

LDIR#121

MUNICIPAL

POWERS

THE SUPREME COURT OF THE STATE OF ALASKA

CHUGACH ELECTRIC ASSOCIATION,)
INC.,)
)
Appellant,)
)
v.)
)
CITY OF ANCHORAGE, a municipal)
corporation,)
)
Appellee.)

File No. 1152

O P I N I O N

[No. 647 - November 2, 1970]

Appeal from the Superior Court of the State of Alaska,
Third Judicial District, Anchorage,
Eben H. Lewis, Judge.

Appearances: William J. Moran, Anchorage, for
Appellant. Karl L. Walter, Jr., Anchorage, for
Appellee. Shirle A. DeBenham, Assistant
Attorney General, for the State of Alaska as
Amicus Curiae.

Before: Dimond, Rabinowitz, Connor, Justices;
Taylor and Stewart, Superior Court Judges.
[Boney, Chief Justice, not participating.]

CONNOR, Justice.

The factual aspects of this case are relatively simple and stand in stark contrast to the voluminous and far-reaching legal arguments which have been put forth by both parties.

Basically there is no dispute that the Park Lanes Bowling Alley was served with electrical power by the Anchorage City Utility Department, that the bowling alley requested Chugach Electric Association (hereafter referred to as Chugach) to provide

permission to permit... by this decision when the total cost of the replacement... does not exceed... -1-

STANLEY J. McCUTCHEON
CLIFFORD J. GROH
RONALD G. BENKERT
WILLIAM A. GREENE
KARL L. WALTER, JR.

LAW OFFICES OF
McCUTCHEON, Groh, Benkert & Greene
FIRST FEDERAL SAVINGS & LOAN ASSOCIATION BUILDING
430 "C" STREET - SUITE 301
Anchorage, Alaska 99501

TELEPHONES
272-6474
272-6475

November 13, 1970

Mr. Billie Berrier
City and Borough of Juneau
Johnson Building
Juneau, Alaska

Re: Chugach Electric Association
Inc. vs. City of Anchorage
File #1152
Opinion #647 - November 2, 1970

Dear Mr. Berrier:

Enclosed please find a copy of a Petition for Rehearing which I have filed in the Supreme Court on behalf of the City of Anchorage in the above-entitled matter. If you have not as yet read the opinion in the above case, I would suggest that you immediately do so because it is of paramount importance in the long run to your city.

The opinion in effect destroys the concept of Home Rule charter powers as envisaged by the Alaska constitution. For years it appeared to be fairly well settled law that municipalities did have all Home Rule charter powers unless the legislature had specifically withheld those powers by express legislation. In addition, the Home Rule powers that a Home Rule charter city could exercise would always be all legislative powers which the state legislature could itself exercise. The court's opinion, however, has adopted the rulings of courts in the other states which developed out of different constitutional and legislative provisions. In effect, the court has held that a city only has Home Rule charter powers as to what may be characterized as local activities, and also if the state legislature has enacted legislation which may be characterized as either preempting a sale or as being a matter of state concern, then the Home Rule charter powers must fall. In other words, all residual of Home Rule charter powers were found by the court to be vested in the state government rather than in the Home Rule municipality.

IN THE SUPREME COURT OF THE STATE OF ALASKA

CHUGACH ELECTRIC ASSOCIATION)
INC.,)

Appellant,)

vs.)

CITY OF ANCHORAGE, a municipal)
corporation,)

Appellee.)

No. 1152

PETITION SUPPORTING PETITION FOR REHEARING
AND REQUESTING PERMISSION TO FILE AMICUS
CURIAE BRIEF IN THE REHEARING

The decision in this case is of great concern to the City and Borough of Juneau, Alaska. The City and Borough is a home rule unit of local government formed by unification of the former cities of Douglas and Juneau and the former Greater Juneau Borough. It is difficult to understand the full import of the decision rendered in this case on November 2, 1970. However it appears the court has adopted the discredited local vs. state concern approach to home rule, referred to by the court as the "local activity rule". The court further says "our holding attempts to comport with the current trend of authority in dealing with problems of this nature" ignoring both the clearly expressed intent of the Constitutional Convention that Alaska rule home rule be different and that home rule derives from the various state constitutional provisions and must be construed in light of the particular constitution involved.

