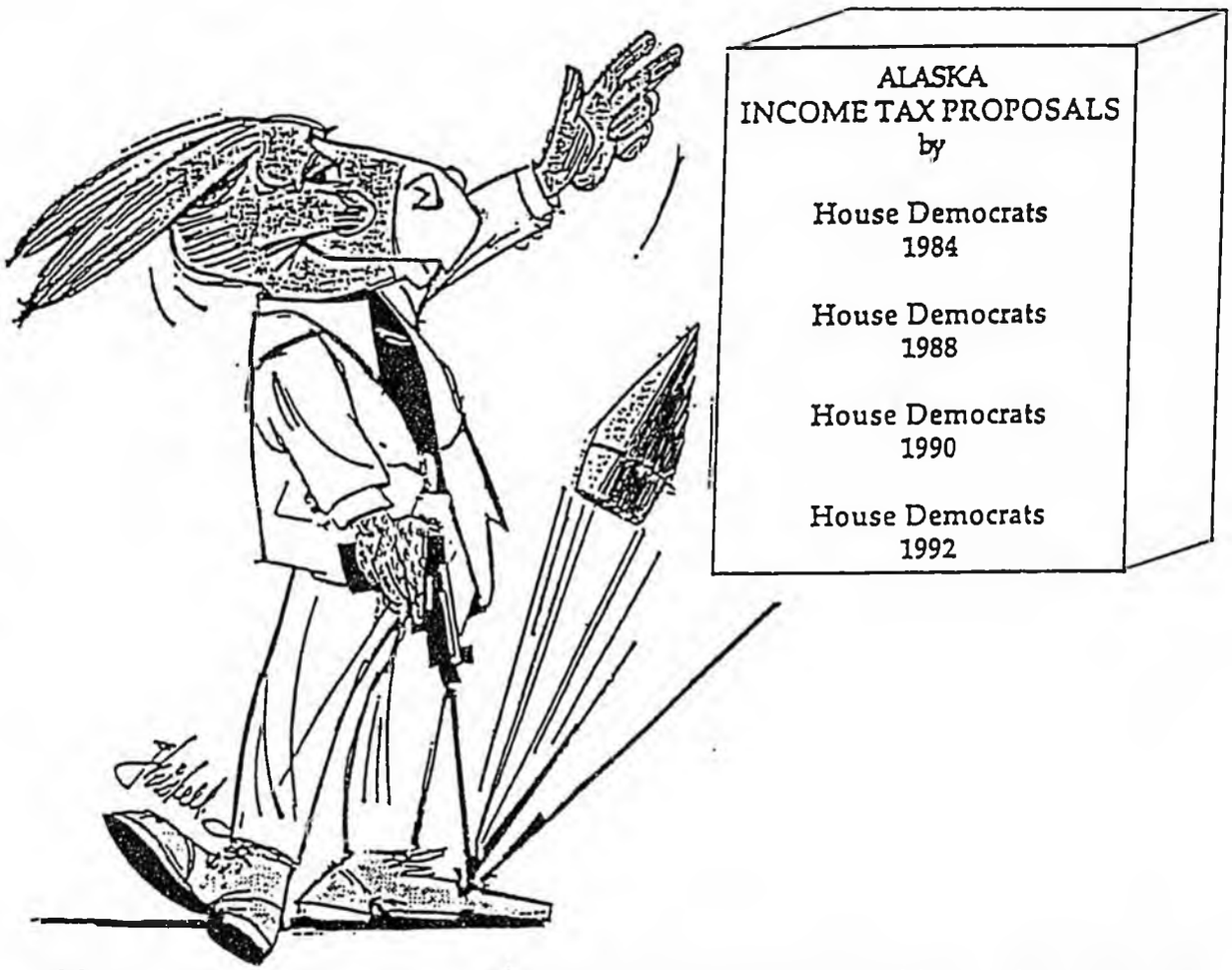
I cannot really blame the Juneau representatives for pushing a state income tax because the program itself would employ, at a minimum, 92 new people with a payroll of at least $4.1 million ($50,000 for the average employee including benefits), plus an enormous start-up cost with new machinery and office space required. At the same time, we will still be employing 92 full-time equivalent employees to give out the dividend checks.

Currently, state employees and teachers across the state are complaining or threatening to go on strike for a 3% to 4% pay increase. However, many of them also say they support an income tax. I am bewildered by their rationalization. Don't they realize that an income tax is also a reduction in their wages? Do they not realize that government workers and teachers far and above receive a higher salary than the average private worker and would pay a higher percentage of taxes. As everyone has shared equally in the wealth of Alaska through the PFD checks, so everyone should also be willing to share equally in the loss through a reduction in the PFD. With an income tax, working people are being forced to take too great a portion of the burden in replacing the lost revenues.

Others who advocate reimposing the state income tax say people were more interested in government when they paid taxes. This is really grabbing at straws, and is not borne out by the facts. Figures show in Alaska that the public's participation in government, in terms of percentages of people

Once a new tax is put into law, there would be no limit to how high future legislatures could raise it. Alaskans used to pay an additional 16% income tax of their federal tax to the state. Nor would there be any limit on the growth of state government as some suggest. You don't see the federal government decrease as people pay taxes, nor did the state government decrease when an income tax was imposed. The new tax is a threat to every individual's personal and family well-being. The state does not need the extra revenue. The legislature was not created to devour the savings of the widows, nor the income of the single parent who struggles to provide for the needs of her or his children.

BLESSED BE A STATE WITHOUT INCOME TAX!!!



How many times can you shoot yourself in the foot?

John Maney
@ Municipal
OMB office
Close fiscal
gap.
Role of Legis.

Sponsor Statement

HJR 7

Proposing an amendment to the Constitution of the State of Alaska prohibiting the imposition of state personal income taxation, state ad valorem taxation on real property, or state retail sales taxation without the approval of the voters of the state.

With the continued successful production of North Slope oil, $20 billion in their Permanent Fund and another $3 billion plus in the budget reserve, Alaskans enjoy one of the lowest rates of personal taxation in the US.

We should keep it that way.

On the other hand, Alaskans have hardly any protection against the imposition of taxation by the Legislature, certainly not the kind of protection other states' citizens have. In Alaska, a simple majority of the House and Senate can approve and impose a new tax or raise an existing tax. In many other states, a supermajority vote of anywhere from 60 percent to 80 percent of the elected representatives is required to put new and higher taxes in effect.

While there has not been a serious threat of legislative imposition of the income tax since it was repealed in 1980, bills proposing the personal income tax have been introduced every Legislature since then. Perhaps the greatest effort was made in 1987-88 by then-Governor Steve Cowper, who went so far as to establish an income tax task force which tried to drum up support around the state for the idea; however, the majority in the Legislature has not been inclined to support the income tax.

I believe it is time for the Legislature to give back to the people some of their taxing powers, which few people realize were given away to the Legislature when the vote for statehood took place. The constitutional amendment proposed by HJR 7 would simply require the approval of the majority of Alaskan voters before any of three kinds of statewide taxes could take effect. I am firmly convinced that Alaska's voters have the wisdom to understand the state's financial picture; if that picture becomes so bleak as to require new taxes, the voters should have the final authority to approve them.

Sectional Analysis

HJR 7

Proposing an amendment to the Constitution of the State of Alaska prohibiting the imposition of state personal income taxation, state ad valorem taxation on real property, or state retail sales taxation without the approval of the voters of the state.

Section 1 amends Article IX, sec. 1 of the state constitution by adding a new sentence to read: "A law establishing a State tax on personal income, a State ad valorem tax on real property, or a State retail sales tax shall not take effect until approved by the voters of the State by amajority of the votes cast on the proposed law."

Section 2 directs that the proposed amendment be placed before the voters in the next general election in conformity with that section of the constitution that governs how the constitution may be amended. Article XIII, sec. 1 requires that the proposed amendment pass the legislature by a 2/3 vote of each house and be approved by more than half the voters in the election. When approved by the voters, the amendment takes effect 30 days after certification of the election by the Lt. Governor.

1995 State Tax Collections by Source

(Percentage of Total)

	General Sales	Selective Sales	Ind. Income	Corp. Income	Other Taxes
Alabama	26.9	25.2	29.2	4.7	14.1
Alaska	0.0	5.3	0.0	27.5	67.3
Arizona	44.5	13.3	23.8	6.7	11.6
Arkansas	38.4	17.3	30.9	5.6	7.8
California	33.2	9.3	34.4	10.8	12.3
Colorado	27.2	15.1	46.4	4.2	7.2
Connecticut	31.7	17.9	33.1	9.4	7.9
Delaware	0.0	15.2	35.4	12.2	37.2
Florida	57.3	19.8	0.0	5.1	17.8
Georgia	37.3	9.7	40.5	6.9	5.6
Hawaii	47.4	15.0	32.2	1.6	3.7
Idaho	33.2	13.8	34.6	7.5	10.9
Illinois	29.9	20.9	32.0	8.9	8.2
Indiana	33.7	10.8	40.5	10.9	4.2
Iowa	33.2	13.7	36.7	5.0	11.3
Kansas	36.6	13.7	32.7	6.9	10.0
Kentucky	26.1	19.8	31.3	5.4	16.7
Louisiana	31.9	19.6	22.7	6.1	19.8
Maine	35.9	15.2	35.3	3.5	10.1
Maryland	24.2	19.2	42.2	4.5	9.9
Massachusetts	21.4	10.8	51.5	10.4	5.9
Michigan	33.1	10.2	30.9	12.0	13.8
Minnesota	29.4	15.3	39.3	7.1	8.9
Mississippi	47.0	20.3	19.0	5.6	8.1
Missouri	34.8	13.8	37.5	5.5	8.5
Montana	0.0	20.5	30.6	6.2	42.6
Nebraska	35.2	18.3	33.4	5.6	7.5
Nevada	53.3	30.5	0.0	0.0	16.2
New Hampshire	0.0	59.0	4.1	18.2	18.7
New Jersey	30.4	20.9	33.4	7.6	7.8
New Mexico	42.8	14.0	20.8	5.3	17.1
New York	20.0	14.4	51.3	8.2	6.2
North Carolina	24.5	18.1	41.1	7.9	8.4

