1965-66

HOUSE JUDICIARY COMMITTEE

TABLE OF CONTENTS

1966 INDEX TO MINUTES

1966 MEMOS

1966 MINUTES, ETC.: 1/27/1966 - 4/9/1966

1966

INDEX TO MINUTES

INDEX

to

JUDICIARY COMMITTEE MINUTES - 1966

Bills considered by the committee and the date of the minutes referring to the bill are listed below. Materials and reports on the bills follow the minutes of the day a bill was considered.

Following this index are general reports by committee counsel on bills referred to the committee.

	HOUSE BILLS	Date	SENATE BILLS	Date
1 - 100	48	2/4	15	2/9
	62	2/23	4	3/14 & 21
	9	3/21	66	3/21
			6	4/9
101 - 200	167	1/27	138	1/27
	168	2/1 & 4	176	1/28
	171	2/1	182	1/28
	108	2/11 & 18	184	1/28
	142	2/18	117	2/8, 9 & 10
			177	2/8
			157	2/8
			118	4/4 & 5
			194	4/4
			151	4/8
201 - 300	275	1/27 & 28	228	2/18
	299	2/1 & 22	267	3/8
	292	2/16 & 18	234	3/9
	249	2/21	209	3/9
	279	3/2, 3 & 21	213	3/10
	220	3/10	238	3/14
	263	3/8	282	3/19 & 22, 4/1
	296	3/23	262	3/26
	295	4/1	278	4/4
			231	4/5
			279	4/9
301 - 400	310	2/2	206	4/14
	317	2/2	256	4/14
	319	2/3	257	4/14
	352	2/3	254	4/14
	321	2/8		
	349	2/9	310	3/9
	371	2/10		
	324	2/15 & 16		
	311	2/15, 16, 18, 23		

3/4/66

309 -

301 - 400 Continued	381	2/21
	304	2/21
	374	2/22
	378	2/23
	359	2/23
	302	3/3, 10
	373	3/4 & 7
	309	3/4
	383-387	3/5, 7 & 28; 4/9
	389-390	3/5
	353	3/8
	363	3/10
	368-370	3/12 & 28
	303	4/4
	375	4/4
401 - 500	419	3/2
	487	3/2
	402	3/3
	418	3/3
	462	3/4
	436	3/7
	490	3/9
	450	3/9
	424	3/10
	435	3/14
	427	3/19 & 24
	493	3/19 & 21
	449	3/24
	447	4/1
	452	4/4
501 - 600	506	3/8 & 10
	505	3/29
	502	4/14
	526	4/14

HOUSE RESOLUTIONS		SENATE RESOLUTIONS	
HR 6	3/3	SCR 9	2/10
HCR 42	3/3	SCR 13	2/16 & 18
HR 2	3/8		

* * * * * *

1966
MEMOS

ALASKA
STATE LEGISLATURE
LEGISLATIVE COUNCIL
BOX 2199-JUNEAU

MEMORANDUM March 4, 1966

SUBJECT: HB 383 - 390, excluding HB 388

TO: Representative Gene Guess, Chairman
Judiciary Committee

This is a group of bills introduced at the request of the Legislative Council. They are suggested legislation resulting from the January 1966 Legislative Council report entitled "Legislative Oversight of the Administration of Statutes". The report covered a review of the regulations of the Department of Natural Resources and the Supreme Court opinions of the past year.

Mr. Kent Edwards, the Council staff attorney who prepared the report, will appear before the Committee to explain the bills. A copy of the report is attached.

Jane Asher
Revisor of Statutes

JA/mh

ALASKA
STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

M E M O R A N D U M March 1, 1966

SUBJECT: ~~SB~~ HB 279, Disqualification of Judges

TO: House Judiciary Committee, Chairman Guess

FROM: Jane Asher

SB 279 changes the present law in the following respects:

Page 1, line 18. A new reason for disqualification is added.

Page 1, lines 21 - 23. Compare (5) with AS 22.20.020(4) to see how this reason for disqualification has been changed.

Page 1, lines 27 - 29 and page 2, lines 1 - 5. This is a new subsection which requires that another judge determines the matter of disqualification and not the one who may be disqualified.

Page 2, lines 7 - 19. This subsection is approximately the same as AS 22.20.020(5). However, under present law, the bias or prejudice must be proved to the judge who is considered biased or prejudiced. Under this bill, the action is immediately transferred to another judge. Under present law and under this bill, only one affidavit of bias or prejudice is allowed. This approach is similar to a preemptory challenge to a juror.

Page 2, lines 20 - 22. This is a new subsection which is taken from the Arizona law.

Page 2, lines 23 - 27. This is a similar provision to the one presently in the law in AS 22.20.020(5). Compare the two for the slight differences.

Page 2, lines 28 - 29. This is the exact language now found in AS 22.20.020(5).

Page 3, lines 1 and 2. This bill might be considered to only affect those suits filed after it became law. This section applies it to actions pending on the date it becomes law.

You will note that the word "action" was used throughout the bill. Under AS 01.10.060(1) in the laws of this state, "action" includes any matter or proceeding in a court, civil or criminal.

California (CCP 170), Arizona (ARS 12-409-411), and Oregon (ORS 14.210 - 270) law was used in the preparation of this bill.

ALASKA STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

M E M O R A N D U M

March 1, 1966

SUBJECT: Agenda, week of February 28th.

TO: Judiciary Committee, Chairman Guess

FROM: Jane Asher

SB No. 17 - This bill is a legislative council bill introduced as a result of the 1965 review of supreme court decisions. In Silverton v. Marler, Sup. Ct. Op. No. 186, January 30, 1964, the court held that AS 09.10.020 was in conflict with and superceded by Rule 3 of the Rules of Civil Procedure since the section was a procedural one. AS 09.10.020 says that an action is commenced when the complaint is filed and the summons issued. Rule 3 requires only the filing of a complaint.

There has been some discussion of either amending AS 09.10.020 so that it is the same as the rule or else changing the rule by legislation to conform with the present wording of AS 09.10.020. The reason for these approaches would be that since the statute of limitations is substantive law and not procedure, that the law should contain the manner of stopping the running of the statute of limitations, that is, by commencing a civil action. Such an amendment could be as follows:

> AS 09.10.020 is repealed and re-enacted to read:
>
> Sec. 09.10.020. TOLLING OF STATUTE OF LIMITATION. The running of a statute of limitation is stopped by the commencement of an action as set out in Rule 3 of the Rules of Civil Procedure.

Such an amendment probably isn't necessary because AS 09.10.010 says that a civil action must be commenced within the periods prescribed by statutes of limitation and Rule 3 says an action is commenced by the filing of a complaint.

HB 300 - This bill changes the date of the primary election to the day after Labor Day. CSSB 50 on the same subject has passed the Senate and is now in the House. CSSB 50 changes the date to the fourth Tuesday in August but the bill doesn't take effect until January 1, 1967 so it would not affect the election this year. CSSB 50 contains other amendments to the election code. A copy is attached.

HB 408 - This bill amends the law of vagrancy to include a person who, without legitimate reason, loiters about a school where children are in attendance, or who loiters about a nearby public place frequented by school children.

JUDICIARY COMMITTEE PUBLIC HEARING ON

HB 419 relating to a state lottery

8:30 March 1 in Superior Court

Other bills on this week's agenda will be covered in additional reports. They are:

SB 279 - Disqualification of Judges
HB 418 - Off street parking, declaration of taking for
302 - Minors dining in restaurants which serve liquor
462 - Powers and duties of judicial council
309 - Jurisdiction in civil actions
402 - Amending the Human Rights Act
373 - Accident reports
220 - Powers of local boundary commission
306 - Comparative negligence
353 - Wiretapping
435 - Non-profit Corporation Act

ALASKA
STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

M E M O R A N D U M

February 14, 1966

SUBJECT: Agenda, week of Feb. 14, 1966

TO: Judiciary Committee, Chairman Guess

FROM: Jane Asher

The following bills on this week's agenda are considered in separate memoranda:

HB 108 and draft of CS (Deed of trust - Postponement of Sale)
HB 142 (Civil Rights)
HB 299 (Uniform Arbitration Law)
SB 157 and draft of 2dCS (Fish buyers - bond or cash purchase)

HB 311: This bill allows the court the discretion to impound any vehicle under the control of a minor at the time he violates a law relating to alcoholic beverages. The vehicle may be impounded for not more than 30 days and at the owner's expense.

HB 324: This bill relates to the control of depressant and stimulant drugs. AS 17.15.010 says, "It is unlawful for a person to sell, give away, barter, exchange or distribute (1)....." Paragraph (1) is amended by Sec. 1 of HB 324 to include "a depressant or stimulant drug designated by the commissioner of health and welfare under sec. 35 of this chapter..". Sec. 2 of the bill defines a depressant or stimulant drug. Sec. 2 also says that drugs listed in the Uniform Narcotic Drug Act (AS 17.10) shall not be included for regulation under this Act since they are already regulated.

There has been some question raised as to whether alcoholic beverages could come under the definition of depressant and stimulant drugs in this Act. If it is considered that it can, then the bill could be amended by adding before the period on page 2, line 3, "or any intoxicating liquor as defined in AS 04.20.010".

The bill was reported out of Health, Education and Welfare "Do Pass" as amended. The amendment is: Page 1, line 26, after word "drug" add "any drug which contains". This amendment corrects a typographical error.

The definition of depressant or stimulant drug is based on the definition in the New York Depressant and Stimulant Drug Control Act. (Sec. 3371, New York Consolidated Laws Service)

A supplemental memorandum will be prepared on the other bills on this week's agenda which are:

HB 374 (Public Access to Public Buildings)
HB 378 (Bring Deputy Magistrates under Retirement System)
HB 304 (Require Public Records on Loans by Alaska Development Corporation)
HB 279 - Friday, Feb. 18 (Disqualification of Judges)

PUBLIC HEARING -- HB 353 -- RE WIRETAPPING
7:30 p.m. - February 16th - Room 2

ALASKA STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

M E M O R A N D U M

February 10, 1966

SUBJECT: HB No. 299 - Arbitration Law

TO: Chairman Guess, Judiciary Committee

FROM: Jane Asher

This bill is the Uniform Arbitration Law adopted by the National Conference of the Commissioners on Uniform State Laws and approved by the House of Delegates of the American Bar Association. It has been adopted in five states according to the "Book of the States", 1964-65. They are Arizona, Illinois, Massachusetts, Minnesota and Wyoming. Approximately 20 other states have modern arbitration laws. A comparison of the arbitration provisions of 20 state laws would be too time-consuming but attached to this memorandum is a copy of the Washington Law on arbitration so that the committee may compare any section of it with the Uniform Law. The Washington Law on arbitration was chosen simply because of the proximity of the state.

If a state does not have an arbitration law, as is the case in Alaska, a voluntary contract provision to arbitrate subsequent controversies between the parties can be ignored by one party and the other party has no legal remedy for enforcement of that contract provision.

JA:ic

Att.

(Attached to this memorandum was Secs. 7.04.010--220 of the Washington Revised Statutes which is Ch 138 of 1943 without amendment.)

7.04.010 Arbitration authorized. Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this chapter, any controversy which may be the subject of an action existing between them at the time of the agreement to submit, or they may include in a written agreement a provision to settle by arbitration any controversy thereafter arising between them out of or in relation to such agreement. Such agreement shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement.

The provisions of this chapter shall not apply to any arbitration agreement between employers and employees or between employers and associations of employees, and as to any such agreement the parties thereto may provide for any method and procedure for the settlement of existing or future disputes and controversies, and such procedure shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement. [1947 c 209 § 1; 1943 c 138 § 1; Rem. Supp. 1947 § 430-1.]

Saving: "Sections 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, and 274 of the Code of 1881 (sections 420 to 430, both inclusive, Remington's Revised Statutes; sections 7339 to 7349, both inclusive, Pierce's Code) are hereby repealed: *Provided, however,* That arbitration proceedings pending upon the effective date of this act may be carried through to final judgment under the provisions of said sections, which are hereby continued in effect for such purposes only." [1943 c 138 § 23.] This applies to RCW 7.04.010 to 7.04.220, incl.

7.04.020 "Court" defined—Applications in writing—How heard. Any application made under authority of this chapter shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions or petitions, except as otherwise herein expressly provided. [1943 c 138 § 2; Rem. Supp. 1943 § 430-2.]

7.04.030 Stay of action pending arbitration. If any action for legal or equitable relief or other proceedings be brought by any party to a written agreement to arbitrate, the court in which such action or proceeding is pending, upon being satisfied that any issue involved in such action or proceeding is referable to arbitration under such agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in accordance with the agreement. [1943 c 138 § 3; Rem. Supp. 1943 § 430-3.]

7.04.040 Motion to compel arbitration—Notice and hearing—Motion for stay. (1) A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the court for an order directing the parties to proceed with the arbitration in accordance with their agreement. Eight days notice in writing of such application shall be served upon the party alleged to be in default. Service thereof shall be made in the manner provided by law for

service of a summons in a civil action in the court specified in RCW 7.04.020. If the court is satisfied after hearing the parties that no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith, the court shall make an order directing the parties to proceed to arbitrate in accordance with the terms of the agreement.

(2) If the court shall find that a substantial issue is raised as to the existence or validity of the arbitration agreement or the failure to comply therewith, the court shall proceed immediately to the trial of such issue. If upon such trial the court finds that no written agreement providing for arbitration was made or that there is no default in proceeding thereunder, the motion to compel arbitration shall be denied.

(3) Either party shall have the right to demand the immediate trial by jury of any such issue concerning the validity or existence of the arbitration agreement or the failure to comply therewith. Such demand shall be made before the return day of the motion to compel arbitration under this section, or if no such motion was made, the demand shall be made in the application for a stay of the arbitration, as provided under subsection (4)(a) hereunder.

(4) In order to raise an issue as to the existence or validity of the arbitration agreement or the failure to comply therewith, a party must set forth evidentiary facts raising such issue and must either (a) make a motion for a stay of the arbitration. If a notice of intention to arbitrate has been served as provided in RCW 7.04.060, notice of the motion for the stay must be served within twenty days after service of said notice. Any issue regarding the validity or existence of the agreement or failure to comply therewith shall be tried in the same manner as provided in subsections (2) and (3) hereunder; or (b) by contesting a motion to compel arbitration as provided under subsection (1) of this section. [1943 c 138 § 4; Rem. Supp. 1943 § 430-4.]

7.04.050 Appointment of arbitrators by court. Upon the application of any party to the arbitration agreement, and upon notice to the other parties thereto, the court shall appoint an arbitrator, or arbitrators, in any of the following cases:

(1) When the arbitration agreement does not prescribe a method for the appointment of arbitrators.

(2) When the arbitration agreement does prescribe a method for the appointment of arbitrators, and the arbitrators, or any of them, have not been appointed and the time within which they should have been appointed has expired.

(3) When any arbitrator fails or is otherwise unable to act, and his successor has not been duly appointed.

(4) In any of the foregoing cases where the arbitration agreement is silent as to the number of arbitrators, three arbitrators shall be appointed by the court.

Arbitrators appointed by the court shall have the same power as though their appointment had been made in accordance with the agreement to arbitrate. [1943 c 138 § 5; Rem. Supp. 1943 § 430-5.]

7.04.060 Notice of intention to arbitrate—Contents. When the controversy arises from a written agreement containing a provision to settle by arbitration a controversy thereafter arising between the parties out of or in relation to such agreement, the party demanding arbitration shall serve upon the other party, personally or by registered mail, a written notice of his intention to arbitrate. Such notice must state in substance that unless within twenty days after its service, the party served therewith shall serve a notice of motion to stay the arbitration, he shall thereafter be barred from putting in issue the existence or validity of the agreement or the failure to comply therewith. [1943 c 138 § 6; Rem. Supp. 1943 § 430-6.]

7.04.070 Hearing by arbitrators. The arbitrators shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party, and for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award.

All the arbitrators shall meet and act together during the hearing but a majority of them may determine any question and render a final award. The court shall have power to direct the arbitrators to proceed promptly with the hearing and determination of the controversy. [1943 c 138 § 7; Rem. Supp. 1943 § 430-7.]

7.04.080 Failure of party to appear no bar to hearing and determination. If any party neglects to appear before the arbitrators after reasonable notice of the time and place of hearing, the arbitrators may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them. [1943 c 138 § 8; Rem. Supp. 1943 § 430-8.]

7.04.090 Time of making award—Extension. If the time within which the award shall be made is not fixed in the arbitration agreement, the award shall be made within thirty days from the closing of the proceeding, and any award made after the lapse of such thirty days shall have no legal effect, unless the parties extend the time in which said award may be made or ratify any award made after the expiration of the thirty day period. Any extension of time or ratification of the award shall be in writing and signed by all parties to the arbitration. [1943 c 138 § 9; Rem. Supp. 1943 § 430-9.]

7.04.100 Representation by attorney. Any party shall have the right to be represented by an attorney at law in any arbitration proceeding or any hearing before the arbitrators. [1943 c 138 § 10; Rem. Supp. 1943 § 430-10.]

7.04.110 Witnesses—Compelling attendance. The arbitrators, or a majority of them, may require any person to attend as a witness, and to bring with him any book, record, document or other evidence. The fees for such attendance shall be the same as the fees of witnesses in the superior court. Each arbitrator shall have the power to administer oaths.

Subpoenae shall issue and be signed by the arbitrators, or any one of them, and shall be directed to the person and shall be served in the same manner as subpoenae to testify before a court of record in this state. If any person so summoned to testify shall refuse or neglect to obey such subpoenae, upon petition authorized by the arbitrators or a majority of them, the court may compel the attendance of such person before the said arbitrator or arbitrators, or punish said person for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in the courts of this state. [1943 c 138 § 11; Rem. Supp. 1943 § 430-11.]

Witnesses, compelling attendance: Chapter 5.56.

7.04.120 Depositions. Depositions may be taken with or without a commission in the same manner and upon the same grounds as provided by law for the taking of depositions in suits pending in the courts of record in this state. [1943 c 138 § 12; Rem. Supp. 1943 § 430-12.]

Depositions: **Rules of court;** Pleading—rules 26-37; also Title 5.

7.04.130 Order to preserve property or secure satisfaction of award. At any time before final determination of the arbitration the court may make an order of a party to the agreement to arbitrate to make such order or to take such proceeding as it may deem necessary for the preservation of the property or for securing satisfaction of the award. [1943 c 138 § 13; Rem. Supp. 1943 § 430-13.]

7.04.140 Form of award—Copies to parties. The award shall be in writing and signed by the arbitrators or by a majority of them. The arbitrators shall promptly upon its rendition deliver a true copy of the award to each of the parties or their attorneys. [1943 c 138 § 14; Rem. Supp. 1943 § 430-14.]

7.04.150 Confirmation of award by court. At any time within one year after the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is vacated, modified, or corrected, as provided in RCW 7.04.160 and 7.04.170. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof. The validity of an award, otherwise valid, shall not be affected by the fact that no motion is made to confirm it. [1943 c 138 § 15; Rem. Supp. 1943 § 430-15.]

7.04.160 Vacation of award—Rehearing. In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

(1) Where the award was procured by corruption, fraud or other undue means.

(2) Where there was evident partiality or corruption in the arbitrators or any of them.

(3) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.

(5) If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in RCW 7.04.060, or without serving a motion to compel arbitration, as provided in RCW 7.04-.040(1).

An award shall not be vacated upon any of the grounds set forth under subdivisions (1) to (4), inclusive, unless the court is satisfied that substantial rights of the parties were prejudiced thereby.

Where an award is vacated, the court may, in its discretion, direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the agreement for the selection of the original arbitrators and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order. [1943 c 138 § 16; Rem. Supp. 1943 § 430-16.]

7.04.170 Modification or correction of award. In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

(1) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.

(2) Where the arbitrators have awarded upon a matter not submitted to them.

(3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof. [1943 c 138 § 17; Rem. Supp. 1943 § 430-17.]

7.04.180 Notice of motion to vacate, modify, or correct award—Stay. Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, within three months after a copy of the award is delivered to the party or his attorney. Such motion shall be made in the manner prescribed by law for the service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. [1943 c 138 § 18; Rem. Supp. 1943 § 430-18.]

7.04.190 Judgment—Costs. Upon the granting of an order, confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith. Costs of the application and of the proceedings subsequent thereto, not exceeding twenty-five dollars and disbursements, may be awarded by the court in its discretion. [1943 c 138 § 19; Rem. Supp. 1943 § 430-19.]

7.04.200 Judgment roll—Docketing. Immediately after entering judgment, the clerk must attach together and file the following papers, which constitute the judgment roll:

(1) The agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award.

(2) The award.

(3) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.

(4) A copy of the judgment.

The judgment may be docketed as if it was rendered in an action. [1943 c 138 § 20; Rem. Supp. 1943 § 430-20.]

7.04.210 Effect of judgment. The judgment so entered has the same force and effect, in all respects as, and is subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered. [1943 c 138 § 21; Rem. Supp. 1943 § 430-21.]

7.04.220 Appeal. An appeal may be taken from any final order made in a proceeding under this chapter, or from a judgment entered upon an award, as from an order or judgment in any civil action. [1943 c 138 § 22; Rem. Supp. 1943 § 430-22.]

Rules of court: Appeal—rule 14 (6).

ALASKA
STATE LEGISLATURE
LEGISLATIVE COUNCIL
BOX 2199-JUNEAU

M E M O R A N D U M

February 11, 1966

SUBJECT: Supplemental Agenda for Week of February 7, 1966 (HB 142 and HB 108)

TO: Chairman Guess, House Judiciary Committee

FROM: Jane Asher

HB 142: Federal crimes against civil rights are set out in 18 USC, Secs. 241 - 244. HB 142 would make the offenses in sec. 241 (conspiracy against rights of citizens) and sec. 242 (deprivation of rights under color of law) state crimes. Sec. 243 was not included in the bill because it provides a penalty for the exclusion of jurors on account of race or color in either a federal or a state court. Sec. 244 was not included because it prohibits discrimination in a public place of entertainment or amusement against a person wearing a uniform of the armed forces, and applies only in the District of Columbia or a territory or possession of the U. S.. Alaska has an existing statute (AS 11.60.230) which makes it illegal for a public amusement establishment to discriminate because of race or color.

HB 108: This bill amends the law relating to deeds of trust. A deed of trust is essentially a mortgage. A person who borrows money on his property (trustor) signs a deed of trust making his property security for the money borrowed. The man he borrows the money from is called the beneficiary of the trust and the legal title to the property is placed in the trustee. If there is default in the payment of the money the property can be sold according to the terms of the deed of trust. In the law which HB 108 amends (AS 34.20.080 "Sale at Public Auction") the manner of selling the property under a deed of trust is set out. Specifically it says that the sale shall be made "under the terms and conditions and in the manner set out in the deed of trust." It was felt that rather than to rely on the variance in deeds of trust as to postponement of sale that a uniform method of postponing the sale should be set out in the law. HB 108 adds a subsection to AS 34.20.080 which sets out a manner of postponement of sale. The wording is self-explanatory except perhaps for the use of the word "grantee" on page 1, lines 12 and 14. AS 34.20.080 uses the terms "trustee" and "beneficiary". Perhaps it should be the trustee or both that sign the request. In American Jurisprudence "Legal Forms", examples of provisions in two different forms of deed of trust are:

1. "..and the trustee may from time to time postpone such sale by publication."

2. "The trustee may postpone sale of all or any portion of the property by public announcement at the time and place of sale and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement."

It should be noted that example 2, above allows for a partial sale of the property as well as more than one postponement, neither of which are covered in HB 108.

Minutes

ALASKA STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

M E M O R A N D U M

February 9, 1966

SUBJECT: Agenda for week of February 7, 1966

TO: Chairman Guess, House Judiciary Committee

FROM: Jane Asher

HCS2dCSSB 157: This bill was taken up by the committee at a public hearing on February 3rd. A draft of a 2d committee substitute was prepared for the public hearing on February 4th. The objections to the House Committee Substitute were that

(1) the requirement for a bond would force small reputable buyers out of business;

(2) a bond couldn't be large enough to actually protect the sellers; and

(3) that the bond would be difficult and expensive to enforce.

The argument in answer to (1) was that the bill provided for the Commission of Labor to waive the bond if the buyer were reputable or had sufficient assets to protect the interest of the sellers.

The 2d House Committee Substitute was based on the premise that shore-based operations have assets which are easily accessible for attachment if they don't pay the sellers but that floating operations should pay cash for fish as they can leave Alaska and are therefore difficult to reach for service of process and attachment of assets. It was also pointed out that some floating buyers are owned by corporations with almost no assets who return to another state and dissolve their corporation.

The committee decided against including payment by check as well as cash because if the checks aren't good, you have the same problem with process, attachment and assets as you do with credit buying.

The committee decided against including shellfish since there is no problem with the purchase of shellfish.

The committee considered whether a seller should be able to waive the requirement that the sale must be for cash in those areas where there is no problem with credit sales. Such a provision

would probably be proper if the classification of persons involved can be substantiated.

Sutherland's "Statutory Construction" Sec. 2104 says that legislation is not class or special legislation if "the persons or things embraced by the act form by themselves a proper and legitimate class with reference to the purposes of the act. Constitutions do not forbid a reasonable and proper classification of the objects of legislation. The question is, what is reasonable and proper".

The committee must determine as a fact whether they think a limitation or waiver as to area or persons to be covered by the act is reasonable and proper.

Since the act creates a crime, there is also the question of whether limiting the crime to a certain class of people or allowing waiver of a criminal provision is proper. But again, even with crimes, it is sufficient if the classification is reasonable and proper. Only a waiver should be acceptable as proof that no crime was committed.

One section of the 2d House Committee Substitute makes the seller subject to the same penalty as the buyer for accepting payment in other than cash. This section is based on the fact that floating buyers can be outside the jurisdiction of Alaska and the only way to control them is to make it a crime to sell to them on credit.

This was the approach taken in AS 43.75.100 which makes the seller liable for the fish tax if he sells to a floating buyer outside the jurisdiction of the state. It may be no such problem exists in relation to this bill and if so it would not be necessary to make it a crime for the seller to sell on credit.

SB 177: The Director of Securities, Department of Commerce, called my attention to a typographical error in AS 45.55.140(b)(5), that is the word "on" had been erroneously written "or". This bill corrects that error.

SB 117 am: Under the Alaska Business Corporation Act, (AS 10.05) names of corporations can be reserved and registered. This bill uses about the same language as is found in AS 10.05.024 - 10.05.042 but allows the reservation and registration of the name of a business which is not incorporated, that is, "any commercial or industrial enterprise which is not incorporated and which may be owned by a person or persons, partnership, firm association or organization." (Page 3, Lines 5-8)

The Senate made the following amendments in the original bill which I drafted for Senator Pollock:

Page 2, Line 22: Delete "from year to year" and insert "every five years"

Page 2, Line 23: Delete "each year"

Line 27: Change "each" to "any"

These amendments create the conflict between secs. 10.35.060 and 10.35.070 as to registration each year or every five years.

SB 15: This is a bill introduced by request of the Legislative Council. A full explanation of the reasons for the bill are found on pages 24 - 27 of the "Legislative Oversight of the Administration of Statutes" published by the Legislative Council in January, 1965. Copies are attached. The bill passed through the Senate with a unanimous "Do Pass" recommendation from the Judiciary Committee and a floor vote of 19--0!

HB 349: This bill was introduced by the governor with the following cover letter:

> Pursuant to State law and the Uniform Rules of the Legislature, I am submitting a bill which adds a penalty section to the statute in which malicious damage to markers, posts, and signs is prohibited. The penalty was inadvertently dropped from the statute when it was amended in 1962.

This letter is not technically correct. Ch. 23 SLA 1962 did NOT drop the penalty as stated in the letter. It simply moved the penalty to a subsection of the second of two sections on the subject. See copy of Ch. 23 SLA 1962 which is attached.

A supplemental report on HB 108, 142 and 279 will follow.

M E M O R A N D U M February 1, 1965

TO: Mr. Guess, Chairman, Judiciary Committee

FROM: Jane Asher

The following are comments on the agenda for the week of January 31.

HB 168: This bill makes it a misdemeanor to fail to return rented equipment after notice that the rental period has expired. Last year AS 28.35.026 was enacted making it a crime to keep a rented automobile. This is the same type of statute. On page 1, line 14 "or" should be "of".

HB 171: The bill amends a section relating to abandoned vehicles by requiring that the police give notice to the lien holder or encumbrancer as well as the owner when they pick up a vehicle believed to be abandoned.

HB 299: The bill is the Uniform Arbitration Law adopted by the National Conference of the Commissioners on Uniform State Laws and approved by the House of Delegates of the American Bar Association. Mr. Reese Miller drafted the bill and says there are a few formal changes which will be noted on the attached copy of the Uniform Act from which the bill was typed.

Modern arbitration laws exist in 24 states. When a state does not have an arbitration law, a voluntary agreement to arbitrate future controversies can be ignored by one party and the other has no legal remedy for enforcement.

HB 310: This bill allows for interest before judgment on an award in an action for damages. The interest would begin (1) on the date the liability became fixed; or (2) from the date of the injury; or (3) from the date the cause of action arose. The law presently provides for interest beginning on the date of judgment.

HB 317: All but AS 12.30.010 of this bill is based on federal legislation to revise existing bail practices. Attached is a copy of the Congressional Record from which the bill was taken. AS 12.30.010 is the same as existing law. The present law has only four sections on bail whereas this bill spells out a clear and detailed procedure for the handling of bail. This bill repeals AS 12.50.090 and 100 on undertaking for material witnesses and covers that subject also.

HB 319: The present law says that the term of a person sentenced to imprisonment begins on the day he is sentenced. I think it is the intent of this bill that the person shall receive credit toward his sentence for time spent in custody pending trial or sentencing. But, it may do something else. It may deprive him of credit from the day of sentencing until he is received at the place where he will serve his sentence. Perhaps I am reading the language too technically, but perhaps the first sentence should be left in the present law stating that confinement begins from the day of sentencing and then adding the new sentence giving the defendant credit for time spent in custody pending trial or sentencing. See attached draft.

HB 352: This is a bill introduced by the committee and it is self-explanatory. The result of the bill is to bring a foreign corporation financing installment sales under state regulation.

HB 220: On page 1, line 10, the word "proposed" is deleted because it should not be there. The word "proposed" is incorrect since there are no provisions for proposing the standards to anyone. It is clear from reading the entire section that "proposed" should be deleted since the commission creates the standards.

The amendment to AS 44.19.260 relates to step annexation. The amendment requires that the local boundary commission obtain voter approval from the area to be annexed before beginning step annexation. There is a question of the amendment being constitutional under Sec. 12 of Article X of our state constitution. Sec. 12 gives certain powers to the commission which may be limited by the amendment in this bill. Sec. 12 says the local boundary commission may consider and present to the legislature any proposed boundary change, and that the change shall be effective unless disapproved by the legislature.

Under the present regulations of the commission (Title 6, Sec. 2051) relating to step annexation, the commission may allow the vote proposed by this bill but the commission is not bound by the vote.

SB 117 am: Under the Alaska Business Corporation Act, (AS 10.05) names of corporations can be reserved and registered. This bill uses about the same language as is found in AS 10.-05.024 -- 10.05.042 but allows the reservation and registration of the name of a business which is not incorporated, that is, "any commercial or industrial enterprise which is not incorporated and which may be owned by a person or persons, partnership, firm, association or organization." (Page 3, Lines 5-8)

ALASKA
STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

M E M O R A N D U M

SUBJECT: Sectional Analysis of HB 353 Re Wiretapping

TO: Judiciary Committee, Chairman Guess

I. GENERAL.

HB 353 is concerned with what is commonly called wiretapping or eavesdropping. Section 280 pertains to the misuse, interception, and divulgence of messages sent by wire or radio and Section 290 is concerned with the recording or listening to oral conversations without the consent of at least one of the parties to the conversation. A violation of any one of the sections of the bill is made a misdemeanor with a maximum penalty of $1,000 fine or imprisonment for one year, or both.

Under the federal act, in order to obtain a conviction, both interception and divulgence must be proved. This facet of the federal act has been extensively criticized by the U. S. Attorney General's office. Also, it is not clear under the federal act whether an innocent interception is a crime and the federal courts have split on the question. Section 280 of HB 353 avoids those problems.

II. SECTIONAL ANALYSIS.

Section 280(a) applies to the employees of a common carrier communications system. It prohibits the employee who takes the message for transmission, the employee receiving the message and any employees assisting in those operations, from divulging or releasing in any manner the meaning of the message, except to the persons listed in this section, through authorized channels. It is to be noted that a court may order the divulgence of a message.

Section 280(b) deals with the initial acquisition of a message by persons through the interception of the message at any time. The section contemplates an intentional interception. It should be noted that under this section, the interception alone constitutes a prohibited activity. There is no need to prove interception and divulgence, although the latter activity is also prohibited by this section.

Section 280(c) prohibits a person for whom the message is not intended, regardless of the means by which that person received the message, from using the information he has received for his own or another's benefit.

Section 280(d) prohibits a person from disclosing the meaning of the message when the person has actual knowledge or should reasonably be expected to know that the communication originally was obtained in violation of section 280. In this case, the person would, of course, also be violating section 280(c) if the person used the information obtained for his own or another's benefit.

Section 280(e) prohibits a person who is not entitled to information, but becomes aware of the contents of a message although not actually in physical receipt of a message, from in any way divulging the meaning of the contents of the message, or from using the information for his own or another's benefit.

ORIGIN OF SECTION 280. Sec. 280 is based primarily on section 605 of the Federal Communications Act. The bill does not make innocent interception a crime except in the case of a person using information obtained for his own or another's benefit or the person divulges any information he has obtained.

Section 290 makes it a criminal offense to listen to or record any oral conversation without the consent of one of the parties to the conversation. It covers not only a telephone conversation, but any oral conversation in an office, home, car, boat, or any other place a conversation might be held. It prohibits the illegal use of any type of eavesdropping device, electronic or otherwise.

Section 290(2) prohibits a person from using information obtained through illegal use of an eavesdropping device for his own or another's benefit.

Section 290(3) prohibits a person from revealing the meaning of any conversation heard by means of the illegal use of an eavesdropping device; and

Section 290(4) prohibits a person who becomes aware of the contents of a conversation from revealing the meaning of the conversations if he knows or reasonably should know that the information he has received was originally obtained by the illegal use of an eavesdropping device.

SUPPLEMENTARY COMMENT - EFFECT OF BILL ON POLICE AND ADMISSIBILITY OF EVIDENCE. Neither section 290 or section 300 (the exemption section) makes any exception for law enforcement officers. A law enforcement officer is subject to the same penalties as a private citizen who violates the provisions of

the bill. Law officers would be permitted under section 290(1) to record and listen to a conversation with the consent of one of the parties to the conversation. The most common examples of when this provision would be applicable would be in the case of a kidnapper who has told the victim's family he will call them or obscene phone calls.

Along this line, it is to be noted that only six states permit, by statute, law enforcement officers to obtain evidence by wiretap or other means. They are Maryland, Massachusetts, Louisiana, Nevada, New York and Oregon. Of these six states, only Louisiana does not specifically require a judicial order preceding the tap.

Six states prohibit, by statute, the admission of any evidence obtained in violation of a wiretap or eavesdropping statute. They are Maryland, Nevada, Illinois, Rhode Island, Oregon and Pennsylvania. Overall, 39 states, by statute, prohibit wiretapping or electronic eavesdropping, while 11 states prohibit only physical interference with wires. In regard to evidence obtained by wiretap or other eavesdropping devices being used in a court proceeding, the bill does not in any way change the existing law of Alaska. The admittance or rejection of such evidence is left to case law and the rules governing the admissibility of evidence as interpreted by the court.