The courts approach here is completely foreign to what everyone

MEMORANDUM

State of Alaska

TO: Greg Machowski
Legislative Affairs Agency

DATE : February 3, 1971

FROM: John E. Havelock
Attorney General

SUBJECT: Proposed Legislation - Real
Property Assessment for
Purposes of Taxation

By: M. Gregory Papas *MGP*
Assistant Attorney General

The attached copy of Judge Moody's memorandum opinion in the J. C. Penney case should put to rest the concern shown by members of the last legislature. You will note from the opinion that each of the contentions raised by the plaintiff were decided in favor of the defendants, except for one minor point. I think the attached opinion, as well as the facts of the Hoblit decision, cited by Judge Moody, point out the necessary for flexibility in assessing methods rather than a universal treatment specified by statute.

JEH:MGP:agm
Attachment

LAW OFFICES
BARRY W. JACKSON
527 4TH AVENUE
P.O. BOX 348
FAIRBANKS, ALASKA 99701
907-456-7791

BARRY W. JACKSON
FREDERIC E. BROWN

November 17, 1970

Honorable George Boney
Chief Justice
Supreme Court of the State of Alaska
Anchorage, Alaska 99501

Dear Chief Justice Boney:

I have received a copy of Victor Fischer's letter of November 11, 1970, directed to you and the Court, discussing the Court's opinion in the Chugach vs. City of Anchorage case.

I generally concur with Mr. Fischer's views. I suggest that the decision effectively reduces that predictability of law which the convention attempted to achieve in the local government article. City attorneys and others concerned with municipal law will not be able to predict with any certainty what proposed municipal action may be subject to invalidation under the rationale of the Court's opinion.

It also appears that the rationale is dicta. As a matter of general law, a city cannot deny a building permit to a person who proposes to erect a structure meeting the terms of the building code simply because the city does not want the structure constructed. Such arbitrary action would be invalid without reference to home rule.

The Legislative Affairs Agency and the Legislature has, without exception, dealt with the problem of conflict by specifically withdrawing powers from municipalities. As a drafter of the recent legislation which took away from the cities the power to grant franchises and specifically awarded them power to

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LEGISLATIVE AFFAIRS

Darlin

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT, AT JUNEAU

3 HUGH MACAULEY, MARIE DARLIN, DANNY)
4 PLOTNICK, and JUDY FRANKLET, MEMBERS)
5 of the School Board of the City and)
6 Borough of Juneau, Alaska,)

7 Plaintiffs,)

8 v.)

9 EDWARD S. HILDEBRAND, Treasurer of the)
10 City and Borough of Juneau, Alaska,)

11 Defendants.)

12 C. A. No. 70-256

13 REPORTER'S TRANSCRIPT OF RECORD

14 BE IT REMEMBERED that on the 2nd day of June, 1971, the
15 above-entitled matter came on for oral decision before the Honorable
16 Thomas B. Stewart, Presiding Judge of the Superior Court, First
17 Judicial District. Plaintiffs were represented by Avrum Gross, Esq.
18 attorney at law, and defendant was represented by Billie Berrier,
19 Esq., attorney at law.

20 WHEREUPON, on June 2, 1971, the following decision was re-
21 ceived:

22 THE COURT: There is brought on for statement of decision at
23 this time the case of Macauley, et al, Members of the School Board
24 of the City and Borough of Juneau, plaintiffs, v. Edward S. Hilde-
25 brand, Treasurer of the City and Borough of Juneau, Alaska, defendan
C. A. No. 70-256. Before commenting on the merits of the issues
presented, it will help to note the procedural status on which this

MUNICIPAL TORT LIABILITY

(Prepared for League of Alaska Cities Convention 10/23/64 - Cordova)

Five years have passed since I had the privilege of attending and addressing the 9th annual convention of this league at Nome in 1959.

At that time the Alaska Court System was about to come into being. It and the cities were in the process of working out memorandum agreements whereby the court system would man and operate the municipal courts as a part of the unified court system.