North Dakota	29.6	27.6	14.9	7.3	20.6
Ohio	31.3	18.0	36.6	4.7	9.5
Oklahoma	25.9	16.0	32.1	3.8	22.2
Oregon	0.0	12.8	65.3	7.3	14.7
Pennsylvania	30.4	17.0	27.0	9.8	15.9
Rhode Island	30.6	20.9	35.6	5.5	7.3
South Carolina	37.7	14.2	34.8	5.3	8.1
South Dakota	51.7	25.8	0.0	5.8	16.8
Tennessee	56.9	20.4	1.7	8.3	12.7
Texas	50.6	30.4	0.0	0.0	19.0
Utah	39.9	10.9	38.3	5.5	5.4
Vermont	21.7	27.5	31.2	6.0	13.5
Virginia	21.9	17.4	49.1	4.2	7.5
Washington	59.3	15.6	0.0	0.0	25.1
West Virginia	29.0	24.4	26.0	8.0	12.6
Wisconsin	28.5	14.1	43.6	7.4	6.4
Wyoming	31.2	9.6	0.0	0.0	59.2
District of Columbia	19.9	12.7	26.4	6.6	34.4
U.S. Total	33.0	16.2	31.4	7.3	12.1

Source: U.S. Bureau of the Census.

State Sales Tax Rates

January 1, 1997

State	Tax Rates	------Exemptions------ Food	Prescription Drugs	Non-prescription Drugs
ALABAMA	4		*	
ALASKA	none			
ARIZONA	5	*	*	
ARKANSAS (6)	4.5		*	
CALIFORNIA (4)	6	*	*	
COLORADO	3	*	*	
CONNECTICUT	6	*	*	
DELAWARE	none			
FLORIDA	6	*	*	*
GEORGIA (3)	4	2%	*	
HAWAII	4		*	
IDAHO	5		*	
ILLINOIS (2)	6.25	1%	1%	1%
INDIANA	5	*	*	
IOWA	5	*	*	
KANSAS	4.9		*	
KENTUCKY	6	*	*	
LOUISIANA	4		* *(8)*	
MAINE	6	*	*	
MARYLAND	5	*	*	*
MASSACHUSETTS	5	*	*	
MICHIGAN	6	*	*	
MINNESOTA (2)	6.5	*	*	*
MISSISSIPPI	7		*	
MISSOURI	4.225		*	
MONTANA	none			
NEBRASKA	5	*	*	
NEVADA	6.5	*	*	
NEW HAMPSHIRE	none			
NEW JERSEY	6	*	*	*
NEW MEXICO	5			

NEW YORK	4	*	*	*
NORTH CAROLINA	4	3%	*	
NORTH DAKOTA	5	*	*	
OHIO	5	*	*	
OKLAHOMA	4.5		*	
OREGON	none			
PENNSYLVANIA	6	*	*	*
RHODE ISLAND	7	*	*	*
SOUTH CAROLINA	5		*	
SOUTH DAKOTA	4		*	
TENNESSEE	6		*	
TEXAS	6.25	*	*	
UTAH	4.875		*	
VERMONT	5	*	*	
VIRGINIA	3.5		*	(7)
WASHINGTON	6.5	*	*	
WEST VIRGINIA	6		*	
WISCONSIN	5	*	*	
WYOMING (5)	4		*	
DIST. OF COLUMBIA	5.75	*	*	*

Source: Compiled by FTA from various sources.
(1) Some state tax food, but allow an (income) tax credit to compensate poor households. They are: HI, ID, KS, SD, VT, and WY.
(2) 1.25% of the tax in IL and 0.5% in MN is distributed to local governments.
(3) Taxed at 1% after October 1, 1997, fully exempt after October 1, 1998.
(4) Includes a 0.5% temporary tax pending a judicial ruling on school finance.
(5) Tax rate may be adjusted annually according to a formula based on balances in the unappropriated general fund and the school foundation fund.
(6) Effective July 1, 1997, tax rate in Arkansas will be 4.625%, Vermont 4%.
(7) Scheduled to be exempt after July 1, 1998
(8) Exemption does not apply to local sales taxes.

State Individual Income Tax Rates

Tax rate for tax year 1997 -- as of January 1, 1997

State	---Tax Rates--- Low	High	# of Brackets	--Income Brackets-- Low	High	---Personal Exe Single	Marrie
ALABAMA	2.0	5.0	3	500 (b)	3,000 (b)	1,500	3,000
ALASKA	No State Income Tax						
ARIZONA	3.0	5.6	5	10,000 (b)	150,000 (b)	2,100	4,200
ARKANSAS	1.0	7.0 (e)	6	2,999	25,000	20 (c)	40 (
CALIFORNIA (a)	1.0	9.3	6	4,908 (b)	223,390 (b)	67 (c)	134 (
COLORADO	5.0		1	-----Flat rate-----		----------None----	
CONNECTICUT	3.0	4.5	2	2,250 (b)	2,250 (b)	12,000 (f)	24,000 (
DELAWARE	0.0	6.9	7	4,500	30,000	100 (c)	200 (
FLORIDA	No State Income Tax						
GEORGIA	1.0	6.0	6	750 (g)	7,000 (g)	1,500	3,000
HAWAII	2.0	10.0	8	1,500 (b)	20,500 (b)	1,040	2,080
IDAHO	2.0	8.2	8	1,000 (g)	20,000 (g)	2,650 (d)	5,300 (
ILLINOIS	3.0		1	-----Flat rate-----		1,000	2,000
INDIANA	3.4		1	-----Flat rate-----		1,000	2,000
IOWA (a)	0.4	9.98	9	1,112	50,040	20 (c)	40 (
KANSAS	4.4	7.75	3	20,000 (i)	30,000 (i)	2,000	4,000
KENTUCKY	2.0	6.0	5	3,000	8,000	20 (c)	40 (
LOUISIANA	2.0	6.0	3	10,000 (b)	50,000 (b)	4,500 (j)	9,000 (
MAINE (a)	2.0	8.5	4	4,150 (b)	16,500 (b)	2,100	4,200
MARYLAND	2.0	5.0	4	1,000	3,000	1,200	2,400
MASSACHUSETTS	5.95 (k)		1	-----Flat rate-----		2,200	4,400
MICHIGAN (a)	4.4		1	-----Flat rate-----		2,500	5,000
MINNESOTA (a)	6.0	8.5	3	16,510 (l)	54,250 (l)	2,650 (d)	5,300 (
MISSISSIPPI	3.0	5.0	3	5,000	10,000	6,000	9,500
MISSOURI	1.5	6.0	10	1,000	9,000	1,200	2,400
MONTANA (a)	2.0	11.0	10	1,900	66,399	1,520	3,040
NEBRASKA (a)	2.62	6.99	4	2,400 (n)	26,500 (n)	69 (c)	138 (
NEVADA	No State Income Tax						
NEW HAMPSHIRE	State Income Tax is Limited to Dividends and Interest Income Only.						
NEW JERSEY	1.4	6.37	6	20,000 (o)	75,000 (o)	1,000	2,000

NEW MEXICO	1.7 - 8.5	7	5,500 (p) - 65,000 (p)	2,650 (d)	5,300 (
NEW YORK	4.0 - 6.85	4	8,000 (b) - 20,000 (b)	0	0
NORTH CAROLINA	6.0 - 7.75	3	12,750 (q) - 60,000 (q)	2,500 (d)	5,000 (
NORTH DAKOTA	2.67 - 12.0 (r)	8	3,000 - 50,000	2,651 (d)	5,301 (
OHIO (s)	0.693 - 7.004	9	5,000 - 200,000	850 (s)	1,700 (
OKLAHOMA	0.5 - 7.0 (t)	8	1,000 - 10,000	1,000	2,000
OREGON (a)	5.0 - 9.0	3	2,200 (b) - 5,550 (b)	124 (c)	248 (
PENNSYLVANIA	2.8	1	-----Flat rate-----	----------None----	
RHODE ISLAND	27.5% Federal tax liability			---	---
SOUTH CAROLINA (a)	2.5 - 7.0	6	2,280 - 11,400	2,650 (d)	5,300 (
SOUTH DAKOTA	No State Income Tax				
TENNESSEE	State Income Tax is Limited to Dividends and Interest Income Only.				
TEXAS	No State Income Tax				
UTAH	2.3 - 7.0	6	750 (b) - 3,750 (b)	1,988 (d)	3,975 (
VERMONT	25% Federal tax liability (w)		---	---	---
VIRGINIA	2.0 - 5.75	4	3,000 - 17,000	800	1,600
WASHINGTON	No State Income Tax				
WEST VIRGINIA	3.0 - 6.5	5	10,000 (b) - 60,000 (b)	2,000	4,000
WISCONSIN	4.9 - 6.93 (x)	3	7,500 - 15,000	0	0
WYOMING	No State Income Tax				
DIST. OF COLUMBIA	6.0 - 9.5	3	10,000 - 20,000	1,370	2,740

Source: The Federation of Tax Administrators from various sources.
(a) Seven states have statutory provision for automatic adjustment of tax brackets, personal exemption or standard deductions to the rate of inflation. Nebraska indexes the personal exemption amounts only.
(b) For joint returns, the tax is twice the tax imposed on half the income.
(c) tax credits.
(d) These states allow personal exemption or standard deductions as provided in the IRC. Utah allows a personal exemption equal to three-fourths the federal exemptions. Amounts reported include the 1996 index adjustment.
(e) A special tax table is available for low income taxpayers reducing their tax payments.
(f) Combined personal exemptions and standard deduction. An additional tax credit is allowed ranging from 75% to 0% based on state adjusted gross income. Exemption amounts are phased out for higher income taxpayers until they are eliminated for households earning over $71,000. For tax years beginning after 1996, the tax bracket amount increases to $4,500.
(g) The tax brackets reported are for single individuals and married households filing jointly. For married households filing separately, the same rates apply to income brackets ranging from $500 to $5,000.
(h) For joint returns, the tax is twice the tax imposed on half the income. A $10 filing fee is charge for each return and a $15 credit is allowed for each exemption.
(i) The tax brackets reported are for single individual and married households filing separately. For married household filing jointly, the rates range from 3.5% for income under $30,000 to 6.45% for income over $60,000.
(j) Combined personal exemption and standard deduction.
(k) A 12% tax rate applies to interest, dividends and capital gains.