Sec. 300 of the bill simply lists the activities which are not to be considered criminal under the provisions of the statute and is self-explanatory.

III. REPEALS.

Sec. 2 of the bill will repeal provisions in the present law that will duplicate provisions of the proposed bill if enacted. Sec. 2 amends AS 42.20.050 by deleting subsection 1 which makes it a crime for one to divulge the contents of a message to any person other than the party for which it was intended, his attorney, or agent. This is covered by section 280 of the proposed bill.

Sec. 3 repeals AS 42.20.100 which deals with persons taking messages from a telegraph wire or intercepting a message to which they are not entitled. This activity is covered in section 280 of the bill.

1966

MINUTES,

ETC.

1/27/66 – 4/9/66

JUDICIARY COMMITTEE MINUTES January 27, 1966

Chairman Guess called the meeting to order at 2:15 p.m. The following members were present: Messrs. Josephson, Stevens, Taylor, Hillstrand, Tillion and Metcalf.

The first order of business was SB 138. The following people appeared in favor of the bill: Mr. Joe Kirkbride, Director, Division of Workmen's Compensation, Department of Labor; Mr. Lewis Dischner and Mr. Henry Hedberg, representatives of labor.

Mr. Josephson offered the following amendment to the bill:

On page 1, lines 19 and 20, delete "When a judgment of default is entered by the superior court," and add in place of it, "Anytime after a supplemental order by the board,". Motion seconded and passed.

Mr. Josephson moved that SB 138 as amended be reported out of committee "Do Pass". Mr. Taylor seconded. Motion passed.

The committee next considered HB 167. Mr. A. W. Lingle, Director of the Division of Insurance, Department of Commerce, and Mr. F. W. Eastaugh, Juneau attorney representing the National Association of Insurance Commissioners, appeared in favor of the bill.

Mr. Taylor moved that the bill "Do Pass". Seconded by Mr. Stevens. Mr. Taylor asked unanimous consent. There were no objections.

The last bill considered was HB 275. Mr. Stevens, the sponsor of the bill spoke on it. General discussion resulted in a request to committee counsel to prepare a draft of a committee substitute embodying the matters discussed for consideration by the committee.

The Chairman announced that the following day the committee would take up SB 220 and SB 176, 182 and 184. Meeting adjourned.

REPORT OF JUDICIARY COMMITTEE ON SB 138

Under SB 138, the Attorney General, upon request of the Commissioner of Labor must give legal assistance to a recipient of workmens' compensation in the collection of defaulted payments after a judgment of default has been entered by the superior court.

The Judiciary Committee amendment would allow the legal assistance of the Attorney General to begin at any time after the supplemental order of the Workmens' Compensation Board since it is at that time that action begins in the superior court.

The effect of this bill as amended is to allow the recipient of workmens' compensation, whose employer has defaulted in payment of the award, to have state legal assistance in collecting the award.

REPORT OF JUDICIARY COMMITTEE ON HB 167

HB 167 will allow Alaska to retain state control of its insurance industry. The language of this bill was taken from the regulations of the Security and Exchange Commission.

If this bill is not passed, the S.E.C. will regulate our domestic companies in the same manner provided by this bill. The state was given until July 1, 1966 to pass this bill before the federal government takes over in this field.

Since the state presently controls its insurance companies, it was felt that regulation should not be given to the federal government in this area.

MESSAGES FROM THE GOVERNOR

February 23, 1965

Honorable Warren A. Taylor
Chairman, House Rules Committee
Alaska State Legislature
Juneau, Alaska

HB
167

Dear Mr. Chairman:

Pursuant to State law and the Uniform Rules of the Legislature, I am submitting a bill relating to insider training domestic stock insurance company equity securities.

This proposed legislation authorizes the Department of Commerce to regulate the purchase and sale of stocks and other equity securities of insurance companies organized under the laws of Alaska. This bill is designed to regulate purchases and sales of stock by officers and directors of the companies and persons owning more than ten percent of any class of equity security who, by virtue of their positions of influence in the company, could use their knowledge of company affairs to make unreasonably large profits from the purchase and sale of its stock.

Such legislation is necessary to assure continued regulation by the State of insider stock transactions. The Federal Government has by law given states until January 31, 1966, to regulate such transactions; if after that date the transactions are not regulated by states, the Federal Government assumes jurisdiction over these transactions.

Sincerely,

/s/ Hugh J. Wade

Hugh J. Wade
Acting Governor

ROBERTSON, MONAGLE, EASTAUGH & ANNIS
ATTORNEYS AT LAW
P. O. BOX 1211
JUNEAU, ALASKA 99801

R. E. ROBERTSON (1885-1961)
M. E. MONAGLE
F. O. EASTAUGH
R. J. ANNIS
J. B. BRADLEY

200 NATIONAL BANK OF ALASKA BLDG.
PHONE JUNIPER 6-3340
CABLE ADDRESS: ROMEA

January 24, 1966

Hon. Walter E. Guess, Chairman
House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: Fourth Alaska Legislature - Second Session
HB 167 - Insider Trading Statute

Dear Mr. Guess:

Supplementing our brief conversation on the subject bill:

Jim Newton's letter of January 25, 1965 to Al Lingle, enclosing extract from amendment to the Securities Exchange Act of 1934, indicates the federal interest in states enacting the Insider Trading Statute. Copies are enclosed.

Comparison of Section 16 of the federal act with HB 167 shows the latter embodies provisions to effect the requirement of regulating sales of insurance stock by directors and officers having "inside" information as to values of such stock.

I also enclose two page copy of proposed bill for state enactment as recommended by the National Association of Insurance Commissioners at their 1964 meeting. I first drafted a bill from this information and submitted it to Mr. Lingle who then sought Attorney General approval. It was approved after language incorporating Alaska bill drafting requirements was inserted. As you know this approval was obtained and the bill introduced by the Rules Committee at the request of the Governor.

Enactment of HB 167 will allow Alaska domestic insurance companies to come within the exemptions allowed in the federal statute in those jurisdictions which have provided for reporting such "insider" transactions before July 1, 1966, the scheduled termination of the present moratorium period.

The bill was referred to Commerce, which recommended passage, and Judiciary.

I hope you can schedule this bill for consideration by your committee at an early date and would appreciate the opportunity of appearing.

Sincerely yours,

F. O. Eastaugh

FOE:enk
Encls.
cc: Mr. Lingle
Mr. Martin
Mr. Taft

IN REPLYING PLEASE QUOTE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
REGIONAL OFFICE
9TH FLOOR, HOGE BUILDING, 705 SECOND AVE.
SEATTLE, WASHINGTON 98104

January 25, 1965

Mr. A. W. Lingle
Director of Division of Banking, Insurance
and Securities
Department of Commerce
Room 115, Alaska Office Building
Juneau, Alaska

Dear Sir:

The Federal Securities Acts administered by this Commission were amended under date of August 20, 1964, to require compliance with certain reporting, proxy, and other rules of this Commission by corporations of a certain size with a certain number of stockholders.

These amendments expressly provide, however, that insurance companies which are subject to and do comply with certain minimum standards in their state of incorporation are exempt from portions of the law. To enable us to determine whether any of the insurance companies incorporated in your state are entitled to be exempted from these new regulations by virtue of your laws imposing minimum standards, we would appreciate being informed:

1. Whether your state requires annual reports to be filed with you, or another official, substantially in accordance with the requirements prescribed by the National Association of Insurance Commissioners.

2. Whether your state regulates the solicitation of proxies in accordance with the requirements of the National Association of Insurance Commissioners.

3. Whether after July 1, 1966, the purchase and sale of the insurance company's equity securities by beneficial owners of 10% or more

of a class of the issuer's securities, by its officers, or by its directors, will be subject to regulation -- including reporting of transactions by those persons and recovery of short-term trading profits of those persons by the corporation -- substantially in the manner provided in Section 16 of the Securities Exchange Act of 1934 (a copy of which is enclosed).

Inasmuch as an insurance company, to be exempt, will have to be subject to state laws satisfying each of these categories, it would be helpful if you would furnish us copies of the relevant portions of your statutes or rules relating to these requirements.

If to your knowledge proposals are to be submitted to your legislature for action to obtain the benefit of the insurance company exemption from the new Federal laws, we would appreciate your advising us of the nature of these proposals.

Your cooperation in this matter may be of assistance to the insurance industry, and will certainly be of assistance to this office.

Very truly yours,

James E. Newton
Regional Administrator

Enclosure

(m) Nothing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security.

(n) If any provision of this section is in conflict with any provision of any law of the United States in force on the date this section takes effect, the provisions of this section shall prevail.[1]

Directors, Officers, and Principal Stockholders

SECTION 16. (a) Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered on a national securities exchange, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security or within ten days after he becomes such beneficial owner, director, or officer, a statement with the exchange (and a duplicate original thereof with the Commission) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been any change in such ownership during such month, shall file with the exchange a statement (and a duplicate original thereof with the Commission) indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

(c) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer (other than an exempted security), if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(d) The provisions of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Commission may adopt in order to carry out the purposes of this section.

Accounts and Records, Reports, Examinations of Exchanges, Members, and Others

SECTION 17. (a) Every national securities exchange, every member thereof, every broker or dealer who transacts a business in securities through the medium of any such member, every registered securities association,[2] and every broker or dealer registered pursuant to section 15 of this title,[3] shall make, keep, and preserve for

[1] SECTION 15A was added by Public No. 719, 75th Cong., (52 Stat. 1070).

[2] SECTION 5 of Public No. 719, 75th Cong., (52 Stat. 1070) added "every registered securities association."

[3] SECTION 4 of Public No. 621, 74th Cong., (49 Stat. 1377) substituted "every broker or dealer registered pursuant to section 15 of this title" for "every broker or dealer making or creating a market for both the purchase and sale of securities through the use of the mails or of any means or instrumentality of interstate commerce," which was deleted by that amendment.

AN ACT CONCERNING INSIDER TRADING OF DOMESTIC STOCK INSURANCE COMPANY EQUITY SECURITIES

Be It Enacted by the General Assembly of the State of (_____):

Section 1: Every person who is directly or indirectly the beneficia owner of more than ten per cent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the (superintendent) (commissioner) (director) on or before (the thirty-first day of January, nineteen hundred sixty-five), or within ten days after he becomes such beneficial owner, director or officer a statement, in such form as the (superintendent) (Commissioner) (director) may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the (superintendent) (commissioner) (director) a statement, in such form as the (superintendent) (commissioner) (director) may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

Section 2: For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the (superintendent) (commissioner) (director) by rules and regulations may exempt as not comprehended within the purpose of this section.

Section 3: It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within

twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

Section 4: The provisions of section 2 of this act shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 3 of this act shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The (superintendent) (commissioner) (director) may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

Section 5: The provisions of sections 1, 2, and 3 of this act shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the (superintendent) (commissioner) (director) may adopt in order to carry out the purposes of this act.

Section 6: The term "equity security" when used in this act means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the (superintendent) (commissioner) (director) shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

Section 7: The provisions of sections 1, 2, and 3 of this act shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 1, 2, and 3 of this act except for the provisions of this subsection (b).

Section 8: The (superintendent) (commissioner) (director) shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by sections

1 through 7 of this act, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of sections 1, 2 and 3 of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the (superintendent) (commissioner) (director), notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

Section 9. This act shall take effect (September first, nineteen hundred sixty-four).

* * * * * * * * * * *

NOTE - It is recommended that the term "officer" be defined by regulation of the insurance commissioner which in effect adopts the definition set out in Schedule SIS as promulgated by the National Association of Insurance Commissioners, to wit:

> The term "officer" means a president, vice president, treasurer, actuary, secretary, controller, and any other person who performs for the company functions corresponding to those preformed by the foregoing officers.

JUDICIARY COMMITTEE MINUTES January 28, 1966

The meeting was called to order by Chairman Guess at 2:25 p.m. Members present were: Messrs. Josephson, Stevens, Taylor, Tillion and Metcalf. The minutes of January 27, 1966 were approved.

The Chairman announced that HB 220 would not be considered this day.

The draft of CS for HB 275 was considered. Mr. Stevens explained that there were four changes from the original bill. Under the substitute:

1. there will be no advisory jury if the minor objects;

2. the minor has no right to the jury;

3. the number on the jury is left to the discretion of the judge; and

4. the manner of choosing each jury from the list of high school students is left to the discretion of the judge.

Mr. Taylor moved that CS for HB 275 "Do Pass" and asked unanimous consent. Mr. Metcalf objected. Mr. Stevens seconded the motion. Motion passed and the committee substitute was reported out of committee.

The committee took up SB 176. After discussion by the committee, Mr. Tillion moved "Do Pass" and asked unanimous consent. There were no objections so the bill was reported out of committee "Do Pass".

The committee then considered SB 182 and Mr. Stevens moved that SB 182 "Do Pass" and asked unanimous consent. There were no objections so the bill was reported out of committee.

The committee next took up and discussed SB 184. Mr. Tillion moved the bill "Do Pass" and asked unanimous consent. There being no objection, the bill was reported out of committee.

The meeting was adjourned at 3:05 p.m.

REPORT OF JUDICIARY COMMITTEE ON CS for HB No. 275

This bill will allow the court to have an advisory jury composed of high school students in juvenile hearings which do not involve a felony charge, assault with a deadly weapon or battery. The advisory jury cannot be used if the minor objects and if it is used, the judge is not bound to follow the recommendations.

Advisory juries have been used in Alaska by individual judges and it has been found to be workable and useful. However, the use of such juries should be statutory so there will be uniformity throughout the state court system.

Jan. 28

REPORT OF JUDICIARY COMMITTEE ON SB NO. 176

SB No. 176 is legislation to clarify the law. An adjudication of habitual criminal status is not a judgment of conviction but involves merely a determination of certain facts which operate to prolong the prisoner's confinement. No crime is created to which a defendant would plead guilty or not guilty but rather a more severe punishment is provided.

During the revision of the Code of Criminal Procedure, language was used throughout AS 12.55.060 referring to the "plea" of the defendant. The original section had used the term only once. SB No. 176 uses the original language in the law except that the one original reference to "plea" has also been changed to "say whether or not he is the same person as charged in the information".

JUDICIARY COMMITTEE REPORT ON SB NO. 184

This bill contains a technical correction. The law as presently written in AS 13.30.710(a) requires that notice be posted "for not less than 30 days". This wording requires that someone swear that the notice was posted the entire 30 days which would, if the law were followed to the letter, require a 24 hour vigil. What is actually intended is that the notice be posted "at least 30 days before the date set for the hearing". This bill makes that change.

JUDICIARY COMMITTEE REPORT ON SB NO. 182

Each year since the Alaska Statutes became law, a bill has been passed correcting errors made during the revision of the Alaska Statutes. (For example, see Ch 2 SLA 1964.) SB No. 182 is such a bill. The corrections that SB No. 182 makes are as follows:

Section 1 of the bill amends AS 02.05.090(b) to correct a citation which erroneously says "chapter" instead of "section".

Section 2 correctly capitalizes the latin names in AS 16.10.240.

Section 3 corrects the language in AS 29.10.309 to conform with the original law, Sec. 16-1-94 ACLA 1949.

Section 4 corrects an erroneous citation in AS 39.25.120.

Section 5 deletes several words included by mistake in the revision in AS 39.25.140(a).

Section 6 corrects a spelling error and makes a singular into a plural in AS 40.15.030.

Section 7 corrects the language in AS 44.62.350(c) to conform with the original law, Sec. 3, Ch 2 of Ch 143 SLA 1959.

Section 8 corrects the printing error in AS 44.62.40(d) by changing the word "supplant" to "supplement".

Section 9 changes the divisions in AS 45.55.130 (3) (D) as they were divided incorrectly during the revision.

Section 10 repeals AS 42.25.200 as it is an obsolete provision that was incorrectly included in the revision.

JUDICIARY COMMITTEE -- MINUTES -- February 1, 1966

The meeting was called to order by Chairman Guess. Present were Messrs. Josephson, Stevens, Taylor, Hillstrand, Tillion and Metcalf.

The first order of business was HB 299. After lengthy discussion the bill was referred to the committee counsel to check the provisions in other state arbitration laws to see how they compare.

The committee recessed. The meeting was called to order. Present were Messrs. Guess, Josephson, Stevens, Taylor, Hillstrand and Metcalf.

Mr. Sassara appeared before the committee to testify in favor of HB 168 and 171. HB 168 was referred to committee counsel for preparation of a draft of a committee substitute.

HB 171 was discussed. Two amendments were proposed:

(1) Page 1, line 12 -- delete "personal" and add "by certified mail" after "notice";

(2) Page 1, line 15 -- after "If the" add "record of".

Mr. Stevens moved that the bill "Do Pass" with the above amendments. There were no objections and the amended bill passed out of committee.

Chairman Guess announced that the Legislative Council had referred Part 1 of the Mental Health Study to the Judiciary Committees for study and recommended legislation. He appointed Mr. Hillstrand and Mr. Stevens as a sub-committee and asked for a preliminary report in about a week.

Chairman Guess announced that HB 310, HB 317 and HB 319 will be on the February 2nd agenda.

JUDICIARY COMMITTEE REPORT ON HB 171

Under present law when an abandoned vehicle is found in the state, notice is given to the owner that the vehicle has been found. HB 171 would make three changes in this law.

First it would require that the notice be by certified mail instead of personal notice. This change in AS 28.30.-020 will make it consistent with the language of AS 28.30.-030 which says: "If the vehicle is not claimed within 45 days of mailing the notice..." In other words, one section presently speaks of "personal" service while the next section speaks of "mailing the notice", and the amendment will correct this inconsistency.

The second change made by HB 171 will require that the notice which is presently given to the owner of the abandoned vehicle also be given to the lien holder or encumbrancer.

The last change which the judiciary committee amendment makes is a technical one and makes no change in the meaning. The words "record of" are added after "If the" in the last sentence of the section so that the language is correct and is consistent with the same language used at the end of the first sentence in the section.

JUDICIARY COMMITTEE -- MINUTES -- FEBRUARY 2, 1966

The meeting was called to order at 2:20 p.m. by Vice-Chairman Josephson. Members present were Messrs. Guess, Stevens, Taylor, Hillstrand, Tillion and Metcalf.

The committee took up HB 310. Mr. Eastaugh appeared on behalf of the American Insurance Association and also spoke for Mr. Banfield who represents Mutual Alliance. Mr. Eastaugh and Mr. Banfield were not in favor of the bill as written.

The committee considered the following two amendments to HB 310:

1. Page 1, line 14 -- After "amount" add "or a portion thereof,"

2. Page 1, line 18 -- Put a comma instead of a period at the end of the line and then add, "unless the person liable therefor was prevented by law or by act of the person to whom such amount is payable from paying the amount awarded."

Mr. Taylor asked unanimous consent on amendment 1. There being no objection the amendment was adopted. Mr. Taylor asked unanimous consent on amendment 2. Mr. Guess objected. The amendment failed on a vote. Mr. Hillstrand moved that HB 310 as amended "Do Pass". There being no objection HB 310 as amended was reported out of committee.

The committee considered HB 317. After presentation of materials on the bill by Mr. Josephson and discussion, Mr. Stevens moved that HB 317 "Do Pass". Mr. Josephson seconded. Motion passed.

Mr. Guess announced that the committee would consider HB 319, HB 352 and CS for HB 168 the next day. Meeting was adjourned.

From Proceedings of Mary 27--29, 1964 of
National Conference on Bail and Criminal Justice
From Address of Hon. Earl Warren, Chief Justice

The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, taking cognizance of these and other considerations, has submitted amendments to Rule 46 proposed by the Advisory Committee on Criminal Rules which are designed to facilitate the release on bail of a greater percentage of indigent defendants. The Advisory Committee feels that to the extent other factors make it reasonably likely the defendant will appear, it is both good practice and good economics to release him on bail, though he cannot arrange for cash or bonds even in small amounts. Proposed changes in the Rule would provide for a deposit of cash or government securities in an amount less than the face value of a bond; the release of the accused without financial security when other deterrents appear reasonably effective; the imposition of nonfinancial conditions as the price of dispensing with security for a bond; and notification that bail-jumping is a federal offense.

I am advised of several experimental projects directed to the use of nonfinancial considerations in the release of accused persons prior to trial. The eight district judges of the United States District Court for the Eastern District of Michigan adopted a policy of releasing on personal bond those defendants with substantial ties to the community, after investigation by the United States Attorney's office. The statistical results involving over 400 cases during a six-month period commencing September 1, 1961, are quite impressive. During that time a surety bond was required in only about a third of the cases, but was dispensed with for the remaining two-thirds of the defendants, who were released on personal bond. No serious problem of default occurred.

Earl Warren's Address

Another, and immensely significant, experiment in this same field is the Manhattan Bail Project, about which I am sure you will hear much during the course of this conference. The evidence so far strongly indicates that, with careful investigation and adequate notification and follow-up procedure, a system which has been termed pre-trial parole can be utilized with safety in a substantial number of cases.

Additional experimental programs have been undertaken in other jurisdictions, including release on recognizance programs in St. Louis and the District of Columbia and a youth

court experiment in Baltimore. I am also happy to learn in my own State of California there are several programs of that kind, and seeing here one of the judges from my own city, I am happy to say that one of those programs is in that City of Oakland. The Attorney General's office, with the view of broadening the use of release on recognizance, has urged all United States Attorneys and their assistants to take the initiative in recommending the release of defendants on their own recognizance when they are satisfied that there is no substantial risk of the defendants' failure to appear for trial.

Many suggestions for attacking the problems of bail have emerged from these studies and experiments. These include the increased use of release on personal recognizance for misdemeanors and lesser felonies; refundable cash deposits in lieu of bail bonds; the assignment of counsel to the financially disadvantaged accused prior to the time when bail determinations are made; supervision of persons released on personal bonds, by reporting regularly, or by "sleeping in"; and the establishment of permanent agencies to make investigations and recommendations for release pending trial. These and many more approaches will doubtless be explored at your work-sessions and hopefully will be subjected to further testing in other projects.

Certainly as far as bail for indigents accused for the first time of committing misdemeanors is concerned, we can and should take prompt steps to alleviate the often harsh bail requirements. We can then move on to the improvement of the situation with respect to those charged with at least some of the more serious offenses. We can proceed circumspectly, ever maintaining the proper balance which is inherent in our system of criminal justice between the rights of the individual accused of crime and the rights of society to be protected against unlawful conduct.

Now, I have spoken thus far about problems of bail, since these are your immediate concern. We must not forget, however, that there are many other important facets of criminal justice, and to some of these I should like to invite your further attention.

It has been observed that "the quality of a nation's civilization can be largely measured by the methods it uses in the

REPORT OF JUDICIARY COMMITTEE ON HB 310

Under present law, interest is paid on court judgments beginning on the date of the judgment. This bill as amended by the Judiciary Committee allows for interest before judgment at the discretion of the judge, on an award or a portion of the award in an action for damages. The interest would begin (1) on the date the liability became fixed; or (2) from the date of the injury; or (3) from the date the cause of action arose.

JUDICIARY COMMITTEE REPORT ON HB 317

Present law contains four sections on bail for persons accused of crimes (AS 12.30.010 - 12.30.040) and two sections on release of material witnesses (AS 12.50.090 - 12.50.100). HB 317 replaces that law with a detailed procedure for release of accused persons and material witnesses.

HB 317 is taken almost exactly from a congressional bill to revise existing bail practices in United States courts (SB 1357, 89th Congress, First Session). The Congressional Record of Sept. 21, 1965 states that the bill was sponsored by 21 Senators and recommended by the Department of Justice, and other law enforcement officials and judges, and that there were no objections to the measure except from professional bail bondsmen. The Congressional Record contains a report and speech in favor of the bill and specifically states that the bill will "assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest;".

JUDICIARY COMMITTEE MINUTES FEBRUARY 3, 1966

The meeting was called to order by Chairman Guess at 2:00 p.m. All members were present.

The committee first considered HB 319. After discussion a committee substitute was adopted based on the comments of the committee counsel in her report on the agenda for the week. The committee voted that the committee substitute "Do Pass".

HB 352 was then considered by the committee. HB 352 was passed out of committee with a unanimous "Do Pass" report.

The meeting was adjourned so the committee members could hold a public hearing on HSC for 2nd CS for SB 157 scheduled for 3:00 p.m.

JUDICIARY COMMITTEE REPORT ON CSHB 319

The present law says that the term of a person sentenced to imprisonment begins on the day he is sentenced. CSHB 319 allows the convicted defendant to receive credit toward his sentence for time spent in custody pending trial, sentencing or appeal providing the detention was in connection with the offense for which sentence was imposed.

JUDICIARY COMMITTEE REPORT ON HB 352

HB 352 requires that a foreign corporation comply with the Alaska Business Corporation Act if it finances installment sales in Alaska or if the article sold is delivered in Alaska, including an article financed by assignment by a dealer located in Alaska. This requirement cannot be waived.

JUDICIARY COMMITTEE -- MINUTES -- FEBRUARY 4, 1966

The meeting was called to order at 2:00 p.m. by Chairman Guess. Members present were Messrs. Josephson, Metcalf, Tillion and Taylor.

The committee considered HB 48 and a draft of a CS for HB 48. After discussion, Mr. Josephson asked unanimous consent that CSHB 48 "Do Pass". Without objection CSHB 48 passed out of committee.

The committee took up the draft of CSHB 168 prepared by counsel at the committee's request. The committee also considered the Idaho Conversion Statute and the American Rental Association Model Conversion Statute. Mr. Josephson asked unanimous consent for the adoption of CSHB 168. There being no objection, CSHB 168 passed out of committee.

The meeting was adjourned so that the committee could hold a public hearing at 3:00 p.m. on 2dHCS2dCSSB 157.

JUDICIARY COMMITTEE REPORT ON CSHB 168

AS 28.35.025 and 28.35.026 became law in 1964 in order to obtain convictions of persons who rent motor vehicles with intent to defraud or fail to return a rented vehicle. CS for HB 168 uses the same language but applies it to the rental of equipment which is defined as "tools, machinery, implements or appliances used for any type of purpose or service".

If a person simply steals a piece of property, he is guilty of a crime. But if that person rents the property for a few dollars for a short period and then appropriates it for his own use or sells it, he has substituted mere civil liability to the owner instead of both criminal liability to the state and civil liability to the owner. CSHB 168 will remedy this loophole in our law.

IDAHO CONVERSION STATUTE

Section 18-2403A of Title 18, Chapter 24 Idaho Code reads:

> 18-2403A. "Prima facie intent to appropriate: It shall be prima facie evidence of intent to commit embezzlement, as set forth in Section 18-2403, when one who has, by written instrument, leased or rented the personal property of another (1) fails or refuses to return such personal property to its owner after the lease or rental agreement has expired (a) within ten days, and (b) within forty-eight hours after written demand for return thereof is personally served or given by registered mail delivered to the last known address provided in such lease or rental agreement, or (2) when the lease or rent of such personal property is obtained by presentation of identification to the lessor or rentor thereof which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification." (4 Idaho Code 18-2403A as amended 1963)

AMERICAN RENTAL ASSOCIATION

MODEL CONVERSION STATUTE

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. In determining the value of the property obtained, for the purpose of this section, the reasonable and fair market value shall be the test, and in determining the value of service received the contract price shall be the test. If there be no contract price, the reasonable and going wage for the service rendered shall govern. For the purpose of this section, any false or fraudulent representation or pretense made shall be treated as continuing, so as to cover any money, property or service received as a result thereof, and the complaint, information or indictment may charge that the crime was committed on any date during the particular period in question. The hiring of any additional employee or employees without advising each of them of every labor claim due and unpaid and every judgment that the employer has been unable to meet shall be prima facie evidence of intent to defraud.

It shall be prima facie evidence of intent to commit theft (larceny) by fraud when one who has leased or rented the personal property of another fails to return the personal property to its owner within 10 days after written notice following the expiration of the lease or rental agreement or who presents identification to the lessor or renter thereof which is false, fictitious or not current with respect to name, address, place of employment or other appropriate items.

Nothing herein contained shall relieve the lessor or rentor from making demand for return of property so rented. Notice addressed and mailed to the lessee at the address given at the time of making lease or rental agreement shall constitute proper demand.

JUDICIARY COMMITTEE MINUTES FEBRUARY 8, 1966

Chairman Guess called the meeting to order at 2 p.m. All committee members were present.

Mr. McCombe appeared and spoke on HB 321. No committee action was taken.

The committee took up HCS for 2d CS for SB 157 and the proposed 2d committee substitute. Mr. Josephson moved that 2d HCS for 2d CS for SB 157 pass out of committee. Mr. Tillion seconded and the motion passed. The committee then decided to hold the bill until the next meeting for further discussion.

The committee took up SB 177 and it passed out of committee without objections.

SB 117 as amended was discussed by the committee. The committee asked that the sponsor of the bill, Senator Pollock, appear before the committee at the next meeting.

The meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON SB 177

A typographical error was made in AS 45.55.140(b)(5), that is, the word "on" was erroneously written "or". This bill corrects that error.

JUDICIARY COMMITTEE -- MINUTES -- FEBRUARY 9, 1966

Chairman Guess called the meeting to order at 3:00 p.m. Members present were Messrs. Josephson, Stevens, Taylor, Metcalf and Hillstrand.

The committee discussed SB 117 as amended in the Senate. Senator Pollock, the sponsor, appeared and spoke on the bill. The committee counsel was asked to prepare a committee substitute based on the discussion.

The committee took up HB 349. Mr. Stevens moved that a committee substitute be prepared to add a section which would remove the penalty for violation of AS 11.20.580 and AS 11.20.590. There was no objection and committee counsel was directed to prepare the substitute bill.

Next on the agenda was SB 15. The committee read the Legislative Council report on the bill and discussed it. Mr. Stevens moved the following amendment and asked unanimous consent:

> Page 1, lines 20 and 21: Delete the words, "shall periodically inquire about" and insert "in its commitment order shall require the commissioner or his authorized representative to submit periodic reports upon"

There being no objection, the amendment passed. Mr. Josephson moved that SB 15 as amended pass out of the committee. There were no objections.

Meeting adjourned.

minutes
Feb 9

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JUDICIARY COMMITTEE REPORT

ON CSHB 349

Under present law, the penalty for violation of AS 11.20.580 and 11.20.590 are found in the latter section. This bill simply puts the penalty for violation of AS 11.20.-580 in that section, which will make it easier to find, and takes it out of AS 11.20.590.

JUDICIARY COMMITTEE REPORT ON SB 15

The fact situation in the case of Clark v. State of Alaska, Sup. Ct. Op. No. 187, January 30, 1964, was as follows:

The superior court held a hearing and found that the defendant was so mentally incompetent as to be unable to assist in his own defense and therefore was not mentally competent to stand trial. The court committed the defendant and later the medical director of the institution in which the defendant was placed, certified that the defendant was competent to make a proper defense. The defendant stood trial and was convicted. On appeal, the Supreme Court held that the defendant should have been given a judicial hearing to determine his competency to stand trial after his release from the mental institution.

AS 12.45.115 as added by Sec. 2 of SB 15 puts the decision of the court in the Clark case into law.

Sec. 1 of SB 15 amends the present law to place a duty upon a court to require periodic reports about the mental condition of a defendant whom the court commits to an institution because he is not mentally competent to stand trial.

JUDICIARY COMMITTEE -- MINUTES --- FEBRUARY 10, 1966

Chairman Guess called the meeting to order at 2:00 p.m. All committee members were present.

The following members of the Board of Hairdressing and Beauty Culture Examiners appeared and spoke in favor of HB 371: Selma Brown, President; Wilma Zentmeyer, Vice-President; Helen Burges, Secretary-Treasurer; and Maxine Grey, Board member.

Mr. Taylor moved that HB 371 pass out of committee and asked unanimous consent. There were no objections and HB 371 passed out of committee.

The committee considered a draft of CSSB 117. After general discussion and amendments agreed upon by the committee, the committee unanimously agreed to pass out CSSB 117.

CS for Senate Concurrent Resolution No. 9 was taken up by the committee. Mr. Hillstrand moved that the resolution be referred to the Finance Committee. It was seconded by Mr. Josephson. After discussion, the motion was withdrawn. Mr. Hillstrand moved to table the resolution. Motion was seconded. The motion failed. Mr. Josephson moved that the resolution be reported out of committee "Do Not Pass". The motion was seconded and passed.

The meeting was adjourned.

Minutes

JUDICIARY COMMITTEE REPORT ON HB NO. 371

The Board of Hairdressing and Beauty Culture Examiners license and regulate persons who engage in the practice of hairdressing or beauty culture. This bill amends the definition of hairdressing and beauty culture to include the cleaning and waving etc. of wigs or hair pieces.

JUDICIARY COMMITTEE REPORT ON CSSB 117

Under the Alaska Business Corporation Act (AS 10.05) names of corporations can be reserved and registered. CSSB 117 uses the same language as that relating to corporations (AS 10.05-024 - 10.05.042) but allows the reservation and registration of the name of a business which is not incorporated, that is, "any commercial or industrial enterprise which is not incorporated and which may be owned by a person or persons, partnership, firm, association or organization".

The registration of the name is good for five years and the people now doing business under a business name have the right to register that name before anyone else, providing they register it before January 1, 1967. CSSB 117 will not abrogate any rights between persons who have not registered a business name under its provisions.

REPORT OF CONFERENCE COMMITTEE
WITH POWERS OF FREE CONFERENCE

HCSSB 117

Mr. President
Mr. Speaker

March 1, 1966

The Conference Committee with powers of free conference on HCSSB 117 has met and recommends that HCSSB 117 do pass with the following amendments:

Page 1, lines 25 and 26. Delete "of this chapter"
Page 2, line 8. Delete "of this chapter"
Page 2, line 8. Add the following new sentence:

Registration of the name gives the exclusive right to the use of the name and the person who has registered the name may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Page 4, line 12. Add the following new sentence:

However, no name may be registered which is the same as, or deceptively similar to, the name of a domestic corporation or a foreign corporation authorized to transact business in the state, or a name reserved or registered under AS 10.05.

Senator Robert H. Ziegler

Rep. Walter E. Guess

Senator Howard W. Pollock

Rep. Theodore F. Stevens

Senator Grant H. Pearson

Rep. Joseph Josephson

JUDICIARY COMMITTEE --- MINUTES --- FEBRUARY 11, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Members present were Tillion, Metcalf, Josephson and Taylor.

The committee took up HB 108. The committee counsel was asked to prepare a draft of a committee substitute based on the discussion in the Memorandum on the Agenda.

Meeting adjourned.

JUDICIARY COMMITTEE -- MINUTES --- FEBRUARY 15, 1966

Chairman Guess called the meeting to order at 3:00 p.m. Members present were Messrs. Stevens, Hillstrand and Metcalf.

Mr. Bill Ray appeared and spoke in favor of two bills sponsored by him, HB 324 and HB 311. He asked that the amendment of the Health, Welfare and Education Committee be left out of HB 324 and that page 2, line 3 be amended by adding before the period "or that is controlled by AS 04". Both bills are to be taken up again at the next meeting with a representative of the Department of Health and Welfare appearing on HB 324 and with a copy of the California law on the same subject as that in HB 311 available to the committee.

Meeting was adjourned.

JUDICIARY COMMITTEE MINUTES FEBRUARY 16, 1966

Chairman Guess called the meeting to order at 2 p.m. Members present were Messrs. Stevens, Tillion, Taylor, Hillstrand and Metcalf.

Dr. Browning and Dr. McGowan, from the Department of Health and Welfare, appeared to answer questions of the committee on HB 324. Mr. Hillstrand moved that HB 324 be reported "Do Pass" with amendment as follows:

> Page 2, Line 3: add before the period "or any intoxicating liquor as defined in AS 04.20.010".