Many of the agreements worked out at Nome in between convention activities remain unchanged to this day.

I remember very well the question and answer period that followed my talk at Nome. Some doubt existed as to the ability of a unified state court system to satisfactorily supply magistrate services to the cities.

One fear expressed at Nome was that the state court system would arbitrarily import magistrates foreign to the community.

I am happy to say that not only has this not happened, but the very fear that it might happen has disappeared. The Presiding Superior Court Judges have been anxious to appoint magistrates resident in the community in which they serve -- so much so that this has become established practice.

Some of the contingencies that were discussed at the law of torts in general and then pass to governmental Nome have happened. One question that bothered some of the cities was what recourse they would have in the event the

Introduced: 2/21/64
Referred: Local Govern-
ment and Judiciary

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IN THE HOUSE BY THE LOCAL GOVERNMENT
COMMITTEE BY REQUEST

HOUSE BILL NO. 338

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRD LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to claims by or against an incorporated borough, city, or other public corporation of like character."

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

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

CHAPTER 85. CLAIMS BY OR AGAINST MUNICIPAL CORPORATIONS.

ARTICLE 1. CLAIMS BY MUNICIPAL CORPORATIONS.

Sec. 29.85.010. CLAIMS BY INCORPORATED UNITS OF LOCAL GOVERNMENT. An action may be maintained by an incorporated borough, city, or other public corporation of like character in its corporate name, and upon a cause of action accruing to its corporate character

(1) upon a contract with the public corporation,

(2) upon a liability prescribed by law in favor of the public corporation,

(3) to recover a penalty or forfeiture given to the public corporation,

(4) to recover damages for an injury to the corporate rights or property of the public corporation.

ARTICLE 2. CLAIMS AGAINST MUNICIPAL CORPORATIONS.

Sec. 29.85.100. TORT CLAIMS AGAINST INCORPORATED UNITS

Introduced: 1/28/65
Referred: Health, Welfare and
Education, Local Government and
State Affairs

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 HOUSE BILL NO. 52

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to regulate fireworks; and providing
7 for an effective date."

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

9 * Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 85. FIREWORKS.

11 Sec. 18.85.010. FIREWORKS PROHIBITED. Except as
12 provided in this chapter, it is unlawful for any person to
13 offer for sale, expose for sale, sell at retail, use, or
14 explode any fireworks.

15 Sec. 18.85.020. EXCEPTION FOR AUTHORIZED DISPLAYS. (a)
16 Fireworks may be used for public or private display or use by
17 municipalities, fair associations, amusement parks, and other
18 organizations or groups of individuals, if

19 (1) a permit is obtained from the city or borough
20 in which the display is to take place, or, if the display is
21 not to take place within a city or borough, from the state
22 fire marshal;

23 (2) the display is prepared and presented under
24 the immediate supervision of a person approved by the fire

25
26 place, or if the display is not to take place within a city

1 IN THE HOUSE

BY MR. STEVENS

2 HOUSE BILL NO. 170

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act requiring that the meetings of
7 agencies of the state and its subdivisions be
8 open to the public with certain exceptions."

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

10 * Section 1. AS 44.62.310 is repealed and re-enacted to read:

11 Sec. 44.62.310. AGENCY MEETINGS PUBLIC. (a) All
12 meetings of an administrative or legislative body, board,
13 commission, committee, subcommittee, authority, council,
14 agency, or other organization, including subordinate units of
15 the above groups, of the state or any of its political sub-
16 divisions, including but not limited to municipalities,
17 boroughs, school boards, and all other boards, agencies,
18 assemblies, councils, departments, divisions, bureaus, com-
19 missions or organizations, advisory or otherwise, of the
20 state or local government supported in whole or in part by
21 public money or authorized to spend public money, are open
22 to the public except as otherwise provided by this section.

23 (b) If excepted subjects are to be discussed at a
24 meeting, the meeting must first be convened as a public
25 meeting and the question of holding an executive session to

Introduced: 1/27/65
Referred: Local Govern-
ment

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1 IN THE HOUSE

BY MR. JACKSON

2 HOUSE BILL NO. 17

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act requiring home rule cities and
7 boroughs to file copies of certain enactments
8 with the Legislative Council and Local Af-
9 fairs Agency."