(l) The tax brackets reported are for single individuals. For married taxpayers filing jointly, the same rates apply to income brackets ranging from $24,140 to $95,920. An addition 0.5% tax is applied to certain income levels.
(m) Limited to $10,000 for joint returns and $5,000 for individuals.
(n) The tax brackets reported are for single individual. For married couples, the tax rates range from 2.62% for income under $4,000 to 6.99% over $46,750.
(o) The tax brackets reported are for single individuals. A separate schedule is provided for married households filing jointly which ranges from 1.4% under $20,000 to 6.37% for income over $150,000.
(p) The tax brackets reported are for single individuals. For married individuals filing jointly, the rate ranges from 1.7% under $8,000 to 8.5% over $100,000. Married households filing separately pay the tax imposed on half the income.
(q) The tax brackets reported are for single individuals. For married taxpayers, the same rates apply to income brackets ranging from $21,250 to $100,000. An additional middle income tax credit is allowed.
(r) Taxpayers have the option of paying 14% of the adjusted federal income tax liability, without a deduction of federal taxes. And additional $300 personal exemption is allowed for joint returns or unmarried head of households.
(s) Plus an additional $20 per exemption tax credit. Tax rates are temporarily adjusted downward for 1996 and 1997, based on the amount of revenue in the general fund. Rates reported are adjusted for the 1996 tax year, statutory rates range from 0.743% to 7.5% with the same brackets.
(t) The rate range reported is for single persons not deducting federal income tax. For married persons filing jointly, the same rates apply to income brackets ranging from $2,000 to $21,000. Separate schedules, with rates ranging from 0.5% to 10%, apply to taxpayers deducting federal income taxes.
(u) Limited to $3,000.
(v) One half of the federal income taxes are deductible.
(w) If Vermont tax liability for any taxable year exceeds the tax liability determinable under federal tax law in effect on December 31, 1994, the taxpayer will be entitled to a credit of 106% of the excess tax.
(x) The tax brackets reported are for single individuals. For married taxpayers, the same rates apply to income brackets ranging from $10,000 to $20,000.

1994 State Revenue

	Total General Revenue			Total Taxes		
	($million)	Per Capita	Rank	($million)	Per Capita	Rank
ALABAMA	11,599	2,749	40	4,767	1,130	44
ALASKA	6,203	10,237	1	1,240	2,047	3
ARIZONA	11,749	2,883	35	5,657	1,388	27
ARKANSAS	6,870	2,800	39	3,176	1,295	34
CALIFORNIA	115,228	3,666	14	49,695	1,581	14
COLORADO	10,425	2,852	36	4,154	1,136	43
CONNECTICUT	11,993	3,662	15	6,788	2,073	2
DELAWARE	3,237	4,585	4	1,444	2,045	4
FLORIDA	34,805	2,494	48	17,808	1,276	36
GEORGIA	18,265	2,589	46	8,784	1,245	40
HAWAII	5,698	4,833	3	2,993	2,539	1
IDAHO /p	3,628	3,203	24	1,617	1,427	23
ILLINOIS	31,897	2,714	43	15,472	1,317	31
INDIANA	15,813	2,749	41	7,283	1,266	37
IOWA	8,961	3,167	26	4,130	1,460	19
KANSAS	7,474	2,926	33	3,675	1,439	21
KENTUCKY	11,730	3,065	31	5,693	1,488	18
LOUISIANA	13,524	3,134	27	4,383	1,016	48
MAINE	4,098	3,305	22	1,765	1,423	24
MARYLAND	15,581	3,113	28	7,583	1,515	16
MASSACHUSETTS	22,298	3,691	12	11,017	1,824	7
MICHIGAN	31,814	3,350	21	15,419	1,624	13
MINNESOTA	17,182	3,762	10	8,651	1,894	5
MISSISSIPPI	7,697	2,884	34	3,325	1,246	39
MISSOURI	13,359	2,513	47	5,910	1,112	45
MONTANA	3,166	3,699	11	1,161	1,356	29
NEBRASKA	4,446	2,740	42	2,144	1,321	30
NEVADA	4,767	3,272	23	2,381	1,634	12
NEW HAMPSHIRE	3,081	2,710	44	837	736	50
NEW JERSEY	29,808	3,771	9	13,494	1,707	10
NEW MEXICO	6,709	4,056	7	3,021	1,826	6
NEW YORK	82,202	4,524	5	32,817	1,806	9
NORTH CAROLINA	21,051	2,977	32	10,519	1,488	17

NORTH DAKOTA	2,289	3,588	17	885	1,387	28
OHIO	40,836	3,678	13	14,188	1,278	35
OKLAHOMA	9,184	2,819	38	4,263	1,308	33
OREGON	10,886	3,528	18	4,039	1,309	32
PENNSYLVANIA /p	38,252	3,174	25	17,142	1,422	25
RHODE ISLAND	4,131	4,143	6	1,436	1,440	20
SOUTH CAROLINA	11,268	3,075	30	4,502	1,229	41
SOUTH DAKOTA	2,041	2,831	37	659	914	49
TENNESSEE	12,725	2,459	49	5,733	1,108	46
TEXAS	45,035	2,450	50	19,465	1,059	47
UTAH	5,907	3,096	29	2,416	1,266	38
VERMONT	2,026	3,494	19	833	1,435	22
VIRGINIA	17,295	2,640	45	8,037	1,227	42
WASHINGTON	19,379	3,627	16	9,701	1,816	8
WEST VIRGINIA	6,349	3,485	20	2,554	1,402	26
WISCONSIN	19,617	3,860	8	8,428	1,658	11
WYOMING	2,308	4,849	2	739	1,553	15
U.S. Total	845,887	3,256		373,824	1,439	

/p - preliminary data.
Source: U.S. Bureau of the Census.

1994 State Revenue as a Percentage of Personal Income

	Total General Revenue /1			Total Taxes		
	($million)	% Per. Inc.	Rank	($million)	% Per. Inc.	Rank
ALABAMA	11,599	15.3	28	4,767	6.3	35
ALASKA	6,203	43.7	1	1,240	8.7	4
ARIZONA	11,749	15.1	31	5,657	7.2	21
ARKANSAS	6,870	16.7	23	3,176	7.7	12
CALIFORNIA	115,228	16.4	24	49,695	7.1	26
COLORADO	10,425	12.8	41	4,154	5.1	48
CONNECTICUT	11,993	12.6	43	6,788	7.1	24
DELAWARE	3,237	19.9	7	1,444	8.9	3
FLORIDA	34,805	11.5	48	17,808	5.9	41
GEORGIA	18,265	12.8	40	8,784	6.2	37
HAWAII	5,698	20.1	6	2,993	10.6	2
IDAHO /p	3,628	17.4	16	1,617	7.8	11
ILLINOIS	31,897	11.5	49	15,472	5.6	44
INDIANA	15,813	13.6	38	7,283	6.2	36
IOWA	8,961	15.7	27	4,130	7.2	22
KANSAS	7,474	14.1	35	3,675	6.9	29
KENTUCKY	11,730	17.3	19	5,693	8.4	6
LOUISIANA	13,524	17.8	13	4,383	5.8	42
MAINE	4,098	17.0	21	1,765	7.3	20
MARYLAND	15,581	12.5	44	7,583	6.1	40
MASSACHUSETTS	22,298	14.4	33	11,017	7.1	25
MICHIGAN	31,814	15.1	30	15,419	7.3	19
MINNESOTA	17,182	16.9	22	8,651	8.5	5
MISSISSIPPI	7,697	18.3	11	3,325	7.9	10
MISSOURI	13,359	12.3	46	5,910	5.4	46
MONTANA	3,166	20.8	4	1,161	7.6	14
NEBRASKA	4,446	13.2	39	2,144	6.3	34
NEVADA	4,767	13.7	36	2,381	6.9	30
NEW HAMPSHIRE	3,081	11.4	50	837	3.1	50
NEW JERSEY	29,808	13.6	37	13,494	6.2	38
NEW MEXICO	6,709	23.8	2	3,021	10.7	1
NEW YORK	82,202	17.6	15	32,817	7.0	27

NORTH CAROLINA	21,051	15.2	29	10,519	7.6	15
NORTH DAKOTA	2,289	19.3	8	885	7.4	16
OHIO	40,836	17.6	14	14,188	6.1	39
OKLAHOMA	9,184	16.0	26	4,263	7.4	17
OREGON	10,886	17.2	20	4,039	6.4	33
PENNSYLVANIA /p	38,252	14.3	34	17,142	6.4	32
RHODE ISLAND	4,131	18.9	9	1,436	6.6	31
SOUTH CAROLINA	11,268	17.4	18	4,502	6.9	28
SOUTH DAKOTA	2,041	14.4	32	659	4.7	49
TENNESSEE	12,725	12.6	42	5,733	5.7	43
TEXAS	45,035	12.4	45	19,465	5.4	47
UTAH	5,907	18.0	12	2,416	7.4	18
VERMONT	2,026	17.4	17	833	7.1	23
VIRGINIA	17,295	11.7	47	8,037	5.5	45
WASHINGTON	19,379	16.1	25	9,701	8.1	8
WEST VIRGINIA	6,349	20.4	5	2,554	8.2	7
WISCONSIN	19,617	18.5	10	8,428	7.9	9
WYOMING	2,308	23.8	3	739	7.6	13
U.S. Total	**845,887**	**15.0**		**373,824**	**6.6**	

/p - preliminary data. /1 - Total revenues from all sources, including intergovernmental and miscellaneous charges.
Source: U.S. Bureau of the Census and Bureau of Economic Analysis.