There were no objections and HB 324 passed out of committee.

Jake Stalker appeared on Senate Concurrent Resolution No. 13. After discussion it was agreed that a joint resolution should replace the concurrent resolution so it could be directed to the Alaska congressional delegation. Mr. Stalker said he would like to sponsor the joint resolution. The committee took no further action on Senate Concurrent Resolution No. 13.

HB 292 was considered by committee and they requested that the committee counsel prepare a substitute bill limiting it to state employees.

The committee considered HB 311 and the California law on the same subject as set out in a memorandum to the committee. Consideration of the bill will be continued to the next meeting of the committee.

Chairman Guess reminded the committee of the public hearing on HB 353 re Wiretapping which will be held at 7:30 p.m. in Room 2.

Meeting was adjourned.

7-16

JUDICIARY COMMITTEE REPORT ON HB 324

HB 324 makes it unlawful to sell, give away, barter, exchange or distribute any substance which is designated by the commissioner of health and welfare as a depressant or stimulant drug because it has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinatory effect or it is habit forming because of its stimulant effect on the central nervous system.

HB 324 does not cover narcotic drugs which are controlled under AS 17.10 and under the judiciary committee amendment, it would not cover intoxicating liquors controlled under AS 4.

The definition of depressant or stimulant drug is based on the definition in the New York Depressant and Stimulant Drug Control Act (Sec. 3371, N. Y. Cons. Laws Service).

JUDICIARY COMMITTEE MINUTES FEBRUARY 18, 1966

Chairman Guess called the meeting to order at 2 p.m. Members present were Messrs. Tillion, Metcalf, Taylor, Stevens and Hillstrand.

Mr. Stevens moved that House CS for SCR No. 13 "Do Pass" and asked unanimous consent. There were no objections and House CS for SCR No. 13 passed out of committee.

The committee discussed the draft of CS for HB 311. Mr. Stevens moved that CS for HB 311 "Do Pass". Seconded and passed.

The committee then took up the proposed CS for HB 292. The committee voted to accept the committee substitute and ask that it be referred to the Finance Committee for costing based on the attached committee report.

The committee took up the proposed CS for HB 108. Mr. Stevens moved that a section 2 be added to the bill. Section 2 was added without objection. Mr. Stevens moved that the CS for HB 108 be reported out of committee and asked unanimous consent. There being no objections, the bill passed out of committee.

The committee considered HB 142. Mr. Stevens moved that on page 1, line 12, after the word "conspires" the words "with another" be added and on line 13 the word "another" be changed to "a". There being no objection the amendment was accepted. Mr. Stevens moved that HB 142 as amended be reported out "Do Pass". Motion seconded and carried.

Mr. Guess moved that SB 228 be reported out of committee "Do Pass" and be referred to the Finance Committee. There being no objections, the bill was reported out of committee.

Mr. Guess announced that there will be a meeting Monday evening at 7:30 (Feb. 21) and the committee will consider HB 249, HB 299 and HB 143.

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON CSHB 292

The committee substitute limits the effect of HB 292 to state officers and employees. HB 292 said that if a state holiday falls on a Saturday, that both the Saturday and the preceding Friday are legal holidays.

Therefore, if a state holiday falls on a Saturday, a state officer or employee who does not work on Saturdays, would have Friday off. But, if an officer or employee works on Saturdays, then he will have both Friday and Saturday off.

The bill should be costed to show the actual financial impact of these additional holidays. For example, in 1964, three holidays fell on a Saturday; Feb. 22nd, May 30 and July 4. In 1965, Christmas fell on a Saturday. In 1966, New Year's Day was on a Saturday and in 1967, November 11th will fall on a Saturday. In 1968, March 30th is on a Saturday and in 1969, February 22nd and October 18 are on Saturday. In 1970, May 30 and July 4 fall on Saturday.

Minutes

ALASKA STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

TO: House Judiciary Committee, Chairman Guess

FROM: Jane Asher

RE: House Bill No. 311

California has a law somewhat similar to HB 311. Under the California law, the vehicle may be impounded if it it owned by the minor. The California law is as follows:

§ 23123.5. Possession by Minor.

(a) No person under the age of 21 years shall knowingly possess, transport, or have under his control in any motor vehicle any alcoholic beverage, unless such person is accompanied by a parent or legal guardian or is employed by a licensee under the Alcoholic Beverage Control Act (Division 9, commencing with Section 23000, of the Business and Professions Code), and is possessing, transporting or has such alcoholic beverage in a motor vehicle under his control during regular hours and in the course of his employment.

(b) If the vehicle used in any violation of subdivision (a) is registered to such person under the age of 21 years, the vehicle may be impounded at the owner's expense for not less than one day nor more than 30 days for each violation.

(c) Any such person under 21 years of age found guilty under this section shall also have his driver's license suspended for not less than 15 days nor more than 30 days. [Added by Stats 1965 ch 1662 § 2.]

Feb 18

JUDICIARY COMMITTEE REPORT ON HB 142

Federal crimes against civil rights are set out in 18 USC, Secs. 241 - 244. HB 142 would make the offenses in sec. 241 (conspiracy against rights of citizens) and sec. 242 (deprivation of rights under color of law) state crimes. Sec. 243 was not included in the bill because it provides a penalty for the exclusion of jurors on account of race or color in either a federal or a state court. Sec. 244 was not included because it prohibits discrimination in a public place of entertainment or amusement against a person wearing a uniform of the armed forces, and applies only in the District of Columbia or a territory or possession of the U. S. Alaska has an existing statute (AS 11.60.230) which makes it illegal for a public amusement establishment to discriminate because of race or color.

JUDICIARY COMMITTEE MINUTES FEBRUARY 21, 1966

Chairman Guess called the meeting to order at 7:30 p.m. All members were present.

The committee considered CS for HB 249. Mr. Hillstrand moved that it be replaced by 2d CSHB 249 and that 2d CSHB 249 be reported out of committee. Seconded and passed.

The committee then considered HB 381. Mr. Stevens moved and asked unanimous consent that lines 19 - 22 on page 1 be deleted and that the following language be inserted:

> (10) The residence of a student enrolled in an institution of learning and who meets the qualifications of sec. 10 of this chapter is the residence shown on his last registration at the institution made at least 30 days before an election.

There were no objections. Mr. Stevens moved that the bill be reported out of committee as amended and asked unanimous consent. There were no objections.

HB 304 was considered by the committee. Mr. Stevens moved and asked unanimous consent that HB 304 be reported out of committee. There were no objections.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON 2d CS FOR HOUSE BILL NO. 249

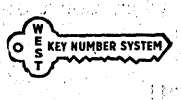
2d CS for HB 249 requires that a national or international labor organization having one hundred or more members residing or working in Alaska to have at least one local or subsidiary organization in Alaska. Each violation of this requirement may result in the labor organization being fined from $1,000 to $10,000. This bill contains the exact language of Chapter 164 of the Kentucky Acts of 1952.

An international union brought action against the Attorney General of Kentucky seeking a declaration of rights concerning the meaning and validity of the Kentucky statute. The lower court held against the Attorney General and the case was appealed to the Court of Appeals. On appeal, the court said in Hamilton et al. v. International Union of Operating Engineers et al., 262 S. W. 2d 695 (Court of Appeals of Kentucky, 1953) that it was the purpose of the statute to give all union members the opportunity for membership in a Kentucky local or subsidiary organization that has jurisdiction to represent them in Kentucky. The court said that the Kentucky statute was a valid exercise of the police power of the state and that it does not invade constitutional freedoms of speech and assembly, and does not conflict with federal labor laws guaranteeing freedom of choice in selection of bargaining agents.

almost even with the east curb line of Fifteenth Street.

[1, 2] The trial court, in directing verdicts for the defendant, stated that plaintiffs had failed to show any negligence on the part of defendant's driver. We agree. Since the car struck the side of the bus after the bus had almost cleared the intersection, the conclusion is inescapable that the bus entered the intersection first. That being so, the bus driver had the right to assume that plaintiffs' driver would yield the right of way. There is no material dispute about the facts, and the only inference which reasonably can be drawn is that the accident was caused solely by the negligence of plaintiffs' driver. Consequently, there was no issue to submit to the jury. The cases cited by plaintiffs are not applicable to this situation.

The judgment is affirmed.



DICKISON et al. v. SHUMATE.

Court of Appeals of Kentucky.

Dec. 4, 1953.

Action was brought involving question of alleged illegal arrest. The Carter Circuit Court, John A. Keck, J., entered judgment, and motion was made for an appeal. The Court of Appeals held that there was sufficient evidence on question of an illegal arrest to warrant submission of case to jury.

Judgment affirmed.

False Imprisonment ⇐39

Evidence on question of illegal arrest was sufficient to warrant submission of case to jury.

H. R. Wilhoit, Grayson, R. T. Kennard, Olive Hill, for appellants.

O. F. Duval, Olive Hill, R. C. Littleton, Grayson, for appellee.

PER CURIAM.

Motion for an appeal from the Carter Circuit Court. John A. Keck, Judge.

There was sufficient evidence on the question of an illegal arrest to warrant the submission of the case to the jury. We find no errors on the trial which were prejudicial to the appellants' substantial rights.

Judgment affirmed.

HAMILTON et al. v. INTERNATIONAL UNION OF OPERATING ENGINEERS et al.

Court of Appeals of Kentucky.

Dec. 4, 1953.

International union brought action against the Commonwealth's Attorney of Jefferson County and the Attorney General of Kentucky seeking a declaration of rights concerning the meaning and validity of statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state. The Jefferson Circuit Court, Chancery Branch, First Division, Macauley L. Smith, J., entered judgment adverse to Commonwealth's Attorney and Attorney General, and they appealed. The Court of Appeals, Cullen, C., held that statute is not unconstitutional.

Judgment reversed with directions.

1. Labor Relations ⇐141

Branch offices in Louisville, Kentucky and Paducah, Kentucky of local union, which had its headquarters in Evansville, Indiana, were not "subsidiary organizations" within meaning of Kentucky statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or "subsidiary organizations" in the state, since word "organization" contemplates an organizational unit with a governmental structure of its own, and something that is capable of some degree of independent existence as an entity. KRS 336.170.

See publication Words and Phrases, for other judicial constructions and definitions of "Organization" and "Subsidiary Organization".

2. Labor Relations ⇐141

Where international union had a large number of members residing and working in Kentucky, and most of them were under jurisdiction of local unions with headquarters outside the state, and the only local maintained was one with headquarters in Louisville and which had jurisdiction only over members residing or working in Louisville area, Louisville local did not constitute compliance with statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing who reside or work in Kentucky not to have at all times one or more duly chartered and established local or subsidiary organizations in the state. KRS 336.170.

3. Labor Relations ⇐141

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established "local" or subsidiary organizations in the state, means not merely a "local organization" from standpoint of union terminology and custom, but an organization that is localized in Kentucky. KRS 336.170.

See publication Words and Phrases, for other judicial constructions and definitions of "Local Organization".

4. Labor Relations ⇐141

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, means that there must be a local organization available for all members of the union in Kentucky. KRS 336.170.

5. Evidence ⇐5(1)

Statutes ⇐215

The Court of Appeals is entitled to recognize matters of common knowledge and to give consideration to contemporaneous circumstances throwing light on legislature's intent when Court of Appeals construes a statute.

6. Evidence ⇐11

The Court of Appeals, in construing a statute, may take judicial notice of the historical setting and conditions out of which statute was promulgated.

7. Evidence ⇐11

The Court of Appeals, in construing a statute, may take notice of the economic conditions existing at the time of enactment of the statute.

8. Statutes ⇐181(2)

Statutes must be given a practical construction.

9. Statutes ⇐181(2)

A statute will not be construed so as to lead to an absurd conclusion.

10. Statutes ⇐212.3

It will not be presumed that the legislature, in enacting a statute, intended a useless or futile thing.

11. Labor Relations ⇐141

Purpose of statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, is to require that all members of union have opportunity for membership in a Kentucky local or subsidiary organization that has jurisdiction to represent them in Kentucky. KRS 336.170.

12. Labor Relations ⇐141

A national or international union, which establishes one local union with state-wide jurisdiction, or several locals which, collectively, have state-wide jurisdiction, does not violate statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state. KRS 336.170.

13. Labor Relations ⇐141

If a national or international union carries on activities in Kentucky, through its locals and membership, without having the kind of local organizations required by statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, the national or international union has violated the statute. KRS 336.170.

14. Labor Relations ⇐1057

Under statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, and that any national or international labor organization which violates the statute shall for each offense be fined not less than $1,000 nor more than $10,000, there may be one prosecution, for period covered by indictment, in each county in which the offense is committed. KRS 336.170.

15. Criminal Law ⇐13

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, and that any national or international labor organization which violates the statute, shall, for each offense, be fined not less than $1,000 nor more than $10,000 is not void for uncertainty, on ground that it does not define with sufficient certainty what constitutes an offense. KRS 336.170.

16. Constitutional Law ⇐277(1)

Labor Relations ⇐83

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, did not deprive local unions, which were located outside Kentucky, and which had members in Kentucky, of property rights without due process of law. KRS 336.170.

17. Constitutional Law ⇐277(1)

The due process clause of the constitution is not designed to protect monopolies.

18. Labor Relations ⇐83

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, is a valid exercise of the police power. KRS 336.170.

19. Constitutional Law ⇐90

Labor Relations ⇐45, 83

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, does not invade constitutional freedoms of speech and assembly, and does not conflict with federal labor laws guaranteeing freedom of choice in selection of bargaining agents. KRS 336.170.

A. Scott Hamilton, Louisville, J. D. Buckman, Atty. Gen., H. D. Reed, Jr., Asst. Atty. Gen., for appellants.

Hubert T. Willis, John L. Richardson, Jr., Louisville, for appellees.

CULLEN, Commissioner.

The International Union of Operating Engineers brought this action against the Commonwealth's attorney of Jefferson County and the Attorney General of Kentucky, seeking a declaration of rights concerning the meaning and validity of Chapter 164 of the Acts of 1952 KRS 336.170, which reads as follows:

> "Section 1. It shall be unlawful for any national or international labor organization having one hundred or more members in good standing who reside or work in Kentucky not to have at all times one or more duly chartered and established local or subsidiary organizations in this State.
>
> "Section 2. Any national or international labor organization which violates section 1 of this Act, shall for each offense, be fined not less than one thousand dollars nor more than ten thousand dollars."

The circuit court adjudged that the Union was complying with the Act, as interpreted by the court, and therefore did not pass upon the question of whether the Act would be constitutional if so interpreted as to place the Union in the status of noncompliance. The Commonwealth's attorney and the Attorney General have appealed.

The first question before us is whether the Union is complying with the Act, as correctly construed. If that question is answered in the negative, we must determine whether the Act as we construe it, is valid and enforceable.

The Union has a large number of members residing and working in the vicinity of Paducah, Kentucky. These workers are under the jurisdiction of Local No. 181, which has its headquarters at Evansville, Indiana, but which has branch offices at Louisville and Paducah. Local 181 has jurisdiction over stationary, hoisting, and portable engineers residing or working in southern Indiana and in all counties of Kentucky except four northern counties. These four counties are under the jurisdiction of Local No. 18, which has its headquarters in Cincinnati, Ohio. The Union also has Local No. 930, with headquarters in Louisville, which has jurisdiction only over stationary engineers residing or working in the Louisville area.

The lower court found that Local No. 930 was a local chartered and established in this state, within the meaning of the 1952 Act, and therefore adjudged that the Union, by maintaining this local, was complying with the Act. The Union contends that not only does Local No. 930 constitute a compliance with the Act, but that the branch offices of Local No. 181, in Paducah and Louisville, constitute "subsidiary organizations" in Kentucky within the meaning of the Act. The Commonwealth's attorney and the Attorney General maintain that a reasonable interpretation of the Act requires the Union to establish in Kentucky one or more autonomous locals of such character that each Kentucky member of the union could have membership in a Kentucky local which would have jurisdiction to represent its membership in labor matters in Kentucky.

[1] We have no difficulty in concluding that the branch offices of Local No. 181 in Paducah and Louisville are not "subsidiary organizations" within the meaning of the statute, for the simple reason that they are not "organizations". We think it is clear that the word "organization" as used in the statute contemplates an organizational unit with a governmental structure of its own—something that is capable of some degree of independent existence as an entity.

[2] Whether Local No. 930 constitutes a compliance with the Act is a question somewhat more troublesome. However, it is our opinion that a reasonable construction of the Act requires something more than is supplied by this local.

[3,4] As we construe the Act, when it requires a "local" organization "in this State" it means not merely a "local" from the standpoint of union terminology and custom, but an organization that is *localized* in Kentucky. And we think the Act means that there must be a local organization available for all members of the union in Kentucky.

[5–7] As has been said, the Court is not required to act in a vacuum. We are entitled to recognize matters of common knowledge, and to give consideration to contemporaneous circumstances throwing light on the legislature's intent. Baker v. White, 251 Ky. 691, 65 S.W.2d 1022. The court may take judicial notice of the historical setting and conditions out of which an Act was promulgated. Martin v. Louisville Motors, 276 Ky. 696, 697, 125 S.W.2d 241. It may take notice of the economic conditions existing at the time of enactment of a statute. Grieb v. National Bank of Ky.'s Receiver, 252 Ky. 753, 68 S.W.2d 21.

In Green v. Moore, 281 Ky. 305, 135 S.W.2d 682, 683, we said:

> "In the search for the legislative will, we start with the pertinent conditions existing when the law was enacted, with their background and development, and look toward the object intended to be reached or accomplished. * * * Those attendant circumstances, the context of the act and its consequences are controlling, even though it may be necessary to modify the language used in order to make it consistent. * * *"

[8–10] Other pertinent rules of construction are: Statutes must be given a practical construction. Commonwealth v. Randolph, 277 Ky. 724, 127 S.W.2d 398; Reeves v. Fidelity & Columbia Trust Co., 293 Ky. 544, 169 S.W.2d 621; a statute will not be construed so as to lead to an absurd conclusion. Reeves v. Fidelity & Columbia Trust Co., 293 Ky. 544, 169 S.W. 2d 621; Swift v. Southeastern Greyhound Lines, 294 Ky. 137, 171 S.W.2d 49; it will not be presumed that the legislature intended a useless or futile thing. Washburn v. Paducah Newspapers, 275 Ky. 527, 121 S.W.2d 911.

The situation that existed in the Paducah area, with respect to foreign control of union affairs, was a matter of common knowledge at the time of enactment of the statute here in question. It had received wide newspaper publicity and was a subject of general public discussion. In addition, some of the problems connected with this situation were brought before this Court in International Union of Operating Engineers v. J. A. Jones Const. Co., Ky., 240 S.W.2d 49, and in International Union of Operating Engineers v. Bryan, Ky., 255 S.W.2d 471. The big issue was local representation and voice in union affairs.

[11,12] To so construe the 1952 Act as contended by the union would be to render the Act completely useless and futile. No conceivable purpose could be accomplished by requiring a union merely to maintain a local in one small area of Kentucky, with its membership limited to those who worked in one branch of the craft in that area. The obvious purpose of the Act was to require that all members of the union have the opportunity for membership in a Kentucky local or subsidiary organization that would have jurisdiction to represent them in Kentucky. Since the Act refers to "one or more" such organizations, it appears that

the union might establish one local with state-wide jurisdiction, or several locals which, collectively, would have state-wide jurisdiction. To so construe the Act does no violence to its language, and we do so construe it.

[13–15] The union contends that, in providing a penalty for "each offense," the Act does not define with sufficient certainty what constitutes an offense, and the Act therefore is void for uncertainty. It is true that the Act itself does not define what constitutes "each" offense, but it does make clear what constitutes a *violation,* and the rule governing the number of penalties that may be imposed, and the places in which prosecutions may be maintained, is well established by our case law. It is clear from the Act that if a national or international union carries on activities in this state, through its locals and membership, without having the kind of local organizations required by the Act, it has committed a violation of the Act. See International Union of Operating Engineers v. J. A. Jones Construction Co., Ky., 240 S.W.2d 49. Under the rule defined in International Harvester Co. of America v. Commonwealth, 144 Ky. 403, 138 S.W. 248, there may be one prosecution, for the period covered by the indictment, in each county in which the offense is committed. The claim of uncertainty cannot be maintained.

[16, 17] The union further maintains that Locals Nos. 18 and 181 have property rights in or by virtue of their present membership, and the Act will deprive them of these property rights without due process of law. As we interpret the Act, it does not of itself deprive these locals of any of their membership. It merely requires that one or more Kentucky locals be established to which Kentucky workers will have the privilege of transferring their membership, if they so desire. Certainly the due process clause was not designed to protect monopolies.

[18] It also is argued that the Act is not a valid exercise of the police power, because there is no public evil or abuse sought to be remedied, but only the conferring of private benefits. We think that the public has a protectable interest in the accessibility of labor organizations to the processes of law of this state. Furthermore, it has long been recognized that the protection of labor is a proper objective for exercise of the police power, since the economic interests of the public are directly and substantially affected by labor disputes. It would seem that the public should have as great an interest in the protection of labor from labor, as in the protection of labor from capital.

[19] Finally, it is contended that the 1952 Act invades the constitutional freedoms of speech and assembly, and conflicts with federal labor laws guaranteeing freedom of choice in the selection of bargaining agents. We find no basis for these arguments. The Act does not purport in any way to restrict the activities of any labor organization, or to impose conditions upon the free exercise of the rights of speech and assembly. It does not limit any worker in the selection of a bargaining agent of his own choice. Locals Nos. 18 and 181 may continue to function in Kentucky just as they have in the past, the only restriction being that a union member cannot be *compelled by the union* to choose any of them as his bargaining agent, but must be given the choice of selecting a Kentucky local as his bargaining agent. As we view it, the Act promotes, rather than impedes, the exercise of those rights guaranteed by the Constitution and by the federal labor laws.

The judgment is reversed, with directions to enter a judgment in conformity with this opinion.

JUDICIARY COMMITTEE REPORT ON CS FOR HB 304

CS for HB 304 requires that the Alaska State Development Corporation maintain public records which contain the names of the business concerns to whom contracts are let and for whom financing is arranged by the corporation and the nature of the business and the amount involved.

JUDICIARY COMMITTEE -- MINUTES -- FEBRUARY 22, 1966

Chairman Guess called the meeting to order. Present were members Stevens, Metcalf, Taylor, Josephson and Hillstrand.

The committee took up HB 299 and the requested report on the bill by committee counsel. After discussion, Mr. Stevens moved that the bill be amended to (1) amend AS 09.43.070 to allow application for issuance of subpoenas to be made to the superior court; and (2) exclude from the application of the bill contracts of insurance and agreements between employers and employees, as set out in sec. 7.04.010 of the Wash. Revised Statutes, and that the amended bill "Do Pass". Seconded by Mr. Josephson and passed.

The committee then considered HB 374. After discussion, the committee agreed to delete "work" from page 2, line 5 and to insert "under sec. 10 or 20 of this chapter or" at the end of line 11, page 2 and after "restricted" on page 2, line 15. Mr. Taylor moved that HB 374 as amended "Do Pass". Mr. Stevens seconded and the motion passed.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON HB 299

HB 299 is the Uniform Arbitration Law adopted by the National Conference of the Commissioners on Uniform State Laws and approved by the House of Delegates of the American Bar Association. It has been adopted in five states according to the "Book of the States", 1964-65. They are Arizona, Illinois, Massachusetts, Minnesota and Wyoming. Approximately 20 other states also have a modern arbitration law.

If a state does not have an arbitration law, as is the case in Alaska at this time, a voluntary contract provision to arbitrate subsequent controversies between the parties can be ignored by one party and the other party has no legal remedy for enforcement of that contract provision.

Amendment No. 1 amends Sec. 09.43.010 of HB 299 to make this Act inapplicable to (1) contracts of insurance, and (2) agreements between employers and employees or employers and associations of employees. The language relating to (2) was taken from sec. 7.04.010 of the Washington Revised Statutes.

Amendment No. 2 amends sec. 09.43.070 of HB 299 to allow the court and not the arbitrators to issue subpoenas.

JUDICIARY COMMITTEE REPORT ON HB 374

HB 374 requires that a government agency responsible for the operation of a public building shall notify the public by the posting of a sign when and under what conditions the building is open to the public, what areas are not open, and who can be contacted about entering on a day or time when the building is not open to the public.

The government agency may prohibit or restrict access by the public so that the health and safety of the public will not be endangered or where the presence of the public would obstruct the efficient performance of duties by the employees of the agency. However, public access to or public activities in the public corridors may not otherwise be prohibited or restricted by the government agency except under a statute or ordinance.

The last section of the bill defines "government agency" and "public building".

JUDICIARY COMMITTEE -- MINUTES -- FEBRUARY 23, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Members present were Messrs. Stevens, Taylor, Hillstrand and Metcalf.

The committee discussed CS for HB 311 which the committee had adopted at the February 18th meeting and asked that a new committee substitute be prepared by the committee counsel.

The committee discussed HB 378 and Mr. Stevens moved that it "Do Pass" and asked unanimous consent. There were no objections and HB 378 was reported out of committee.

The committee took up HB 359 and Mr. Taylor moved "Do Pass". Seconded and passed.

The committee discussed HB 62 and Mr. Taylor moved "Do Pass. Seconded and passed.

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON CSHB 311

CSHB 311 allows the court to impound a vehicle for not more than 30 days if it is owned by a person under 21 years of age who is in possession, control, etc. of the motor vehicle at the time he violates a law, ordinance or regulation relating to being under the influence of intoxicating liquor or to possession, control or consumption of alcoholic beverages.

ALASKA
STATE LEGISLATURE
LEGISLATIVE COUNCIL
BOX 2199-JUNEAU

TO: House Judiciary Committee, Chairman Guess

FROM: Jane Asher

RE: House Bill No. 311

California has a law somewhat similar to HB 311. Under the California law, the vehicle may be impounded if it it owned by the minor. The California law is as follows:

§ 23123.5. Possession by Minor.

(a) No person under the age of 21 years shall knowingly possess, transport, or have under his control in any motor vehicle any alcoholic beverage, unless such person is accompanied by a parent or legal guardian or is employed by a licensee under the Alcoholic Beverage Control Act (Division 9, commencing with Section 23000, of the Business and Professions Code), and is possessing, transporting or has such alcoholic beverage in a motor vehicle under his control during regular hours and in the course of his employment.

(b) If the vehicle used in any violation of subdivision (a) is registered to such person under the age of 21 years, the vehicle may be impounded at the owner's expense for not less than one day nor more than 30 days for each violation.

(c) Any such person under 21 years of age found guilty under this section shall also have his driver's license suspended for not less than 15 days nor more than 30 days. [Added by Stats 1965 ch 1662 § 2.]

JUDICIARY COMMITTEE REPORT ON HB 378

HB 378 includes in the Public Employees' Retirement System any deputy magistrate whose annual salary is at least $1,500.

The salaries of deputy magistrates are prescribed by the supreme court and are governed by the duties and responsibilities involved as to the particular office (AS 22.15.220(b); Court Rules of Administration No. 34). There are presently 39 deputy magistrates receiving annual salaries of $1,500 or more.

JUDICIARY COMMITTEE REPORT ON HB 359

Under present law, a person may bring an action for injury to personal property for six years after the injury occurs. HB 359 requires that the action be brought within two years.

JUDICIARY COMMITTEE REPORT ON HB 62

Under AS 29.10.456 - 29.10.540, a municipal corporation may enforce a lien for delinquent taxes on real property by the sale of the property in the special foreclosure proceeding set out in those sections. The present law requires notice of the proceeding by publication, or if there is no newspaper in the municipality by posting and notice by mail. There must be publication or posting in two instances, (1) when the petition for foreclosure is filed (AS 29.10.465); and (2) shortly before the expiration of the period of redemption (AS 29.10.522).

HB 62 amends the law to require that notice be given to the last-known owner of the property by registered or certified mail, in addition to the publication or posting in the above two instances. H. B. 62 further requires that notice be given in the same manner of any intended sale by the municipal corporation of the foreclosed property and that the notice contain the fact that the record owner of the property at the time of tax foreclosure has a right of re-purchase under AS 29.10.528.

In sec. 3 of the bill, obsolete references to school district and public utility districts are deleted.

Minutes

JUDICIARY COMMITTEE MINUTES FEBRUARY 24, 1966

The committee met with the Senate Judiciary Committee and the Board of Governor's of the Alaska Bar Association at 2:30 p.m. Present were Chairman Guess and members Stevens, Taylor, Metcalf and Josephson.

The Board of Governors gave the Judiciary Committees their views on legislation affecting the Alaska Bar. The Board felt many provisions of Ch 47 SLA 1965 would not improve the Bar. They did not think that a person should be admitted without examination simply because they had done legal work in Alaska for three years as set out in AS 08.08.130(6) (D). They were not in favor of the clerkship provisions and stated further that the law provided no standards for the work to be accomplished or method of reporting, etc. and required no background education such as a high school diploma. They felt that the reason for clerkship, as advanced by those in favor of it, was not justified by those applying under the clerkship provisions. Those in favor of it feel that since we have no law school in Alaska, there should be a way for a person to study law in this state if they are not financially able to do so otherwise. The Board says that the people applying under the clerkship provisions are persons coming here from other states and wives, children and secretaries of attorneys.

The Board said that approximately 18 persons a year have been admitted to the Bar since statehood. They said that an average of 62.4 per cent of those taking the bar have passed since statehood. The national average is under 67 per cent which includes some states which nearly always pass 100 per cent of their applicants.

It was suggested that the attorney who supervises the law clerk be licensed by the Bar, and that they cannot supervise anyone employed in their office or related to them.

The Board also said that the Anchorage Bar has taken no position on HB 329 giving another superior court judge to the Juneau area. They are in favor of HB 317 which amends the law relating to bail, and HB 306 relating to comparative negligence; although they pointed out that it was not a true comparative negligence statute. The Anchorage Bar supports HB 279 relating to disqualification of judges, but the Supreme Court is not in favor of it because of the additional travel and per diem which will be required if the bill passes.

HB 275 relating to young adult advisory panels in certain misdemeanor cases was discussed. Some Board members were in favor of it and others were not. The general consensus was that it was a good bill.

There was discussion of election of magistrates. The Supreme Court is not in favor of it and no conclusion was reached by the Board. However, the Board felt that magistrates should be members of the Alaska Bar and particularly so if their salaries are increased.

Meeting was adjourned.

JUDICIARY COMMITTEE MINUTES MARCH 1, 1966

Chairman Guess called the meeting to order at 3 p.m. Present were Messrs. Taylor, Metcalf and Tillion.

The committee discussed SB 17 and without objection the bill passed out of committee "Do Pass".

HB 408 was discussed by the committee and passed from the committee "Do Pass".

The committee discussed HB 300 which changes the date of the primary election. It was decided to refer it to State Affairs since that committee has CSSB 50 which also changes the date of the primary election so that the two bills may be considered together.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON SB 17

AS 09.10.010 says that a civil action must be commenced within the periods prescribed by statutes of limitation and Rule 3 of the Rules of Civil Procedure says that a civil action is commenced by the filing of a complaint. AS 09.10.020, which is repealed by SB 17, says that an action is commenced by the filing of a complaint and the issuance of a summons.

In Silverton v. Marler, Sup. Ct. Op. No. 186, January 30, 1964, the court held that AS 09.10.020 was in conflict with and superceded by Rule 3 of the Rules of Civil Procedure since the section contained procedure.

SB 17 repeals AS 09.10.020, which the Supreme Court has declared invalid, so that the statutes will not mislead persons as to what constitutes commencement of a civil action.

March 1

JUDICIARY COMMITTEE REPORT ON HB 408

HB 408 amends the law of vagrancy to include a person who, without legitimate reason, loiters about a school where children are in attendance, or who loiters about a nearby public place frequented by school children.

JUDICIARY COMMITTEE MINUTES MARCH 2, 1966

Chairman Guess called the meeting to order at 2 p.m. Members present were Stevens, Tillion, Taylor and Metcalf.

Mr. McCombe, the sponsor of HB 419, appeared and spoke in favor of the bill. Rev. Boesser spoke against the bill. Mr. Stevens moved that HB 419 "Do Not Pass". Seconded by Mr. Guess and passed.

The committee discussed HB 279. Mr. Stevens suggested several amendments to the bill. Mr. Stevens was asked to prepare them for the next meeting.

HB 487 was discussed by the committee. Mr. Tillion moved that HB 487 "Do Pass". Seconded by Mr. Taylor and passed.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON HB 419

HB 419 establishes an Alaska Lottery Authority in the Department of Revenue. Under the terms of the bill, there will be three or more drawings a year. One half of the gross proceeds from each drawing shall be paid out as prizes. The other half of the gross proceeds goes into the general fund as unrestricted receipts. The cost of the lottery is paid out of the general fund.

The Alaska Lottery Authority is composed of five members appointed by the Governor for overlapping terms of five years including one member from the Senate and one from the House of Representatives. Members are entitled to the usual travel and per diem for members of boards. The Authority will promulgate regulations to carry out the provisions of the Act.

Ticket sellers must comply with the provisions of AS 43.17.080, such as having resided in the state for a year, filing a bond to cover tickets received, etc.

HB 419 would take effect on January 1, 1967, if in the general election of 1966, the voters vote in favor of the establishment of a state-operated lottery in Alaska.

JUDICIARY COMMITTEE REPORT ON HB 487

Under HB 487, a person who provides financial programming or marketing assistance to the state or a political subdivision in connection with the issuance or sale of general obligation bonds may not bid on those bonds or negotiate for their purchase. If such a person purchased the bonds, the sale would be void as against public policy.

JUDICIARY COMMITTEE

MINUTES OF

March 3, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Present were Stevens, Taylor, Josephson, Hillstrand, and Metcalf.

The committee considered the three amendments to HB 279 offered by Mr. Stevens. Mr. Taylor moved "do pass" with the amendments; seconded and passed. The committee agreed to refer it to the Finance Committee with the Supreme Court comments on the cost of the bill.

HB 302 was considered by the committee. The committee counsel was asked to draft a committee substitute based on the discussion.

The committee took up HB 402. Mr. Guess moved that HB 402 "do pass". Mr. Taylor seconded and the motion passed.

HB 418 was discussed by the committee. Mr. Taylor moved "do not pass"; Mr. Stevens seconded; the motion passed.

Mr. Stevens moved that House Resolution No. 6 "do pass"; seconded and carried.

Mr. Guess moved that House Concurrent Resolution No. 42 "do pass"; seconded and carried.

Meeting was adjourned.

JA/mh

JUDICIARY COMMITTEE REPORT ON HB 279

HB 279 changes the present law relating to the disqualification of a judge in the following manner:

Page 1, line 18: A new reason for disqualification is added.

Page 1, lines 21 - 23: Compare (5) with AS 22.20.020(4) to see how this reason for disqualification has been changed.

Page 1, between lines 23 and 24: Amendment No. 1 allows the judge to disqualify himself.

Page 1, lines 27 - 29 and page 2, lines 1 - 5: This is a new subsection which requires that another judge determines the matter of disqualification and not the one who may be disqualified.

Page 2, lines 7 - 19: This subsection is approximately the same as AS 22.20.020(5). However, under present law, the bias or prejudice must be proved to the judge who is considered biased or prejudiced. Under this bill, the action is immediately transferred to another judge. Under present law and under this bill only one affidavit of bias or prejudice is allowed. This approach is similar to a preemptory challenge to a juror.

Page 2, lines 20 - 22: This is a new subsection which is taken from the Arizona law.