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

11 * Section 1. AS 29.08 is amended by adding a new section to
12 read:

13 Sec. 29.08.400. FILING OF CERTAIN ENACTMENTS WITH STATE.

14 The clerk of a home rule city shall file with the Legislative
15 Council and the Local Affairs Agency a true copy of every
16 ordinance and resolution enacted by the governing body of the
17 city and pertaining to the exercise of a legislative power not
18 authorized to first class cities by general law. Ordinances
19 and resolutions in effect on the effective date of this
20 section must be filed within 60 days after the effective date
21 of this section. Ordinances and resolutions enacted there-
22 after must be filed within 60 days of enactment.

23 * Sec. 2. AS 7 is amended by adding a new chapter to read:

24 CHAPTER 12. HOME RULE BOROUGHS.

25 Sec. 07.12.400. FILING OF CERTAIN ENACTMENTS WITH STATE.

26 The clerk of a home rule borough shall file with the Legis-

Introduced: 2/24/65
Referred: Local Government
and State Affairs

1 IN THE SENATE

RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 129

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 transfer of civil de-
7 fense property to political subdivisions,
8 and providing for an effective date."

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

10 * Section 1. AS 44.74 is amended by adding a new section to
11 read:

12 Sec. 44.74.090. TRANSFER OF CIVIL DEFENSE PROPERTY.

13 (a) Title to personal property received by the state from
14 the federal government for civil defense purposes may be
15 transferred to political subdivisions of the state which
16 have qualified civil defense organizations by the Department
17 of Public Safety with the approval of the state director of
18 civil defense and the approval of the Department of Adminis-
19 tration. This section is applicable only when title to the
20 property is held by the Department of Public Safety.

21 (b) As a condition of title transfer, the political
22 subdivision is responsible for compliance with the federal
23 and state restrictions on the property.

24 (c) No transfer of title to property shall be made
which is not in compliance with federal law and with the

Introduced: 2/18/65
Referred: Local Govern-
ment

ALASKA
STATE
LEGISLATURE

1 IN THE HOUSE

BY MESSRS. LEFEVRE, MCCOMBE,
MOSELEY, ORBECK, PINKERTON,
PLOTNICK, RAY, SHELDON,
TAYLOR AND GRAVEL

2 HOUSE BILL NO. 146

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 terms and conditions of
7 employment and retirement for local govern-
8 ment policemen and firemen; and providing
9 for an 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 37. CIVIL SERVICE SYSTEM

13 Sec. 29.37.010. APPLICATION OF CHAPTER. This chapter
14 applies to every fire department or police department of
15 local government that

16 (1) employs more than one full-time policeman or
17 more than one full-time fireman;

18 (2) on the effective date of this chapter is not
19 using a civil service system substantially similar to the
20 civil service system established by this chapter.

21 Sec. 29.37.020. DEPARTMENT EMPLOYEES OPTION TO DECLINE
22 TO PARTICIPATE. (a) On or before June 1 of each calendar
23 year a petition may be filed with the employing authority of
24 a police or fire department, signed by no less than 25 per

25
26 employing authority to hold an election by secret ballot of

Introduced: 2/27/64
Referred: Local Govern-
ment and Judiciary

ALASKA
STATE
LEGISLATURE

1 IN THE HOUSE BY MR. GRAVEL

2 HOUSE BILL NO. 361

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRD LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to terms and conditions of
7 employment and retirement for local govern-
8 ment policemen and firemen; and providing
9 for an 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 37. CIVIL SERVICE SYSTEM.

13 Sec. 29.37.010. APPLICATION OF CHAPTER. This chapter
14 applies to every local government that

15 (1) employs more than one full-time policeman or
16 more than one full-time fireman;

17 (2) on the effective date of this chapter is not
18 using a civil service system substantially similar to the
19 civil service system established by this chapter.

