

LDIR#115

MUNICIPAL

INCORPORATION

ORGANIZATION

Greg Mackayowski

MUNICIPAL
FISCAL AND ACCOUNTING
MANUAL

Available from

Local Affairs Agency
Office of the Governor
State of Alaska
Juneau - 1966

Alfred E. Widmark
Deputy Director
Local Affairs Agency

October 28, 1968

G. Kent Edwards
Attorney General

By: Charles K. Cranston
Assistant Attorney General

1. May villages situated within 10 miles of each other be incorporated as fourth class cities or "incorporated villages".
2. May a city council of a fourth class city acquire or regulate a cemetery under its general powers relating to health and safety.

1. Villages situated within 10 miles of each other may be incorporated as fourth class cities or "incorporated villages".

AS 29.25.030(a) states that a village that is not (among other things) within 10 miles of an incorporated city may form an incorporated village.

There appears to be a statutory distinction between a municipality and a fourth class city. Even though the distinction is not specifically made, several specific statutes treat an incorporated village differently than a municipality. Examples follow:

a. Chapter 80 of Title 29 provides for the dissolution of "a city incorporated under the general laws of the state". The chapters dealing with cities of the first, second and third class do not deal individually with this subject. However, Article 7 of Chapter 25 provides for the dissolution of cities of the fourth class and states that such a city may be dissolved in the manner provided for the dissolution of "municipalities" in Chapter 80 of Title 29. The implication is that a specific reference to Chapter 80 was necessary to bring an "incorporated village" within the meaning of "a city incorporated under the general laws of the state". Thus "incorporated village" or city of the fourth class has a different meaning than "incorporated city".

b. AS 29.25.490 states "[a]n incorporated village may at any time initiate proceedings to incorporate as a municipality". Here again is a distinction between an incorporated village and a municipality. A municipality as used in this context would appear to be a city of the first, second or third class.

7/23/68
10-28-68

MEMORANDUM

State of Alaska

TO:

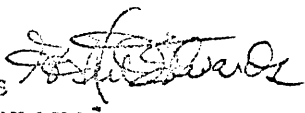
Larry Montgomery, Director
Local Affairs Agency

DATE : October 2, 1967

FROM:

Edgar Paul Boyko
Attorney General

SUBJECT: Unification

By: G. Kent Edwards 
Deputy Attorney General

By memorandum dated June 27, 1967 you requested an opinion from our office on the following question:

"Can the home rule charter of a unified local government established in accordance with AS 29.85 establish additional requirements for spreading debt (AS 29.85.120) other than the requirements established by statute (AS 29.85.180)?"

The statutory provisions referred to in your question state:

"Sec. 29.85.120(a) . . . The charter shall include among its provisions: (1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will preserve a fair and equitable burden of taxation for debt service. . . ."
(Emphasis added)

"Sec. 29.85.180 Assets and Liabilities. A municipality created by unification shall succeed to all the assets and liabilities of the local governments it unified. A bonded indebtedness incurred before unification shall remain the tax obligation of the area which contracted the debt, except that the tax obligation may be spread over a larger area by vote of the governing body of the unified municipality."
(Emphasis added)

Re Transitional Provision

MEMORANDUM

State of Alaska

TO:

Larry Montgomery, Director
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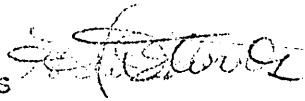
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(Emphasis added)

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

CITY OF JUNEAU, an Alaskan
municipal corporation, et al,)

Plaintiffs,)

vs)

GREATER JUNEAU BOROUGH, an
Alaskan municipal corporation,)
et al,)

Defendants.)

No. 65-317

MEMORANDUM DECISION

This is an action for a declaratory judgment and injunctive relief which is now before the court on cross motions for summary judgment. In their complaint plaintiffs attack the constitutionality of the present apportionment of the Assembly of the Greater Juneau Borough. They contend principally that the provisions of AS 07.10.040, establishing the formula for apportionment of the assembly, violate the equal protection clauses of both the state and federal constitutions (Art. I, Sec. I, Constitution of Alaska; Fourteenth Amendment to the U. S. Constitution), particularly the latter as interpreted by recent apportionment decisions of the U. S. Supreme Court. Plaintiffs further contend that the weighted voting provisions of AS 07.20.070(d) deny them equal protection of the law, and that even if this statutory section is valid, the practice of the assembly in the use of the weighted voting violates the statute.

Defendants contend that by virtue of a legitimate classification based on its particular governmental functions and powers,

1 IN THE SUPERIOR COURT OF THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 CITY OF JUNEAU, an Alaskan)
4 municipal corporation, et al,)

5 Plaintiffs)

6 vs.)