Page 2, lines 23 - 27: This is a similar provision to the one presently in the law in AS 22.20.020(5). Compare the two for the slight differences.

Page 2, lines 28 - 29: This is the exact language now found in AS 22.20.020(5).

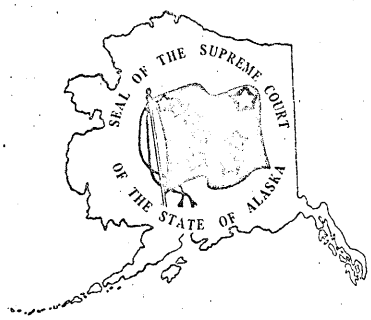
Page 3, lines 1 and 2: This bill might be considered to affect only those suits filed after it became law. This section applies it to actions pending on the date it becomes law.

You will note that the word "action" was used throughout the bill. Under AS 01.10.060(1) in the laws of this state "action" includes any matter or proceeding in a court, civil or criminal.

"Judicial officer" is defined in AS 22.20.010 as a supreme court justice, including the chief justice, a judge of the superior court, a district magistrate, and a deputy magistrate.

California (CCP 170), Arizona (ARS 12-409-411), and Oregon (ORS 14.210 - 270) law was used in the preparation of this bill.

HB 279



Supreme Court
State of Alaska
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

BUELL A. NESBETT, CHIEF JUSTICE
JOHN H. DIMOND, ASSOCIATE JUSTICE
JAY A. RABINOWITZ, ASSOCIATE JUSTICE

February 21, 1966

Honorable W. E. Guess, Chairman
House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: H.B. #279, Disqualification of Judicial Officers. Discussion of Undesirable Aspects - Estimate of Annual Cost Approximately $22,000.00.

Dear Representative Guess:

In accordance with your request we have prepared a statement of views on the effects H.B. #279, re the disqualification of judges, would have on the operation of the superior court if enacted.

The net effect of this measure would be to remove the control of court calendars from the presiding judges of the superior court and actually to make impossible any orderly regulation of the court calendars. It would have a seriously damaging impact on the availability of judges for the trial of cases and a like impact on the court budget as it relates to travel and per diem for judges.

The bill allows any party or attorney in any action to disqualify a judge peremptorily. This means that in every case there are at least four peremptory challenges that can be made to disqualify a judge, and as many more as there are additional parties or attorneys involved. It is obvious that in every case there is a potential for every resident judge in each of the superior court locations to be summarily prevented from hearing the case and that a judge from another district or location may have to be brought in to hear the case. The seriousness of this problem can be recognized only when it is realized that in many instances there are either attorneys or litigants who are disgruntled with relation to one or more judges before whom they have lost a previous case or whose judicial reputation or other attributes are disliked. On the other hand there are some judges simply

more "popular" than others, and attorneys or parties can be expected to exercise peremptory disqualifications solely in order to have their cases heard by such judges when no substantial basis for disqualification of another actually exists.

With all of these factors at work in determining the assignment of cases, it is apparent that some judges may have very few cases to hear, and others may have so many that they cannot possibly keep up with the workload. The inefficiency and wasted use of available judicial manpower under such a system would create impossible working conditions for the superior court judges and their clerical assistants. This would be particularly true in the multi-judge courts at Anchorage and Fairbanks, but the problems would also exist in the single-judge courts, where the arrangements for bringing in other judges would become extremely complicated if disqualifications were made with any appreciable frequency.

The high cost of providing visiting judges is also apparent, and a great deal more money for their travel and per diem would have to be provided if this bill were enacted. It is impossible to determine how much more should be provided when there is no basis of experience on which to estimate the number of cases in which disqualifications as allowed by the bill would result in the necessity of travel. In the initial year we could be sure of meeting the needs only if sufficient per diem funds were appropriated for every judge to travel the limit of 90 days, and this would require $17,000. The transportation costs would be in addition to this sum in the approximate amount of $5,000.

Until recently the calendars in the largest multi-judge court, at Anchorage, were prepared by the presiding judge keeping a continuing check on the caseload of each judge and assigning new cases and other duties to judges as appropriate to maintain an equitable load for all. Under this system different judges were often assigned different phases of the proceedings in any given case, and this can create problems in obtaining consistent results. Recently this system has been altered to a plan under which, in general, each new case is assigned to the respective judges in turn, and each judge thereafter handles all aspects of all cases assigned to him. Under either of these systems the workload is fairly evenly established among all the judges, and the presiding judge can make adjustments as necessary where disparities appear.

No such methods for control of calendars could operate under the proposals of H.B. #279. On the contrary, AS 22.20.020(c) and .022(a) as proposed in the bill provide a positive method by which counsel could cooperate to pick their judge and thus circumvent the assignment judge and calendar clerk who are responsible for the orderly assignment of cases and scheduling of all matters to be heard.

In our view chaotic calendaring conditions would result under a system where individual attorneys and parties can effect the assignment of cases according to their individual desires and without regard to the workload already borne by the judges. The harm that would result to the public interest in securing the speedy handling of cases would be a severe blow to efficient and effective administration of justice.

Very truly yours,

Buell A. Nesbett

Buell A. Nesbett
Chief Justice

cc: Representative Kerttula
Representative Gravel
Senator Ziegler
Senator Bradshaw
Senator McNealy

JUDICIARY COMMITTEE REPORT ON HB 418

HB 418 allows the state or a first or second class city to use a declaration of taking in acquiring property for off-street parking.

JUDICIARY COMMITTEE REPORT ON HB 402

HB 402 was introduced at the request of the governor, and his letter of explanation which fully describes the bill is found in the February 10th supplement to the House Journal.

"February 9, 1966

HB 401

Honorable Warren A. Taylor
Chairman, House Rules Committee
Alaska State Legislature
Juneau, Alaska

Dear Mr. Chairman:

Pursuant to State law and the Uniform Rules of the Legislature, I am submitting a bill which would provide a pay increase of three per cent for permanent employees assigned to duty stations located over 100 miles from the key cities of Anchorage, Fairbanks, Juneau and Ketchikan and which are connected by road, railroad or ferry to these key cities. It provides a pay increase of six per cent for permanent employees assigned to any duty station which is not connected to one of the key cities by surface transportation.

The increased cost in operating programs, if this bill is adopted, is estimated at $161,000 from the State General Fund, $2,400 from State Special Funds and $8,000 from federal funds. These amounts have been included in the appropriation bill for Fiscal 1967. It is proposed to make this increase effective July 16, 1966, the beginning of the first pay period in Fiscal 1967.

This bill recognizes the lack of community facilities which exist at many of the duty stations affected, the isolation factor present and the cost of living in the more remote areas of the State.

Sincerely,

/s/ William A. Egan

William A. Egan
Governor"

Minutes

"February 10, 1966

HB 402

Honorable Warren A. Taylor
Chairman, House Rules Committee
Alaska State Legislature
Juneau, Alaska

Dear Mr. Chairman:

Pursuant to State law and the Uniform Rules of the Legislature, I am submitting a bill which would bring agencies of the State and its political subdivisions under coverage of the Human Rights Act of 1963.

The Federal Civil Rights Commission has advised the Department of Health and Welfare that our Human Rights Act is not sufficiently inclusive of the State agencies in providing a hearing procedure for those who are served by public agencies in the disbursement of Federally-assisted welfare funds. In order to comply with Federal requirements, the State may either amend the Human Rights Act so that it will be available to members of the public for the purposes of registering and obtaining a hearing on their complaints of discrimination, or establish a separate and independent hearing procedure to provide these services for those who obtain Federally-assisted welfare payments from the agencies. The former is the most efficient means of satisfying the Federal requirement.

Since State personnel rules already furnish protection against discrimination in employment practices, it is only in the area of dealing with the general public that an amendment is needed. We believe that this new section will complete the Civil Rights protection now required by the Federal Government.

Sincerely,

/s/ William A. Egan

William A. Egan
Governor"

JUDICIARY COMMITTEE -- MINUTES -- MARCH 4, 1966

The meeting was called to order at 3:00 p.m. by Chairman Guess. Present were members Stevens, Josephson, Taylor and Hillstrand.

Mr. Jackson, the sponsor of HB 462, appeared and spoke in favor of the bill. The committee decided to ask the bar and the Judicial Council for their comments on the bill before taking further action.

Mr. Norman Banfield representing American Mutual Insurance Alliance appeared and spoke on HB 373. Mr. Banfield will draft a bill covering his proposals and Commissioner Underwood will be asked to appear before the committee takes further action on the bill.

The committee considered HB 309. Mr. Taylor moved that HB 309 "Do Pass". Mr. Stevens seconded. Motion passed.

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON HB 309

If a court has jurisdiction over the subject matter in an action, then under HB 309 the court can obtain jurisdiction over a person who is served in the manner set out in the court rules of procedure provided that the action and person served are as set out in (a)(1) --(11) of the bill. Subsection (b) states that when an action is brought in reliance upon (a)(2)--(10) of the section, that there can be no joining of any other claim or cause in the same action against the defendant unless grounds exist under (a) for personal jurisdiction over the defendant as to the claim or cause to be joined.

HB 309 is taken from Sec. 262.05 of the Wisconsin Statutes (1963) and beginning on page 1228 of the 1960 Wisconsin Annotations there is set out the objectives, scope, and annotations on Sec. 262.05. It is stated therein that the primary objective sought in the section is to expand the exercise of personal jurisdiction over nonresidents in cases having substantial contacts with Wisconsin. It is further stated that "Revised Chapter 262, relying upon these legislative and judicial materials from other states, attempts to provide a means for trying in Wisconsin all personal actions which, in a due process sense, it is reasonable to try here against the named defendant."

JUDICIARY COMMITTEE -- MINUTES -- MARCH 5, 1966

Chairman Guess called the meeting to order at 10:00 a.m. All members were present.

The committee took up HB 383 - 387 and 389 and 390 which are bills introduced by the Legislative Council as a result of the recommendations in the January 1966 Council report "Legislative Oversight of the Administration of Statutes". Mr. Kent Edwards of the Council staff who prepared the Council report described each bill to the committee. Commissioner Holdsworth of the Department of Natural Resources appeared on HB 383 - 387 to answer committee questions as to how the bills would effect the present procedure of his department.

Mr. Stevens moved that HB 383 and 385 "Do Pass" and Mr. Taylor seconded. Both bills passed out of committee.

Mr. Stevens moved that HB 387 "Do Pass" with the following amendment:

> On page 1, line 17, after "by" insert "puchase, exchange, condemnation,"

Mr. Taylor seconded and motion passed.

Mr. Guess moved that HB 389 "Do Pass". Motion passed without objection.

Mr. Taylor moved that HB 390 "Do Pass". Motion passed without objection.

The committee asked Mr. Edwards to prepare drafts of committee substitutes for HB 384 and 386 and asked that Mr. Edwards and Commissioner Holdsworth return on Monday, March 7th at 3:00 p.m. to discuss them.

Meeting was adjourned.

JUDICIARY REPORT ON HB 383

HB 383 amends AS 38.05.150(c) by adding the requirement that "a satisfactory mining plan for the coal's recovery" be submitted to the Department of Natural Resources before a coal prospecting permit may be changed into a lease. Presently the law simply requires a showing that the land contains coal in commercial quantities.

The purpose of the amendment is explained in detail on page 1 of the Legislative Council's Legislative Oversight of the Administration of Statute's" report.

JUDICIARY REPORT ON HB 385

Presently "agricultural and grazing lands" is a single classification for land. HB 385 would enable the division of lands to treat "agricultural lands" and "grazing lands" as two separate types of land classifications.

HB 385 also amends the homestead provision of the Alaska Land Act (AS 38.05) so that homestead entry may be permitted on either agricultural land or grazing land.

The proposal contained in HB 385 is a product of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" and a more detailed explanation of its purpose is contained on page 4 of that report.

JUDICIARY REPORT ON HB 387

The Statehood Act requires that Alaska reserve the mineral rights to all lands which it obtains from the federal government by selection. Failure to do so results in forfeiture of the land to the federal government. AS 38.05.125 was designed to protect the state from the possibility of losing land to the federal government through such forfeiture by making the mineral right reservation contained in AS 38.05.125 automatically a part of every contract involving the sale of state land which has been selected from the federal government. However, through an apparent oversight, the present wording of AS 38.05.125 fails to protect the state where the Department of Natural Resources has failed to place a mineral reservation in a contract involving the sale of land which was acquired by escheat or foreclosure after having been originally acquired from the federal government and later sold. Insertion of the word "originally" into AS 38.05.125, as proposed by HB 387, would remedy the department's oversight in such a situation.

The Statehood Act does not require that mineral rights be reserved in sales of state land acquired by means other than selection from the federal government. However, under the present wording of AS 38.05.125 only land acquired by escheat or foreclosure can be sold with mineral rights. HB 387 would expand the power to sell mineral rights to include land acquired by gift. By way of amendment the Judiciary Committee also proposes to add lands acquired by "purchase, exchange or condemnation" to the category of lands which may be sold with mineral rights.

The proposal contained in HB 387 is a product of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" and a more detailed explanation of its purpose is contained on page 8 of that report.

JUDICIARY REPORT ON HB 389

In Liberty National Insurance Co. v. Eberhart, Sup. Ct. Op. No. 281 (February 8, 1965) the state supreme court declared that AS 21.10.160 "attempts to regulate a matter of procedure which is within the province of this court, and is therefore ineffective".

Since there is a supreme court rule containing a provision substantially similar to that in AS 21.10.160, HB 389 proposes a repeal of the statutory provision.

A detailed explanation of the Liberty National Insurance case and the reason for repealing AS 21.10.160 can be found on page 17 of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" report.

JUDICIARY REPORT ON HB 390

In Thrift Shop v. Alaska Mutual Savings Bank, Sup. Ct. Op. No. 277, (January 29, 1965) the Alaska supreme court concluded that AS 09.45.070(b) attempts to regulate a matter of practice and procedure governed by Civil Rule 18(a) of the supreme court.

Since there is a supreme court rule containing a provision substantially similar to that in AS 09.45.070(b), HB 390 proposes a repeal of the statutory provision.

A detailed explanation of the Thrift Shop case can be found on page 19 of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" report.

JUDICIARY COMMITTEE MINUTES March 7, 1966

Chairman Guess called the meeting to order at 10:00 a.m. All members were present.

Mr. Banfield appeared with a draft of a committee substitute for HB 373. Commissioner Underwood also appeared at the request of the committee. The committee discussed the draft and by agreement made some changes. Mr. Stevens moved that the committee substitute as agreed upon by the committee "Do Pass". Motion passed without objection.

The committee discussed HB 436. Mr. Stevens moved that HB 436 be prepared as a committee substitute with an effective date of January 1, 1967 and that the language be clarified by changing "it" to "ordinance" in both paragraphs of the bill. Motion passed without objection.

The committee discussed drafts of committee substitutes for HB 384 and 386 with Mr. Edwards and Commissioner Holdsworth. It was decided to continue work on the two committee substitutes and take them up at a later meeting.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON CSHB NO. 373.

Under present law, no accident report may be used in evidence in a criminal or civil action arising out of the accident that is the subject of the report. Under CSHB 373, an accident report may be used in any court or other proceeding subject to the rules of the court (1) by the person who submitted the report while testifying to refresh his recollection of matters contained in the report; (2) to impeach the credibility of the person who submitted the report; and (3) in evidence subject to all valid objections to the admissibility of the report.

It would be unconstitutional to allow an accident report to be used in evidence in a criminal action against the person who made the report and this exception is noted in (b) of the bill.

Under (c) a person involved in the accident, including the insurers or attorneys of those persons, may inspect and copy the reports. The department shall furnish these persons with copies or certified copies of the reports on demand and a reasonable charge can be made for the copies.

JUDICIARY COMMITTEE REPORT ON CSHB 436

When laws are codified, they are brought together and arranged according to subject matter in one or more books, either under an alphabetical arrangement or some other plan of classification. CSHB 436 requires that all cities codify their ordinances and have copies of the ordinances available to the public or they cannot impose criminal penalties for violation of the ordinances.

Many cities have already codified their ordinances but in order that there will be time for the other cities to do so, the effective date of this bill is January 1, 1967.

JUDICIARY COMMITTEE MINUTES MARCH 8, 1966

Chairman Guess called the meeting to order at 2:00 p.m. All members were present.

The committee discussed SB 267. Mr. Josephson moved "Do Pass". Motion passed without objection.

The committee considered House Resolution No. 2. Mr. Taylor moved "Do Pass". Motion passed without objection.

The committee discussed a draft of a bill to have coroners decide to what mortuary a body shall be sent if there are no instructions from the next of kin. The committee counsel was asked to draft the bill for introduction by the committee based on the discussion.

The committee considered HB 353 on which they had previously held a public hearing. Mr. Guess moved "Do Pass" and the motion passed without objection. Mr. Josephson signed "Do Pass" with attached amendment.

The committee discussed HB 263. Mr. Stevens moved that the bill be amended to state that it would only take effect when the U. S. or Alaska Supreme Court extended the rule in Gideon v. Wainwright, 372 U.S. 335, to misdemeanors and that HB 263 as amended "Do Pass". Motion passed without objection.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON HB 263 as Amended

The United States Supreme Court has ruled (Gideon v. Wainwright, 372 US 335) that indigent defendants charged with felonies must be provided counsel by the states. This doctrine has been extended at the lower federal court level to include the defense of indigents charged with misdemeanors.

HB 263 as amended will not take effect unless the United States or the Alaska Supreme Court extends the rule of Gideon v. Wainwright to cover misdemeanors. If this extension of the rule takes place, then under HB 263 as amended an Agency for Public Defense will be established in the Office of the Governor. The agency will provide legal counsel to an indigent accused of committing a misdemeanor.

The agency will be administered by the public defender and two assistant attorneys. Their qualifications are set out in Sec. 44.19.740 of the bill.

The bill does not preclude a court, either on its own motion or upon application of the agency or an indigent defendant, from appointing an attorney other than an Agency attorney to represent or to assist in representing an indigent defendant at any stage of the proceedings or on appeal.

March 8

JUDICIARY COMMITTEE REPORT
on
HOUSE BILL NO. 353

1. GENERAL.

HB 353 is concerned with what is commonly called wire-tapping or eavesdropping. Section 280 pertains to the misuse, interception, and divulgence of messages sent by wire or radio and Section 290 is concerned with the recording or listening to oral conversations without the consent of at least one of the parties to the conversation. A violation of any one of the sections of the bill is made a misdemeanor with a maximum penalty of $1,000 fine or imprisonment for one year, or both.

Under the federal act, in order to obtain a conviction, both interception and divulgence must be proved. This facet of the federal act has been extensively criticized by the U. S. Attorney General's office. Also, it is not clear under the federal act whether an innocent interception is a crime and the federal courts have split on the question. Section 280 of HB 353 avoids those problems.

2. SECTIONAL ANALYSIS.

Section 280(a) applies to the employees of a common carrier communications system. It prohibits the employee who takes the message for transmission, the employee receiving the message and any employees assisting in those operations, from divulging or releasing in any manner the meaning of the message, except to the persons listed in this section, through authorized channels. It is to be noted that a court may order the divulgence of a message.

Section 280(b) deals with the initial acquisition of a message by persons through the interception of the message at any time. The section contemplates an intentional interception. It should be noted that under this section, the interception alone constitutes a prohibited activity. There is no need to prove interception and divulgence, although the latter activity is also prohibited by this section.

Section 280(c) prohibits a person for whom the message is not intended, regardless of the means by which that person received the message, from using the information he has received for his own or another's benefit.

Section 280(d) prohibits a person from disclosing the meaning of the message when the person has actual knowledge or should reasonably be expected to know that the communication originally was obtained in violation of section 280. In this case, the person would, of course, also be violating section 280(c) if the person used the information obtained for his own or another's benefit.

Section 280(e) prohibits a person who is not entitled to information, but becomes aware of the contents of a message although not actually in physical receipt of a message, from in any way divulging the meaning of the contents of the message, or from using the information for his own or another's benefit.

ORIGIN OF SECTION 280. Sec. 280 is based primarily on section 605 of the Federal Communications Act. The bill does not make innocent interception a crime except in the case of a person using information obtained for his own or another's benefit or the person divulges any information he has obtained.

Section 290 makes it a criminal offense to listen to or record any oral conversation without the consent of one of the parties to the conversation. It covers not only a telephone conversation, but any oral conversation in an office, home, car, boat, or any other place a conversation might be held. It prohibits the illegal use of any type of eavesdropping device, electronic or otherwise.

Section 290(2) prohibits a person from using information obtained through illegal use of an eavesdropping device for his own or another's benefit.

Section 290(3) prohibits a person from revealing the meaning of any conversation heard by means of the illegal use of an eavesdropping device; and

Section 290(4) prohibits a person who becomes aware of the contents of a conversation from revealing the meaning of the conversations if he knows or reasonably should know that the information he has received was originally obtained by the illegal use of an eavesdropping device.

SUPPLEMENTARY COMMENT - EFFECT OF BILL ON POLICE AND ADMISSIBILITY OF EVIDENCE. Neither section 290 or section 300 (the exemption section) makes any exception for law enforcement officers. A law enforcement officer is subject to the same penalties as a private citizen who violates the provisions of

the bill. Law officers would be permitted under section 290(1) to record and listen to a conversation with the consent of one of the parties to the conversation. The most common examples of when this provision would be applicable would be in the case of a kidnapper who has told the victim's family he will call them or obscene phone calls.

Along this line, it is to be noted that only six states permit, by statute, law enforcement officers to obtain evidence by wiretap or other means. They are Maryland, Massachusetts, Louisiana, Nevada, New York and Oregon. Of these six states, only Louisiana does not specifically require a judicial order preceding the tap.

Six states prohibit, by statute, the admission of any evidence obtained in violation of a wiretap or eavesdropping statute. They are Maryland, Nevada, Illinois, Rhode Island, Oregon and Pennsylvania. Overall, 39 states, by statute, prohibit wiretapping or electronic eavesdropping, while 11 states prohibit only physical interference with wires. In regard to evidence obtained by wiretap or other eavesdropping devices being used in a court proceeding, the bill does not in any way change the existing law of Alaska. The admittance or rejection of such evidence is left to case law and the rules governing the admissibility of evidence as interpreted by the court.

Sec. 300 of the bill simply lists the activities which are not to be considered criminal under the provisions of the statute and is self-explanatory.

3. REPEALS.

Sec. 2 of the bill will repeal provisions in the present law that will duplicate provisions of the proposed bill if enacted. Sec. 2 amends AS 42.20.050 by deleting subsection 1 which makes it a crime for one to divulge the contents of a message to any person other than the party for which it was intended, his attorney, or agent. This is covered by section 280 of the proposed bill.

Sec. 3 repeals AS 42.20.100 which deals with persons taking messages from a telegraph wire or intercepting a message to which they are not entitled. This activity is covered in section 280 of the bill.

4. AMENDMENT.

The amendment offered by Mr. Josephson is almost identical to secs. 141.720 - 141.990 of the Oregon Revised Statutes. The amendment allows the presiding judge for the judicial district

in which the interception will take place to allow an interception of telecummunications, radio communications or conversations by peace officers if there are reasonable grounds to believe that a crime directly and immediately affecting the safety of human life or the national security has been committed or is about to be committed. Also, there must be reasonable grounds to believe that evidence will be obtained essential to the solution of the crime, or which may enable the prevention of the crime and there must be no other means readily available for obtaining the information.

The order must be applied for by the district attorney with the approval of the attorney general whether the interception is to be made by peace officers of the state or a political subdivision. The court may examine under oath the district attorney, a witness he produces, or anyone the court wishes to question. If the court issues the order for interception, it is effective for 10 days under this amendment. The Oregon law allows 60 days. The order may be renewed for 10 days at a time.

The amendment makes it a misdemeanor to use an expired order or to release any information about the application or any supporting documents or testimony. The presiding judge shall, however, report to the legislature the number of orders and renewals issued and also the nature of the reasons for issuance.

A M E N D M E N T

Offered in the HOUSE By Mr. Josephson

To HB 353

Page 4, between lines 7 and 8 insert new sections to read:

Sec. 11.60.320. ORDER FOR INTERCEPTION OF TELECOMMUNICATIONS, RADIO COMMUNICATIONS OR CONVERSATIONS.

(a) An ex parte order for the interception of telecommunications, radio communications or conversations by peace officers of the state or of a political sub-division, may be issued by the presiding judge for the judicial district in which the interception will take place, upon application of a district attorney with the approval of the Attorney General, setting out fully the facts and circumstances upon which the application is based and stating that:

(1) there are reasonable grounds to believe that a crime directly and immediately affecting the safety of human life or the national security has been committed or is about to be committed;

(2) there are reasonable grounds to believe that evidence will be obtained essential to the solution of such crime, or which may enable the prevention of such crime;

(3) there are no other means readily available for obtaining such information.

(b) Where statements are solely upon the information and belief of the applicant, the precise source of the information and the grounds for the belief must be given.

(c) The applicant must state whether any prior application has been made to obtain telecommunications, radio communications or conversations on the same instrument or from the person and, if such prior application exists, the applicant shall disclose

the current status thereof.

(d) The application and any order issued under this section shall identify fully the particular telephone or telegraph line, or other telecommunication or radio communication carrier or channel from which the information is to be obtained and the purpose thereof.

(e) The court shall examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.

(f) Orders issued under this section shall not be effective for a period longer than 10 days, after which period the court which issued the warrant or order may, upon application of the officer who secured the original warrant by application, in its discretion, renew or continue the order for an additional period not to exceed 10 days. All further renewals thereafter shall also be for a period not to exceed 10 days.

Sec. 11.60.330. PROCEEDING UNDER EXPIRED ORDER PROHIBITED. An officer who knowingly proceeds under an order which has expired and has not been renewed as provided in sec. 320 of this chapter is considered to act without authority under sec. 320 of this chapter and shall be subject to the penalties provided in sec. 350 of this chapter, as though he had never obtained the order or warrant.

Sec. 11.60.340. RECORDS CONFIDENTIAL. The application for any order under sec. 320 of this chapter and any supporting documents and testimony in connection with it shall remain confidential in the custody of the court, and these materials shall not be released or information concerning them in any manner disclosed except upon written order of the court. No person having custody of any records maintained under

secs. 320 - 340 of this chapter may disclose or release any materials or information contained therein except upon written order of the court.

Sec. 11.60.350. PENALTY FOR VIOLATION OF SECS. 330 or 340. Violation of sec. 330 or 340 of this chapter is punishable, upon conviction, by a fine of not more than $3,000 or by imprisonment in the penitentiary for not more than three years, or by both.

Sec. 11.60.360. REPORT TO LEGISLATURE. Each presiding judge shall make a report to the legislature at the beginning of each session giving the number of orders issued under sec. 320 of this section and any renewals of those orders and the nature of the reasons for issuance.

Page 4, line 3 - Insert after section number "PENALTY FOR VIOLATION OF SECS. 280 and 290."

Page 4, line 8 - Change "Sec. 11.60.320" to "Sec. 11.60.370."

JUDICIARY COMMITTEE MINUTES MARCH 9, 1966

Chairman Guess called the meeting to order at 3:00 p.m. All members were present.

The committee considered three senate bills, SB 234, 209 and 310. After discussion of the bills, Mr. Stevens moved that they "Do Pass" and asked unanimous consent. There were no objections.

The committee then considered HB 490 and the bill was moved "Do Pass" without objection.

The committee discussed HB 450. The committee amended the bill in the following manner:

Page 1, line 19 and 20: add "minority" before "member" on both lines.

Page 2, delete lines 5 and 6 and renumber accordingly.

Page 6, delete lines 24 - 28 and insert:

Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. After a reasonable time has elapsed, the public examiner shall present his opinion and recommendations in writing to the governor. If the situation is not remedied within a reasonable time, the public examiner shall submit his opinion and recommendations in writing to the members of the legislature. The public examiner shall include with his opinion any reply made by the agency.

Mr. Stevens moved that it "Do Pass" as amended. There were no objections.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON SB 234

AS 09.35.090 exempts a homestead from judicial sale for the satisfaction of any liability or judgment up to $8,000 and AS 34.15.140(b) exempts a homestead up to $5,000 from the debts of either or both tenants when it is held by tenants by the entirety. SB 234 changes the $5,000 to $8,000 so that the two homestead exemptions will be in the same amount.

JUDICIARY COMMITTEE REPORT ON SB 209

Under AS 20.10.020 written consent to adopt a minor of illegitimate birth who has not been legitimatized shall be filed before a hearing on the petition by the mother but the consent of the natural father need not be obtained or notice given him. AS 20.10.040 says "Consent for adoption of a minor is not required" from an insane parent, a parent who abandoned the child, etc. SB 209 adds to AS 20.10.040 the exact language from AS 20.10.020 that consent is not required by the natural father so that the two sections are consistent.

JUDICIARY COMMITTEE REPORT ON HB 450

HB 450 creates in the legislative branch the office of public examiner. The examiner is selected by a committee composed of the president of the senate, a minority member of the senate appointed by him, the chairman of the senate judiciary committee and the same members from the house. The name of the person selected is placed before the legislature for appointment.

The public examiner cannot be a candidate for or hold any other state office or be engaged in any other occupation for reward or profit. His term is four years but he can be removed by a two-thirds vote in each house of the legislature for neglect of duty, misconduct or disability. He receives $20,000 a year.

The public examiner may investigate the administrative acts of agencies as set out in Sec. 24.55.150 of the bill. He shall investigate any complaint which is an appropriate subject for investigation under that section unless there is a reason why he should not as set out in Sec. 24.55.110 or he may investigate on his own motion.

The concept of the public examiner is modeled after the Swedish ombudsman. Ombudsman legislation has also been adopted in Denmark, Norway, Finland and New Zealand. A bill to establish an office similar to that of the ombudsman at the federal level was introduced in Congress last session by Rep. Reuss of Wisconsin. Because of the tremendous growth in scope and power of administrative agencies at both the state and federal levels, the ombudsman concept is currently receiving much attention and study. The concept is based upon the premise that an indeptendent investigator, with access to official information, may, by acting upon citizen complaints, improve the fairness and efficiency of government operations by bringing to official and public attention the errors and weaknesses of agencies.

Sec. 2 of this bill sets out that there is a rule change in this bill. The section containing the change must be approved by a two-thirds vote.

JUDICIARY COMMITTEE REPORT ON SB 310

Under the Alaska Business Corporation Act, there is a procedure for registering a corporate name. (AS 10.05.033--042) SB 310 sets out that the registration of a corporate name gives the exclusive right to the use of the name and that the use by another of the same or a deceptively similar name may be enjoined and a cause of action for damages exists.

JUDICIARY COMMITTEE REPORT ON HB 490

At the present time, we cannot have workmen's compensation hearings outside the state. HB 490 allows the Alaska Workmen's Compensation Board to arrange to have hearings in other states or territories of the U.S. or the District of Columbia. The hearing would be conducted by the board or officer having authority to hear workmen's compensation cases in that state, etc. The testimony and proceedings would be reported to the Alaska board and be a part of the record in the case. Evidence taken at the hearing outside the state would be subject to rebuttal upon final hearing before the Alaska Board.

JUDICIARY COMMITTEE MINUTES MARCH 10, 1966

Chairman Guess called the meeting to order at 3:00 p.m. All members were present.

The committee discussed CSSB 213 and HB 363. The committee asked that a committee substitute be prepared for HB 363 to incorporate the following amendments:

Page 1, line 15, delete ", when considered advisable,"

Page 1, delete lines 19 and 20 and insert "installment. If the employer agrees, the installment is forwarded by the employer to the clerk of the superior court which entered the judgment or the court trustee, if there is one, and the amount of the installment is exempt from execution."

Mr. Stevens moved that CSSB 213 and CSHB 363 "Do Pass". There were no objections.

The committee discussed a bill to have coroners decide to what mortuary a body should be sent which was prepared according to the committee instructions of March 8th. Mr. Stevens moved that the committee introduce the bill. There were no objections.

The committee discussed CSHB 302 which they had instructed be prepared at the meeting of March 3rd. Mr. Guess moved that CSHB 302 "Do Pass". There were no objections.

The committee then considered HB 220. Mr. Guess moved "Do Pass". Motion passed without objection.

The committee discussed HB 424 and Mr. Stevens moved "Do Pass". Motion passed without objection.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON CS FOR SB NO. 213

Under present law there is some confusion about the meaning of AS 09.35.080 (1) which sets out what property is exempt from execution. It says that the earnings of a person received for his personal services rendered at any time during the 30 days preceding the levy on the earnings are exempt from execution up to a set amount. Does this mean that if the person has earned the money but not actually received it, that it is not exempt under this section? In order to improve and clarify this law on exemptions, sec. 1 of CS for SB No. 312 exempts all income of a person which is due to him or received by him from any source at any time during the 30 days before the levy up to a set amount. The exempt amount is not changed by this bill. The result is that any income, not just earnings, which has been received by the person or which is due to the person in the 30 day period preceding the levy is all considered and when the person has received the exempt amount, the rest is subject to the execution.

Sec. 2 of the bill sets out a new exemption for child support payments which a person has been ordered to pay to a court trustee.

JUDICIARY COMMITTEE REPORT ON CS FOR HB 363

Under CS for HB 363, if the court orders a person to pay child support, the court may also order the party to arrange with his or her employer for an automatic payroll deduction. If the employer agrees to the automatic deduction, he forwards the sum to the clerk of the court which entered the judgment or to the court trustee, if there is one. If this procedure is followed, the amount of the child support is exempt from execution.

HB 363 was discussed by the four Anchorage superior court judges at a meeting January 24th and they felt that the bill "would accomplish the purpose intended".

March 12

REPORT OF JUDICIARY COMMITTEE ON CSHB 302

Under present law, a person under 21 years of age cannot enter premises licensed to sell alcoholic beverages unless he is accompanied by his parent or guardian or spouse who has attained the age of 21 years.

CSHB 302 would allow a nineteen or twenty year old to enter a restaurant for dining even though the restaurant was licensed to sell alcoholic beverages. The Alcoholic Beverage Control Board would designate the premises which could be considered as restaurants under this bill. If the premises were inside a city, the designation would have to have the approval of the city council and if the premises were outside a city but within a borough, then the borough assembly would have to give their approval.

JUDICIARY COMMITTEE

REPORT

Under this bill the coroner must keep a list of all morticians within a radius of 20 miles from his court. If a person dies and there is a police investigation or pending notification of next of kin, the coroner shall assign the body to a mortician who is chosen from the area list in rotation.

A mortician owning more than one mortuary shall be listed only once on the area list. If there are no morticians within the area, the coroner shall make other suitable arrangements.

JUDICIARY COMMITTEE REPORT ON HB 220

HB 220 deletes the word "proposed" on page 1, line 10, because there are no provisions for proposing the standards to anyone. The commission creates the standards, it does not propose them.

HB 220 relates to step annexation. The bill requires that the local boundary commission obtain voter approval from the area to be annexed before beginning step annexation. Under the present regulations of the commission (Title 6, Sec. 2051) relating to step annexation, the commission may allow the vote proposed by HB 220 but the commission is not bound by the vote.

JUDICIARY COMMITTEE REPORT ON HB 424

A person who is accused of violating certain laws and regulations relating to motor vehicles may have his vehicle impounded. This results in an impounding fee and perhaps storage costs. Regardless of whether or not the accused person is found innocent or guilty of the charges, he is still required to pay the cost of impounding and storage. Under HB 424, if the person is found innocent of the charge, he is not liable for these costs.

JUDICIARY COMMITTEE MINUTES MARCH 12, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Members present were Metcalf, Tillion, Taylor, Josephson and Stevens.

Mr. Don Kane, Assistant Attorney General, and Mr. Bruce Campbell representing the Department of Highways appeared on HB 368, 369 and 370.