20 Sec. 29.37.020. CREATION AND MEMBERSHIP OF COMMISSION.

21 There is created in each local government a three-member
22 Civil Service Commission. The members of the commission are
23 appointed by the local government official who employs the
24 chief police officer. Members are appointed for staggered

25

26 Sec 29 37 030 QUALIFICATIONS A person is qualified

1 IN THE SENATE

BY SENATOR GILBERT

2 SENATE BILL NO. 43

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending Title 16, ACLA 1949 by
7 adding a new Chapter 6 relating to muni-
8 cipal police forces, their powers and
9 duties."

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

11 Section 1. Title 16, ACLA 1949 is hereby amended by adding
12 a new Chapter 6 to be entitled "Municipal Police" containing new
13 sections 16-6-1 through 16-6-7 which shall read as follows:

14 NEW
15 W Sec. 16-6-1. REQUIRING MUNICIPAL POLICE IN CITIES:

16 (1) A municipal police force consisting of one
17 or more municipal police officers who shall be American
18 citizens shall be maintained in every city by and at the
19 expense of the city.

20 (2) If a municipality fails to appoint one or
21 more municipal police officers, the Attorney General of
22 Alaska may direct the municipality to appoint such police
23 officers, and if the municipality neglects or refuses to
24 appoint municipal police officers upon being directed to do
25 so, the Attorney General may appoint municipal police for
26 that municipality at such salaries as he deems proper.

27 (3) The salaries of municipal constables appoint-
28 ed by the Attorney General shall be paid by the municipali-
29 ty and may be deducted from any funds normally paid to
the municipality by the state.

SB #43

Introduced: 3/7/63
Referred: Resources,
State Affairs and
Local Government

1 IN THE HOUSE

BY MR. LEONARD

2 HOUSE BILL NO. 167

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRD LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of waters
7 of the state by local units of government;
8 and providing for an effective date."

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

10 * Section 1. AS 46 is amended by adding a new chapter to read:

11 CHAPTER 30.

12 Sec. 46.30.010. LOCAL REGULATION OF WATER. (a) Any
13 incorporated unit of local government which borders on waters
14 of the state, or contains water courses carrying waters of
15 the state through them, or is dependent upon nearby waters of
16 the state for municipal purposes, has the following powers
17 of regulation of waters of the state within a distance of 50
18 miles of its incorporated limits:

19 (1) the power to establish standards of quality;

20 (2) the power to regulate discharge of waste
21 material into the waters;

22 (3) the power to regulate the flow of the waters.

23 (b) The incorporated unit of local government shall
24 exercise these powers in conjunction with the areawide health
25 jurisdiction.

26 (c) in case of conflicting interest among incorporated
27

Introduced: 2/23/68
Referred: Health, Wel-
fare & Education and
Judiciary

1 IN THE SENATE

BY PALMER AND THOMAS

2 SENATE BILL NO. 360

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for state action to control deposit-
7 ing of litter and refuse on highways and public
8 recreational facilities; and providing for an
9 effective date."

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

11 * Section 1. AS 19.17 is amended by adding a new section to read:

12 Sec. 19.17.020. LITTER AND REFUSE CONTROL PROGRAM. The commis-
13 sioner of highways shall develop and administer a statewide program
14 to remove and prevent the deposit of litter and refuse on highways and
15 public recreational facilities. The program shall provide for

16 (1) local participation in remedy and prevention efforts
17 by cities and organized boroughs in the area outside cities, or area-
18 wide in accordance with law, with participating cities and boroughs
19 eligible to receive 90 per cent of the costs of their effort from the
20 department, upon appropriating 10 per cent as a local share and upon
21 such other terms and conditions as the commissioner may prescribe in
22 order to effect the purpose of this section;

23 (2) preference, consistent with personnel requirements of
24 the program, for employment of persons of high school age on a summer-
25 or part-time basis;

26 (3) opportunity for cooperation of federal, state, local
27 and private agencies in furthering the purpose of this Act;

28 (4) other requirements as the commissioner of highways deems
29 necessary to effect the purpose of this section.

Introduced: 2/21/68
Referred: Local Government

1 IN THE HOUSE

BY SMITH

2 HOUSE BILL NO. 603

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing second class boroughs, in accord-
7 ance with federal law, to provide for community action
8 agencies and programs in the area outside cities."