7 GREATER JUNEAU BOROUGH,)
8 an Alaskan municipal corporation,)
9 et al,)

10 Defendants)

No. 65-317, Civil

11 MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION
12 FOR SUMMARY JUDGMENT

13 A. THE ONE MAN ONE VOTE CONCEPT DOES NOT REQUIRE THAT BOROUGH
14 ASSEMBLIES BE APPORTIONED STRICTLY IN ACCORDANCE WITH
15 POPULATION.

16 Many recent local government reapportionment cases hold
17 that the rule of Reynolds v. Sims 377 US 533 84 SCT. 1362, 12 L.
18 ed. 2d 506 (1964) is applicable to local governmental bodies
19 exercising legislative authority. The first decision I find
20 announcing this view is a Michigan case Brower v. Bronkema,
21 No. 1855 Kent County Mich. Circuit Court September 11, 1964,
22 reprinted in 13 National Municipal League Decisions on Legisla-
23 tive Reapportionment 81 (1965). The decision in Brower v.
24 Bronkema, was based upon the following chain of reasoning:

25 1. The Fourteenth Amendment applies to the State and
26 to every governmental agency or instrumentality of the State
27 which exercises powers delegated to it by the State.

28 2. The County is a governmental instrumentality or
29 division of the State and the Board of Supervisors is the legi
slative body of the County. That board exercises legislative
powers delegated to it by the State.

DILLI J. DENKNER
ATTORNEY AT LAW
127 S. FRANKLIN ST. TELEPHONE 586-2270
JUNEAU, ALASKA

August 23, 1968

M E M O R A N D U M

TO: Dr. Clifford Hartman
Commissioner
Department of Education

FROM: G. Kent Edwards
Attorney General

RE: Juneau Charter Commission

SUMMARY

In your letter of April 25, 1968, you asked whether a unified municipality has sufficient power to disregard the legislature's mandatory provisions for management and control of the school system, and whether a unified municipality can provide in its charter for an appointed school board, rather than an elected school board. It is the opinion of this Department that a unified municipality does not have this power. Where the legislation is mandatory, is not in conflict with the Alaska Constitution and is intended to be the controlling pronouncement on a particular issue, the legislation controls even in the face of home rule powers.

ANALYSIS

1. Legislative Creation of School System.

The Constitution delegates to the legislature the duty of establishing and maintaining a system of schools in the State. Art. VII, Sec. 1. In fulfilling its constitutional duty, the legislature created a State school system, AS 14.03.010, and delegated certain administrative authority to the Department of Education, AS 14.07.020. In addition, for the organization and the government of the school system at the local level, the legislature created school districts, and provided that each borough and city school district have a school board. AS 14.12. The legislature regarded the

Introduced: 2/7/67
Referred: Local Government
and Judiciary

1 IN THE HOUSE

BY LOCAL GOVERNMENT COMMITTEE
BY REQUEST

2 HOUSE BILL NO. 128

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing a borough and cities within the
7 borough to form a single unit of local government upon
8 approval by public referendum; and providing for an
9 effective date."

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

11 * Section 1. AS 29 is amended by adding a new chapter to read:

12 CHAPTER 85. FORMATION OF A MERGED OR CONSOLIDATED
13 CITY OR BOROUGH.

14 Sec. 29.85.010. METHODS OF MERGER OR CONSOLIDATION. Two methods
15 may be used by home rule and general law municipalities to initiate
16 merger or consolidation:

17 (1) petition to the Local Boundary Commission under regula-
18 tions adopted by the commission, or

19 (2) the local option method specified in secs. 20 - 210
20 of this chapter.

21 Sec. 29.85.020. PETITION. (a) Residents of two or more munici-
22 palities or the governing body of a municipality by resolution may
23 file a merger or consolidation petition with the Local Affairs Agency.
24 If the petition is from the residents it must be signed by a number of
25 municipal voters of each municipality equal to at least 10 per cent of
26 the number of votes cast in its last regular election.

27 (b) The petition includes

28 (1) the name and class of each municipality;

29 (2) the name and class of the proposed municipality;

HB 128

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IN THE SENATE BY SENATOR HANSEN

SENATE BILL NO. 97

IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the composition of
borough assemblies."

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

* Section 1. AS 07.20.020 is repealed and re-enacted to read:

Sec. 07.20.020. ELECTION. (a) Members of the assembly
are elected according to the apportionment prescribed in
AS 07.10.040.

(b) Members representing a first class city are directly
elected by city voters to dual council-assembly seats. The
council shall designate by ordinance those council seats
which are to be dual council-assembly seats. The designa-
tion shall be clearly indicated on the ballot.

(c) Members representing the area outside first class
cities are elected from and by the voters resident outside
such cities.

* Sec. 2. AS 07.10.120(g) is amended to read:

(g) First term of office. The elected borough chair-
man and assembly members elected shall meet on the first
Monday after their certification and shall continue to serve
until the next regular election. Assembly members repre-
senting first class cities are appointed from and by their

Introduced: 3/3/65
Referred: Local Government

1 IN THE SENATE BY SENATOR PERATROVICH

2 SENATE BILL NO. 151

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to exclusion of certain
7 Indian reservations and withdrawals for
8 Indian purposes from organized boroughs; and
9 providing for an effective date."