Mr. Stevens moved that HB 370 "Do Pass" with the word "condemnation" removed on page 1, line 23 and with the words "on the state highway system" changed to read "under the federal aid primary and secondary system as defined in Title 23 of the United States Code" on page 1, lines 25 and 26, and with the definition of state highway system deleted from page 2, lines 4 - 7. Motion passed without objection. The committee recommended referral to the Finance Committee.

The committee discussed HB 368 but decided to hold the bill until such time as it obtained additional information relating to the necessity for the bill, a comparison with existing law on the subject in AS 08.60 and its effect on city and borough powers now existing under AS 08.60.

The committee then considered HB 369. Committee counsel was asked to draft a committee substitute on the basis of the discussion.

Meeting was adjourned.

Public Law 89-285
89th Congress, S. 2084
October 22, 1965

An Act

79 STAT. 1028

To provide for scenic development and road beautification of the Federal-aid highway systems.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Highway Beautification Act of 1965.

TITLE I

SEC. 101. Section 131 of title 23, United States Code, is revised to read as follows: 72 Stat. 904.

"§ 131. Control of outdoor advertising

"(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

"(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State. 72 Stat. 889.

"(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

"(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the

purposes of this Act. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

"(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

"(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

"(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices—

"(1) those lawfully in existence on the date of enactment of this subsection,

"(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

"(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

"(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

"(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

"(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

Information centers.

"(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

Bonus payments.

"(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement or the control required by this section, whichever control is stricter. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

"(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

"(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

Notice of final determination.

62 Stat. 928.

"(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section."

Appropriation.

SEC. 102. The table of sections of chapter 1 of title 23 of the United States Code is amended by striking out

"131. Areas adjacent to the Interstate System."

and inserting in lieu thereof

"131. Control of outdoor advertising."

TITLE II

SEC. 201. Chapter 1 of title 23, United States Code, is amended to add at the end thereof the following new section:

23 USC 101 et seq.

"§ 136. Control of junkyards

"(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

"(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made pro-

Apportioned funds, withholding.

vision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

Reapportionment of withheld funds.

"(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

Definitions.

"(d) The term 'junk' shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"(e) The term 'automobile graveyard' shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

"(f) The term 'junkyard' shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

"(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

"(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

Landscaping and screening costs.

"(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

Junkyards. Costs of relocation, etc.

"(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of the following junkyards—

"(1) those lawfully in existence on the date of enactment of this subsection,

"(2) those lawfully along any highway made a part of the interstate or primary system on or after the enactment of this subsection and before January 1, 1968, and

"(3) those lawfully established on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum.

"(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

"(l) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junk-

yards on the Federal-aid highway systems than those established under this section.

"(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section." Appropriation.

SEC. 202. The table of sections of chapter 1, title 23, United States Code, is amended by adding at the end thereof the following: 72 Stat. 917.

"136. Control of junkyards."

TITLE III

SEC. 301. (a) Section 319 of title 23, United States Code, is revised to read as follows:

"§ 319. Landscaping and scenic enhancement

"(a) The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public.

"(b) An amount equivalent to 3 per centum of the funds apportioned to a State for Federal-aid highways for any fiscal year shall be allocated to that State out of funds appropriated under authority of this subsection, which shall be used for landscape and roadside development within the highway right-of-way and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public, without being matched by the State. The Secretary may authorize exceptions from this requirement, upon application of a State and upon a showing that such amount is in excess of the needs of the State for these purposes. Any funds not used as required by this subsection shall lapse. There is authorized to be appropriated to carry out this subsection, out of any money in the Treasury not otherwise appropriated, not to exceed $120,000,000 for the fiscal year ending June 30, 1966, and not to exceed $120,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this subsection." Appropriation.

(b) The table of sections of chapter 3 of title 23 of the United States Code is amended by striking out

"319. Landscaping."

and inserting in lieu thereof

"319. Landscaping and scenic enhancement."

SEC. 302. In order to provide the basis for evaluating the continuing programs authorized by this Act, and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1967, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of carrying out the provisions of this Act, and a comprehensive study of the economic impact of such programs on affected individuals and commercial and industrial enterprises, the effectiveness of such programs and the public and private benefits realized thereby, and alternate or improved methods of accomplishing the objectives of this Estimate and study.

79 STAT. 1033

Report to Congress.

Act. The Secretary shall submit such detailed estimate and a report concerning such comprehensive study to the Congress not later than January 10, 1967.

Rules and regulations. Ante, pp. 1028, 1030.

SEC. 303. (a) Before the promulgation of standards, criteria, and rules and regulations, necessary to carry out sections 131 and 136 of title 23 of the United States Code, the Secretary of Commerce shall hold public hearings in each State for the purpose of gathering all relevant information on which to base such standards, criteria, and rules and regulations.

Report to Congress.

(b) The Secretary of Commerce shall report to Congress, not later than January 10, 1967, all standards, criteria, and rules and regulations to be applied in carrying out sections 131 and 136 of title 23 of the United States Code.

Appropriation.

SEC. 304. There is authorized to be appropriated the sum of $500,000 to enable the Secretary of Commerce to carry out his functions under section 135 of title 23 of the United States Code relating to highway safety programs.

SEC. 305. Nothing in this Act or the amendments made by this Act shall be construed to authorize the use of eminent domain to acquire any dwelling (including related buildings).

TITLE IV

SEC. 401. Nothing in this Act or the amendments made by this Act shall be construed to authorize private property to be taken or the reasonable and existing use restricted by such taking without just compensation as provided in this Act.

Appropriation.

SEC. 402. In addition to any other amounts authorized by this Act and the amendments made by this Act, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Secretary of Commerce not to exceed $5,000,000 for administrative expenses in carrying out this Act (including amendments made by this Act).

Short title.

SEC. 403. This Act may be cited as the "Highway Beautification Act of 1965".

Approved October 22, 1965, 2:30 p.m.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1084 (Comm. on Public Works).
SENATE REPORT No. 709 (Comm. on Public Works).
CONGRESSIONAL RECORD, Vol. 111 (1965):
Sept. 15: Considered in Senate.
Sept. 16: Considered and passed Senate.
Oct. 7: Considered and passed House, amended.
Oct. 13: Senate concurred in House amendment.

GPO 50-139

JUDICIARY COMMITTEE MINUTES MARCH 14, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Present were members Metcalf, Tillion, Hillstrand, Taylor and Stevens.

The committee considered HB 435. The bill will be considered further when more material is available on it.

The committee discussed SB 4 and SB 238. No action was taken.

Meeting was adjourned.

February 19, 1966

M E M O R A N D U M

TO: William A. Egan
Governor

FROM: Warren C. Colver
Attorney General

RE: Nonprofit Corporation Law

Alaska's present nonprofit corporation law has remained basically unchanged since its enactment in 1913. At the urging of a number of Alaska attorneys the Department of Law made a study of the law. The Department concluded that our present law is inadequate and the State should adopt the Model Nonprofit Corporation Act drafted by the American Bar Association. The attached bill is an Alaska Nonprofit Corporation Act based on the Model Nonprofit Corporation Act, 1964 Edition.

In 1957 Alaska adopted the Model Business Corporation Act, which covers stock corporations. In that year the American Bar Association issued a revised version of its Model Nonprofit Corporation Act which had first been drafted in 1952. This model act had been revised primarily to bring it into accord with the Model Business Corporation Act. Again in 1964 the American Bar Association published a new edition of the nonprofit act. This latest edition follows as closely as possible the corresponding provisions of the business corporation act.

Adoption of the Model Nonprofit Corporation Act would result in these significant changes in Alaska law:

(1) The new law will enlarge the purposes for which nonprofit corporations may be formed. (10.20.005)

(2) It provides that a nonprofit corporation may make incidental income or profit in carrying on its primary nonprofit functions; for example, a nonprofit

hospital may run a small gift shop. This incidental profit may not be distributed to members but must be devoted to the primary purposes of the corporation. (10.20.135)

(3) The law allows a nonprofit corporation to pay reasonable compensation to its members and directors for services rendered. This is not considered a prohibited distribution of income. (10.20.135)

(4) A nonprofit corporation which holds assets subject to limitations permitting their use only for charitable or similar purposes must, upon its dissolution, transfer these assets to an organization engaged in similar activities. (10.20.295)

The Model Nonprofit Corporation Act is designed to give an organization its basic authority and corporate status and to provide a method of administering the organization. It is not a regulatory statute which imposes controls. The major purpose of the law is to provide nonprofit organizations with a clear, orderly method of conducting its internal affairs and its relations with the State.

The American Bar Association has designed a set of official forms to accompany the act. If the act is adopted, these forms will be useful both to lawyers who must draft documents in compliance with the act and to the Department of Commerce which would administer the act.

As of 1964 the Model Nonprofit Corporation Act had been adopted, either as a whole or in large part, by the following jurisdictions:

Wisconsin - 1953
Alabama - 1955
North Carolina - 1956
Virginia - 1956
Nebraska - 1959
North Dakota - 1959
Oregon - 1959
Texas - 1959
District of Columbia - 1962

In addition, Illinois, Missouri and Ohio have nonprofit laws substantially similar to the Model Act.

Attached to the bill is a chart which gives parallel sections. This may be of use to legislative committees which study the law.

WCC:jt
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ALASKA
STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

MEMORANDUM

To: House Judiciary Committee

Re: SB 282 An Act relating to coin-operated devices.

Attached is

1. United States District Court Case, US vs Two coin-operated Pinball Machines. 1965.
2. Kentucky law cited in above case.
3. McKee v. Foster, Oregon Supreme Court 1959.
4. Oregon law cited in above case.

Marshall McKEE, Respondent,

v.

... FOSTER, District Attorney of Polk ..., and Robert Y. Thornton, Attorney ... of the State of Oregon, Appel-...

Supreme Court of Oregon,
En Banc.

... and Submitted Sept. 16, 1959.

Decided Dec. 9, 1959.

... for decree declaring free play ... machines not to be gambling devices. ... Circuit Court, Polk County, Arlie ..., J., entered a decree permanently ... defendants from curtailing, ... or confiscating plaintiff's ma-..., and defendants appealed. The Su-... Court, Rossman, J., held that ma-... were not gambling devices, and were ...lawed by lottery statute or any other ...

...firmed.

...; C.J.S. §63(3)
... C.J.S. §3

... play pinball machines were not ... devices, and were not outlawed by ... ute or any other state law. ORS ...1.310, 167.405, 167.505, 167.535 ...(2) (b); Const. art. 15, § 4.

... Sullivan, Asst. Atty. Gen., for ... On the brief were Robert Y. ... Atty. Gen., and John D. Nichols, ... Gen., and Walter W. Foster, ... of Polk County, Dallas.

... Williams, Salem, for respond-... him on the brief were Otto R. ..., and Paul Burris, Salem.

...AN, Justice.

... an appeal by the state from a de-...ed by the circuit court in a cause ... plaintiff, Marshall McKee, insti-...inst the District Attorney of Polk

County, Mr. Walter Foster, and the Attorney General of this state, Mr. Robert Y. Thornton, for the purpose of securing a declaratory decree determining whether or not free play pinball machines are gambling devices. Attached to the complaint as an exhibit and forming a part of it is an opinion of the defendant Attorney General dated March 20, 1958, which declares "It is my opinion that these so-called 'free play' machines violate both ORS 167.535 and 167.555." The complaint alleges that the plaintiff owns and operates "certain free play pinball machines." Although it gives an extensive description of the manner in which machines of that kind operate, we will, in lieu of quoting it, take the following from the answer of the two defendants which sets forth the process whereby the machines indicate the right of a winning player to a free play.

"* * * Scores are credited to the player if he causes a ball to roll into the holes on the board. When a ball rolls into the hole it causes an electronic circuit to be activated which lights one of the squares in the panel on the backboard corresponding to the number assigned the hole. The object of the player is to light three, four or five lights in a row horizontally, vertically or diagonally on the backboard by causing the ball to roll into the appropriate hole on the board. Free plays are scored upon principles similar to Bingo by the lighting of three, four or five lights in a row. * * *"

The complaint avers that "it is just and equitable under the existing circumstances that the Court * * * determine by declaratory judgment that the machine herein is not a gambling device as defined by Oregon Revised Statutes 167.535 and 167.555 and that the legal opinion of the defendant Thornton and its directive be held for naught * * *." The prayer sought a decree holding that "free play pinball machines of the type herein described and proof of operation offered are not gambling devices as defined by ORS 167.535 and 167.555."

which the two defendants filed jointly. Other parts admitted that the defendant Attorney General issued in his "official capacity" the opinion dated March 20, 1958, in which he expressed the belief that "these so-called 'free play' machines violated both ORS 167.535 and 167.555." The answer further alleged that on October 4, 1947, Mr. Thornton's predecessor issued an opinion which declared that "free-play pinball machines were gambling devices as defined by §§ 23-935 and 23-939 O.C.L.A., now compiled in Oregon Revised Statutes as ORS 167.535 and 167.555 respectively." Going on, it alleged that "on or about March 20, 1958, defendant Thornton caused to be issued an Opinion No. 3976, affirming the aforesaid opinion and conclusion reached by Attorney General Neuner." The answer further set forth:

> "Plaintiff contends that the free-play pinball machines owned and operated by him in the manner above described are not prohibited nor subject to seizure and destruction under the provisions of ORS 167.405, 167.535 to 167.540 or 167.555."

It continues:

> "* * * a real and substantial dispute exists between plaintiff and defendants herein over the lawfulness of free-play pinball machines as herein described under the provisions of ORS 167.405, 167.535 and 167.555."

The cause was submitted to the court upon stipulated facts. The part of the findings of fact which recites the manner in which the machine indicates the player's right to a free play is couched in the same language as the above quoted excerpt of the answer. The findings contain no assertion that the machine issued to the player anything except a free play. Nor do they contain any recital that there comes to the player somthing of a tangible or physical nature such as a token, slug or card. The conclusions of law state:

> "The machine as described in the ... other representative of value or evidence of winning capable of being exchanged or redeemed for anything of value, when it returns to the player free plays upon securing a designated score."

There is no claim that the statement just quoted is at variance with the record. The illumination of a part of the machine in the manner indicated by the excerpt which we took from the answer signifies to the player that he has won the right to a free play. In order to avail himself of the right he pushes a button but does not deposit in the machine a coin, slug or anything else. The brief filed by the defendants-appellants (Attorney General and District Attorney) says:

> "It is this distinctive 'free game' feature which is involved in this case and which incidentally gives this and other similar machines the generic term 'free-play pinball machines.' Such machines thus stand apart from machines dispening coins, tokens, mints or similar items. Cf., State v. Coats, 158 Or. 122, 124-127, 74 P.2d 1102."

In other words, the machine with which this case is concerned issues to the player no slug, coin or other item. Likewise, it awards to the player nothing whatever except occasionally a free play.

The findings of fact, after mentioning ORS 167.405, 167.535 and 167.555 which are cited in the answer, state:

> "* * * Provided, however, that the parties through their attorneys have agreed that the applicable statute to be interpreted is 167.535."

No one claims that the finding just quoted misstates the agreement of the parties. ORS 167.535 reads as follows:

> "Any person, firm or corporation who possesses, sets up, conducts, maintains, operates, or is in control of the operation, either as owner, proprietor, lessee, employe or agent, or plays or uses any nickel-in-the-slot machine or other device of like character, which ... the deposit of a coin what it will vend or dispense, shall be punished upon conviction by a fine of not less than $10 nor more than $100, and in default of payment of the fine shall be imprisoned in the county jail one day for each $2 thereof:
>
> "(1) Upon deposit therein of a coin, slug, token or other thing representative of value, the machine may vend or dispense any merchandise, money, check, token, slug, credit or other representative of value or evidence of winning in varying quantities or values, depending upon chance.
>
> "(2) In exchange for a deposit therein, there may be received at occasional or uncertain intervals or in varying quantities or value, from time to time, depending upon chance, any money, check, slug, token, credit or other representative of value or evidence of winning which:
>
> "(a) May be exchanged or redeemed for anything of value.
>
> "(b) May be deposited in such machine or device for further operation or play with the chance of winning or receiving additional merchandise, money, check, token, slug, credit or other representative of value or evidence of winning."

The appellants (defendants) present only one assignment of error. It follows:

> "The court erred in entering its decree permanently enjoining the defendants from curtailing, molesting or confiscating the plaintiff's free-play pinball machines inasmuch as such decree was based upon an incorrect Conclusion of Law that the operation of such machines was not prohibited by ORS 167.535, which was not supported by the undisputed facts."

Terry v. City of Portland, 204 Or. 478, 269 P.2d 544, held that since free play pinball machines lend themselves to gambling purposes the police power of the ... the plaintiff's machi... terms of the statute

It will be noticed ... vides that any perso... nickel-in-the-slot ma... operates as describe... guilty of the crime ... tion of our laws. ... lowed by two subs... many similar words ... cerned with machi... kinds. Subsection ... "Upon deposit the ... * * *" and subs... exchange for a dep... Although the latter ... slug * * *" th... the same. The de... chine and thereupon ... that point on subs... machine which is ... scribed in subsectio... in specifying the ... is concerned uses ... or dispense any me... token * * *." ... which it is applic... merchandise, mone... tion (2) omits th... pense" and, accord... it is applicable is ... Subsection (1) re... vends or dispense ... varying quantities ... on chance" unlaw... patronizes a machi... to receive somet... great in value it n... fact that the "qu... come to him are ... the machine is re... a gambling device

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the play the machine may issue to him absolutely nothing. Or, it is possible that at "occasional or uncertain intervals or in varying quantities or values, from time to time, depending upon chance," there may come to him "money, check, slug, token, credit or other representative of value or evidence of winning." Subsection (2), however, does not stop there. If it did, its language in that phase of the matter would be somewhat similar to that of subsection (1). Subsection (2) goes on to say that the thing received must be of a kind which "may be exchanged or redeemed for anything of value," or if it is not of that kind, it must be something which "may be deposited in such machine or device" for replay bringing to the player upon replay "the chance of winning or receiving additional merchandise, money, check, token * * *."

The defendants-appellants argue that the plaintiff's machines fall within subsection (1). They point out that when a player deposits his nickel in a machine the latter may dispense for him only a single play or, if he is lucky, it may give him a sequence of two or more plays. He may thus keep the machine operating upon the deposit of a single nickel as long as his luck continues, or, stated differently, as long as he continues to obtain high scores and win free replays. The defendants-appellants argue that the plaintiff's machines therefore come within this language: "may vend or dispense any * * * other representative of value or evidence of winning in varying quantities or values, depending upon chance." The length of play and hence the "quantities or values" of the play vary in plaintiff's machines, so the defendants argue, according to chance. We may safely assume, since other courts have so held, that a free play is a "representative of value or evidence of winning."

The contention that a free play machine violates subsection (1) is fundamentally unsound in our belief. The words "vend or dispense" found in that subsection, if we [illegible]by commonplace meanings (ORS 161.- then stands by while the machine goes through the operation of issuing to him an item of merchandise. The subsection, however, appears to be aimed at machines which, in dispensing mints, gum balls or other items, do so "in varying quantities or values, depending upon chance." Thus, upon one play the patron of the machine may receive a piece of chewing gum and on the next not only gum but also some trinket. The patron of a vending machine stands by idle while the machine goes through the operation incidental to the delivery to him of the desired item. The ordinary "one-arm bandit" slot machine clearly comes under the terms of this subsection. On the other hand, in a pinball game the player actively participates after he has inserted his nickel. And in order to obtain his free play, if one is awarded to him, he must depress a button on the machine so that the play will continue.

Although the observations just made indicate that the plaintiff's machines are not embraced in subsection (1) another distinction of a more persuasive nature will now receive mention. It consists of the fact that replay machines are the specific subject matter of subsection (2) (b) of ORS 167.535. It seems unreasonable to believe that the legislature, after making specific provision for them in subsection (2) intended that they should also be deemed within subsection (1) which, as we have seen, appears to take as its province vending machines.

Subsection (2) describes machines from which "there may be received at occasional or uncertain intervals, * * * depending upon chance, any money, check * * * which * * * May be deposited in such machine or device for further operation or play with the chance of winning of receiving additional merchandise, money, check, token, slug, credit or other representative of value or evidence of winning." Since replay machines are clearly singled out by this subsection as the latter's province, and since subsection (1) [illegible] applicable are satisfied embrace replay machines.

The same difficulty is encountered if one attempts to apply subsection (2) (a) of ORS 167.535 to the plaintiff's machines. This section is applicable to coin-operated machines from which "there may be received at occasional or uncertain intervals or in varying quantities or value * * * depending upon chance, any money, check, slug, token * * * which * * * May be exchanged or redeemed for anything of value * * *." It may seem that this provision contemplates a situation where the machine issues to the player something which he may hand to the machine's owner and surrender for a prize. But when one takes into view the broad language of the statute he will conclude that the "something" received need not be a tangible item. Very likely, a mere light flashing in the machine or other mechanical indication of a high score would be enough to qualify as a "credit or other representative of value or evidence of winning" capable of redemption or exchange. See People v. Gravenhorst, Sp.Sess., Bronx County, 1942, 32 N.Y.S.2d 760; Prickett v. State, 1948, 88 Okl.Cr. 213, 200 P.2d 457, 201 P.2d 798. But here again it does violence to the scheme of the statute to apply subsection (2) (a) to a replay machine. ORS 167.535(2) (b) occupies the field. Since subsection (2) (b) describes with particularity the kind of replay machine prohibited by the state, it is reasonable to conclude that subsection (2) (a) does not apply to replay machines.

ORS 167.535(2) (b) apparently does not prohibit pinball machines which give free plays if no coin or token is dispensed by the machine. The subsection outlaws only coin operated machines from which "there may be received" some tangible object which "May be deposited in such machine" for a replay. Although "credit or other representative of value or evidence of winning" are among the prohibited class of objects which "May be deposited" in the machine for a replay, we must conclude, if we

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XV, section 4, Constitution of Oregon; ORS 161.310, 167.405 and 167.505.

Article XV, section 4 of the state's constitution, follows:

> "Lotteries, and the sale of Lottery tickets, for any purpose whatever, are prohibited, and the Legislative Assembly shall prevent the same by penal laws."

The defendants render it clear that in their belief ORS 167.535 and none of the other enactments is applicable to pinball games. Their brief, referring to the specially concurring opinion which Mr. Justice Bailey filed in State v. Coats, 158 Or. 122, 74 P.2d 1102, 1119, says:

> "* * * Justice Bailey's reasoning, we believe, is clear. Because it represents the view we urge here, we will have occasion to comment more fully on Justice Bailey's view later."

In his specially concurring opinion Justice Bailey stated:

> "If we are to pursue the intention of the Legislature in the instant case, we must conclude that it was intended that any one guilty of the crime with which the defendant is charged must be prosecuted under the provisions of section 14-746, supra. It surely was not the intention of the Legislature that the defendant could be prosecuted under both the lottery act and the nickel-in-the-slot machine statute, or that of numerous offenders guilty of similar acts some might be prosecuted under a statute making the violation thereof a felony, while others could be charged with the violation of some other statute making the crime charged a misdemeanor. * * *"

Section 14-746, Oregon Code 1930, cited in the language just quoted, as subsequently amended, is now ORS 167.535. There are two cases which are entitled State v. Coats, 158 Or. 102, 74 P.2d 1120, and State v. Coats, 158 Or. 122, 74 P.2d 1102. According to 158 Or. 102, at page 103, 74 P.2d 1120, those in the pinball machine case (State v. Coats) this day held to constitute a lottery." Those words and a re-examination of the record in our clerk's office seem to indicate that both charges were based upon a single machine possessed by Coats, but it may be that he had more than one machine and we will so assume. The patron of Coats' machine or machines, upon inserting a nickel in the device and pulling a lever, set the machine in operation. If chance favored him he could win as much as ten nickels which the machine paid out to him automatically. We see from those facts that the device which was the subject matter of the Coats decision was a pay-off machine. It granted no replays. In the first of the two cases (158 Or. 102, 74 P.2d 1120) the information filed against the accused mentioned no section of our laws, but the opinion stated:

> "* * * we assume from the briefs that the charge was brought under section 14-746, Oregon Code 1930, prohibiting the operation of nickel-in-the-slot machines. * * *"

In the other Coats case (158 Or. 122, 74 P.2d 1102, 1103) the information, referring to the defendant, stated that he "wrongfully, unlawfully and feloniously promote[d] and set up a certain lottery for money" by operating the machine. Each information was challenged by demurrer which the circuit court sustained. In each of the two decisions the majority opinion of this court, written by Mr. Justice Belt, held that the circuit court erred when it sustained the demurrer. The majority opinion ruled that each information charged the defendant with the operation of a lottery.

The decisions in the two cases of State v. Coats recognized that the term "lottery" has no technical or established legal meaning. They held that the essential elements of a lottery are prize, chance and consideration. Neither of the prevailing opinions undertook to define the word "prize." As we have said, Coats' machine issued to the winner as a prize such as which was in effect when the Coats decisions were written, stated:

> "If any person shall promote or set up any lottery for money or other valuable thing, or shall dispose of any property of value, real or personal, by way or means of lottery * * * or suffer the setting up, management, or drawing of any such lottery, or the sale of any lottery tickets, share of a ticket, or any writing, token, or other device purporting or intended to entitle the holder or bearer thereof * * * to any prize * * * such person, upon conviction thereof shall be punished * * *."

Section 14-802, Oregon Code, stated:

> "If any person shall sell * * * a ticket or share of a ticket in any such lottery, or any writing, token, or other device as is mentioned in section 14-801, such person, upon conviction thereof, shall be punished * * *."

Section 14-803, Oregon Code, repeated much of the phraseology of which we have just taken note. Those sections, apart from minor alterations in language, are now ORS 167.405, 167.410 and 167.415.

Although the opinions written by Mr. Justice Belt in the Coats cases did not define the word "prize" Mr. Justice Bailey, in his specially concurring opinion of which we have already taken note, set forth a number of definitions of lottery which indicated that the prize must be greater in value than the amount hazarded. The majority opinion expressed no disagreement with that view. It remained silent upon the subject. The machine in the Coats cases paid to the winner, as we have said, ten times the sum which he deposited in it when he placed it in operation. In view of that fact the majority may have felt that since the winner received something of a tangible nature and of measured worth the situation did not call for a definition of the word "prize." A free play, on the other hand, is intangible and, in a sense, of immeasurable machine assigned t nickel to the replay, the replay has no s cannot be sold. It It is intangible in mechanics of the r gone the replay h time. It may appe stincts of some and prize which is a "re evidence of winning of ORS 167.535(2) reason to believe th templates "prize" as within its interpreta ute.

The lottery statu free games from its mind the language which prohibits pr lotteries for "mon thing" and then rei by prohibiting the any property of v It seems clear that which is contemplat They cannot be cons other way. The wc ute of which we ha very different from in ORS 167.535(2), representative of winning." Since "l gal definition it wa of the legislature, a tutional mandate, t definition of the "p tery. We believe t tangible in nature a market place.

The defendants' (

> "No Oregon ca applied ORS 167.5 to be applicable, State v. Coats, (1 P.2d 1120, and St 158 Or. 122, 74 this section as i ment by c

Laws 1937, and chapter 185, Oregon Laws 1943. Parenthetically, it should be noted that although chapter 210, Oregon Laws 1937, was enacted by the Legislature prior to the time the Coats cases arose, the statute was referred to the people upon petition and therefore did not apply. * * *"

We believe that the amendments which gave ORS 167.535 its present form render it clear that that section of our laws is the enactment which determines the validity of plaintiff's machines. In our opinion the machines are not outlawed by that provision of our laws. No other enactment has any application to them.

The challenged decree is affirmed.

STATE of Oregon, Appellant,
v.
Charles George JOY, Respondent.

STATE of Oregon, Appellant,
v.
Sam GILGUS, Respondent.

Supreme Court of Oregon,
En Banc.

Argued and Submitted Sept. 16, 1959.

Decided Dec. 9, 1959.

Prosecutions for illegal possession and operation of nickel-in-the-slot machines. The Circuit Court, Multnomah County, Alfred T. Sulmonetti, J., sustained demurrers to the indictment, and appeals were taken. The Supreme Court, Rossman, J., held that pinball game machine which does not issue any tangible objects and requires deposit of none upon replay is not a gambling device and is not rendered unlawful by statute pertaining to setting up of lotte... or any other law of state.

Affirmed.

Gaming ⇐68(3)
Lotteries ⇐3

Pinball game machine which does... issue any tangible objects and requires... posit of none upon replay is not a gam... device and is not rendered unlawful by... utes pertaining to setting up of lotte... any other law of state; and indict... charging possession and operation of... play pinball machines were demur... ORS 167.535.

Robert M. Christ, Deputy Dist. Atty... Multnomah County, Portland, for ap... With him on the briefs were Leo S... Dist. Atty. of Multnomah County, ... Donal D. Sullivan, Deputy Dist. Atty... Multnomah County, and Charles E. ... mond, Dist. Atty. of Multnomah C... Portland.

Francis E. Harrington, Portland, for... spondents.

ROSSMAN, Justice.

These are two appeals which have... consolidated by order of this court.

One of the two defendants-appe... Charles George Joy, was indicted ... grand jury of Multnomah County ... crime of possessing and operating a ... in-the-slot machine in violation of ... 167.535. To the indictment he filed ... murrer which, referring to the indi... recited: "The facts stated do not ... tute a crime." The demurrer was ... tained.

The challenged indictment alleg... the defendant possessed and operated

"* * * a nickel-in-the-slot ... chine, to-wit, one 'Bally Variety' ... ball game, which said machine oper... in a manner so that in exchange ... deposit therein of a coin there may ...

only that upon the facts and circumstances of the instant case, the prosecutor's statement did not deprive defendant of a fundamentally fair trial.

The writ is denied.

UNITED STATES of America, Libelant,

v.

TWO COIN-OPERATED PINBALL MACHINES, Nos. B-1197 and B-1378, Respondents.

Civ. A. No. 4727.

United States District Court
W. D. Kentucky,
at Louisville.

March 26, 1965.

Libel against coin-operated pinball machines as gambling devices under federal statute. The District Court, Brooks, Chief Judge, held that the record established that the machines were gambling devices in that they were designed and manufactured primarily for use in connection with gambling and by operation of which a person could become entitled to receive as a result of application of element of chance money or property.

Decree of forfeiture accordingly.

1. Gaming ⇐61

Record, in libel action, established that coin-operated pinball machines were gambling devices as defined in federal statute, in that they were designed and manufactured primarily for use in connection with gambling and by operation of which person could become entitled to receive as result of application of element of chance money or property. Gambling Devices Act of 1962, § 1 et seq., 15 U.S.C.A. § 1171 et seq.; KRS 436.230(5).

2. Gaming ⇐2

Coin-operated pinball machines, involved in libel against them as gambling devices under federal statute, were not specifically enumerated as lawful devices in Kentucky statute. Gambling Devices Act of 1962, § 1 et seq., 15 U.S.C.A. § 1171 et seq.; KRS 436.230(5).

3. Gaming ⇐58

Coin-operated pinball machines, as involved in libel against them as gambling devices under federal statute, were not exempted from application of federal statute by virtue of any exception contained in that statute. Gambling Devices Act of 1962, §§ 1 et seq., 9, 15 U.S.C.A. §§ 1171 et seq., 1171, 1178.

4. Gaming ⇐52

Federal statute, under which coin-operated pinball machines may be condemned and forfeited if gambling devices within statute, as applied to devices involved in libel against them, was constitutional exercise of legislative power. Gambling Devices Act of 1962, § 1 et seq., 15 U.S.C.A. § 1171 et seq.

5. Gaming ⇐62

Transportation of coin-operated pinball machines in interstate commerce is prohibited, if gambling devices, under federal statute. Gambling Devices Act of 1962, § 2, 15 U.S.C.A. § 1172.

6. Gaming ⇐61

Coin-operated pinball machines would be condemned and forfeited to United States, as gambling devices, pursuant to statute, in libel brought for purpose. Gambling Devices Act of 1962, § 7, 15 U.S.C.A. § 1177.

Boyce F. Martin, Jr., U. S. Atty., for W. D. Ky., Wm. E. Scent, former U. S. Atty., Louisville, Ky., for W. D. Ky., for libelant, United States of America.

Ben T. Cooper, Louisville, Ky., and Paul R. Connolly, Washington, D. C., for respondents and claimants.

BROOKS, Chief Judge.

This matter having come on regularly for hearing before the Court and a Jury,

upon the Amended Libel filed for and on behalf of the Libelant, United States of America, and upon the Answer to the Libel filed for and on behalf of the Claimants, H. M. Branson Distributing Company, a Kentucky corporation, with its principal place of business at 814 East Broadway, Louisville, Kentucky and Lion Manufacturing Corporation, an Illinois corporation, with its principal place of business at 2640 Belmont Avenue, Chicago, Illinois; and both the Libelant and the Claimants having presented their evidence and arguments at the conclusion of which the Court submitted to the Jury the following interrogatory:

"Were the Two Coin-Operated Pinball Machines, Nos. B–1197 and B–1378, Respondents, designed and manufactured primarily for use in connection with gambling and by the operation of which a person may become entitled to receive as the result of the application of an element of chance any money or property?" To which interrogatory the Jury responded in the affirmative and after hearing further argument by the parties hereto, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. That subsequent to February 4, 1964, the respondents, Two Coin-Operated Pinball Machines, Nos. B–1197 and B–1378 were transported from Chicago, Illinois to Louisville, Kentucky.

2. That the respondents are coin activated electrically operated machines. The machines when assembled and ready for use consist of a vertical section attached to a base section to which are secured four legs. The base section contains a plunger device, a number of holes drilled into an inclined playboard and a quantity of posts with rubber bumpers placed at intervals thereon. The devices are each equipped with eight metal balls, five of which are released for play upon insertion of a coin. The vertical section has a glass front upon which the results of play are recorded by electrically operated equipment. The object of play of the devices is to propel the balls by means of the plunger onto the inclined playboard so that the ball will fall into certain holes and thereby light corresponding light bulbs located on the vertical section of the machines. When three or more bulbs are lit in a row, or in some other predetermined order, the machine registers so-called "free plays." The machines are so constructed that any number of coins may be inserted therein before actual play of the game begins. The number of "free plays" to be awarded for successful operation of the device can be increased by insertion of additional coins prior to play of the machine, although the rate of increase of free play awards cannot be controlled by the player and may or may not increase upon the insertion of a particular coin. The machine also provides other "features", the most prominent of which is denominated "skill-shot" which will award a designated number of "free plays" if the first ball played falls into any of several predesignated holes. After striking the ball with the plunger, the ball is propelled onto the playboard and descends the inclined plane totally dependent upon the law of gravity and chance contacts with the posts affixed to the board. The player has no control over this descent and only negligible, if any, skill is involved in the operation or play of the device. Free plays won on the machine are recorded on a three-digit counting meter (Replay register). The register is numbered so that it will apparently record 999 free games but a stop is contained in these devices so that, in fact, the register will record only 899 free games. Free games so recorded may be used by depressing appropriate buttons to activate the machine; to activate the mechanism which controls the increase of the free game awards, or to activate other features of the machine. Each such use decreases the number shown on the replay register by one. The replay register can be immediately cleared by operation of an on-off switch located on the base section of the device or by disconnecting the device from its power source and then reconnecting it. Inside the base section are

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located two additional meters referred to as the total plays meter and the replays meter. The total plays meter records the number of coins inserted in the device and the number of free plays used in the play of the machine. The replays meter records the total number of free plays which have been won on the play of the machine. Subtracting the total registered on the replays meter and the total of coins in the coin box from the total registered on the total plays meter will result in the number of free games eliminated from the machine without being used in play. The devices are so equipped that the replay meter may be readily rewired in order to record only the number of free games so eliminated.