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

10 * Section 1. AS 07.15 is amended by adding a new section to read:

11 Sec. 07.15.725. COMMUNITY ACTION AGENCY AND PROGRAM. (a) In
12 the area outside cities the second class borough may exercise all
13 powers required for local participation under Title II of the Economic
14 Opportunity Act of 1964, Title 42, United States Code, secs. 2781 et
15 seq., and its amendments. The power conferred upon the borough in
16 this subsection includes but is not limited to power to be designated a
17 community action agency, to plan, coordinate, conduct, administer and
18 evaluate a community action program, to enter into contracts with
19 public and private nonprofit agencies or organizations to assist in
20 fulfilling the purposes of a community action program, exercise
21 specific powers and functions required under sec. 212 of the Economic
22 Opportunity Act of 1964, as amended, and to designate a public or
23 private nonprofit agency or organization as a community action agency
24 having the powers and functions required under federal law.

25 (b) The exercise of the power conferred in (a) of this section is
26 at the option of the borough and is not subject to the restrictions on
27 acquiring additional powers in the area outside cities specified in
28 secs. 720 and 730 - 800 of this chapter.
29

HB 603

Introduced: 2/27/67
Referred: Local Govern-
ment

1 IN THE HOUSE

BY SMITH

2 HOUSE BILL NO. 243

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 effect of assumption of area-
7 wide sanitary sewer power by an organized borough."

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

9 * Section 1. AS 07.15 is amended by adding a new section to read:

10 Sec. 07.15.400. SANITARY SEWERS. (a) When a first or second
11 class borough acquires the areawide sanitary sewer power, the first
12 and second class borough shall succeed to all the rights, powers, func-
13 tions, claims, franchises, contractual obligations, liabilities, privi-
14 leges, immunities and real and personal property of each city within
15 the borough consisting of the city's sanitary sewerage system in the
16 manner and method provided in this section.

17 (b) The sanitary sewer powers and functions exercised by a city
18 which are succeeded to by a borough shall continue to be exercised by
19 the city until such time as the borough exercises the areawide sanitary
20 sewer powers and function, which time may not exceed one year after the
21 borough has acquired the areawide power. The borough shall make written
22 notice of its exercise of the powers, functions, duties and other items
23 enumerated in (a) of this section to each city concerned at least 30 days
24 prior to the exercise of the areawide power. After acquisition of the
25 areawide sanitary sewer power, the borough officials shall consult with
26 officials of each city concerned and arrange for an orderly transfer of
27 the sanitary sewerage system to the borough. Upon the exercise of the
28 areawide sanitary sewer power, the borough shall succeed to and assume
29 all of the items set forth in (a) of this section without the necessity

Introduced: 3/8/67
Referred: Health, Welfare
and Education

BY BEIRNE, FRITZ, BOARDMAN,
HENSLEY, HOHMAN, MCGILL,
SACKETT, WESTDAHL AND YOUNG

1 IN THE HOUSE

2 HOUSE BILL NO. 273

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 community health aides."

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

8 * Section 1. AS 18.05.040 is amended by adding a new paragraph to read:

9 (16) the complete control and management of a community
10 health aide program and of persons designated by him as community
11 health aides.

12 * Sec. 2. AS 18.05 is amended by adding new sections to read:

13 Sec. 18.05.041. COMMUNITY HEALTH AIDES. The commissioner may
14 designate one or more persons in each village to serve as community
15 health aides.

16 Sec. 18.05.043. POWERS AND DUTIES OF COMMUNITY HEALTH AIDES. (a)
17 A community health aide, working under supervision of professional
18 doctors or nurses, shall

19 (1) coordinate health services at the village site in
20 advance of, during, and following the visits of professional health
21 personnel; the health services shall be in the areas of

22 (A) treatment on orders of a health professional,

23 (B) maternal and child health care,

24 (C) maintenance of health records,

25 (D) home nursing care,

26 (E) health programs other than medical care;

27 (2) serve as the custodian and dispenser, on orders of a
28 health professional, of selected medications;

29 (3) serve as a skilled observer of medical symptoms to be

HB 273

Introduced: 2/3/67
Referred: State Affairs

1 IN THE SENATE

BY B. PHILLIPS, BRADY,
PALMER AND SMITH

2 SENATE BILL NO. 61

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 standards to be met by local
7 prison facilities; and providing for an effective date."