1994 State Taxes by Source

(percentage of total taxes)

	General Sales	Selective Sales	License Taxes	Individual Income	Corporation Income	Other Taxes
ALABAMA	26.8	26.9	8.1	28.7	4.6	4.9
ALASKA	0.0	8.0	5.9	0.0	14.2	71.8
ARIZONA	44.1	13.7	5.7	24.9	5.4	6.3
ARKANSAS	38.2	18.1	6.1	30.2	5.8	1.7
CALIFORNIA	34.0	9.2	5.0	35.3	9.3	7.2
COLORADO	27.1	15.7	6.0	46.3	3.5	1.4
CONNECTICUT	32.2	15.9	4.5	32.9	10.3	4.2
DELAWARE	0.0	14.6	32.5	37.9	10.7	4.3
FLORIDA	56.4	19.7	7.3	0.0	5.3	11.3
GEORGIA	37.2	10.1	4.5	40.8	5.9	1.6
HAWAII	44.5	17.4	2.5	32.1	2.3	1.2
IDAHO /p	33.7	14.3	9.4	34.8	5.4	2.4
ILLINOIS	30.1	20.7	5.9	32.6	7.9	2.6
INDIANA	34.4	11.6	2.8	41.4	8.3	1.4
IOWA	33.6	14.0	9.3	36.5	4.2	2.3
KANSAS	35.3	14.0	5.1	32.5	6.9	6.2
KENTUCKY	27.4	20.4	5.7	30.4	4.7	11.4
LOUISIANA	31.5	20.6	9.9	22.3	5.0	10.8
MAINE	35.0	15.5	6.0	34.8	5.2	3.5
MARYLAND	23.9	19.2	4.6	42.5	4.2	5.4
MASSACHUSETTS	20.9	11.2	3.6	51.6	9.6	2.9
MICHIGAN	29.4	10.0	5.3	36.0	14.1	5.1
MINNESOTA	29.1	15.2	7.7	39.9	6.4	1.8
MISSISSIPPI	47.7	19.7	6.3	19.2	5.0	2.0
MISSOURI	37.2	13.4	7.8	36.2	4.3	1.2
MONTANA	0.0	20.9	11.4	29.8	5.9	32.0
NEBRASKA	34.8	18.7	6.7	33.4	5.3	1.0
NEVADA	49.8	32.9	12.0	0.0	0.0	5.3
NEW HAMPSHIRE	0.0	57.9	12.6	4.3	17.2	8.0
NEW JERSEY	28.0	23.4	4.6	33.2	8.0	2.8
NEW MEXICO	47.4	12.3	4.7	19.1	4.1	12.5
NEW YORK	19.4	15.9	2.9	48.9	9.5	3.4

NORTH CAROLINA	24.6	19.1	6.1	40.8	7.0	2.4
NORTH DAKOTA	29.0	27.2	7.2	15.5	8.1	13.1
OHIO	31.6	18.8	8.2	36.0	4.6	0.8
OKLAHOMA	25.6	16.0	13.0	30.8	3.8	10.8
OREGON	0.0	13.5	12.7	64.0	6.5	3.4
PENNSYLVANIA /p	30.0	17.4	10.2	27.6	8.7	6.1
RHODE ISLAND	28.7	21.5	6.0	36.8	5.5	1.4
SOUTH CAROLINA	37.2	14.4	8.2	34.0	4.9	1.3
SOUTH DAKOTA	51.4	26.3	12.1	0.0	5.5	4.7
TENNESSEE	53.7	24.8	9.8	1.7	7.4	2.6
TEXAS	51.0	30.5	13.0	0.0	0.0	5.5
UTAH	40.7	11.3	3.4	38.3	5.2	1.1
VERMONT	21.1	27.0	8.2	34.4	4.2	5.1
VIRGINIA	22.2	18.3	5.2	47.4	3.8	3.1
WASHINGTON	59.8	14.8	4.7	0.0	0.0	20.7
WEST VIRGINIA	28.5	25.8	5.7	26.2	7.2	6.6
WISCONSIN	28.8	14.7	5.2	43.2	6.4	1.8
WYOMING	27.0	8.2	9.5	0.0	0.0	55.3
U.S. Total	**33.0**	**16.7**	**6.5**	**31.5**	**6.8**	**5.5**

/p - preliminary data.
Source: U.S. Bureau of the Census.

HJR

18

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HJR 18

Revision Date
Title: Const. Amdt.: Changing rate of a tax or license
Sponsor: Representative Ivan
Requester: House State Affairs

Dept. Affected: Office of the Governor
BRU: Elective Operations
Component: General and Primary Elections
Component Serial No.: #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

Full-time		0				
Part-time		0				
Temporary		0				

ANALYSIS: *(Attach a separate page if necessary)*

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by $56.0.

Prepared by: Dana LaTour 1/30/2014 — Phone: 465-5347
Division: Division of Elections — Date: 1/31/97
Approved by Co: Lt. Governor Fran Ulmer — Date: 1/31/97
Agency: Office of the Lieutenant Governor

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 26, 1997 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/11/97

The JUDICIARY Committee considered: **HJR 18**

HOUSE JOINT RESOLUTION NO. 18 **DEDICATED FUNDS: RATE MAY BE CHANGED**

Proposing an amendment to the Constitution of the State of Alaska relating to changing the rate of a tax or license that supports a dedication of its proceeds.

recommends it be replaced with the following committee substitute _____ [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____ [✓] fiscal note(s) ELECTIONS

[ ] zero fiscal note(s) _____ [ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	CRAFT			✓	✓
	ROKEBERG			✓	
	PORTER	✓			
	GREEN	—			
	JAMES	-			
	BUNDE	✓			
	BERKOWITZ			✓	

CHAIR'S SIGNATURE _____

Alaska State House of Representatives
House District 39

Session
Alaska State Capitol
Juneau, Alaska 99801-1182
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1-800-323-4942
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Interim
P.O. Box 137
Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

MEMORANDUM

TO: Representative Con Bunde, Chair
House HESS Committee

FROM: Representative Ivan M. Ivan

DATE: February 21, 1997

RE: Dedicated Funds

The following is a list of dedicated funds, FY 98 balances and funding source. I hope this helps clarify any questions regarding the number of dedicated funds still in existence.

DEDICATED FUND	FY98 BALANCE	FUNDING SOURCE
U of A Trust Fund	3019.2	Mgmt of State Lands & Settlements
FICA Administration Fund	92.8	Fed funds, Social Security beneficiaries
Fish and Game Fund	21,205.7	Fed tax funds received from crew licenses, sale of gear, etc.
School Fund	2,608.4	Tobacco tax revenues
Sick & Disabled Fishermen's Fund	1,304.2	60% of crew licenses
Second Injury Fund	2,854.9	Worker's Comp
Public School Trust Fund	9,300.6	half of 1% of receipts of state land management

The FY 98 balances are operating and capital budget fund sources and are still active.

If there are further questions regarding these dedicated funds, I will try to provide answers. The Office of Management and Budget is also able to provide more information if needed.

Thank you.

IMI/tw

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COPY

MEMORANDUM April 26, 1996

SUBJECT: Draft CSHB 431 ( )(Work Order No. 9-LS1518\F)

TO: Representative Jeannette James, Chair
House State Affairs Committee

FROM: Jack Chenoweth
Legislative Counsel

This is drafted in the alternative.

Until a few weeks ago, based on a very old Opinion of the Attorney General, I would have advised as a matter of course that this proposal to dedicate the tax increment constituted a violation of the dedicated fund prohibition of article IX, section 7. Now, as a result of further research explained in Legislative Counsel Mike Ford's April 3 memorandum, I believe that conclusion is not so certain.

The drafting of the amendment reflects the possibility that the dedication might not be found unconstitutional for the reason given in that memo.

To repeat advice already provided to you:

Under AS 43.50.140, the proceeds derived from the original tobacco tax are required to be paid into the school fund. This fund avoids the constitutional prohibition against dedicated funds contained in Article IX, sec. 7, of the Alaska Constitution because the fund existed at the time the Alaska Constitution was ratified by the voters. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska." The two main motivations for the ban on dedicated funds are to maintain the potential of flexibility in budgeting and to ensure that the legislature does not abdicate its responsibility in making budget decisions. Fairbanks v. Convention & Visitors Bureau, 818 P.2d 1153, at 1158 (Alaska 1991).

A question was raised as to whether the Alaska Constitution allows the legislature to change the amount of the tax, without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued opinion No. 7, that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the

tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5. This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Barrie M. White. The following discussion with Delegate White and other delegates illustrates the intent of the framers of the Alaska Constitution:

> R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.
>
> PRESIDENT EGAN: Mr. McCutcheon.
>
> MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.
>
> PRESIDENT EGAN: Mr. Victor Rivers.
>
> V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS. If they lowered it down to three could they then re-enact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

(Emphasis added). This discussion indicates a clear intent on the part of the delegates to allow a change to the rate of taxation without affecting the status of a dedication of the proceeds of the tax. While the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitutional rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of tobacco taxation destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v. Hagglund, 374 P.2d 316, 319 (Alaska 1962), the court stated that

> opinions of individual members of the constitutional convention are not considered to be a safe guide in ascertaining the purpose of a majority of the convention when adopting a particular provision. But reports of committees and statements of chairmen of such committees stand on more solid footing and may be resorted to in determining the intent of the enacting body.