3. The great number of free games which can be achieved by players, the provision for multiple coin insertion in order to increase the reward for successful play, the facility with which free plays can be eliminated from the free play register and the ease by which free plays so eliminated can be counted renders these devices peculiarly and uniquely suited for gambling purposes.

4. Successful play of these devices cannot be achieved by the application of skill and depends upon the result of the application of an element of chance.

5. The successful player of these devices will win not only a right to replay the devices but also the opportunity to have free games redeemed for cash or merchandise.

CONCLUSIONS OF LAW

[1] 1. The respondent machines are gambling devices as defined in 15 U.S.C. § 1171 in that they are designed and manufactured primarily for use in connection with gambling and by the operation of which a person may become entitled to receive as a result of an application of an element of chance money or property.

[2] 2. The respondent machines are not specifically enumerated as lawful devices in Section 436.230(5), Kentucky Revised Statutes.

[3] 3. The respondent devices are not exempted from the application of Chapter 24 of Title 15, U.S.C. by virtue of any exception contained in 15 U.S.C. § 1178 or any other section of Chapter 24.

[4] 4. Chapter 24 of Title 15, U.S.C. as applied to the respondent devices is a constitutional exercise of the legislative power.

[5] 5. Transportation of respondent devices in interstate commerce is prohibited by Section 1172 of Title 15 U.S.C.

[6] 6. The respondent devices are guilty and subject to be condemned and forfeited to the United States, pursuant to the provisions of Section 1177 of Title 15.

7. The libelant is entitled to a decree of forfeiture.

Carl MASSEY, Plaintiff,

v.

Anthony J. CELEBREZZE, Secretary of Health, Education and Welfare, Defendant.

No. 671.

United States District Court
E. D. Kentucky,
Pikeville Division.

Oct. 18, 1963.

Action for review of decision denying social security disability benefits. The District Court, Swinford, Chief Judge, held that denial of benefits was not supported by substantial evidence in absence of showing of employment opportunities available to person who could do only what claimant could do in the general area where claimant lived.

Motion of plaintiff for summary judgment sustained; motion of defendant therefor overruled.

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / ALASKA OFFICE BUILDING — JUNEAU

March 23, 1966

HONORABLE GENE GUESS
Chairman, House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

In Re: Senate Bill No. 282, An Act Relating to Coin-Operated Devices

Dear Mr. Guess:

Attached is a summary of gross collections of the coin-operated device tax provided under AS 43.35.010-43.35.090 for the calendar years 1962, 1963, 1964 and 1965.

The summary shows gross collections of tax before refunding to municipalities and boroughs for each class of device, as well as collections of distributors fees and transfer fees.

The tax schedule for coin-operated devices is as follows:

Coin-operated device - Class I	$ 48.00
Coin-operated device - Class II	120.00
Coin-operated device - Class III	240.00
Distributor fees	50.00
Transfer fees	5.00

The statistics contained in the attached summary are for your information and for the members of the House Judiciary Committee.

Very truly yours,

R. D. Stevenson

R. D. Stevenson
Commissioner of Revenue

Attachment

SUMMARY OF GROSS COLLECTIONS
OF COIN-OPERATED DEVICE TAX
AS 43.35.010-43.35.090

Type of tax or fee	1965 Gross Collections	1965 Units	1964 Gross Collections	1964 Units	1963 Gross Collections	1963 Units	1962 Gross Collections	1962 Units
Coin-operated device - Class I	$30,207.45	677	$30,023.00	642	$31,744.60	672	$ 33,313.98	699
Coin-operated device - Class II	35,730.00	311	38,585.80	327	57,107.00	462	71,100.52	614
Coin-operated device - Class III	480.00	2	3,680.00	16	9,112.00	40	5,688.80	28
Sub-total of gross collections	$66,417.45	990	$72,288.80	985	$97,963.60	1,174	$110,103.30	1,341
Distributors fees	350.00	--	500.00	--	350.00	--	600.00	--
Transfer fees	15.00	--	-0-	--	35.00	--	130.00	--
Total of gross collections	$66,782.45	990	$72,788.80	985	$98,348.60	1,174	$110,833.30	1,341

LAW OFFICES OF
PETER J. KALAMARIDES
P. O. BOX 1346
ANCHORAGE, ALASKA

21 March 1966

ANCHORAGE OFFICE
SUITES 204-209
CRAWFORD BUILDING
507 E STREET
PHONE 272-7431

The Honorable Gene Guess
House of Representatives
Juneau, Alaska

Re: Senate Bill 282, An Act Relating to
Coin-operating Devices

Dear Mr. Guess:

Pursuant to your request regarding the above, I am writing to you, suggesting that the following substantive matters be made amendments to the bill:

(That this law shall not remain in existence beyond June 30, 1971;

(It is the intention of the Legislature that this bill shall in no way be deemed an attempt or intent to liberalize or to exempt the State of Alaska from the limitations imposed in 15 U. S. Code 1171, et. seq.)

As you are aware, the opposition, both in the newspapers and at the hearing, has alleged that the passage of this bill and enactment into law in its present state, would open the State to legalized gambling.

Our state statute having to do with prohibiting gambling, to-wit, AS 11.60.140, is exactly word for word the same as the Oregon statute prohibiting gambling, and it should not be surprising because Alaska borrowed this statute from Oregon many years ago.

The leading case in Oregon in which free plays were determined not to be a thing of value, is McKee vs. Foster, et al, 347 Pac. 2d 585, in which the Supreme Court of Oregon determines that free replays are not a thing of value. This is directly contra to the finding of our Supreme Court in its case determined last August, and as stated before determined upon the same statute. If the judicial minds of the Supreme

Court of two separate jurisdictions differ obviously, there must be a decided split in the determination as to whether or not free replays or property are a thing of value.

Nonetheless, we cite further for your information, the case of the U. S. vs. 2 Coin-operated Pinball Machines, U. S. District Court, Kentucky, case decided March 26, 1965, in which the court made a determination that pinball machines of the class 2 type giving free plays authorized by state statute, did not, in fact, remove it from the limitations as defined in 15 USC 1171.

There are five separate statutes which must be considered in the determination as to whether or not Senate Bill 282 would allow or authorize the importation through Interstate Commerce into the State of Alaska of like machines for replacement parts:

25 U. S. Code 4461, the Internal Revenue statute which defines what a pinball machine is, and the taxes to be assessed on it. It was under this section that the U. S. vs. Korpan case was determined, in which case the courts determined that class 2 devices are liable to taxation as gambling devices for the purpose of this federal statute.

15 U. S. C. 1171, et. seq., with particular emphasis on 1172, which section sets forth the manner and means by which a state may exempt itself from the limitations imposed by the federal statute. To date Nevada is the only state which has taken advantage of this exemption.

18 U. S. Code 1952, which section is the anti-racketeering act, which punishes any individual attempting the illegal importation of equipment to be used for gambling. The penalty is severe.

The State of Alaska anti-gambling statutes.

Senate Bill 282 amended as proposed above, would set out a limitation and a closing date in order to allow this type of machine to phase out, and would also express the intention of the Legislature not to exempt the State of Alaska from the limitations imposed by 15 U. S. Code 1171, et. seq.

I am aware that on March 16, 1966, you received what purported to be an Opinion signed by Warren C. Colver, Attorney General for the State of Alaska, setting out that these machines could be imported into the State under federal law in the event Senate Bill 282 were enacted into law, however, the Opinion of

the Attorney General does not cite one case in support of his conjecture, and certainly, and obviously, his office should make more research if he is to support the purported Opinion. I do not believe that the Judiciary Committee should be guided by this conjectured Opinion because of the fallacious reasoning set out therein.

In discussing the matter with the Honorable Richard L. McVeigh, United States Attorney for the District of Alaska, I have been apprised that he was in discussion with you on March 16, 1966, and informed you of a letter he had received from the Honorable William G. Hunley, Chief of the Organized Crime and Racketeering Section of the Department of Justice, in which letter Mr. Hunley sets out specifically that he does not feel that the enactment into law of Senate Bill 282 would authorize the importation of class 2 devices or replacement parts into the State of Alaska through interstate commerce or foreign commerce.

It would seem then, that after the sand and the smoke is settled, that Senate Bill 282 is an innocuous bill which would merely put the machines back into a free replay status, the same as they have been for years, and prior to the time of the Supreme Court decision of last August. You should also consider that in the interim period between December 1962 and August 1965 that no machines or replacement parts came into the State of Alaska in interstate commerce or otherwise because of the statutes above cited.

I do not feel that emotionalism should have any factor in the determination as to whether or not a bill should be enacted into law. I do feel, however, that the Legislature should take into consideration the economic determination as to whether or not people, who were for years in what was a legal business by law, suddenly are ousted from their property and property rights by a decision that would tend to cause them to lose not only anticipated income, but property and property rights and interests to their great financial detriment. I refer not only to the distributors and operators but also to the loss to be encountered by the locations, the maintenance people, the warehousemen who handle the storage and moving of these machines, and all other incidental individuals who have annual earnings from their employment directly or indirectly from the class 2 devices, and who are all engaged in

paying their income taxes and who may ultimately become unemployed.

Respectfully submitted,

Peter J. Kalamarides

PJK:cmb

cc: Members of the Judiciary Committee

THE LEGAL ASPECTS OF THE FIGHT AGAINST GAMBLING

(This report has been prepared for the Alaska Council of Churches upon the request of Reverend Richard K. Heacock, Jr. of the Juneau Methodist Church.)

January 29, 1966

This report does not attempt to deal with law enforcement against professional gambling operations such as betting pools, football pools, pari-mutual betting and the like, since there is adequate legal machinery for the elimination of such activies. Further, no comment has been made on the recently introduced law for a State lottery since the intent of the law and the dangers inherent thereto are readily apparent without any elaboration.

This report does deal with two specific areas of special concern in the campaign against gambling activities. These two areas are the pinball machine and the proper enforcement of the permitted lotteries and games of chance or skill under the so-called "Bingo Law". Some suggestions are made as to possible legislation which the Alaska Council of Churches may wish to introduce and some ideas for possible community action.

"Seizure and destruction of gambling devices. The Commissioner of Public Safety, a member of the Division of State Police, or a police or peace officer designated by the Commissioner shall seize and destroy a gambling implement."

Prior to the 1965 decision of the Supreme Court on pinball machines, it had been necessary in order to destroy a pinball machine as a gambling implement, to prove that the machine had, in fact, been used as a gambling implement. This required that a police officer go into a place where the pinball machine was situated, play the machine long enough to run up a winning score, get paid-off for his winning score, then, remembering the serial number and exact identity of the machine, testify in court that the particular machine had been used in gambling. Then the court would order that particular machine destroyed. This was the rule under the case of Pinball Machine vs. State 371 P2nd 805, decided in 1962.

However, in 1965 a major break-through was achieved in the fight against pinballs in the companion cases of State vs. Pinball Machine and Pinball Machine vs. State 404 P 2nd 923. In these two cases, the Supreme Court summarized the nature of the pinball machines as follows:

"The type of pinball machine involved in these cases is an electro-mechanical device operated by a motor which is activated by the insertion of a coin in the machine. Balls are released which the player shoots with a plunger device on the table or playboard portion of the machine. The balls drop into numbered holes which cause corresponding numbers on a bingo-like card on the backboard to light up. When the player gets a certain combination of lighted numbers on the bingo card, the machine registers a certain number of free games to which the player becomes entitled.

The number of free games that one may win depends not only upon the number and sequence of lighted numbers on the bingo card, but also upon the odds which are controlled by a mechanism called a search relay. Odds are varied and generally increase in the player's favor as he inserts more coins in the machine or utilizes the free games that he has accumulated. The effect of increasing the odds is to increase the number of free games that one may win for the same number and sequence of lighted numbers on the bingo card. For example, one may win 16 free games for 4 consecutive lighted numbers in a certain row. As the odds change in the player's

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favor, the number of free games for the same sequence of lighted numbers could possible increase to 96. It is conceivable that a player could win as many as 999 free games in all.

When free games accumulated are not played, they can be removed from the machine by pushing a runoff button. The number of free games thus removed is recorded on a meter inside the machine."

The court then proceeded to find that pinball machines of the nature described were gambling machines per se. The court stated:

"The pinball machines involved in these two cases are gambling implements within the meaning AS 11.45.040 and are subject to seizure and destruction."

The Difference Between These Two Rules

The difference between the rules of the 1962 and 1965 cases is as follows:

(1) Under the 1962 ruling it was necessary that the State actually prove that the machine had been used in gambling such as one would prove that a deck of cards was a gambling device where it had been used in a poker game.

(2) With the 1965 ruling the pinball machine was clearly identified by itself as a gambling device and could be summarily seized and destroyed.

The advantage of the second ruling to the State is obvious particularly when one considers the vast number of pinball machines within the State of Alaska. Under the 1965 ruling the State could have quickly seized and destroyed all pinball machines in the State.

The Delay in Enforcement of the 1965 Rule

The opinion, finding pinball machines to be gambling implements per se, came down on August 19, 1965. A request for re-hearing was immediately made, which request was denied on Sept. 15th, 1965. The State did not act immediately to seize pinball machines throughout the State.

by the player, i.e., [illegible]
pensated by a money payment.

(2) By removing what is commonly known as the "knock-off button", which is usually located behind the bar and through which the proprietor can remove from the machine those games which have not been played off by the operator.

It is the contention of the State of Alaska in its pleadings that the machines still in operation have been altered only in the respect that the meter in question has been moved from the insides of the machine to a situation elsewhere in the building, usually behind the bar, and that the knock-off button has been replaced by a procedure of turning off the electricity to the machine and turning the electricity back on, which action has the effect of knocking off the unused free games.

There is presently, in effect, a preliminary injunction, issued October 13, 1965, restraining the State police from seizing any pinball machines of the owners involved in the action or of others similarly situated.

The next step in the proceedings is a decision by the court whether or not a permanent injunction should be issued along the lines of the now existing preliminary injunction. This matter had been set for hearing on January 28, 1966 but was continued, to be heard at a later date. It is expected that a decision on this matter should be forthcoming within one month.

Whatever action is taken by the Superior Court will surely be appealed to the State Supreme Court, thus causing a further delay.

The Alaska Council of Churches may wish to apply pressure for the immediate destruction of pinball machines when the State obtains a favorable ruling in this action.

Also, it is predictable that some pressure will be put on the Legislature to enact legislation which would legalize pinballs, or hamstring police action against pinballs.

Possible police action against pinballs has already been reduced by changes in the statute prior to AS 11.45.040. That section formerly provided in section 4-2-1 ACLA, 1949 as follows:

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"All gambling implements shall be siezed by the United States Marshall or any of his deputies, or any constable or peace officer, and destroyed."

The new provision provides:

"The commissioner of public safety, a member of the division of state police, or a police or peace officer designated by the Commissioner shall seize and destroy a gambling implement."

The difference between these two provisions, although not readily obvious is quite considerable. Under the prior one any police officer, including city police could seize and destroy gambling implements. Under the new provisions, it must be a state policeman or some peace officer designated by the State Commissioner of Public Safety. Whereas, formerly many police agencies could move against gambling devices, now only the state police may do so.

This constitutes a radical departure from the norm of criminal law where a city police officer may arrest a person on any state crime, whether it be murder, manslaughter or even reckless driving.

The Council of Churches might wish to sponsor an amendment to this section which would restore the power of all police officers to seize and destroy gambling implements. Such an amendment should read as follows:

AS 11.45.040 is amended to read:

"AS 11.45.040 Seizure and destruction of gambling devices. The commissioner of public safety, a member of the division of state police, / OR A POLICE OR PEACE OFFICER DESIGNATED BY THE COMMISSIONER / or any peace officer or police officer shall seize and destroy a gambling implement."

However, Alaska Statutes 05.15, commonly known as the "Bingo Law" authorizes certain lottery type games to be conducted by a "bona fide civic or service organization or a bona fide religious, charitable, fraternal, or educational organization, police or fire department company, dog mushers association, or fishing derby association in the State which operates without profits to its members and which has been in existence continually for a period of five years immediately before applying for a license."

Such an organization may acquire from the Commissioner of Revenue a permit to conduct bingo, raffles, lotteries, ice classics, dog mushers contests, fish derbies or contests of skill.

The detailed regulations under which these games may be conducted are found in sub chapter 3, Chapter 1, Title 15, Alaska Administrative Code. It is interesting to note the great number and variety of games which may be played under the direction of the such qualified organizations. These games include:

(1) Bingo

(2) Raffles and lotteries: The varities allowed are listed below:

(a) The normal raffle as we know it where the winner is determined by drawing from a container the winning number or ticket. (This has recently been expanded by an Attorney General's ruling of August 20, 1965 to include punchboards as a permitted lottery on the premise that punchboard is a drawing from a container in the same manner as other lotteries. Appendix A

(b) A ring-toss game. (The winner is determined by tossing ring over bottles or pegs.)

(c) Penny pitch

(d) Fish pond. (A person fishes for a weighted fish which has a number on the bottom of it.)

(e) Duck pond (Player selects a floating duck and the prize is determined by the number on the bottom of the duck.)

(f) String game (Prizes are on a shelf attached to a string. The player selects a string and receives the article attached to it.)

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(g) Baseball game (Player tosses a baseball into a numbered pie pan to receive a prize.)

(h) Dart game (Player throws darts at slips of paper containing concealed numbers.)

(i) Dart game with "laydown board" (The player places his bet on a betting board which has numbered sections on it. A wheel is spun and a person throws a dart at the spinning wheel which contains corresponding numbers. The number in which the dart sticks is the winner. This is a rough equivalent of Roulette.)

(j) Grab bag (The player pays a fee and selects a wrapped paper bag which contains a prize of varying value.)

(k) Bean guess (Guessing the number of beans in a container.)

(l) Hamster game (A hamster is placed in an enclosure with several numbered exit holes. Winner is determined by the hole through which the hamster enters.)

(3) Ice classics. These are permitted with the provision that permits shall be granted only to the Nenana Ice Classic Association, Nenana, Alaska to conduct the Nenana Ice Classic and to the Fairbanks Firemen's Benefit Association, Inc., Fairbanks, Alaska to conduct the Chena Ice Pool Classic.

(4) Dog mushers contest. (The prize is awarded to the person making the correct guess of racing time of a dog team or the winner or team position in the race.)

(5) Fish derbies. (Prize awarded on the basis of the size of the fish caught on Derby Day.)

(6) Contests of skill. (Prizes are awarded for demonstration of human skills in marksmanship, races and other athletic events.)

Accounting and Reporting of Permitees

Alaska Statutes 05.15.080 provides:

financial reports at least quarterly.

A letter request has been mailed to the Commissioner of Revenue requesting copies of the reports which have been filed on behalf of the Nenana Ice Classic and the Chena Ice Pool Classic. These reports will be added by supplement to this memorandum when received.

There are varying schools of thought on the wisdom of allowing certain organizations to conduct specified kinds of gambling. The State of Alaska has, however, decided to confer this privilege to certain organizations, and has provided what seem to be adequate safeguards. For example, it is a misdemeanor for any person to wilfully violate the provisions of this law, and a violation is also grounds for revoking the permit of an organization.

Enforcement of this law is steadily improving, but funds and numbers of personnel provided in the budget of the State Department of Revenue, are apparently not adequate for strict enforcement.

The area which might be of special concern to the Alaska Council of Churches would be an attempt to secure additional funds and personnel for the enforcement of this law.

The Alaska Council of Churches may also want to challenge the use of punchboards, since AS 05.15.180 provides:

> "No activity may be licensed under this chapter unless it existed in the state in substantially the same form and was conducted in substantially the same manner as before January 1, 1959."

If it could be established that punchboards did not exist in the state prior to January 1, 1959, it would seem to be an effective bar to the authorization of a permit for such an operation and could be challenged in the courts by an action to restrain the Commissioner of Revenue from issuing any permits for punchboard operations.

The regulations dealing with authorized games of chance and skill are important reading for anyone interested in the proper enforcement of this law. Accordingly they have been appended to this memorandum as Appendix B.

Respectfully submitted.

James N. Wanamaker
Attorney at Law

April 1

JUDICIARY COMMITTEE REPORT ON SB 282

For many years, Alaska has had a law which would allow the state to seize and destroy gambling implements (AS 11.45.040), and a law taxing coin-operated devices (AS 43.35). The taxation law contains a section stating that it shall not be construed in any way to legalize gambling or the possession of any gambling device. Pinball machines have long been used and Alaska taxes paid on them under AS 43.35, which is the law amended by SB 282. AS 43.35.090(2) describes what constitutes a pinball or coin-operated device for the purposes of taxation. It states that a pinball machine, among other things, is one which awards free plays. SB 282 adds the language "but free plays shall not be construed as a thing of value".

The Alaska Supreme Court decided in State v. Pinball Machines, Sup. Ct. Op. No. 298, August 19, 1965, that pinball machines are gambling implements which are subject to seizure and destruction under the law. According to the court, the essential elements of gambling are (1) price, (2) chance and (3) prize, and whenever some tangible thing is "used or mainly designed or suited for gambling" it is a gambling implement. The court concluded that free plays were a "prize" and said, "It is not the essence of gambling that the element of prize have a monetary value. If that which one seeks to attain, regardless of whether it has value in money, may be attained by chance after the payment of a price, then one is gambling." Under this case, pinball machines are gambling implements if the three essential elements are present.

The proponents of this bill feel that the statement in the bill that free plays shall not be construed as a thing of value

This may or may not be so. As already stated, AS 43.35 taxes coin-operated devices and contains a section stating that it does not legalize gambling. It is established law in the United States that you may tax things which are illegal. The law defining and prohibiting gambling is found in Title 11, Criminal Law. Therefore, SB 282 by amending AS 43.35 instead of Title 11 creates further litigation to determine whether the amendment of the taxation law changes the effect of the supreme court case which was decided on the sections found in the criminal law.

If our court should find that enactment of SB 282 means that pinball machines are legal in Alaska because they do not give a prize since free plays have no value, then this raises the question as to whether new pinball machines or parts for existing ones can be brought into the state. In October, 1962, the federal law in Title 15, of the United States Code, Secs. 1171 - 1178 was amended so that transportation of gambling devices or parts for them in interstate commerce is not legal. Since that time, no new machines or parts have entered Alaska.

However, under Sec. 1172 of Title 15 USC, the transportation of gambling devices into a state is possible if the state has enacted a law (1) providing for the exemption of the state from the provisions of the Sec. 1172 or (2) in which the gambling device is specifically enumerated as lawful in a statute of the state. The question arises as to whether SB 282 would exempt Alaska from this federal law and allow the importation of pinball machines or their parts into the state.

The proponents of this bill state that the bill does not

December 1959, states that free play pinball machines are not gambling devices, and are not outlawed by any state law. Oregon has, in effect, decided exactly contrary to our supreme court, and SB 282 would put Alaska in the same position as Oregon. Since Oregon is not exempted from the federal law previously discussed and therefore cannot import pinball machines, Alaska would not be exempted.

Another case cited in support of proponents' position is United States v. Two Coin-Operated Pinball Machines, 241 F. Supp. 57 (United States District Court, 1965). In that case it was held that pinball machines are not specifically enumerated as lawful devices in Sec. 436.230 (5) Kentucky Revised Statutes and therefore are not exempted from the application of 15 U.S.C. Secs. 1171 - 1178, Title 15 USC. The Kentucky statute, Sec. 436.230 (5) describes a pinball machine which gives free plays and says that "playing such device, shall not be considered as gambling, and subsection (1) of this section shall not apply to any person keeping, managing, operating, conducting, or owning such device which only gives a free game or games for the skill of the player playing such machine or device." Subsection (1) makes it illegal for a person to operate, conduct, etc., enumerated types of gambling.

The proponents of SB 282 point to the Nevada law as the only one which exempts a state from the provisions of 15 U.S.C. Sec. 1171 - 1178, Sec. 463.410 of the Nevada Statutes is entitled "Declaration of state's exemption from operation of provisions of 15 U.S.C. Sec. 1172", and Sec. 463.420 is

parts can be brought into Alaska. In a memorandum to Mr. Guess, dated March 16, 1966, Attorney General Colver stated "If the courts were to take the view that SB 282 did in effect legalize the kind of pinball machine described in AS 43.35.090 (2), then these machines could be imported into the state under federal law"... because the federal law says "it shall not be unlawful to transport in interstate...commerce any gambling device into any state in which the transported gambling device is specifically enumerated as lawful in a statute of that state."

The opponents of the bill feel that this bill opens the state to a form of gambling which will continue until prohibition by some future legislature. The proponents state that the bill will allow those people who have large investments in pinball machines to operate these machines with the hope that they will pay for themselves before they are worn out. The life of these machines has been stated to be about five years.

The Department of Revenue taxation records shows that taxes were paid on 614 machines in 1962, 462 in 1963, 327 in 1964 and 311 in 1965. The proponents of SB 282 state that this bill affects less than 300 machines and that some machines are being used as parts for other machines and that within five years all the machines will be worn out. The opponents of the bill feel this statement is unimportant since new machines and parts can be imported if the bill passes.

This report does not attempt to go into the pros and cons of gambling but only to recognize the legal and factual

MINORITY REPORT ON SB 282 BY MR. TAYLOR

I recommend the passage of SB 282 with the following amendments:

Amendment No. 1 Page 1. Add "Sec. 2. It is the intention of the legislature that this bill shall in no way be considered an attempt or intent to liberalize or to exempt the state from the limitations imposed by 15 U.S.C. Secs. 1171 - 1178."

Amendment No. 2 Page 1. Add "Sec. 3. This Act shall not remain in existence beyond June 30, 1971."

SB 282 amended as proposed above, would set out a limitation and a closing date in order to allow this type of pinball machine to phase out, and would also express the intention of the legislature not to exempt the state from the limitations imposed by 15 U.S.C. Secs. 1171 - 1178.

The majority committee report sets out the arguments for and against SB 282 and correctly states the position of the proponents of SB 282. There are, however, comments I feel should be made in support of the bill.

Our state statute prohibiting gambling, AS 11.60.140, is exactly the same as the Oregon statute prohibiting gambling, which is not surprising since Alaska took this statute from Oregon many years ago. Under the McKee case mentioned in the majority committee report, the Supreme Court of Oregon determined that free plays are not a thing of value. This is directly contrary to the finding of our Supreme Court. If these two courts differ, there must be a decided split in the determination as to whether or not free plays are a thing of value.

In U.S. v. 2 Coin-operated Pinball Machines, also cited in the majority committee report, the court determined that although pinball machines giving free plays are authorized by Kentucky state statute, they are not exempt from the provisions of the federal law making it illegal to ship them into a state. This would be similar to Alaska's position if SB 282 passed. It should be noted that the position of the opponents of SB 282 that it will allow shipment of pinball machines into the state is not supported by case law.

Although the suggested amendment makes the question moot as to whether SB 282 exempts the state from 15 U.S.C. Secs. 1171 - 1178, the United States Attorney for Alaska received a letter from William G. Hunley, Chief of the Organized Crime and Racketeering Section of the Department of Justice in which

Mr. Hunley advises that he does not feel that the enactment of SB 282 would authorize the importation of class 2 devices or replacement parts into the state through interstate or foreign commerce.

It is therefore clear that SB 282 does not legalize gambling nor does it allow new pinball machines or parts for the existing machines to come into Alaska. It merely allows pinball machines now in Alaska, which are approximately 300, to be put back into a free play status, the same as they have been for years before the 1965 decision of the Alaska Supreme Court.

Emotionalism should play no part in the determination as to whether SB 282 should be passed. However, I feel that it is proper for the legislature to consider the economic effect of the supreme court decision on people who were for years in what was a legal business by law and who were suddenly caused to lose not only anticipated income but property rights and interests to their great financial detriment. I refer not only to the distributors and operators but also to the loss to be encountered by the business locations, the maintenance people, the warehousemen who handle the storage and moving of these machines and all other individuals who have annual earnings incidental to the operation of pinball machines. None of these people are part of a criminal syndicate. They are Alaskans, many of whom have been here for 20 years or more. They do not ask that the legislature legalize gambling. They simply want the right to use the few pinball machines now in Alaska with free plays until these machines are worn out but not later than June 30, 1971. This is very little to ask of the legislature. It should be granted to them by the passage of SB 282.

JUDICIARY COMMITTEE REPORT ON CSHB 295

Under CSHB 295, as amended by the Judiciary Committee, operators of or passengers on motor scooters, motor bicycles, or motorcycles would have to wear a crash helmet. It would be unlawful for the operator of such a vehicle to allow a passenger to ride with him unless the machine is manufactured to accommodate a passenger and the operator has liability coverage for the protection of the passenger when riding on a public highway.

JUDICIARY COMMITTEE REPORT ON HB 447

HB 447 will allow settlements to be made under motor vehicle liability insurance policies for damage to or destruction of property owned by a person other than the insured without the settlement being construed as an admission of liability by the insured, or the recognition of that liability by the insurer, with respect to any other claim arising from the same accident or event.

JUDICIARY COMMITTEE MINUTES

April 4, 1966

Chairman Guess called the meeting to order at 9 a.m. Present were members Metcalf, Taylor and Hillstrand.

The committee considered HB 303 and unanimously moved it out "Do Pass".

The committee then discussed SB 194 and it was moved that it "Do Pass". There was no objection.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON HB 303

Under HB 303, the Department of Public Works shall promulgate regulations governing the construction and renovation of public buildings and facilities which shall conform as far as it is feasible to the publication "American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped". These regulations shall apply to buildings and facilities constructed by and for the state and its political subdivisions.

JUDICIARY COMMITTEE REPORT ON SB 194

The existing law requires a forfeiture of the commercial fishing license for not more than three years upon a third conviction for violation of a law or regulation for the protection of commercial fish or provisions of law relating to the licensing of commercial fishermen, vessels and gear. SB 194 deletes this requirement from the law and gives the court the discretion to require forfeiture of the license for the same period of time. SB 194 also deletes the provision that a forfeiture of the license is effective immediately upon conviction and no stay pending appeal may be granted.

JUDICIARY COMMITTEE MINUTES APRIL 4, 1966

The meeting was called to order at 4 p.m. by Chairman Guess. Present were Messrs. Metcalf, Stevens, Tillion, Taylor and Hillstrand.

Senator McNealy and Mr. Milt Daugherty spoke on CSSB 118. The committee asked that the Department of Law appear before the committee the following day on the bill to answer questions. No action was taken on the bill.

Rep. Stalker appeared on HB 452. No action was taken on the bill.

The committee took up CSSB 278 and after discussion recommended that it "Do Pass".

The committee then considered HB 375. The committee recommended that proposed State Affairs CSHB 375 "Do Pass" with the following amendment:

Page 1, line 12: Insert after word "statute" the following: ", by ordinance,"

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON CSSB 278

A person may lease state land for a purpose other than the extraction of natural resources under the provisions of AS 38.05.070 - 105. Examples of such leases would be ones for shore fisheries development under AS 38.05.082 and leases for grazing lands. AS 38.05.100 which is repealed and re-enacted by CSSB 278 presently requires that if a lessee desires a renewal lease, he applies for it. The director of lands then offers the land for lease at public auction to the highest qualified bidder with a preference being allowed the former lessee if all other pertinent factors are substantially equivalent.

CSSB 278 gives the lessee an automatic renewal for a term equal to his original one if he has maintained hislease in accordance with applicable requirements and regulations and if he applies for a renewal at least 30 days before expiration of the lease. The bill keeps the requirement presently in the law that his application for renewal must be accompanied by a deposit of a sum equal to 50 per cent of the annual rental payment still in effect, but not exceeding $50.00.

JUDICIARY COMMITTEE REPORT ON CSHB 375

AS 09.25.110 presently provides that books, records, papers, files, accounts, writings and transactions of all agencies and departments are public records and unless specifically provided otherwise, are open to inspection by the public during regular office hours. However, there are no provisions for closing records, designating what type of records should be closed, or protecting the public against abuse of the right to refuse public inspection of records.

CSHB 375 provides that a state executive agency or the executive of a political subdivision may by statute or by regulation restrict access to the records described above. The regulations must be before a regular session of the legislature for 30 days if they are promulgated by the state or before the governing legislative body of a political subdivision for 30 days when promulgated by its executive. The regulations are effective if they are not disproved during the 30 days.

CSHB 373 provides that a person who is refused the right to inspect public records may apply to the court for an order directing that he be allowed to inspect such records. A person may be punished for contempt of court if he does not allow the inspection after being served with the court order.

CSHB 373 also provides that the court shall forward to the legislative council a copy of any application to the court for inspection of public records and that the council submit to the legislature annually a report of any findings or recommendations it may have regarding the inspection of public records.

Under sec. 4 of this bill, it will take effect on January 23, 1967, which is the first day of the next legislative session, so that regulations can be promulgated and put before the legislature at that time.

JUDICIARY COMMITTEE MINUTES APRIL 5, 1966

Chairman Guess called the meeting to order at 4:30 p.m. All members were present except Mr. Josephson.

Mr. Mike Holmes from the Department of Law appeared on CSSB 118 at the request of the committee. No action was taken on the bill.

The committee then considered SB 231. The committee recommended that SB 231 be replaced by HCSSB 231 and that it "Do Pass".

April 5, 1966

The Honorable Gene Guess
Alaska State Representative
Chairman, House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: Senate Bill 118; Retail Installment Contracts.

Dear Representative Guess:

You have asked whether the maximum service charges permitted by Senate Bill No. 118 include interest or whether interest may be charged on top of the maximum service charge. In brief, the maximum service charge permitted by Senate Bill 118 is the exclusive charge that may be made on a retail installment contract.

AS 45.10.120 provides:

> The service charge shall include all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments under the contract or agreement. No other fee, expense, or charge may be taken, received, reserved, or contracted for investigating and making the contract or agreement, or for the privilege of making the payments.

It should be explained that Senate Bill 118 has nothing to do with interest rates. Under existing state law the maximum interest rate is 8% except in the case of licensed small loan companies. Senate Bill 118 has no effect whatsoever on the existing usury law.

What Senate Bill 118 does regulate is the sale of merchandise on installment contracts or charge accounts. Interest is the sum charged by a lender of money and does not include service charges. Service charges have been universally held by the courts not to be interest within the meaning of the usury statutes. Under existing law there is no limit to the service charge that may by imposed in a retail installment contract because the usury laws do not apply to service charges.

Banks and other lending institutions that loan money are governed by the usury statutes because they loan money and charge and collect interest. A retailer on the other hand does not loan money within the meaning of the usury statutes. He sells merchandise for one price for cash or for a higher price on time. The difference between the cash price and the time price is called the service charge and is not interest. Retailers do not loan cash to its customers. For that reason the question of whether a retailer can charge a service charge and interest is based on the false assumption that retailers charge interest. See U.C.L.A. Law Review Vol. 7, No. 4 (1960).

A retailer would only be permitted to charge the amounts permitted by Senate Bill 118. Those amounts are a maximum of 18.43% per annum on the unpaid balance (where there is a down payment) or 18% per annum on the outstanding balance (in the case of a charge account).

By its terms the bill clearly applies to open end accounts. See Sec. 45.10.120(c) and the definitions of the terms retail charge agreement, revolving charge agreement and retail charge agreement in AS 45.10.220(8) and (9).

Very truly yours,

WARREN C. COLVER
ATTORNEY GENERAL

By
Michael M. Holmes
Deputy Attorney General

WCC/MMH/lvh

JUDICIARY COMMITTEE REPORT ON HCSSB 231

Under present law, when a person is employed by the state, he serves a period of probation not to exceed one year. Each time the employee is promoted, he again is on probation the same length of time. Under HCSSB 231, the employee would still be on probation not to exceed one year when he is initially employed, but if he is a permanent employee when he is promoted, he is permanent in the position to which he is promoted.