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

9 * Section 1. AS 33.30 is amended by adding new sections to read:

10 Sec. 33.30.082. LOCAL PRISON FACILITIES TO MEET STATE STANDARDS.

11 After July 1, 1967, no person may be detained in a local prison facility
12 that does not meet the standards prescribed by the department for state
13 prison facilities relating to the safekeeping, housing, care and sub-
14 sistence of prisoners.

15 Sec. 33.30.084. INSPECTIONS OF LOCAL PRISON FACILITIES. The
16 department shall make an annual inspection of all local prison facili-
17 ties to determine if they meet the standards prescribed by the depart-
18 ment. The Department of Public Safety shall make an annual inspection
19 of all local prison facilities to determine if they meet the minimum
20 standards for the prevention of fire prescribed by regulation under
21 AS 18.70.080 and shall enforce these regulations as prescribed in
22 AS 18.70.

23 Sec. 33.30.086. SUBSTANDARD LOCAL PRISON FACILITIES. (a) If
24 the department determines that a local prison facility is operating
25 in violation of the standards prescribed for state prison facilities
26 relating to the safekeeping, housing, care and subsistence of prisoners,
27 the department shall serve notice that unless the violations complained
28 of are remedied within 90 days, the local prison facility will be
29 declared unfit for the detention of persons, ordered closed and the

File
B
April 29, 1968

M E M O R A N D U M

TO: Larry Montgomery, Director
Local Affairs Agency

FROM: Edgar Paul Boyko
Attorney General

By: Robert E. Price
Assistant Attorney General

RE: Transfer of a power from City to Borough

This is to respond to the letter of April 15 of Mr. Berrier, attorney for the Juneau Borough. The question which he raised is this:

"What is the result if one, but not all, the cities in a first class borough transfers a power to a borough and the borough accepts the transfer?"

ANSWER

AS 07.15.350 states in relevant part: "First class boroughs acquire additional areawide powers by transfer from a city". (Emphasis added). AS 07.15.350 should be read together with AS 07.15.710, which states in relevant part: "Before exercising any of these powers in the area outside cities, the borough shall first seek to have transferred from cities, or propose the joint exercise with cities, those powers which it intends to exercise in the area outside any city". (Emphasis added). The intention of the legislature in the passage of 146 SLA 1961 is best expressed in the light of the whole act and not in the isolation of one section. The singular "city" of AS 07.15.350 means "cities" when read together with AS 07.15.710. There is no transfer of power unless all cities in the borough transfer the power.

I attach an earlier opinion of this office on the use of the initiative to secure the transfer of power from a city to a borough.

EPB/REP/er

April 1, 1965

M E M O R A N D U M

TO: Herb Adams, Executive Director
Alaska Centennial Commission

FROM: Warren C. Colver
Attorney General

By: Dave Wharton
Legal Assistant

RE: Participation of Second-Class Boroughs
in Centennial Projects

You have asked whether second-class boroughs are given the power by statute to participate financially in a project such as the 1967 Alaska Centennial.

In our opinion, such boroughs may so participate, based on the following statutory provisions:

AS 07.15.010. "POWERS OF FIRST AND SECOND CLASS BOROUGHES. The first and second class boroughs have the following general powers:

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with any other local government, with the state, or with the United States;

(9) to acquire and dispose of real and personal property in the manner provided for first class cities;

(10) to acquire membership in organizations . . . to the good of the borough in the manner provided for first class cities. . . ."

Please note that the guidelines for borough property ownership and/or investment are stated in AS 29.10, especially AS 29.10.126(b) and (c), 132, and 198, insofar as they might apply to Centennial projects.

We trust this information will be of value to you.

HDW:rw

1965 Opinions of the
Attorney General No. 12

December 31, 1965

Mr. Ronald C. Cease, Director
Local Affairs Agency
P. O. Box 710
Juneau, Alaska

Re: Regulations of Fireworks by
Boroughs Possessing Areawide
Health Function.