(Emphasis added) Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court.

Please contact me if you have further questions.

JBC:pl:glc:lmb
96-091.lmb

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Juneau, Alaska 99801-2105

MEMORANDUM April 3, 1996

SUBJECT: Tobacco Tax - (Work Order No. 9-LS1832)

TO: Representative Jeannette James

FROM: Michael F. Ford
Legislative Counsel

You have asked for an explanation of the effects of an increase of the tobacco tax (AS 43.50.090) on the dedicated fund provision contained in AS 43.50.140. As explained in this memo, it appears that the legislature may be able to increase the tax without affecting the dedicated status of the state school fund.

Under AS 43.50.140, the proceeds derived from the tobacco tax are required to be paid into the school fund. This fund avoids the constitutional prohibition against dedicated funds contained in Article IX, sec. 7, of the Alaska Constitution because the fund existed at the time the Alaska Constitution was ratified by the voters. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska." The two main motivations for the ban on dedicated funds are to maintain the potential of flexibility in budgeting and to ensure that the legislature does not abdicate its responsibility in making budget decisions. Fairbanks v. Convention & Visitor Bur., 818 P.2d 1153, at 1158 (Alaska 1991).

The precise question you have raised is whether the Alaska Constitution allows the legislature to change the amount of the tax, without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued opinion No. 7, that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5. This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Mr. Barrie M. White. The following discussion with Mr. White and other delegates illustrates the intent of the framers of the Alaska Constitution:

R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year

and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS. If they lowered it down to three could they then re-enact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

We believe that this discussion indicates a clear intent to allow a change to the rate of taxation, without affecting the status of a dedication of the proceeds of the tax. To this extent, we disagree with the 1959 opinion No. 7 issued by the Attorney General, that the framers of the constitution intended that a change to the rate of taxation would destroy the dedicated status of the fund.

It is important to note that while the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitutional rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of tobacco taxation destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v. Haggund, 374 P.2d 316, 319 (Alaska 1962), the court stated that "opinions of individual members of the constitutional convention are not considered to be a safe guide in ascertaining the purpose of a majority of the convention when adopting a particular provision. But reports of committees and statements of chairmen of such committees stand on more solid footing and may be resorted to in determining the

intent of the enacting body." (Emphasis added) Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court.

You have also asked if the rate of taxation is changed, does the additional revenue go into the school fund or the general fund? We believe that any increase in the tax imposed under AS 43.50.090 will not, by itself, affect the disposition of the proceeds of the tax. The increased revenues will still flow into the school fund as required under AS 43.50.140. It is also important to note that to maintain the status of the school fund as an exception to the dedicated fund rule, that disposition of the proceeds of the tobacco tax cannot be changed. To change the disposition of the proceeds of the tax as required under AS 43.50.140 would destroy the dedicated fund exemption granted to the school fund under Article IX, sec. 7, of the Alaska Constitution.

Please contact me if you have further questions.

MFF:klb
96-252.klb

1959 Opinions of the
Attorney General, No. 7

March 11, 1959

Reversed in part as to
Sharing of Taxes with Local
Units of Government by Opin-
ion No. 31, December 2, 1960.

The Honorable Hugh J. Wade
Acting Governor of Alaska
State Capitol
Juneau, Alaska

Re: The Prohibition Against Dedicated Funds Contained in Article IX, Section 7 of the Constitution of the State of Alaska.

Dear Governor Wade:

I have for consideration your request of February 27, 1959, for an opinion on § 7, Article IX of the Constitution. You have specifically requested whether an increase in the tax on gasoline used in the aviation industry in Alaska could constitutionally be diverted to the Aviation Fund or whether the excess must go into the general fund.

Section 7 reads as follows:

> "DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this constitution by the people of Alaska."

Inasmuch as this problem is related to a wide variety of complex revenue dedications which are now law or proposed law and since the problem is basic to state financing, the scope of this opinion is broadened beyond the question at hand to a general review of § 7 of the Constitution.

This section has been diligently researched by recourse to the minutes of the Constitutional Convention of 1955-1956.

The typed transcripts have been used wherever available. However, § 7 was introduced on the floor of the Convention on the morning of January 17, 1956, and no transcripts are available. For that morning session, the tape recordings of the debates of the delegates were listened to. References to the tapes so as to provide both pertinent quotations and their context would be impossible without extending this opinion to unmanageable length. However, references will be made to the tapes by giving the foot of tape at which the pertinent discussion transpires and then summarizing the occurrences, leaving the context to be verified from the original by interested persons.

To grasp the problem examination of the reasons behind § 7 and the evils to be avoided, thereby, will be necessary.

Prior to the Convention, the Public Administration Service was employed by the Alaska Statehood Committee to prepare Constitutional Studies for the convention delegates. See Vol. I of the Constitutional Studies, Sec. IX, pp 27-30. Among the reasons such a prohibition as is found in § 7 was recommended are the following:

1. Flexibility of budgeting.
2. Financial control.
3. Lack of relationship between the tax and purpose.

Percentages of dedicated funds as compared to total revenue were cited for various states.

Listening to the tape recordings of the morning session of January 17, 1956, impels the conclusion that the delegates were desirous of eliminating dedications so that the Legislature would have the greatest flexibility in allocating tax revenues on a basis of need. It was stated that, as a matter of compromise, a grandfather clause had been included in § 7 to permit all dedications existing on the date of ratification of the Constitution (April 24, 1956) to continue. An amendment to this clause, offering a change from the date of ratification to the effective date of the Constitution was defeated. (See the transcripts pp 57 et seq. on January 28, 1956.)

Other than the grandfather clause which permits existing dedications, there is a further exception to the prohibition. Any dedications "required" for participation in Federal programs are permitted. Federal conservation statutes presently require certain license fees to be diverted to special purposes in order for states to receive matching funds. (For instance, see 16 USCA 669 and 16 USCA 777.) Only those dedications which

re "required" will be permitted. Any attempted dedication f funds after April 26, 1956, which is not absolutely required or participation in Federal programs must be covered into he general fund, any statute not withstanding.

The prohibition against dedications should be read in onjunction with § 7 of Article XI of the Constitution which eals with restrictions on the initiative and referendum. Therein it is stated that the initiative and referendum shall not e used to create or apply to dedications of "revenue." Note hat the prohibition in § 7, Article IX is against dedications f "proceeds of any state tax or license." This seeming contradiction is resolved by reference to the typed transcripts page 31 of January 24, 1956. There it was explained to be e intent that "revenues" is a broader term than "tax or icense" and means all proceeds coming to the State. Consequently, is proper for a legislature to dedicate any revenues that e proceeds of neither taxes or licenses.

The grandfather clause is stated as an exception to the neral prohibition in the following language:

> ". . . This provision shall not prohibit the continuation of any dedication for special purposes existing upon the date of ratification. . . ."

The question you pose is whether or not the rate of the dication can be raised. In other words, if a tax proceed or portion thereof is dedicated to a special purpose, may the te of tax be or the proportion of the proceeds be raised, ereby increasing the amount of dedicated funds.

It is my opinion that no action by the Legislature is rmissible which would (1) tend to increase or decrease the rcentage of the total tax and license proceeds which are dicated, or (2) which would tend to increase or decrease the ount of proceeds which are dedicated.

The exception permits only the "continuation" of dedicaons "existing" on the date of ratification. To raise the iation gas tax from 5 to 7 cents and dedicate the whole ents would constitute another and further dedication of tax ceeds. The only prior existing dedication is one for 5 cents not one for 7 cents. To permit existing dedications to raised would "open end" all of them existing upon the date ratification. The purpose of the prohibition would be eated. Existing dedications could be raised to inordinate rcentages of the total revenue, thus denying the financial xibility sought by the constitutional framers.

The foregoing opinion is born out by the taped recordings of the Convention proceedings. (Refer to tapes 2, 3 and 4 of January 17, 1956.)

At foot 540, tape 3, Delegate Johnson proposed to amend the present § 7 by striking the words, "prohibit the continuance of" and inserting in their place the words "apply to."

At foot 600, tape 3, Delegate Ralph Rivers spoke in favor of the amendment because he felt it would permit repeal and re-enactment of existing dedications. Delegates Johnson and Nolan at foot 640, tape 3, indicated their understanding of the amendment was that the Legislature would be powerless to repeal an existing dedication. (Note: Delegates Johnson and Rivers were for the amendment, but disagree as to its meaning. However, both they and Delegate Nolan indicate that the section without the amendment could not be repealed and re-enacted at a later date.)

At foot 55, et seq., tape 4, Delegate Victor Rivers says Delegate Johnson's amendment should be supported because it would permit existing dedications to be raised, lowered, replaced or eliminated by the Legislature. He stated that the amendment would therefore give greater flexibility then the present wording.

At foot 125, tape 4, Delegate Nerland stated that he spoke for the Committee on Finance and Taxation, and that it was their intent that present dedications be allowed until repealed; but that once it was repealed, it could not be later re-enacted.

At foot 215, tape 4, this amendment was defeated 40 to 13.

At foot 330, tape 4, Delegate Ralph Rivers offered an amendment to § 7 which would delete the words "the continuance of."

Delegate Ralph Rivers at foot 345, says the present wording freezes the exact rates of the dedications allowed upon the date of ratification of the Constitution. He advocated his amendment so as to give more flexibility. He stated that his amendment would not allow the rate to be raised but would allow it to be lowered or temporarily discontinued.

At foot 395, tape 4, Delegate Coghill supported the amendment to § 7 because if adopted, it would permit the dedication to be temporarily done away with or suspended downward; thereby allowing the Legislature more flexibility for growth or decline in financial problems.

At foot 420, tape 4, Delegate Gray challenged the amendment on the grounds that it was, in substance, the same amendment as the earlier one offered by Delegate Johnson at foot 540 of tape 3.