PUBLIC HEARING ON SB 151 APRIL 8, 1966

The Public Hearing was called to order by Chairman Guess at 3 p.m.

Appearing as witnesses were borough chairmen from the Kenai, Fairbanks and Juneau boroughs and a representative from the League of Alaska Cities.

STATEMENT

FOR THE HOUSE JUDICIARY COMMITTEE CONCERNING SENATE BILL 151 BY BOROUGH CHAIRMEN

April 2, 1966

This concerns the proposal to exclude by legislation indian reservations from the boroughs surrounding them. It seems that the proponents must misunderstand the major considerations involved which are:

Basic indian rights enjoyed by reason of the trust status of property are not abridged by reason of reservations being within boroughs; nor are any similar rights of the tribe and village on the reservation. It is normal in other states that indian reservations and lands are parts of the county or counties containing them.

To make reservations non-borough islands in boroughs would be to create permanent tax escape havens for all kinds of investments which would find the temptation too great to resist.

Boroughs are essential political subdivisions of the state carrying out the state function of education and other major governmental purposes.

To have tax escape islands within boroughs would be unfair to the interests of the people of the entire state and violate the principle of equity in taxation.

The major example of what is at stake is the borough surrounding the Moquawkie Reservation. Huge oil industry development is underway on the east side and shore of Cook Inlet, in the Inlet and on the west shore and side of the Inlet surrounding the reservation. We know we are to enjoy the benefits of huge investments in development and that hundreds of millions of dollars in value in various processing plants are in prospect. It would be an intolerable injustice to hand out a permanent tax exemption to untold millions of dollars of industrial enterprises by creating a tax escape haven of the reservation.

We respectfully emphasize there is no question of being in a borough impinging on the established rights enjoyed by a tribe on a reservation but that excluding a reservation would create a situation of almost unmeasurable special privilege at the expense of all the other taxpayers.

In line with almost universally accepted public policy throughout the nation we are removing racial and ethnic barriers and promoting equality and better understanding among men. The proposed legislation would be a step backward that would engender a growing ill will over what would inevitably be widely viewed as special privilege. This would be detrimental to all concerned.

By our great good fortune in oil resources and the startling petroleum industry developments the economic wellbeing of the people of Tyonek is assured beyond the most extravagant dreams of a short while ago. It would be an act of injustice against the taxpaying people of the borough and of the entire state to create a condition of special over-privilege for the industry of a permanent unlimited tax exemption in the area of greatest development.

The situation in the one borough used for illustration would exist in any other borough surrounding a reservation, the difference being only in the degree of injustice.

We respectfully recommend that the Legislature do not create enclaves in any boroughs by excluding reservations or any other lands excepting as to the Federal Government's own military establishments.

NORTH STAR BOROUGH s/ Jack Schleppegrell, *Chairman*

MATANUSKA-SUSITNA AREA BOROUGH s/ Jan Koslosky, *Chairman*

GREATER ANCHORAGE AREA BOROUGH s/ John Asplund, *Chairman*

KENAI PENINSULA BOROUGH s/ Harold E. Pomeroy, *Chairman*

/rep

Subscribed to also by:

GATEWAY BOROUGH Robert Ward, Chairman

GREATER SITKA BOROUGH Frank Getman, Chairman

GREATER JUNEAU BOROUGH Claude Millsap, Jr., Chairman

TESTIMONY ON SB 151

SUBMITTED TO THE HOUSE JUDICIARY COMMITTEE

by the ALASKA MUNICIPAL LEAGUE

Mr. Chairman, Members of the Committee:

For the record I am Don M. Berry, Executive Director of the Alaska Municipal League, an organization representing 27 cities and 5 boroughs throughout Alaska. On behalf of the League I wish to thank the Committee for this opportunity to present our testimony in opposition to SB 151.

While this measure has become commonly known as the "Tyonek bill", I will not discuss this specific instance since I have not been authorized to represent as Legislative agent the Kenai Peninsula Borough in any matter.

The League opposes SB 151 primarily because of its effect on the tax-paying citizens of Alaska. If all native villages were allowed to withdraw from boroughs, the remaining tax load would have to be borne by those citizens who do not seek such exclusion. We do not feel that this is equitable to those people who come under borough government in the same manner as the Indian villages who now seek to withdraw.

If SB 151 is enacted into law, it would make the effect of establishing tax-free entities throughout Alaska. It is apparent that this would give undue and harmful advantage to these entities as compared to other local government units. It would be impossible for cities which assume their fair share of the local tax burden to compete economically or industrially with these tax-free communities. The normal progress and growth of such cities would be seriously impaired if not stopped.

The Constitution of the State of Alaska dictates that all local Government shall be vested in boroughs and cities. There are no provisions in the Constitution for excluding certain groups who have been privileged to have their unique form of local government. The legislature exercised its power to set borough boundaries, subject to a referendum of the people, and at that time no objection was raised to the inclusion of Indian villages.

In conclusion, Mr. Chairman and Members of the Committee, the Municipal League opposes passage of SB 151 because it gives financial advantage to a few to the detrement of many.

This state, and its legally constituted political subdivisions, can ill afford to grant unwarranted tax privileges to groups who are merely dissatisfied with certain forms of local government. Finally, we consider SB 151 as special legislation and has no place before this legislature.

Respectfully submitted,

Don M. Berry

STATEMENT BY KENAI PENINSULA BOROUGH ASSEMBLY
CONCERNING TYONEK VILLAGE REQUEST FOR EXCLUSION OF TYONEK
AREA FROM THE KENAI PENINSULA BOROUGH

Adopted by the Assembly unanimously November ,1964

The Assembly of the Kenai Peninsula Borough opposes exclusion of the Tyonek area from the borough on the ground exclusion would be contrary to the intent and purposes of the constitution, the law respecting the borough level of government and the intent of the legislature.

An immediate major purpose of the legislature in ordering the incorporation of the Kenai Peninsula Borough and several other boroughs was to establish borough responsibility for schools and move the State out of direct school operation. This is also consistent with the policy of the Federal Government to transfer responsibility for schools from the Bureau of Indian Affairs to the State of Alaska and recede from direct school operation.

The Borough School District is now operating the Tyonek school and this is feasible. Air services from the Kenai Airport is about twenty minutes and 36 miles. Air distance to Merrill Field is about 45 miles. There is a rapidly expanding water transportation terminal facility at East Foreland to service the oil industry in Cook Inlet and vicinity. The oil companies are also establishing major water transportation terminal facilities in the East Foreland area in connection with development in Cook Inlet and vicinity. Projects are under study for the future establishment of a small boat harbor and deep draft harbor at Kenai.

The foregoing identifies Cook Inlet and the west shore of the Inlet with the East Foreland, Port Nikiski and Kenai area as to transportation. The virtually unbroken spread of oil land from on shore east of Cook Inlet, in the Inlet and on the west side of Cook Inlet, coupled with deep water in the vicinity of East Foreland, associates these vicinities as parts of one whole entity as to development and growth which is underway.

To exclude Tyonek would be to create a non-borough island in the borough in an area in which substantial development is imminent - development which will produce growing requirements for schools and other public services.

Exclusion would be an irresistible temptation for oil companies, drilling companies and extensive related service activities to base on the non-borough island large quantities of property from a wide area to avoid borough taxes. Oil lands, leases, wells and machinery directly associated with production are exempt from property taxes. Exclusion of the Tyonek reserve would constitute a further automatic exemption for large quantities of associated oil industry property

that is subject to property tax and should not escape its share of support of the area government. It is from such property that revenue should and must come to help pay the costs of schools and other services. To create such a situation would be wholly incompatible with sound public policy and good government.

The legislature went to great lengths to combine cities and outlying areas into a viable governmental unit. Exclusion of the Tyonek reserve would be an invitation to surrounding areas also to request exclusion. An encroachment or threat of encroachment that would weaken the capacity of the borough to carry out the growing responsibilities contemplated in the constitution and law for this essential middle level of government would be contrary to the purpose of the state to secure strong, capable borough government to lessen the state burden for direct administration of area services and functions.

Rights on the Moquawkie reserve existing pursuant to applicable law and court decisions are not at issue. What is at issue is whether to create a virtual enclave enjoying in effect an extra-territorial right of having all property of all kinds and by whomever owned free from any tax obligation for support of the area government.

The requested exclusion would be inconsistent with the intent of the constitution and borough act with respect to the establishment of boroughs to take responsibility for area government. It would be a retrogressive step in government and a wholly unmerited handicap to the borough in carrying out its responsibilities now and in the orderly development of sound borough government in the period just ahead and through the subsequent years.

JUDICIARY COMMITTEE MINUTES APRIL 9, 1966

The meeting was called to order at 3 p.m. by Chairman Guess. A quorum of the members was present.

The committee discussed SB 279 and Tillion moved that it be reported out "Do Pass". Mr. Taylor seconded and the motion passed.

The committee next considered SB 6. The committee voted that HCSSB 6 "Do Pass".

The next bill considered by the committee was HB 384. The committee voted to replace the bill with CSHB 384 and recommended that it "Do Pass".

Meeting adjourned.

REPORT OF HOUSE JUDICIARY COMMITTEE

ON HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6

In Watts and Blue v. Seward School Board, Alaska Supreme Court No. 427, Sept. 1964, the court construed AS 14.20.170(2) which is amended by HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6. In that case the court held that two teachers, Mr. Watts and Mr. Blue could be discharged because their action in soliciting labor union and fellow teachers for support in removing the school superintendent and members of the school board from office was an immoral act under Alaska law.

The case was taken to the United States Supreme Court (Watts v. Seward School Board Per Curiam No. 923) which said: 'We need not consider petitioners' contentions at this time, for since their petition for certiorari was filed, Alaska has amended its statutes governing the dismissal of teachers.' The amendments referred to were chapters 14 and 41, SLA 1965. The state supreme court now has the case before it and HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 and this report will be helpful to it as an expression of legislative intent that the immorality necessary for nonretention of a teacher is his commission of an act which, under the laws of the state constitutes a crime involving moral turpitude. While the substantive change of HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 is already embodied in the recently passed HOUSE BILL NO. 12 (Education Code), it is felt that enactment of HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 will make manifest legislative intent as an aid to the court."

April 9

JUDICIARY COMMITTEE REPORT ON SB 279

Under SB 279, when a valid existing federal grazing lease is cancelled to allow state selection of the areas under lease, the lessee of the lands has the preference right to lease the lands without competitive bidding "for a term equal to that originally granted in the cancelled federal lease".

Appendix I.

JUDICIARY REPORT ON CS FOR HOUSE BILL 384

The purpose of CSHB 384 is to clarify the power of the Department of Natural Resources to require bid deposits in the competitive sale or lease of state land, minerals, timber and materials. The Legislative Council has pointed out in its 1966 report on "The Legislative Oversight of The Administration of Statutes" that the current regulations of the Department which require such bid deposits are subject to attack under one method of statutory interpretation due to a lack of specificity in the wording of the present statutes.

Enactment of CSHB 384 would make the requirement of a bid deposit mandatory in the case of competitive oil and gas leases and discretionary in all other instances. The bill also specifies what disposition is to be made of the deposits after their receipt.

A more detailed explanation of the need for clarification of the legislature's intent regarding the Department of Natural Resources' power, or lack of power, to require bid deposits can be found on page 2 of the Council report as cited above.

JUDICIARY COMMITTEE MINUTES APRIL 14, 1966

9 a.m. A quorum of the committee was present. HB 502 was reported out "Do Pass".

CSSB 206 was reported out "Do Pass". Four members reported it "Do Pass" with the following amendment:

Page 1, line 13: Delete "eleven" and insert "ten"and delete "three" and insert "two".

Meeting was adjourned.

1 p.m. Chairman Guess called the meeting to order. Present were members Stevens, Josephson, Hillstrand, Taylor, Metcalf and Tillion.

The committee discussed HB 526 and reported out CSHB 526 "Do Pass".

The committee recommends that CSSB 256 "Do Pass" with the following amendments:

Page 1, line 15: Change "two" to "one".

Between lines 21 and 22 on page 2, insert the following: *Sec. 3. Beginning September 1, 1967, the presiding judge of the superior court in each judicial district shall accept applications for all positions as district judge in his judicial district with all appointments to be made before January 1, 1968. All interested persons including any district judges sitting on September 1, 1967 may apply. The term of any district judge sitting on September 1, 1967 shall expire when an appointment to his position is made under this section.

On page 2, line 22, delete all material and insert: *Sec. 4. Secs. 1 and 2 of this Act take effect January 1, 1968.

The committee next considered SB 257 and recommended that it "Do Pass" and that it be referred to the Finance Committee.

The committee recommended that CSSB 254 "Do Pass" with the following amendment:

Page 1, line 12: Insert after "$12,000" the words "or more than $16,000"

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON SB 257

Under the present judicial retirement system, only the superior and supreme court judges are covered. Sec. 1, sec. 4 and sec. 5 of SB 257 include in the system the district magistrates and the administrative director of courts.

Sec. 2 of the bill allows all persons covered by the retirement system to retire at age 60 instead of 65. Under present law, when retired, the justice or judge would receive monthly compensation equal to four per cent per year of service, to a maximum of 50 per cent of the monthly salary he is receiving on the date of retirement. Sec. 3 of this bill changes four per cent to five per cent and makes the maximum 75 per cent.

Sec. 6 allows for the transfer of funds belonging to the district magistrates and the administrative director of courts to the judicial retirement account.

The majority of the committee felt that this bill is proper if there is to be a retirement system for the judiciary. However, the committee feels that Alaska should adopt a retirement plan for supreme court justices and superior court judges similar to the federal judicial retirement system. The following letter was sent to the Judicial Council.

"Gentlemen:

The judiciary committee of the House considered at length SB 257 relating to judicial retirement. In our conversation on the subject, we concluded that retiring judges at an early age for other than disability means that the state loses the valuable intelligence and experience of these judges. We suggest that the Council look into the federal judicial retirement system. The judges would have a lifetime appointment under that system. In Alaska, the supreme court justices could have lifetime tenure after having been approved at two elections and the superior court judges at four or five elections. This would amount to about 20 years on the bench before the judge had lifetime tenure.

There are, perhaps, other methods which would keep our judges available to us, and we hope you will give this matter your consideration and give the next Legislature your recommendations.

(s)
Gene Guess, Chairman
House Judiciary Committee "

Supreme Court
State of Alaska
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

BUELL A. NESBETT, CHIEF JUSTICE
JOHN H. DIMOND, ASSOCIATE JUSTICE
JAY A. RABINOWITZ, ASSOCIATE JUSTICE

RECEIVED
JAN 14 1966
McNEALY MERDES
Attorneys at Law

January 12, 1966

Honorable Robert J. McNealy
President of the Senate
Alaska State Legislature
Box 1912
Fairbanks, Alaska

Dear Bob:

There are enclosed copies of the legislation relating to the court system which we discussed on your recent visit. The draft bills include the following:

(1) A bill to remove the ceiling on the salaries of district magistrates.

(2) A bill to allow retirement of judges at age 60 after ten years of service, and to increase retirement benefits to 5% of salary per year of service to a maximum of 75% of salary.

(3) A bill to place district magistrates and the administrative director under the judicial retirement system.

(4) A bill to clarify the authority of court personnel to perform notarial functions.

(1) The bill to remove the salary ceiling on district magistrates would enable correction of the inequity of having assistant district attorneys paid more than the judges before whom they plead. The supreme court would fix salaries at least commensurate with experienced attorneys in the executive branch.

(2) The bill to allow judges to retire at age 60 in its Section 1 is explained by the enclosed letter from the actuaries

dated January 25, 1965. As noted in the letter, this change would not place any additional cost burden on the retirement system. Section 2, increasing the retirement benefits, will increase the cost from $60,641 to $92,694, i.e. $32,050 per year. This is detailed in the attached Exhibits 1a and 1d.

(3) The bill to bring district magistrates and the administrative director under the judicial retirement system will cost $37,994 per year at the present salary levels, as shown by Exhibit 2a. If salary increases are allowed and the higher retirement benefit schedule is approved, the cost increase would be $66,732, as shown by Exhibit 3d.

(4) The bill relating to notarial functions of court personnel is one we originally offered in March, 1964, as explained in the attached copy of the cover letter we then sent to you. We did not request its introduction in 1965, but it should be considered.

We are preparing background materials to justify the need for the proposed changes in the judicial retirement system and for the district magistrate salary increases. When these are ready, we will forward copies for your reference and have them available for committee hearings or other use as appropriate.

With kindest personal regards,

Sincerely yours,

Bruce G. Nesbett

Buell A. Nesbett
Chief Justice

ARTHUR STEDRY HANSEN CONSULTING ACTUARIES
CHICAGO NEW YORK DALLAS FORT WORTH HOUSTON MILWAUKEE OKLAHOMA CITY DENVER

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ROBERT C. WAREHAM
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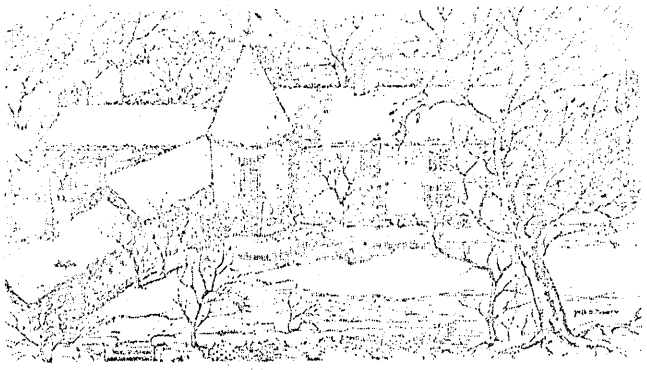

GENERAL OFFICES
1080 GREEN BAY ROAD
LAKE BLUFF, ILL. 60044
CE 4-3400
FROM CHICAGO: BR 3-2345

ONE N. LA SALLE STREET
CHICAGO, ILL. 60602
FI 6-0101

Air Mail

January 25, 1965

Mr. Thomas B. Stewart
Administrative Director
Alaska Court System
941 Fourth Avenue
Anchorage, Alaska 99501

Dear Tom:

Voluntary Retirement - Age 60 and 10 Years Service

You have requested our opinion of the effect on the contribution requirements for the Alaska Judges Retirement System if Justices or judges were permitted to retire at age 60 and after 10 years service on a voluntary basis. If any individual retiring under this provision drew his pension prior to age 65, the amount of the benefit would be reduced on an actuarial equivalent basis.

Reduction of the benefit to the actuarial equivalent basis means that, insofar as the individual is concerned, there is no additional cost to the system in permitting him to receive an immediate benefit. This conclusion is based on the fact that the retiree would be in average good health. To the extent that the judge or Justice retires because of ill health, some payments might be made in case of early retirement that would not otherwise be made if the pension were deferred to age 65.

It is our conclusion that this risk is negligible, particularly since the individuals affected by this provision would still not have completed 13 years of service and earned a full 50% pension. Until this time, there would be strong incentive for a judge to continue on in service since the combination of the actuarial equivalent reduction and the loss of the 4% accrual for each additional year of service would sharply curtail his pension.

A second minor cost consequence would be for the group as a whole, even though no extra cost would result on the part of any individual because of the actuarial equivalent reduction. As noted, a judge can earn a full benefit with 13 years of service. After this time, he is not increasing his pension with his additional years on the bench because of the 50% maximum.

At present, judges who enter between ages 46 and 48 must serve an extra year or two of service to become eligible for benefits under the rule of 75 whereas they would not have to do so if allowed to retire under the age 60 and 10 years of service rule. For example, a judge who comes on the bench at age 47 can only voluntarily retire at age 61 after 14 years of service. Under the new rule, he would still be eligible for the 50% benefit at age 60 and 13 years of service and he would lose little by retiring one year earlier. If all judges in this category consistently did this, there would be a very slight increase in cost to the system as a whole since employment of an additional judge might ultimately be required because of the aggregate of slightly shorter service periods than would be realized under the rule of 75.

Again, it is our opinion that this potential additional cost is not significant. This is particularly true since it is likely that other considerations, rather than the minimum period of service to earn full benefits, will be determinative of the judge's decision to retire. Furthermore, there would be no effect on judges entering prior to age 46 or after age 48. Consequently, after consideration of all aspects of the proposal, we believe that any additional cost, if any, to the system because of the change would be of minor proportions and would not be easily measurable.

We would suggest that the easiest method of making the change would be to modify the first two sentences of subparagraph (d) of Section 25.25.010 as follows:

> "A Justice or judge may voluntarily retire, and is eligible for retirement pay when he has (1) reached the age of 60 years and has served for 10 years or more, or (2) his age plus his years of service equals 75. ( ) If the Justice or judge has not reached the normal retirement age of 65 years, he may elect either to have his retirement pay begin when he reaches the age of 65 years, or to have his retirement pay begin on an actuarial equivalent basis as of the effective date of his retirement."

This adjustment seemed to us to be the simplest way to permit the earlier retirement without being redundant or unduly complicating the legislation. Since the actuarial equivalent now applies to both cases in the first sentence of subparagraph (d), the reference to "in the latter case" is omitted.

At the same time, the addition of the words "normal retirement" in front of age 65 in the second sentence stresses that full benefits are not payable until this age. In the usual situation, we would add a definition of "normal retirement date" and separate the payment of full benefits on or after this time from an early retirement provision dealing with age 60 and 10 years of service and the rule of 75.

On the other hand, the suggested change appears both simple and clear. The only risk we see in not separately defining a normal retirement date and benefit is that it may appear in the future simple merely to change the age that full benefits are payable from 65 to 60. It cannot be too strongly emphasized that this would be a very expensive change to make in the system and perhaps more stress should be laid on it in the wording of the law.

Should you have any question concerning these comments, we would be pleased to discuss it with you further at your convenience.

Very truly yours,

ARTHUR STEDRY HANSEN
CONSULTING ACTUARIES

Davis H. Loewe

Actuary

DHR:mm
1154-3-02

Judicial Retirement System - State of Alaska

Actuarial Valuation

(As of December 31, 1964)

Normal Retirement Benefit	4% of earnings for each year of service maximum 50% of earnings for life.
Normal Retirement Date	Age 65, after completion of 10 years of service, or when age plus service exceeds 75. Compulsory retirement at age 70. Benefit is reduced to actuarial equivalent if payment begins prior to age 65.
Disability Benefit	If deemed incapacitated after 2 years of service or on own option after 5 years of service, a full benefit based on earnings and service to date of incapacity.
Widow's Benefit	In event of death after 2 years of service or after retirement, widow receives one-half of the annuity which was or would have been payable to the judge.
Contribution	Judges contribute 5% of pay.

Normal Cost	$ 65,044	
Less Judges Contributions	11,932	
Net Employer Outlay		$53,112
Past Service Requirement 12-31-64	$303,188	
Estimated Assets		
Employer	105,500	
Judges	36,904	
Net Requirement	$160,784	
40 Year Amortization of Past Service Requirement		7,529
Net Annual Outlay of Court System		$60,641

1154-3-85
1-4-66

Judicial Retirement System - State of Alaska

Actuarial Valuation

(As of December 31, 1964)

Normal Retirement Benefit	5% of earnings for each year of service maximum 75% of earnings for life.
Normal Retirement Date	Age 65, after completion of 10 years of service, or when age plus service exceeds 75. Compulsory retirement at age 70. Benefit is reduced to actuarial equivalent if payment begins prior to age 65.
Disability Benefit	If deemed incapacitated after 2 years of service or on own option after 5 years of service, a full benefit based on earnings and service to date of incapacity.
Widow's Benefit	In event of death after 2 years of service or after retirement, widow receives one-half of the annuity which was or would have been payable to the judge.
Contribution	Judges contribute 5% of pay.

Normal Cost	$ 91,483	
Less Judges Contributions	11,932	
Net Employer Outlay		$79,551
Past Service Requirement 12-31-64	$423,075	
Estimated Assets		
Employer	105,500	
Judges	36,904	
Net Requirement	$280,671	
40 Year Amortization of Past Service Requirement		13,143
Net Annual Outlay of Court System		$92,694

1154-3-85
1-4-66

Judicial Retirement System - State of Alaska
(Magistrates)

Estimated Costs

(As of July 1, 1966)

Normal Retirement Benefit	4% of earnings for each year of service maximum 50% of earnings for life.
Normal Retirement Date	Age 65, after completion of 10 years of service, or when age plus service exceeds 75. Compulsory retirement at age 70. Benefit is reduced to actuarial equivalent if payment begins prior to age 65.
Disability Benefit	If deemed incapacitated after 2 years of service or on own option after 5 years of service, a full benefit based on earnings and service to date of incapacity.
Widow's Benefit	In event of death after 2 years of service or after retirement, widow receives one-half of the annuity which was or would have been payable to the judge.
Contribution	Judges contribute 5% of pay after July 1, 1966.

Normal Cost	$ 44,334	
Less Judges Contributions	10,850	
Net Employer Outlay		$33,484
Past Service Requirement 7-1-66	$142,312	
Estimated Assets		
Employer	34,500	
Judges	11,500	
Net Requirement	$ 96,312	
40 Year Amortization of Past Service Requirement		4,510
Net Annual Outlay of Court System		$37,994

1154-3-83
1-4-66

Judicial Retirement System - State of Alaska
(Magistrates - Proposed Salary)

Estimated Costs

(As of July 1, 1966)

Normal Retirement Benefit	5% of earnings for each year of service maximum 75% of earnings for life.
Normal Retirement Date	Age 65, after completion of 10 years of service, or when age plus service exceeds 75. Compulsory retirement at age 70. Benefit is reduced to actuarial equivalent if payment begins prior to age 65.
Disability Benefit	If deemed incapacitated after 2 years of service or on own option after 5 years of service, a full benefit based on earnings and service to date of incapacity.
Widow's Benefit	In event of death after 2 years of service or after retirement, widow receives one-half of the annuity which was or would have been payable to the judge.
Contribution	Judges contribute 5% of pay after July 1, 1966.

Normal Cost	$ 72,032	
Less Judges Contributions	12,440	
Net Employer Outlay		$59,592
Past Service Requirement 7-1-66	$198,473	
Estimated Assets		
Employer	34,500	
Judges	11,500	
Net Requirement	$152,473	
40 Year Amortization of Past Service Requirement		7,140
Net Annual Outlay of Court System		$66,732

1154-3-83
1-4-66

ALASKA
STATE LEGISLATURE
LEGISLATIVE COUNCIL
BOX 2199-JUNEAU

MEMORANDUM

TO: House Judiciary Committee

Re: SB 282, An Act relating to coin-operated devices.

Attached find a copy of

1. Legislative Council review of State v. Pinball Machines, Alaska Sup. Ct. Op. No. 298, 1965.
2. Chapter 24 of Title 15 USC relating to the transportation of gambling devices.
3. Nevada statutes permitting gambling devices in interstate commerce.
4. Copy of Attorney General Colver's memorandum to Mr. Guess.

of the Code can begin without delay. In other words, instead of being authorized to merely create a plan of revision, as provided in HB 256, it is recommended that the Legislative Council be given authority to begin work immediately with each department and agency on a revision of its regulations. It is also recommended that the Council be assigned the responsibility of re-writing the instructions on drafting techniques and prescribing a uniform system of indexing, numbering and arrangement of text to be used in lieu of those instructions and requirements now contained in Title 1 of the Administrative Code. Each of these tasks it is believed can be performed by the Council within its present staff structure.

Under the staff's proposed additions to HB 256, the interim powers and responsibilities vested in the Legislative Council would terminate when the revision of the Code is accomplished. At that time the Council would then submit to the Legislature the method it recommends for the future promulgation, publication, and distribution of administrative regulations.

A bill to effectuate the recommended proposal is contained in Appendix 7.

III. REVIEW OF STATE SUPREME COURT DECISIONS

This part of the report contains analyses of four recent state supreme court opinions and the Council's recommendations based on these analyses.

A. STATE v. PINBALL MACHINES [Sup. Ct. Op. No. 298 - August 19, 1965]

1. Fact Situation. Various pinball machines in the cities of Anchorage and Fairbanks were seized as gambling implements under the authority of AS 11.45.040. Essentially, the machines featured a coin insertion to activate the machine, the shooting of balls by a player, the dropping of balls into holes, the lighting of numbers on a bingo-type card, the varying of odds by a mechanism within the machine and the winning of free games by chance. No pay-off in money or things of monetary value was found to have been made to winning players. Winners only acquired the right to continue playing the game without paying additional money until the number of free games won were used up.

2. Statutes Involved. The only statute involved in these cases that is pertinent to the legislative problem to be discussed is AS 11.45.040 which states:

> The commissioner of public safety, a member of the division of state police, or a police or peace officer designated by the commissioner shall seize and destroy a gambling implement.

3. Superior Court Decisions. The superior court at Fairbanks held that a pinball machine is a gambling implement per se, while the superior court at Anchorage held that it is not.

4. Supreme Court Decision. The Supreme Court agreed with the superior court in Fairbanks and held that pinball machines are gambling implements which are subject to seizure and destruction under the law. According to the court, the essential elements of gambling are price, chance and prize, and whenever some tangible thing is "used or mainly designed or suited for gambling" it is a gambling implement. In applying these criteria to pinball machines the court noted that since a person must insert money into a pinball machine to activate it, the element of price is present and because the number of free games one may win is uncertain, the element of chance is also present. Moreover, a prize was won, even though the free games accumulated had no real monetary value, because, said the court:

> It is not the essence of gambling that the element of prize have a monetary value. If that which one seeks to attain, regardless of whether it has value in money, may be attained by chance after the payment of a price, then one is gambling.

5. Legislative Problem. This case indicates that there is a need for the legislature to either define what it considers to be a "gambling implement" or to at least make clear its position regarding pinball machines as gambling implements.

Under the court's present criteria almost any game which a person pays to play or see can fall into the catagory of gambling because of the presence of price, chance and prize. In fact, a literal application of the definition adopted in this case would require the conclusion that even bubble gum machines, which have little trinkets interspersed among the gum, are gambling instruments

to be adjusted manually or automatically to raise or lower the frequency of winning free games. One such device is known as a "reflex unit." It operates constantly to adjust the odds--unbeknownst to the player--to protect the "house." After a series of pay-offs the unit begins to disconnect circuits in the odds-fixing mechanism to reduce the chance of increasing the odds with each coin; after a period of slow play the unit reverses and reopens circuits to make it progressively easier to win a greater number of games again.

It may be feasible, therefore, to use the mechanical makeup of pinball machines as the basic method for determining whether a particular pinball machine is a gambling implement. (A draft bill incorporating this approach is contained in Appendix 8).

It is the Legislative Council's belief that further consideration of the problem posed by this case is needed. Thus, the Council recommends that the material related above and the draft bill in Appendix 8 be referred to the House State Affairs and the House Finance Committee for their study and analysis.

B. WADE v. DWORKIN [Sup. Ct. Op. No. 306 - November 4, 1965]

1. Fact Situation. The Secretary of State denied an application for a recount of votes for the House of Representatives' race of November, 1964, in the sixteenth election district on the ground that the application was not received within the time set by law for filing such applications.

The state canvass of the election in question was completed and certified to the Secretary of State on November 19, 1964. The application, which had been signed by ten qualified voters of the sixteenth election district (one of whom was the appellee, Lazer Dworkin), was mailed on November 23, 1964, (four days after the canvass) and received by the Secretary of State on November 25th, which was six days after certification of the state canvass (one of those six days being an intervening Sunday).

2. Statutes Involved. This case involved the following statutes:

(a) AS 15.20.430, which states in part

A defeated candidate or 10 qualified voters who believe there has been a mistake made by an election official or by the canvassing board in counting the votes in an

ALASKA
STATE
LEGISLATURE

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the clarification of the meaning of a gambling implement as applied to pinball machines and other coin-operated games; and providing for an effective date."

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

* Section 1. AS 11.45 is amended by adding a new section to read:

Sec. 11.45.050. PINBALL MACHINES AND OTHER COIN-OPERATED GAMES. (a) A pinball machine or other coin-operated game is a gambling implement within the meaning of sec. 40 of this chapter unless it is designed solely for amusement purposes and does not contain a device for releasing free plays, a meter for registering or recording the plays so released, a provision for multiple coin insertion for increasing the odds on winning free plays, a device for adjusting the machine manually or automatically to raise or lower the odds on winning a free play, or a mechanism capable of awarding more free plays than would, within reason, be played off by the average person.

(b) A pinball machine or other coin-operated game, the use of which has entitled a player to a payoff in money or other material thing of value, by the proprietor or an employee of the establishment in which the machine is located, is subject to seizure and destruction under this chapter.

* Sec. 2. This Act takes effect on the day after its passage

strued as modifying or limiting any other statute relating to the classification of information for reasons of national defense or security. (Sept. 9, 1950, ch. 936, § 5, 64 Stat. 824.)

§ 1156. Use of existing facilities.

(a) The Secretary may utilize any personnel, facilities, bureaus, agencies, boards, administrations, offices, or other instrumentalities of the Department of Commerce which he may require to carry out the purposes of this chapter.

(b) The Secretary is authorized to call upon other departments and independent establishments and agencies of the Government to provide, with their consent, such available services, facilities, or other cooperation as he shall deem necessary or helpful in carrying out the provisions of this chapter, and he is directed to utilize existing facilities to the full extent deemed feasible. (Sept. 9, 1950, ch. 936, § 6, 64 Stat. 824.)

§ 1157. Relation to other provisions.

Nothing in this chapter shall be construed to repeal or amend any other legislation pertaining to the Department of Commerce or its component offices or bureaus. (Sept. 9, 1950, ch. 936, § 7, 64 Stat. 824.)

Chapter 24.—TRANSPORTATION OF GAMBLING DEVICES

Sec.
1171. Definitions.
1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.
1173. Registration of manufactures and dealers.
(a) Activities requiring registration; contents of registration statement.
(b) Numbering of devices.
(c) Records; required information.
(d) Retention of records.
(e) Dealing in, owning, possessing or having custody of devices not marked or numbered; false entries in records.
(f) Authority of Federal Bureau of Investigation.
1174. Labeling and marking of shipping packages.
1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited.
1176. Penalties.
1177. Confiscation of gambling devices and means of transportation; laws governing.
1178. Nonapplicability of chapter to certain machines and devices.

§ 1171. Definitions.

As used in this chapter—

(a) The term "gambling device" means—

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property, or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

(b) The term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "possession of the United States" means any possession of the United States which is not named in subsection (b) of this section.

(d) The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(e) The term "intrastate commerce" means commerce wholly within one State or possession of the United States. (Jan. 2, 1951, ch. 1194, § 1, 64 Stat. 1134, Oct. 18, 1962, Pub. L. 87–840, §§ 2, 3, 76 Stat. 1075.)

AMENDMENTS

1962—Subsec. (a) (2), (3). Pub. L. 87–840, § 2 (a), (b), substituted provisions including machines and mechanical devices designed and manufactured primarily for gambling by the operation of which a person may become entitled to receive, as the result of chance, any money or property, for provisions which included machines or mechanical devices designed and manufactured to operate by inserting a coin, token, or similar object, in par. (2), and inserted ", but which is not attached to any such machine or mechanical device as a constituent part", in par. (3).

Subsec. (b). Pub. L. 87–840, § 3, substituted "the District of Columbia" for "Alaska, Hawaii."

Subsecs. (d) and (e). Pub. L. 87–840, § 3, added subsecs. (d) and (e).