Dear Mr. Cease:

You have asked whether a borough which has acquired the areawide health function may control the sale and use of fireworks. The answer is no.

At the time of incorporation a borough may begin with more areawide powers under AS 07.10.050 than those specified in AS 07.15.310-340 as being standard, depending upon existing circumstances in the area. After incorporation additional areawide powers may be acquired by the borough in conformity with AS 07.15.350 and in the manner outlined in AS 07.15.710-800.

There is no question that a governmental body which has general police powers may regulate the sale and use of fireworks. The general police powers are usually expressed by the phrase "power to promote the public health, safety, and general welfare." Statutes and ordinances regulating fireworks have uniformly been upheld as a proper exercise of the police powers. Commonwealth of Pennsylvania v. Bristow, 138 A.2d 156 (Penna., 1958).

Boroughs, however, are municipalities with limited powers; they do not have general police powers. Along with its other areawide powers, a borough may acquire the areawide health function. The problem is whether this health function includes power to regulate fireworks. It is quite evident that it does not.

September 23, 1968

M E M O R A N D U M

TO: Walter Kubley
Legislative Assistant
Office of the Governor

FROM: G. Kent Edwards
Attorney General

By: Robert E. Price
Assistant Attorney General

RE: Flood Control Powers of a Third Class Borough

This is to respond to your request for an opinion on certain questions which have arisen on the flood control powers of a third class borough.

The questions are posed in a letter of August 15, 1968 from Colonel E. L. Hardin, Jr., Corps of Engineers, to Governor Hickel. In this letter, Colonel Hardin raises a number of questions, but, because many of these questions were answered in an informal opinion of this office on August 8, this opinion restricts itself to two questions raised in the letter. Specifically, does a third class borough have the following powers:

"The power of planning and zoning to prevent impairment of and/or encroachment on down stream channel capacities or applicable portions of the flood control works such as the ponding areas."

"The power of planning and zoning to regulate the use of lands within the overflow area of the flood plain through use of flood plain management techniques."

ANSWER

While the law is not clear on this point, the better position is that a third class borough, whether through the use of a non-area wide power or through a service area, does not have area to plan and zone. There is no explicit reference to it in

August 8, 1968

M E M O R A N D U M

TO: Larry Montgomery, Director
Local Affairs Agency
Office of the Governor

FROM: G. Kent Edwards
Attorney General

By: Robert E. Price
Assistant Attorney General

RE: Third Class Borough Law

This is in response to your memorandum of August 2 in which you requested the opinion of this department on several questions from John D. Gustafson, Presiding Officer of the Fairbanks North Star Borough Assembly. These questions are:

- "1. Is a third class borough limited to the exercise of the two mandatory areawide powers of education and tax assessment and collection?
2. In what manner and to what extent may the third class borough exercise the power of flood control?
3. Would bonds be sold on an areawide basis or just on the established service area?"

ANSWER 1.

AS 07.17.020(a) states:

"The third class borough shall exercise the areawide powers of education and tax assessment and collection as provided for second class boroughs in this title."

The reference in this section to the areawide powers of the second class boroughs is to AS 07.15.310 (Scope of

13 and opinion file



LAWS OF ALASKA

1967

Source

Chapter No.

HB 297 am S

134

AN ACT

Authorizing a first class borough and all cities within the borough to unite to form a single unit of home rule local government; and providing for an effective date.

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

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

CHAPTER 85. UNIFICATION OF LOCAL GOVERNMENTS.

Sec. 29.85.010. UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED. A first class borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter.

Sec. 29.85.020. UNIFICATION TO BE PROPOSED BY PETITION. (a) Unification shall be proposed by petition.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition for unification.

Sec. 29.85.030. PETITION REQUIREMENTS. (a) The petition shall read:

"PETITION FOR UNIFICATION

We, the undersigned, qualified voters of the Borough do hereby petition that the following two propositions be placed before the voters as provided by law:

(1) Shall the Borough and all cities within it unite into a single unit of home rule government after the election of a charter commission by the voters and the adoption of recommendations of the charter commission by a majority vote from the area of the borough outside first