Delegate Ralph Rivers answered Delegate Gray by saying that the purpose of Delegate Johnson's amendment was to permit doubling the dedications or the rate involved, and the purpose of his own amendment was to permit lowering of rates while still prohibiting the rates from being raised by the Legislature. Delegate Ralph Rivers' amendment was also defeated, leaving § 7 substantially as it appears in the Constitution after redrafting by the Committee on style and drafting.

Consequently, the intent of the drafters of the Constitution of the State of Alaska, was to permit the continuance of existing dedications at the then existing rates until the Legislature saw fit to exercise the only power retained in relation to them: that is, the power to repeal.

A dedication must be continued, if at all, in exactly the same form. Any attempted alteration short of repeal is a nullity. A dedication encompases (1) proceeds or part of the proceeds of a tax or license (2) set aside at a certain rate (3) for a particular purpose. The Legislature has no power to raise or lower the dedication by increasing or decreasing the tax or license fee or the rate thereof which is set aside. Also, there is no power to broaden or reduce the purposes for which an existing dedication is made, for to do so is to alter the dedication itself.

I have for further consideration, two questions submitted by the Director of the Legislative Council. For purposes of continuity and clarity, these questions and their answers will be set out herein.

(1957)

The first question is whether H.B. 120,/which is substantially a re-enactment of Ch. 10, SLA 1949, the Alaska Property Tax Act, violates § 7 of the Constitution by providing in § 4 of the bill that the tax levied by the State shall be turned over to the local political subdivision wherein collected.

You are advised that it is my opinion that such a provision violates the Constitution and is a prohibited dedication. This is a tax proceed which at the time it is collected is earmarked for a special purpose (political subdivisions). There is, however, nothing to prevent each legislature from annually making an appropriation to the political subdivisions of the monies already collected under the Act. To be sure, this is the

express intent of the constitutional framers: that each obligation of government be judged both on its own merits and in comparison with the merits of others in the computation of the budget. (See page 31 et seq. of the written transcripts from the January 24, 1956, session of the Convention for the proposition that a dedication is present when a tax proceed is earmarked from the time it is collected.) Also note that at foot 118, tape 3, it is indicated that the return of liquor license fees and business license fees to political subdivisions constituted a dedication, but since they were earmarked at the time of ratification, they would continue to be dedicated.

The second problem posed by the Director of the Legislative Council is whether or not the raw fish tax refund to political subdivisions could be raised from the present 10% to 50%. In view of the foregoing expressions, the answer is in the negative.

You are further apprised that since the ratification date of the Constitution was April 26, 1956, all dedications made in the 1957 session of the Territorial Legislature are nullities as of January 3, 1959. Any monies due and owing prior to January 3rd may be covered to their earmarked purposes, but receipts due and owing after that which fall into the prohibited category must be covered into the general fund. Also note that any repeal or repeal and re-enactment of a dedication during that session takes the dedication from under the protection of the grandfather clause and a re-enactment either in 1957 or later is a nullity unless the dedication is required by the Federal Government for participation in Federal programs.

Very truly yours,

J. GERALD WILLIAMS
ATTORNEY GENERAL

By
Jack O'Hair Asher
Assistant Attorney General

JO'HA:bb

Addendum: On page 5, paragraph 6, after H.B. 126, insert "introduced in the 1957 Legislature."

cc: Department of Finance
Alaska Office Building
Juneau, Alaska

OPINION NO. 22

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K – STATE CAPITOL JUNEAU 99811

June 2, 1978

Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Legislation on Fishermen's Fund
Our File: J-66-580-78

Dear Chairman Gardiner:

This responds to your inquiry of May 3, 1978, with respect to the legislation enacted last year based on advice from this office which we now believe to have been in error. */

In brief, one of our attorneys who was relatively unfamiliar with the nuances of the prohibition against dedicated funds, Alaska Const., art. IX, §7, worked with your committee last year to develop legislation which would eliminate the double fee paid by commercial fishermen who are also holders of limited entry permits. The results are contained in sections 8 and 14, chapter 105, SLA 1977. In effect, they exempted permit holders from license fees and

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*/ You also requested advice on the proper disposition of interest earned from the Fishermen's Fund. We have not yet reached a conclusion on that point but we are now convinced that no legislation is required on it, i.e., either the interest is already a part of the dedication or it is not. When our researches lead us to a conclusion, we will advise.

provided for payment into the Fishermen's Fund from monies collected for permit fees of an amount equal to the amount which would have been paid into the fund from collections for commercial licenses. It was then believed that this arrangement would not offend the constitutional prohibition. We now conclude otherwise.

The Alaska Constitution, art. IX, §7, provides in relevant part as follows:

> The proceeds of any state tax or license shall not be dedicated to any special purpose [with exceptions not here relevant]. . . . This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of the ratification of this section [1956] by the people of Alaska.

There can be no question that the framers of the constitution fully intended, with only the exceptions expressly stated, to bar for all time the additional dedication of any new or different state revenues for special purposes. 3, 4, and 5 MINUTES, ALASKA CONSTITUTIONAL CONVENTION 2297-2301, 2361-2390, 2401-2416, 3415-3420. The reasons for their doing this were many, but basically the reasons came down to the proposition that neither the chief executive (as the State's chief budget officer) nor the legislature (as the State's only appropriating body) should have its hands tied financially by a myriad of dedicated funds for a myriad of

diverse programs and that each program must compete annually with all others for its fair share of available money. Id.

The prohibition, however, is against new dedications, i.e., those dedications of revenues which did not exist on April 24, 1956, the date of the constitution's ratification. The dedication of license fees for the Fishermen's Fund was first made in 1951 and later amended in 1955. §4, ch. 100, SLA 1951; am §1, ch. 99, SLA 1955; now codified as AS 23.35.060. Hence, when the constitution was ratified there existed a dedication of

> 60 percent of the money derived by the state from all commercial fishermen's licenses, including clam diggers' licenses. . . .

"[T]he continuation of any dedication . . . existing" is not prohibited. In an early opinion by this office, we opined that the legislature could neither increase the percentage of the dedication nor the amount of the levy so as to increase the amount to be dedicated. 1959 Op. Atty. Gen. No. 7. To do so would alter the dedication, not continue it. To do so would also increase the dedication, i.e., dedicate still more of the source of revenue and thereby constitute still another dedication in violation of the constitution. Nor, of course, could a new source of revenue be tapped if the dedicated source were lost or abandoned.

Amendments which could have allowed such alterations were expressly rejected by the framers. 4 MINUTES 2378-2390, 2401-2411. In sum, it was concluded that, with respect to dedicated funds, the only power left to the legislature is the power to repeal the existing dedications. Id. */

In 1977, AS 23.35.060, which provides for the Fishermen's Fund dedication, was amended to read, in relevant part, as follows:

> 60 percent of the money derived by the state from each crewmember fishing license issued under AS 16.05.480, an equal amount of the money derived by the state from each commercial fisherman who is issued a permit under AS 16.43 [the Limited Entry Act]. . . .

The effect of the amendment is to add a dedication of a new and different revenue source, i.e., the annual fee for a commercial fisheries entry permit. It does not continue an existing dedication. **/

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*/ It goes without saying that this lack of power to alter does not apply to the other exceptions, the permanent fund and dedications required under federal law.

**/ Arguably, the Buy-Back Fund established under AS 16.43.-310-320 is also a new and prohibited dedication. However, the wording of the constitution's prohibition was designed to exclude certain kinds of dedications, e.g., sinking funds, retirement funds, employment security funds. 4 MINUTES 2363 (dialogue between delegates Davis and White). The Buy-Back Fund might fall into this excepted class. We are inclined to think not, but the answer is uncertain.

It can be argued that the annual fee for a commercial fisheries entry permit supplants the annual fee for a commercial fisheries license for gear operators. That is, those persons no longer pay the latter, AS 16.05.480 as amended by §8, ch. 105, SLA 1977, effective January 1, 1978, but rather only the former. AS 16.43.160; 20 AAC §05.220. Not only is this argument essentially the same as those resoundingly rejected by the framers of our constitution, 4 MINUTES 2378-2390, 2401-2412, but it is simply not correct. The 1977 amendment to AS 23.35.060 unquestionably makes a dedication from a new and different source of revenue. It does not matter that the amount is the same.

When the license fee for gear operators was eliminated, the dedication for the Fishermen's Fund was reduced to 60 percent of the money received thereafter under AS 16.-05.480 from crewmen's license sales. The purported dedication from fees collected from permit sales and renewals is a nullity -- without any force or effect.

The exception from the prohibition against dedicated funds is for the "continuance" of "existing" dedications. Reducing a dedication makes it different from that which existed, i.e., an existing dedication is not continued when it is reduced any more than it is when it is increased. Under the plain language of the constitution, any change is

prohibited. The prior opinion referred to above, 1959 Op. Atty. Gen. No. 7, basing its conclusion on the framers' rejection of a proposed amendment which would have allowed for reductions in existing dedications, concluded that any alteration was a nullity. That conclusion is logically sound. There is some contradictory material in the Convention minutes, however. 4 MINUTES 2405 (dialogue between delegates V. Rivers and White, the latter acting as spokesman for the committee). How the courts would rule is uncertain, but they will give some weight to remarks of committee spokesmen. Walters v. Cease, 388 P.2d 263, 265-266 (Alaska 1964).

Here there was no reduction in the amount to be dedicated, i.e., 60 percent of a certain source, but rather an alteration -- partial elimination -- in the source. The license fees for commercial fishermen were changed to exempt persons who hold permits. Thus, the present dedication is not a "continuance" of an "existing" dedication. This office issued still another opinion soon after Statehood in which we opined that the reduction of the source invalidates the remaining dedication. 1959 Op. Atty. Gen. No. 14. A reduction of the source was deemed to be, in effect, a repeal of the entire dedication.