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

11 * Section 1. The purpose of this Act is to exclude from
12 organized boroughs in the state the area lying within the bounda-
13 ries of Indian reservations or withdrawals if the Indians who
14 reside on the reservation or withdrawal are organized into a
15 federal corporation, unless the Indians consent to the inclusion.

16 * Sec. 2. AS 07.10 is amended by adding a new section to
17 read:

18 Sec. 07.10.135. EXCLUSION OF INDIAN RESERVATIONS OR
19 WITHDRAWALS FOR INDIAN PURPOSES. (a) There shall not be
20 included within an organized borough the area encompassed
21 within the limits of an Indian reservation or withdrawal
22 created by Act of Congress of the United States or by the
23 order of the President of the United States for the use,
24 occupancy or benefit of any tribe, village or group of
25 Indians if the Indians residing on the reservation or with-
26 drawal are organized under the Act of June 18, 1934, as

1 IN THE HOUSE

BY MR. ENGSTROM

2 HOUSE BILL NO. 174

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing a single organized
7 borough for Southeastern Alaska including
8 proposed boundary extensions for cities of
9 Southeastern Alaska; and providing for an
10 effective date."

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

12 * Section 1. PURPOSE. The purpose of this Act is to enable
13 the exercise of borough functions on a coordinated regional basis
14 in Southeastern Alaska and to place primary responsibility on
15 incorporated cities in Southeastern Alaska for local government
16 within populated areas adjacent to their present boundaries.

17 * Sec. 2. INCORPORATION. That territory within the boundaries
18 of Senate Election District A - Southeastern is hereby authorized
19 to become a municipal corporation and an organized borough of the
20 first or second class as determined by local election, to be known
21 by official title as the Borough of Southeastern Alaska, and to
22 possess all the rights, powers, duties and functions of an organ-
23 ized borough of its class incorporated as prescribed by AS 07.

24 * Sec. 3. DISSOLUTION. The boroughs designated in this
25 section shall be dissolved and their assets and liabilities trans-
26 ferred to the borough incorporated by this Act:

Introduced: 2/11/66
Referred: Local Govern-
ment

1 IN THE HOUSE

BY POLAND, STEVENS, RADER AND
ENGSTROM BY REQUEST

2 HOUSE BILL NO. 409

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing a borough and first
7 class and home rule cities within the
8 borough to form a single unit of local
9 government upon approval by public referen-
10 dum; and providing for an effective date."

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

12 * Section 1. AS 07 is amended by adding a new chapter to read:

13 CHAPTER 37. FORMATION OF CONSOLIDATED BOROUGH.

14 Sec. 07.37.010. FORMATION OF CONSOLIDATED BOROUGH
15 AUTHORIZED. In order to promote local autonomy, eliminate
16 duplication of local governmental units within a borough
17 and foster more efficient services with lessened local tax
18 burdens, an organized borough and first class and home rule
19 cities within the borough may upon approval by public refer-
20 endum form a consolidated borough to provide a single unit
21 of local government. Formation of a consolidated borough
22 must be in accordance with the provisions of this chapter
23 and vests the borough with home rule status as provided in
24 this chapter pursuant to the Legislature's authority under
25 Article X, Section 10 of the state constitution.

CS prepared - 2/11

Introduced: 1/25/67
Referred: Local Government

1 IN THE HOUSE

BY SMITH BY REQUEST

2 HOUSE BILL NO. 57

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the procedure for adoption of
7 ordinances by the assembly of an organized borough."

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

9 * Section 1. AS 07.20.100 is amended to read:

10 Sec. 07.20.100. PROCEDURE FOR ADOPTING ORDINANCES [ORDINANCE OF
11 PROCEDURE]. (a) Except as otherwise provided in this title, the
12 following procedure shall govern the enactment of all ordinances: An
13 ordinance may be introduced by any member or committee of the assembly
14 or by the borough chairman at any regular or special meeting of the
15 assembly. It shall be read aloud by the presiding officer, unless
16 reading is waived by unanimous consent of all the assembly present.

17 Upon introduction of any ordinance, sufficient copies shall be furnished
18 to the clerk in order for him to immediately distribute at least one
19 copy each to the assembly members and to the chairman. After an
20 ordinance has been introduced, and unless it is rejected at the same
21 meeting by the affirmative votes of not less than a majority of the
22 assembly members, the assembly shall promptly cause the ordinance to be
23 published, together with a notice setting out the time and place for a
24 public hearing on the ordinance, and for its consideration by the
25 assembly. The public hearing on any ordinance not rejected shall
26 follow the required publication by at least five days [ONE WEEK], and
27 it may be held separately or in connection with a regular or special
28 assembly meeting and may be adjourned from time to time. At the
29 public hearing held in accordance with the notice, copies of the