This result is admittedly drastic, but there can be no question that it is logically correct. The framers

rejected every effort to amend the exception language so as to allow a dedication to be altered. 4 MINUTES 2401-2405 (Rivers amendment), 2409-2412 (Kilcher amendment). Delegate White, however, acting as a spokesman for the committee, assured the delegates that, despite the logical implications of the constitution's language, an existing allocation of funds from a given source could be raised or lowered, i.e., say, from 3 percent to 6 percent, that the "continuance" did not apply to rates. He also specified that it did apply so as to prevent the legislature from discontinuing an allocation and then starting it up again sometime in the future. And he said, "The committee intends that this apply to the allocation of particular taxes to a particular purpose and no more than that." Id., at 2405. How much of his remarks, if any, will be judicially accepted is unknown. But we are inclined to the view that the dedication is not repealed in its entirety by the partial elimination of its source but rather that it is reduced to provide for a dedication solely from crewmember commercial licenses -- all that is left of the source. */

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*/ The convention expressly rejected an amendment that said, "but discontinuance shall not preclude reinstitution," and therefore, reinstitution of a commercial license fee for operators would not ordinarily allow reinstitution of that dedication. 4 MINUTES 2409-2412 (Kilcher amendment).

The problem now is whether the legislature's mistaken action last year, which resulted from our incorrect advice, can be cured. We believe that legislation retroactive to the first of this year -- the effective date of the applicable amendments from last year -- will supersede last year's legislation and cure the mistaken action. We have prepared legislation to accomplish this. It can, as you have suggested, be added to CSSB 428 am. A copy is enclosed. Last year's discontinuance of a portion of the source of the dedication was so obviously based on a mistake as to its legal effect, and its purpose could so easily have been accomplished in the manner we have proposed here that the courts should give this curative legislation its effect.

We hope this answers the committee's questions.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Rodger W. Pegues
Assistant Attorney General

RWP/pjg

Enc: Proposed Legislation

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

November 30, 1982

ATTY GEN OP #13

Gerald L. Wilkerson, C.P.A.
Legislative Auditor
Legislative Audit Division
Legislative Affairs Agency
Pouch W
Juneau, Alaska 99811

Honorable Carole J. Burger
Commissioner
Department of Administration
Pouch C
Juneau, Alaska 99811

Re: The dedicated funds prohibition applied to various funds and accounts. Our Files Nos. J66-785-81 and J66-649-80

Dear Mr. Wilkerson and Commissioner Burger:

You have both asked for a broad review of the application of the constitutional dedicated funds prohibition to various state funds and accounts. Alaska Const. art. IX, § 7. Because of the factual complexities presented by the various funds, accounts, and appropriations and because of the paucity of judicial precedent, we are not able to advise you with absolute certainty regarding the constitutionality of state practices. However, some of the issues raised by your request may be resolved in litigation which is now pending concerning the administration of

certain appropriations and funds by the Alaska Power Authority. 1/

In response to your request, we have identified and analyzed several categories of funds, accounts, and transactions which raise dedication questions. Our approach in dealing with these questions will be to first discuss the purpose and meaning of the dedication prohibition. We will then focus on the implications of a recent Alaska Supreme Court case that deals specifically with the dedicated funds prohibition. Next we will consider the probable legal status of several general categories of funds, accounts, and appropriations which raise dedication questions. Lastly, we will consider the dedication prohibition in reference to specific funds and appropriations.

We should point out that the advice given in this opinion could have a significant effect upon the state budget. This results from the recent adoption of Article IX, section 16 of the Alaska Constitution (the spending limit). Under the reasoning of this opinion, it may be that income earned by a loan fund or public enterprise must be appropriated to that fund or

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1/ The legal issues in this litigation are the validity of the deposit of interest and principal payments on loans in a revolving loan fund and of the appropriation to the Power Development Fund of interest to be received on specific amounts appropriated to that fund (§ 1 ch. 90, SLA 1981 as reenacted by § 69 ch. 69 SLA, 1981 and amended by § 236 ch. 141, SLA 1982.). Trustees for Alaska, et al. v. State of Alaska and Alaska Power Authority, No. 3AN-492-82 Civ. (Alaska Super., Jan. 21, 1982)

enterprise if that income is to be retained by it. If the Alaska Supreme Court adopts that reasoning, the necessity for these appropriations would have to be considered by the administration and the legislature in developing a state budget which conformed to the spending limit. This concern would also become important if independent authorities for operation of entities like the State Ferry System or the Alaska Railroad were to be considered.

I. THE PURPOSE OF THE PROHIBITION

Article IX, Section 7 provides:

> DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [establishing the Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

There are essentially two views of the meaning of this provision. Under the first interpretation the dedicated funds prohibition would require that every dollar received by the state be deposited and remain unrestricted in the general fund until it is withdrawn pursuant to an appropriation authorizing the expenditure of a specific dollar amount for a specific pur-

pose (absent a contrary federal requirement or a statutory dedication which existed prior to ratification of the Constitution). This is known as the strict interpretation view.

Under the strict view, the phrase "proceeds of any state tax or license" would encompass every dollar paid to the state (or to a public corporation or authority established by the state) for whatever purpose. State loan repayments (both principal and interest), enterprise receipts (e.g., airport lease revenues, parking garage receipts, etc.), program receipts (e.g., Ferry System ticket sales, University of Alaska tuition receipts, etc.), as well as all other revenues (e.g., taxes, natural resource revenues such as royalties, etc.), would be required to be deposited in the state treasury and retained there until the expenditure is authorized by appropriation of a specific dollar amount.

An argument can certainly be made that this is the proper interpretation of the dedicated funds prohibition. As set out in 1975 Op. Atty. Gen. No. 9 at 2 (Alaska May 2, 1974), "Section 7 of Article IX had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes [i.e., 'earmarking'] and (2) to prevent the creation of new special funds separate from the general fund." The rationale underlying each of these two purposes is "that the widespread existence of dedicated revenues lodged in special funds deprives

both the governor and the legislature of 'any real control over the finances of the state.'" Id. at 3 (citation omitted). Requiring all monies received by the state to be deposited into the general fund clearly would satisfy both interrelated purposes of the prohibition. The strict interpretation view of the dedication prohibition would preclude the use of public monies to establish a standing or revolving loan fund or any other program which would be self-sustaining. 2/

However, a second approach in interpreting the meaning of Article IX, section 7 is also very plausible. Under this view, the dedication prohibition is not to be construed to require a blanket prohibition of self-sustaining programs set up by the legislature. As noted in 1975 Op. Atty. Gen. No. 9 at 6-8 (Alaska, May 2, 1975), the constitutional framers substituted the phrase "[t]he proceeds of any state tax or license" for the phrase "[a]ll public revenues" to avoid having to state a number of intended exceptions to the prohibition on dedicated funds. Examples of these exceptions were pointed out in a January 4, 1956, 3/ memorandum by the Public Administration Service (PAS) to

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2/ Of course, even under the strict view, there would be some kinds of monies received by the state which it could not, for independent legal reasons, deposit into the general fund. These monies would include trust funds, restricted gifts, and funds subject to restrictions by contract.

3/ The actual date shown on the memorandum is "January 4, 1955". However, considering the timing of the constitutional convention, this was certainly a typographical error.

the Constitutional Convention: "pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units." 4/

Some of those examples were specifically mentioned by the court in State v. Alex, 646 P.2d 203 (Alaska 1982), which held that the phrase "proceeds of any state tax or license" was to be broadly construed to include all sources of public revenues. The court noted that the drafters intended to permit the establishment of certain special funds, (e.g., sinking funds for the repayment of bonds), but to prohibit the earmarking of any special tax to such a fund. Alex, supra at 210. The court did not elaborate on the application of the dedicated funds prohibition in these situations.

4/ The Public Administration Service prepared a publication entitled "Alaska Statehood Commission, Constitutional Studies (1955)" at the request of the Alaska Territorial Legislature for use at the constitutional convention. Ch 108 SLA 1949. This publication collected research papers on other state constitutions. Copies were mailed to all delegates, and it was often referred to in the convention proceedings. Alaska Statehood Committee, "Handbook for Delegates to the Alaska Constitutional Convention" 4 (1955). Referred to in State v. Alex, 646 P.2d 203, 209 n. 5 (Alaska 1982). The memorandum of January 4, 1956 contained comments by the PAS on the proposed draft of the Finance and Taxation article. Constitutional Convention Finance Committee minutes, Jan. 13, 1956.

II. MEANING OF THE PHRASE "PROCEEDS OF ANY STATE TAX OR LICENSE"

There has been continuing controversy over the proper construction of the phrase "proceeds of any state tax or license." In a number of earlier opinions, this office concluded that the dedicated fund prohibition did not reach all public revenues but, under its plain language, only the actual "proceeds of any state tax or license." See 1969 Op. Atty. Gen. Nos. 3 (Alaska, April 4, 1969) and 5 (Alaska, April 15, 1969); and 1959 Op. Atty. Gen No. 7 (Alaska, March 11, 1959). This conclusion also was reached by the Division of Legal Services in the Legislative Affairs Agency. See September 1, 1977 memorandum fror Bill G. Berrier, Director, to Subcommittee on Alaska Renewable Resources Development Fund of Alaska Permanent Fund (House).

Those opinions all concluded that the prohibition did not reach revenues derived from the disposal of state-owned natural resources. Given this conclusion, it followed that the legislature was free to dedicate all or a certain portion of such revenues to specific purposes. An example of this is found in AS 37.11.020, which requires that not less than five percent of state mineral lease receipts be deposited in the Alaska Renewable Resources Development Fund. (This statutory dedication was the subject of Mr. Berrier's September 1, 1977, memorandum).

On the other hand, 1975 Op. Atty. Gen. No. 9 at 24 (Alaska, May 2, 1975) reached the opposite conclusion:

> Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.
>
> Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

(Emphasis added.)

In State v. Alex, 646 P.2d at 210, the Alaska Supreme Court adopted the position set out in 1975 Op. Atty. Gen. No. 9 (Alaska, May 2, 1975). 5/ It now is clear that the term "proceeds of any state tax or license" is to be construed broadly to reach all public revenues, including public revenues from the development of state-owned natural resources, and not just the proceeds of taxes and license fees.

5/ Alex involved a challenge by commercial fishermen to the collection by a private aquaculture association of a special assessment authorized by statute and imposed on the sale of salmon. The court held that the statute improperly delegated the legislature's taxing authority, and that the assessment constituted "proceeds of a state tax or license" within the meaning of Article IX, section 7. State v. Alex, 646 P.2d at 210, 213.

After the decision in Alex we can now reach some definite conclusions regarding some of the funds and accounts you have asked us to review. The answers to other questions, however, are not as clear.

III. IMPLICATIONS OF THE ALEX DECISION

There is no question that the dedicated funds prohibition in Article IX, section 7 flatly prohibits the legislature from dedicating future unrestricted general revenues to any particular purpose unless the dedication is required for participation in a federal program or the dedication existed before ratification of the Constitution. Alex, supra at 208-210. This confirms the view expressed in our April 1, 1981 memorandum opinion to the legislative auditor that the requirement in AS 37.11.020 that not less than five percent of state mineral revenues be placed in the Alaska renewable resources development fund is unconstitutional. This would be true of any statutory requirement that a specified percentage of revenues derived from the development of state-owned resources be deposited in a fund or earmarked for a particular purpose.

The Alex decision, however, does not provide answers to a number of additional questions. For example, does the dedicated funds prohibition apply (1) to money received through the sale of bonds (either general obligation bonds of the state or

revenue bonds of a public corporation); (2) to receipts from operation of facilities constructed with bond proceeds; or (3) to interest or investment income earned on money appropriated for a specific purpose? In short, are there any exceptions to the prohibition beyond those expressly set out in the Constitution? The section immediately following discusses this question.

IV. POSSIBLE EXCEPTIONS TO THE DEDICATED FUND PROHIBITION

A. Implied Exceptions.

An early draft of what is now Article IX, section 7 (but which was at that time numbered section 8) read as follows: "All public revenues shall be deposited in the state treasury . . ." Subsequent to this early draft, the Committee on Finance and Taxation of the Constitutional Convention requested comments from the Public Administration Service on this wording. The PAS responded with the January 4, 1956 memorandum in which it warned that a strict interpretation of section 7 (then section 8) would prohibit the segregation of state money without regard to the source. The PAS then suggested that certain exceptions be identified in section 7. These exceptions included pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts

which the state might collect on behalf of local government units.

After considering the PAS memorandum, the committee deleted the phrase "all public revenues shall be deposited ..." and substituted the phrase "The proceeds of any state tax or license ...". 3 Alaska Const. Conv. Proceed. at 2361. The record of the committee debate makes it clear that the purpose of this change was to meet the problems raised by the PAS in its January 4 memorandum. See 1975 Op. Atty. Gen. No. 9 at 8 (Alaska, May 2, 1975).

Given this drafting history, a very good case can be made that the present language of Article IX, section 7 must be read to include certain implied exceptions, such as those that are set out in the January 4 PAS memorandum, i.e., pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units. We believe this implied exception approach is the better interpretation of the dedicated fund prohibition and would be adopted by the Alaska Supreme Court if the question is presented to it.

B. Dedication of Money to Specific Purposes on a Continuing Basis When Appropriated

A question of the proper application of the dedicated funds prohibition arises when money is appropriated to a revolving loan fund or other special reserve fund or account. Revolving loan funds provide for the return to the fund of repayments by borrowers of the principal (and frequently the interest on that principal) 6/ which was loaned to them from the fund so that new loans can be made on a continuing basis. Special reserve funds involve essentially the setting aside of money for certain specified future needs or conditions which may or may not occur. 7/ When this is done, it might be argued that the legislature has made an impermissible dedication with respect to the future use of the money placed in those funds and accounts.

We believe the better view is that the dedication prohibition does not apply to money once appropriated by the legislature, regardless of whether the appropriation contemplates that the money will be expended. Usually appropriations authorize money to be spent. In other cases, however, the legis-

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6/ We discuss the dedication of interest earned by revolving loan funds and other separate funds and accounts in the next portion of this opinion which begins below at p. 14.

7/ The "Rainy Day Account," AS 37.05.179, is an example of such an account.

lature may prefer to establish by general law a continuing loan program and finance it through a one-time appropriation or to reserve money in a special fund or account for future use for limited purposes. A strong argument can be made that money once appropriated, regardless of the mechanism utilized, loses its character as revenue for the purpose of the dedicated funds prohibition because the purpose of the prohibition, i.e., that the legislature retain control over state revenues, has been satisfied.

Under this reasoning there would be no unlawful dedication involved in the return to a revolving loan fund of principal payments on loans. The initial appropriation would suffice to authorize the use of that money for other loans until the legislature reappropriates the unobligated assets of the fund or abolishes the fund.

Support for this position is found in the Alaska Supreme Court's analysis in the Alex case. In Alex, the court took note of the drafting change of Article IX, section 7 referred to earlier. This change, said the court, "did not seek to exempt some sources of revenue from the prohibition, but was intended instead to allow necessary dedication of funds once they were received and placed in the general fund." State v. Alex, supra at 210.

The Alaska Supreme Court has thus recognized that the dedication prohibition of Article IX, section 7 does not operate to prohibit all dedications whatever their nature. Rather, the court seems to be saying that Article IX, section 7 must be read to allow certain necessary dedications of money by the legislature after that money is received and placed in the state treasury (i.e., general fund). This analysis by the Supreme Court gives support to the argument that the dedication prohibition does not apply to money once it has been lawfully appropriated from the general fund and that the legislature can, without violating Article IX, section 7, create "necessary dedications" out of that money.

C. Income Generated by Specific Funds or Accounts

A question separate from that just discussed arises concerning the application of the dedicated fund prohibition to the interest or other income earned by money appropriated to revolving funds and other funds and accounts. Is that derivative income revenue which, under the prohibition, must be deposited in the general fund, or may it accrue directly to the fund or account which "earned" it, increasing the amount of money in that fund or account which may be spent without further appropriation?

We are advised by the Department of Administration that the National Committee on Governmental Accounting has defined a fund to be:

> A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

Municipal Finance Officers Association of the United States and Canada, "Governmental Accounting, Auditing, and Financial Reporting," 1980, Appendix B.

From the point of view of generally accepted accounting principles, then, income generated by a fund accrues to that fund unless a transfer is authorized. Economic theory also leads to that result, arguing that the interest or investment income on a particular fund is simply an increase in the value of the fund which offsets inflation and reflects the gradual growth of our economy. Under either approach, such derivative income ought not to be considered revenue subject to the dedicated funds prohibition.

Derivative income such as interest and investment income is not a traditional source of public revenue. It is generated by public revenue which has been received and appropriated and would not be generated if the legislature had

simply spent the money rather than appropriated it to a separate fund. Thus, a statutory dedication of the interest or investment income of a separate fund would not impair the ability of future legislatures to control the spending of general revenues. Rather, it would create a new pool of resources to be used under the statutory guidelines applicable to a particular fund until a future legislature amended or repealed those guidelines. There is no indication in the minutes of the Constitutional Convention that the drafters considered the treatment of separate funds which are endowed in this manner.

A difficulty that arises from the view that the dedicated funds prohibition is not applicable to interest or investment income on separate funds is that it permits steadily increasing amounts of money to be received and used by state departments and agencies without legislative control through the annual budget process. This is precisely the problem posed by the dedication of revenue sources which the drafters sought to avoid. For this reason, while we are not certain about the likely outcome, we doubt that a blanket exception for derivative income would be approved by the courts.

After all, the Alaska Constitution was not written for accountants and economic theorists. Although not expressly addressed by them, the framers were very much aware of the boom-bust cycle of Alaska's economy. In fact, a driving force

behind statehood was the desire of Alaskans themselves to be able to manage the income derived from those brief periods -- as Prudhoe Bay bears witness -- when the state may receive enormous sums of money which are then immediately available for expenditure or placement, by appropriation, into a variety of funds and accounts for various permissible purposes. Depending on the number and size of those funds and accounts, the interest earned on the money placed in them could itself be substantial and would almost certainly be of a magnitude which is far greater than that likely envisioned by the National Committee on Government Accounting in the above-quoted standard. Moreover, the significance of that interest income in properly managing the state's budget leads us to the conclusion that our framers would have considered it to be within the dedicated fund prohibition. As we have indicated, however, the answer to this question is not free from doubt. Consequently, until the question is ruled on by the courts, we will defend legislative action dedicating, by general law, derivative income to the funds which "earned" them.

In the absence of valid general law dedications of derivative income, we believe there would still be a way to maintain legislative control over revenues through the budgetary process while achieving the efficient accounting organization provided by separate funds. This would be if the legislature appropriated to the separate fund for a fixed period the amount

of interest or investment income received by that fund. Since each legislature has implicit budgetary authority for a maximum period of only two years, this practice would not impair the ability of future legislatures to dispose of those derivative revenues. Under this line of reasoning, the interest on a loan fund or other separate fund is public revenue which must be transferred to the treasury, unless the fund is authorized by appropriation to retain it for a specific period. Although it may be possible to argue in favor of a longer period, our recommendation is that these appropriations of derivative income to the fund which "earns" them be made annually, for each fiscal year.

D. Appropriations Stated in General Terms, Rather than Specific Amounts.

The annual budget has traditionally included certain appropriations not stated in specific dollar amounts but rather in terms of money to be received from certain sources during the fiscal year. Such an appropriation, for example, would authorize the risk management division of the Department of Administration to spend the anticipated proceeds from any insurance settlement