EFFECTIVE DATE OF 1962 AMENDMENT

Section 7 of Pub. L. 87–840 provided that: "The amendments made by this Act [enacting section 1178 of this title and amending this section and sections 1172 and 1173 of this title] shall take effect on the sixtieth day after the date of its enactment [Oct. 18, 1962]."

SHORT TITLE

Section 1 of Pub. L. 87–840 provided that Pub. L. 87–840, which enacted section 1178 of this title, and amended this section and sections 1172 and 1173 of this title, may be cited as the "Gambling Devices Act of 1962."

SEPARABILITY OF PROVISIONS

Section 8 of act Jan. 2, 1951, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act [this chapter] which can be given effect without the invalid provision or application, and to this end the provisions of this Act [this chapter] are declared to be severable."

CROSS REFERENCES

Numbering of gambling devices, see section 1173 of this title.

§ 1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.

It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a possession of the United States

from any place outside of such State, the District of Columbia, or possession: *Provided,* That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: *Provided, further,* That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

Nothing in this chapter shall be construed to interfere with or reduce the authority, or the existing interpretation of the authority, of the Federal Trade Commission under the Federal Trade Commission Act. (Jan. 2, 1951, ch. 1194, § 2, 64 Stat. 1134; Oct. 18, 1962, Pub. L. 87–840, § 4, 76 Stat. 1075.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in the text, is classified to sections 41—46 and 47—58 of this title.

AMENDMENTS

1962—Pub. L. 87–840 excepted gambling devices used or designed for use at and transported to licensed gambling establishments where betting is legal under State laws, and provided that it shall not be unlawful to transport such devices into any State in which the device is specifically enumerated as lawful in a State statute.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87–840, set out as note under section 1171 of this title.

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1173. Registration of manufacturers and dealers.

(a) Activities requiring registration; contents of registration statement.

(1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless, after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his places of business in any State or possession of the United States, (C) the address of a place, in a State or possession of the United States in which such a place of business is located, where he will keep all records required to be kept by him by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

(b) Numbering of devices.

(1) Every manufacturer of a gambling device defined in paragraph (a)(1) or (a)(2) of section 1171 of this title shall number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(2) Every manufacturer of a gambling device defined in paragraph (a)(3) of section 1171 of this title shall, if the size of such device permits it, number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(c) Records; required information.

(1) Every person required to register under subsection (a) of this section for any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of—

(A) each gambling device manufactured, purchased, or otherwise acquired by him,

(B) each gambling device owned or possessed by him or in his custody, and

(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

(2) Such record shall show—

(A) in the case of each such gambling device defined in paragraph (a)(1) or (a)(2) of section 1171 of this title, the information which is required to be affixed on such gambling device by subsection (b)(1) of this section; and

(B) in the case of each such gambling device defined in paragraph (a)(3) of section 1171 of

this title, the information required to be affixed on such gambling device by subsection (b)(2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location.

Such record shall also show (i) in the case of any such gambling device described in paragraph (1)(A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1)(C) of this subsection, the name and address of the buyer and consignee thereof and the name and address of the carrier.

(d) Retention of records.

Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a)(4)(C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

(e) Dealing in, owning, possessing or having custody of devices not marked or numbered; false entries in records.

(1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

(f) Authority of Federal Bureau of Investigation.

Agents of the Federal Bureau of Investigation shall, at any place designated pursuant to subsection (a)(4)(C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and, in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the United States district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying. (Jan. 2, 1951, ch. 1194, § 3, 64 Stat. 1135; Oct. 18, 1962, Pub. L. 87–840, § 5, 76 Stat. 1075.)

REFERENCES IN TEXT

The effective date of the Gambling Devices Act of 1962, referred to in pars. (2) and (3) of subsec. (a), means the effective date of Pub. L. 87–840. See effective date note under this section.

AMENDMENTS

1962—Pub. L. 87–840 amended section generally. Prior to such amendment, section provided that: "Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every manufacturer of and dealer in gambling devices shall register with the Attorney General his name or trade name, the address of his principal place of business, and the addresses of his places of business in such district. On or before the last day of each month every manufacturer of and dealer in gambling devices shall file with the Attorney General an inventory and record of all sales and deliveries of gambling devices as of the close of the preceding calendar month for the place or places of business in the district. The monthly record of sales and deliveries of such gambling devices shall show the mark and number identifying each article together with the name and address of the buyer or consignee thereof and the name and address of the carrier. Duplicate bills or invoices, if complete in the foregoing respects, may be used in filing the record of sales and deliveries. For the purposes of this chapter, every manufacturer or dealer shall mark and number each gambling device, so that it is individually identifiable. In cases of sale, delivery, or shipment of gambling devices in unassembled form, the manufacturer or dealer shall separately mark and number the components of each gambling device with a common mark and number as if it were an assembled gambling device. It shall be unlawful for any manufacturer or dealer to sell, deliver, or ship any gambling device which is not marked and numbered for identification as herein provided; and it shall be unlawful for any manufacturer or dealer to manufacture, recondition, repair, sell, deliver, or ship any gambling device without having registered as required by this section, or without filing monthly the required inventories and records of sales and deliveries."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87–840, set out as a note under section 1171 of this title.

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1174. Labeling and marking of shipping packages.

All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package. (Jan. 2, 1951, ch. 1194, § 4, 64 Stat. 1135.)

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited.

It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of Title 18 or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of Title 18. (Jan. 2, 1951, ch. 1194, § 5, 64 Stat. 1135.)

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1176. Penalties.

Whoever violates any of the provisions of sections 1172—1174 or 1175 of this title shall be fined not more than $5,000 or imprisoned not more than two years, or both. (Jan. 2, 1951, ch. 1194, § 6, 64 Stat. 1135.)

§ 1177. Confiscation of gambling devices and means of transportation; laws governing.

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in

violation of the provisions of this chapter shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided,* That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General. (Jan. 2, 1951, ch. 1194, § 7, 64 Stat. 1135.)

§ 1178. Nonapplicability of chapter to certain machines and devices.

None of the provisions of this chapter shall be construed to apply—

(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting,

(2) to any machine or mechanical device, such as a coil-operated bowling alley, shuffleboard, marbel machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or State fairs.

(Jan. 2, 1951, ch. 1194, § 9, as added Oct. 18, 1962, Pub. L. 87–840, § 6, 76 Stat. 1077.)

EFFECTIVE DATE

Section effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87–840, set out as a note under section 1171 of this title.

Chapter 25.—FLAMMABLE FABRICS

Sec.
1191. Definitions.
1192. Prohibited transactions.
1193. Standards of flammability; proposals for new standards.
1194. Administration and enforcement; law governing; rules and regulations; inspections, tests, etc.
1195. Injunction and condemnation proceedings.
(a) Temporary injunction; venue.
(b) Process of libel for seizure and confiscation; manner of procedure; consolidation of trials.
(c) Application by defendant for representative samples of seized materials.
(d) Disposal of condemned materials.
1196. Penalties.
1197. Guaranties.
1198. Shipments from foreign countries, posting of bond.
1199. Chapter as additional legislation.
1200. Persons excluded from operation of chapter.

§ 1191. Definitions.

As used in this chapter—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise.

(b) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(c) The term "Territory" includes the insular possessions of the United States and also any Territory of the United States.

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals except hats, gloves, and footwear: *Provided, however,* That such hats do not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals: *Provided further,* That such gloves are not more than fourteen inches in length and are not affixed to or do not form an integral part of another garment: *And provided further,* That such footwear does not consist of hosiery in whole or in part and is not affixed to or does not form an integral part of another garment.

(e) The term "fabric" means any material (other than fiber, filament, or yarn) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this chapter.

(f) The term "interlining" means any fabric which is intended for incorporation into an article of wearing apparel as a layer between an outer shell and an inner lining.

(g) The term "Commission" means the Federal Trade Commission.

(h) The term "Federal Trade Commission Act' means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended. (June 30, 1953, ch. 164, § 2, 67 Stat. 111.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (h), is classified to sections 41—46 and 47—58 of this title.

EFFECTIVE DATE

Section 12 of act June 30, 1953, provided that this chapter shall take effect one year from June 30, 1953.

SHORT TITLE

Congress in enacting this chapter provided by section 1 of act June 30, 1953, that it should be popularly known as the "Flammable Fabrics Act."

and collected in the same manner as other charges, licenses and penalties under this chapter.

[Part 10e:99:1931; added 1945, 492; A 1947, 734; 1949, 114; 1955, 760]

TRANSPORTATION OF GAMBLING DEVICES IN INTERSTATE COMMERCE

463.410 Declaration of state's exemption from operation of provisions of 15 U.S.C. § 1172. Pursuant to section 2 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. §§ 1171–1177, the State of Nevada, acting by and through its duly elected and qualified members of its legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such Act of Congress, declare and proclaim that it is exempt from the provisions of section 2 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134.

[1:97:1951]

463.420 Legal shipments of gambling devices, slot machines into State of Nevada. All shipments of gambling devices, including slot machines, into this state, the registering, recording and labeling of which has been duly had by the manufacturer or dealer thereof in accordance with sections 3 and 4 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. §§ 1171–1177, shall be deemed legal shipments thereof into this state.

[2:97:1951]

LICENSING AND REGULATION OF DISSEMINATION OF HORSE RACING INFORMATION

463.430 Unlawful to disseminate horse racing information without license; public utility exception.

1. It shall be unlawful for any person, firm, corporation or association in this state to supply or disseminate in this state by any means information received from any source outside of this state concerning horse racing, when such information is to be used by the user for the purpose of maintaining and operating any gambling

FILE COPY

File after review by, or concurrence of

W. Colver

Reviewed MM (Initials)

Concurred in _____ (Initials)

March 16, 1966

M E M O R A N D U M

TO: Representative W. P. Guess
Alaska State Legislature

FROM: Warren C. Colver
Attorney General

RE: S.B. 282, An Act Relating to Pinball Machines

At your request we have examined S.B. 282 to determine what effect it would have on multiple-coin insertion pinball machines under state and federal law.

S.B. 282 amends AS 43.35.090(2) by adding a statement to the effect that the award of "free plays shall not be construed as a thing of value." This is an obvious attempt to legalize the type of pinball machine specifically described in AS 43.35.090(2). The Alaska Supreme Court has held that the kind of pinball machine described in AS 43.35.090(2) is a gambling device per se on the theory that the three elements necessary to constitute a gambling device are present in the machine. Those three elements are consideration, chance and prize. The Court held that the award of free plays was a prize because a free play is a thing of value. S.B. 282 attempts to provide that free plays shall not be construed as a thing of value.

First, it should be noted that AS 43.35.090 does not prohibit or permit gambling or gambling devices. See State of Alaska v. Pinball Machines, 404 P.2d 923 (Alaska 1965). It simply imposes a tax on certain coin-operated devices including one type of device that is clearly illegal: "coin-operated device class 3", i.e., one-arm bandits and other machines that make direct pay-offs in cash, merchandise, etc. Taxing illegal devices is not uncommon and follows the federal practice with regards to gambling implements. AS 43.35.090 neither prohibits or permits pinball machines; it merely taxes them.

The statute that makes gambling implements illegal and subject to seizure is AS 11.45.040. Gambling implements, according to the Alaska Supreme Court, can be taxed even if they are illegal. So, changing the provisions of AS 43.35.090(2) might not make a certain kind of pinball machine (the kind described as coin-operated class 2) illegal under AS 11.45.040.

Considering all the litigation the State has already engaged in over this matter it would perhaps preclude further litigation if the amendment was to AS 11.45.040. By adding a sentence to AS 11.45.040 pinball machines could either be made legal or illegal and we could dispense with further expensive litigation.

However, if the courts were to take the view that S.B. 282 did in effect legalize the kind of pinball machine described in AS 43.35.090(2), then these machines could be imported into the State under federal law.

The federal law on this subject is contained in 15 U.S.C. §§ 1171 - 1178; 15 U.S.C. § 1172 provides that gambling devices cannot be transported to any place in a state except that "it shall not be unlawful to transport in interstate . . . commerce any gambling device into any state in which the transported gambling device is specifically enumerated as lawful in a statute of that state."

WCC:rw

MMH

JUDICIARY COMMITTEE MINUTES MARCH 19, 1966

Chairman Guess called the meeting to order at 10 a.m. Present were Stevens, Metcalf, Tillion and Taylor.

Vic Carlson, Assistant City Attorney of Anchorage, spoke on HB 427, HB 493 and SB 282. Mr. Don Berry, Alaska Municipal League, spoke on HB 494.

Meeting was adjourned.

JUDICIARY COMMITTEE MINUTES MARCH 21, 1966

Chairman Guess called the meeting to order at 10:00 a.m. Present were Messrs. Metcalf, Tillion, Taylor and Stevens. Mr. Don Berry of the Alaska Municipal League and Rep. William Moran appeared on HB 493. Mr. Moran spoke in favor of the bill and Mr. Berry against it. No action was taken on the bill.

The committee next considered HB 9 and Mr. Taylor moved "Do Pass" and asked unanimous consent. There were no objections.

The committee considered SB 66 and the following two amendments to the bill were discussed:

> On page 1, beginning on line 24, insert:
>
> (c) Any zoning done by the division of lands, Department of Natural Resources, under (b) of this section, is not final until approved by concurrent resolution at the next regular session of the legislature.
>
> On page 1, line 19, after "power" insert "within federal lands"

Mr. Stevens moved it "Do Pass with the amendments". Motion passed.

The committee then considered HB 279. The committee decided to limit sec. 2 of the bill to superior court judges and to make the following amendments:

> Page 1, line 29, delete everything after "to" and on page 2, line 1, delete everything before "the".
>
> Page 2, line 13, delete everything after "to" and delete all of line 14 and line 15 delete "then to"

Mr. Stevens moved that it "Do Pass with amendments". Motion passed.

The committee discussed SB 4 and the committee counsel was asked to prepare a committee substitute along the lines of the discussion.

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON SB 66

Under Public Law 88-608, which was passed by Congress on September 19, 1964, the Secretary of the Interior is required, 90 days before offering lands for sale, to notify the head of the government body of the political subdivision of the state having jurisdiction over zoning in the geographic areas within which the lands are located of the proposed sale so that the body has the opportunity of zoning in accordance with local land use and development. No sale may be conducted under the authority of Public Law 88-608 until zoning regulations have been enacted by the appropriate local authority.

In the absence of a political subdivision having zoning authority, the governor must be notified and the land to be sold must be zoned. In the unorganized borough outside of cities, there is presently no body having authority to zone lands. SB 66 is necessary to provide an agency with a zoning power in the unorganized borough where no political subdivision with a zoning power exists.

Under Sec. 6. of Art. X of the state constitution, the legislature "may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough". Under SB 66, the legislature delegates its power of zoning under certain circumstances. The legislature may nullify a zoning regulation promulgated under this bill in the usual manner, and the zoning which is done by the Division of Lands does not become final until approved by resolution of the Legislature under the judiciary committee amendment.

JUDICIARY COMMITTEE REPORT ON HB NO. 9

Since the 1960 presidential election, there have been numerous articles pointing out that many citizens, otherwise eligible to vote, were disfranchised because they changed their state of residence during the preceding year. When a person moves to a new state with the intention of taking up residence, he loses his legal residence in the state from which he has moved and usually loses the right to vote by absentee ballot in that state.

The 1963 program of Suggested State Legislation published by The Council of State Governments contains a discussion of "Loss of Voting Rights in Presidential Elections" beginning on page 212 and a "Uniform Act for Voting by New Residents in Presidential Elections" beginning on page 250. HB 9 is based on that Act.

HB 9 would allow new resident voters to vote for president and vice president of the United States if they have not been a resident of Alaska for a year if they would otherwise be qualified to vote. HB 9 contains safeguards against fraudulent and "double" voting in Sec. 15.30.140(2) and 15.30.150.

The philosophy underlying this bill is that residence in a state for a reasonable period of time might be essential to enable a voter to pass upon state and local candidates and issues, but that since the president is the representative of the entire nation, a change of residence from one state to another should not in any way detract from the voter's ability to make a choice for president.

JUDICIARY COMMITTEE REPORT ON HCSSB NO. 4

Under sec. 1 of HCSSB No. 4, a candidate who loses in the primary election may not be elected to the same office by write-in votes in the general election unless the party nominee for the office has died, withdrawn, become disqualified or incapacitated.

Under sec. 2 of the bill, if an incumbent candidate for renomination dies, becomes disqualified or incapacitated between June 1 of the election year and 10 days before the primary election, his place on the ballot may be filled by party petition. If he dies, becomes disqualified or incapacitated in the 10 days before the primary election, then his name remains on the ballot and his votes are counted. If he is nominated at the party primary, then the vacancy is filled by party petition.

JUDICIARY COMMITTEE MINUTES MARCH 22, 1966

Chairman Guess called the meeting to order at 4:30 p.m. Members present were Messrs. Stevens, Josephson, Hillstrand, Metcalf and Taylor.

Rev. Richard Heacock, representing the Alaska Council of Churches, and Rev. Ernest Jones, representing the Alaska Mission of the Methodist Church, appeared and spoke against SB 282.

Meeting was adjourned.

JUDICIARY COMMITTEE MINUTES MARCH 23, 1966

Vice-Chairman Josephson called the meeting to order at 2 p.m. Present were members Tillion, Metcalf, Taylor and Hillstrand.

The following persons appeared and spoke in favor of the Labor and Management Committee Substitute for HB 296: Bruce Monroe, Deputy Commissioner of Labor; Lewis Dischner, Alaska Teamsters Local 959; Mark Hensen, Coal Operators Assoc.; and Newton Cutler, D. K. MacDonald Co. of Alaska.

Mr. Taylor moved that CSHB 296 "Do Pass". Motion carried.

Meeting was adjourned.

REPORT ON CSHB NO. 296

Sec. 1 of CSHB 296 increases the amounts to be paid into the second injury fund by the employer or his insurance carrier.

Sec. 2 of the bill leaves in the law that the Workmen's Compensation Board may approve lump-sum settlements when it appears to be in the best interest of the beneficiaries. It deletes the limitation that in death cases the lump-sum settlement shall be approved only in cases where the deceased leaves a spouse and more than five years have elapsed since the death of the employee.

Sec. 3 substantially rewrites AS 23.30.215 to improve the benefits of the spouse and children of a deceased employee. Paragraph (a)(1) is the same as present law. Paragraph (a)(2) - (4) should be compared to present law to determine the changes. Generally, (a)(2) raises the lump-sum settlement upon the widow's remarriage from two years' compensation (which amounted to a maximum of $2,948.40) to $10,000 and at the same time limits the amount of the total compensation to $20,000 in the aggregate. In the past the total compensation has usually averaged around $8,000 or $9,000 but the insurance companies have kept $37,000 in reserve. The $20,000 limit closes the open end that has existed under this section except as to the situation covered by (e) of this section.

(a)(3) is reworded but there seems to be no substantive change, except for the age change which will be discussed later.

In (a)(4), on line 20, page 3, after "children", the words "or if the amount payable to a surviving wife or dependent husband and to children is less in the aggregate than 65 per cent of the average wages of the deceased" have been dropped. A $20,000 limitation is also added in this paragraph in place of the dropped language.

(b) fixes the method of computing death benefits and a new method is created by this bill based on the determination of the average weekly wage of the employee as set out in AS 23.30.220 and subject to the same weekly maximum limitation in the aggregate as temporary total disability compensation under AS 23.30.175(a). Subsection (b) changes the maximum and minimum average weekly wage from the present $27 and $81 to a minimum of $45 for a widow or widower, $15 for a child or $30 for children.

(c) is the same except the words "or death" are added at the end of the sentence.

(d) is the same except that on page 4, line 14, the word "may" that is after "board" in the present law has been deleted and inserted on line 15 after "carrier" and the word "shall" has been deleted after "carrier". On lines 16 and 17, the words "who is not a resident of the United States or Canada" have been added.

(e) is a new sub-section. It provides that regardless of anything else in this section, that the surviving widow or widower who was dependent upon the deceased employee at the time of death and incapable of self-support by reason of mental or physical disability or otherwise not employable and who has not remarried shall continue to receive death benefits until conditions change. Whether a person is unemployable is left to the determination of the board.

Sec. 4 of the bill amends AS 23.30.265 (7) to raise the age from 18 to 19 years for those minors who may receive support as dependents of the deceased.

JUDICIARY COMMITTEE MINUTES MARCH 24, 1966

Mr. Guess called the meeting to order at 3:30 p.m. Present were members Stevens, Metcalf, Tillion and Hillstrand.

The committee discussed HB 427 and the proposed committee substitute. Mr. Stevens moved that the committee substitute "Do Pass". There were no objections.

The committee considered HB 449 and two proposed bills prepared by the committee counsel at the committee's request. Mr. Stevens moved that the two new bills be introduced by the committee and there were no objections. The committee then decided by unanimous consent to withdraw HB 449 which is on the same subject as the two new bills.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON CSHB 427

The 1964 earthquake dealt harshly with property rights in a large area of Alaska. Insofar as existing structures were demolished or damaged, legislation can do little. But, where movements of the earth created uncertainty as to who owns what part of the earth's surface, legislation can be helpful. The purpose of CSHB 427 is to provide judicial machinery for the restoration of certainty as to land boundaries. It says that the boundaries, as established by the earthquake, deserve to be embodied in court decrees which can serve as a reliable point of departure for future conveyances, mortgages, public improvements and other similar enterprises.

After the earthquake it was found that an area approximately west of L Street in Anchorage moved about nine feet to the west and four feet to the north. This sliding of the earth created a problem in real property locations and descriptions because the plat of the Original Townsite no longer represents the actual location of the property. The City of Anchorage could find no solution to this problem in Alaska procedures or statutes. Therefore, they retained Professor Richard R. Powell, Emeritus Dwight, Professor of Law at Columbia University and Professor of Law at Hastings College in San Francisco and an outstanding authority on real property law to find the solution to their problem.

Professor Powell drafted HB 427, basing it on the McEnerney Act which was enacted in California in 1906 to provide relief from the uncertainties caused by the wholesale destruction of land records. The McEnerney Act created a procedure which resulted in an in rem decree binding on all persons, known or unknown, born or unborn. The California statute was tested over a 20-year period in both state and federal courts and is a valid law in all respects. The Committee Substitute for HB 427 differs from the original bill in that it deletes some court procedure which is either covered in the existing court rules or which the court can cover by rule. However, the bill still contains procedure and must receive a two-thirds vote of the legislature.

CSHB 427 creates a special action relating to real property and this action will result in a recordable decree describing the boundaries of land, both public and private, as they are found to exist subsequent to an act of God consisting of an earthslide. Land areas made available by municipalities by the voluntary vacating or narrowing of streets or other public ways may be accepted to the extent the public welfare is served by minimizing the land losses caused by the earthslide. The decree will approve and direct the proper filing of a new plat map covering the entire area of real property sought to be affected by the action, as a substitute for the plat maps filed at the time of the earthquake but rendered inaccurate by the earthslide.

The essential features of the bill are

Sec. 800 - which authorizes the action;

805 - describing who may bring the action, who must be included in the action and who is affected by the action;

810 - when separate actions are permissible;

815 - what must be included in the complaint;

820 - publication and posting of notice of the action;

825 - the procedure applicable to the action;

830 - the court's jurisdiction;

835 - the answer and its contents;

840 - recording of a notice of the pendency of the action in the office of the recorder to give constructive notice to a purchaser, encumbrancer, etc;

845 - voluntary vacating of streets in whole or in part by municipalities for the purpose of making it possible for the court to mitigate the hardships suffered by individuals because of the change in land boundaries caused by the earthslide;

850 - no default judgment may be given;

855 - the scope of the judgment;

860 - the judgment shall give effect to the changes in land boundaries which shall be mitigated, where possible, by the allocation of contiguous land vacated by the municipality;

865 - the conclusiveness of the judgment;

870 - the recording of the judgment;

875 - a statement that this special action is a remedy in addition to other actions for quieting or establishing title to real property;

880 - short title.

This bill is necessary to make each parcel of land whose boundaries have been changed by the earthslide fully available for structures, to assure safety in the purchasing, mortgaging or leasing of land, to permit the issuance of title insurance policies, without the exceptions now necessary to cover the existing uncertainties as to boundaries, to confirm and establish the areas available for

public uses in dedicated streets, to correct the existing public records so that they will accurately represent existing land boundaries and to substitute one action for each affected area for the scores of separate quiet title actions otherwise likely to be brought.

Professor Powell's detailed comments and citations are available in the committee records.

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / *BOX 2170 — JUNEAU 99801*

February 18, 1966

The Honorable Walter E. Guess
Alaska State Representative
State Capitol Building
Juneau, Alaska 99801

Re: A Bill to Establish Land Boundaries
Affected by Earthslides

Dear Representative Guess:

Enclosed herewith is a bill that was drafted for the city of Anchorage by a Professor Richard R. Powell. At the city's request, we have put the bill into the usual form for bills to be introduced in the Alaska Legislature. We have not made any substantive changes or considered any of the policy questions presented by the bill.

We understand that the city of Anchorage will make Professor Powell available to any legislative committee that considers the bill. I am also enclosing his notes explaining in detail the meaning of the bill section by section. It appears that Professor Powell has done a very fine job with the bill.

The city has advised us that it is extremely important that this bill be given the earliest possible attention.

Yours very truly,

WARREN C. COLVER
ATTORNEY GENERAL

By Michael M. Holmes
Michael M. Holmes
Deputy Attorney General

MMH/grg

Encl

cc w/encl: Karl Walter

March 17, 1966

Gentlemen;

The problem for which the Earthslide Relief Act is proposed is the present inaccuracy of land plats upon which landowners and lending institutions rely in areas affected by an earthslide.

For example, in the area termed the "L" Street Slide Area (roughly north of 9th Avenue and west of "L" Street in Anchorage) the land has shifted with most of the buildings, trees, fences, etc. in tact. The owners and others having an interest in this group approximately of 300 lots describe their holdings by reference to a certain lot and block of the plat of the original townsite of Anchorage. After the earthslide by referring to this plat many property owners would find they are encroaching on their neighbors and on the public right-of-way, likewise the streets are encroaching on private property. There is a need to have the official plat represent the truth of the land boundaries as shifted.

This bill does not affect disputes concerning property lines which existed before the earthslide and is drafted to specifically save those disputes for the private parties to settle. This bill is concerned with the public interest aspect of having boundaries accurately described by reference to an official plat. The bill, if enacted, accomplishes the result by providing for a judicial determination of the accuracy of a new plat after notice is given to every property owner and every other person with an interest in the area affected by the new plat whose interest can be discovered through a search of the records and a view of the property or is otherwise known.

The form of the bill which is under consideration has been prepared by Professor Powell, a real property professor at Columbia for forty years. I regret that Professor Powell cannot be here to testify.

The bill in its present form contains much procedure and is based upon the McEnerney Act of California which has been tested and upheld by the U. S. Supreme Court. If the bill is changed in form so as to allow a different method of serving notice, time for appearing, etc. the precedents of the McEnerney Act cases will not be as persuasive and therefore may create further litigation which only postpones the period of uncertainty.

It is a question for you to decide, whether or not the form of the bill should be changed so as to allow for use of present court procedure. The legislative council staff has been furnished with a draft bill from which most of the procedure has been omitted.

Thank you for your attention to this problem.

Sincerely,

Victor D. Carlson

Victor D. Carlson
Anchorage Assistant City Attorney

March 16, 1966

Gentlemen:

Attached are Professor Powell's efforts to draft earthslide relief legislation appropriate to all areas of Alaska affected by the 1964 earthquake and by other earthslides which may occur in the future. Your attention is specially directed to the Professor's two page memorandum directed to the Joint Judiciary Committees of the Senate and the House of Representatives.

It is realized that you may not have time to read all of this material, but after hearing my testimony and seeing the map of one problem area and how the proposed legislation would remedy the problem if there remain questions the attached material should provide the answers.

Thank you in advance for your attention to this problem.

Victor D. Carlson

Victor D. Carlson,
Asst. City Attorney
City of Anchorage, Alaska

VDC:l

To the Joint Judiciary Committees of the Senate
and House of Representatives of the State of Alaska:

Having tried unsuccessfully for two days to reach Juneau by air, so that I could appear before your honorable committees in person, in support of the so-called Earth-slide Relief Act; and the continuance of these attempts being impossible, the Chairman of the House Judiciary Committee suggested that I make a brief written presentation for your consideration.

It seems to me that I can, perhaps, be useful to you on two points (1) the purpose of this legislation and its clear authorization under the police power of the State; and (2) the format of the proposed statute and the utility of that format in establishing due process of law for the in rem proceeding.

The earthquake of April 1964 dealt harshly with property rights in a large area of Alaska. In so far as existing structures were demolished or damaged, legislation can do little. In so far as the movements of the earth created uncertainty as to who owns what part of the earth's surface, legislation can be helpful. The purpose of this legislation is to provide judicial machinery for the restoration of certainty as to land boundaries. It says, in effect, that the boundaries, as established by the earthquake, deserve to be embodied in court decrees which can serve as a reliable point of departure for future conveyances, mortgages, public improvements and other similar enterprises. This sort of legislation, to establish certainties as to land ownerships, is clearly within the police power of a state. This holding has been made in many of our states, (Arkansas, California, Illinois and Nebraska), and has been recognized as correct by the United States Supreme Court.

(See annexed memo on the scope of the police power, as recognized in other jurisdictions and also in Alaska)

The format of the proposed statute departs considerably from the accustomed. It, admittedly, embodies procedural matters which are possible for Alaska only if either the bill is passed by a two-thirds vote in each chamber, or the Supreme Court is willing to supplement its existing rules, by a new rule permitting this unique procedure only in actions authorized by this bill. This raises a very practical question upon which you need to make a decision. The possible alternative is a redrafting of the bill to eliminate all deviations from the presently established Rules of Civil Procedure. This second course of action seems to be the least disturbing and the easier. But is it? The present format of the act follows, almost slavishly, the format of the McEnerney Act, enacted in California in 1906 to provide relief from the intolerable uncertainties caused in that state by the wholesale destruction of land records. The California legislation tried to set up a procedure (just as unique then in California as this bill would be today in Alaska) which would result in a decree binding on all persons, born and unborn, known or unknown in the whole world. This is called in legal parlance a decree in rem. This was needed in California. This is needed in Alaska. The California statute was severely tested, over a 20 year period, in both State and Federal courts. It stood these tests. If Alaska adopts a statute in the California pattern, all of the great body of precedents built up with respect to California becomes a relevant and helpful body of precedents to support the in rem character of the Alaskan statute. If, on the other hand, the format of the Alaskan enactment relies wholly on its presently established rules of civil procedure for

its desired in rem character, the result may possibly be either a finding that it lacks due process requisite for an in rem decree or a full sustaining of the new statute. Even if there is eventually a full sustaining of the new statute it will have cost many thousands of dollars and will not give certainties for five or even ten or more years ahead. So which alternative is really the best for your State? On that question you and the two chambers which you represent have the responsibility.

(See annexed memo on the "due process" certainties of a statute in the proposed format.")

Respectfully submitted,

Richard R. Powell

March 10, 1961

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Chapter 46 Earthslide Relief Act Concerning Land Boundaries

Sec. 09.46.010 Short title.

09.46.020 Exercise of the police power of the State.

09.46.030 Prerequisite earthslide changing land boundaries.

09.46.040 Venue.

09.46.050 Permissible plaintiffs.

09.46.060 Prerequisite designation of parties and notice.

09.46.070 Separate actions as to separate slide areas.

09.46.080 Commencement of action; parties; contents of complaint.

09.46.090 Summons; issuance; form.

09.46.100 Summons; publication.

09.46.110 Summons; memorandum of known interests; posting.

09.46.120 Summons; service on persons having known interests.

09.46.130 Jurisdiction.

09.46.140 Appearance; time; restriction on content of answers; saving of rights of parties not litigable in this action.

09.46.150 Lis pendens.

09.46.160 Vacating of streets in whole or in part.

09.46.170 Judgment; proof of facts.

09.46.180 Judgment; scope.

09.46.190 Judgment; standards.

09.46.200 Judgment; effect.

09.46.210 Judgment; recording.

09.46.220 Procedure applicable.

09.46.230 Cumulative remedies.

09.46.240 Severability.

09.46.250 Effective date.

Alaska Statutes
Title 9 Code of Civil Procedure

Chapter 46 Earthslide Relief Act Concerning Land Boundaries.

Sec. 09.46.010 Short title. This chapter may be cited as the Earthslide Relief Act Concerning Land Boundaries.[1]

Sec. 09.46.020 Exercise of the police power of the State.[2] This chapter is enacted as an exercise of the police power of the State of Alaska, for the purpose of serving the public welfare of the people of Alaska by

(1) making fully available for new constructions the entire area owned by each entity,[3] either public or private, which end can only be served by a re-establishment of certainty as to the present location of land boundaries; and

(2) facilitating the sale, mortgage and/or lease of land parcels within the State; and

(3) confirming and establishing the exact areas available for public uses in streets and other public ways;[4] and

(4) minimizing the losses suffered by land owning entities, which have been caused by an earthslide, by allocating to adjacent owners areas of land released by the narrowing or vacating of streets owned by a municipality, with the consent of such municipality, given for the promotion of the general welfare of the people of Alaska, thus reducing in an equitable manner[5] the number of landowners having losses, caused by an Act of God, in the square footage of land owned prior to the earthslide; and

(5) correcting the heretofore approved and filed public records,[6] consisting of land plats, which no longer are accurate, so that a substitute plat, judicially found to be in accordance with existing boundaries as fixed by the earthslide, which was an Act of God, and duly filed subsequent to such judicial approval, will accurately represent the existing land boundaries; and

(6) permitting these ends to be accomplished in a single action in rem,[7] brought with respect to a large area affected by an earthslide, rather than in numerous separate actions; and

(7) safeguarding the due process of the remedial procedure in rem, established by the provisions of this chapter by allowing deviations from the Rules of Civil Procedure wisely established by the Supreme Court of Alaska for all other actions and proceedings of a civil nature, legal, equitable or otherwise.[8] It is expressly declared to be the purpose of the legislature to change these established Rules to the extent, but only to the extent, authorized in this Chapter, and only in the conduct of the actions authorized in this Chapter.[9]

The legislature of this State affirms that the attainment of each of the objectives enumerated in this Section will significantly promote the welfare of all the people in the State of Alaska.[10]

Sec. 09.46.030 Prerequisite earthslide changing land boundaries. Whenever the boundaries of land, owned either by public or by private persons have been moved by an Act of God, consisting of an earthslide, so that they are in a location different from that at which, by solar survey, they were located before such earthslide,[11] an action in rem to recognize the boundaries as they presently exist and to quiet title within such boundaries in the persons judicially found entitled thereto under the provisions of this chapter, is authorized, maintainable by the persons and with the procedures provided for in this chapter for the handling of the emergencies dealt with herein.

Sec. 09.46.040 Venue. An action, authorized by the provisions of this chapter, shall be brought in the superior court having jurisdiction with respect to the geographical area of the State, wherein is located the land wholly or chiefly affected by the earthslide.

Sec. 09.46.050 Permissible plaintiffs. An action, authorized by the provisions of this chapter may be begun by

(1) any borough of the State, with the joinder of any city or cities included therein;[12] or

(2) any city not included within the boundaries of a borough, where the earthslide has affected land within such city,[13] or land outside such city as to which outside land the city has statutory power to approve a land map;[14] or

(3) any school district, which has statutory power to approve a land map;[15] or

(4) any other entity or person, not described in the preceding three clauses of this Section, who on proper application to the Superior Court, having jurisdiction of the action if brought, is granted permission by such Court to bring such an action.[16]

Sec. 09.46.060 Prerequisite designation of parties and notice. In an action authorized by this Chapter every person in actual and peaceable possession[17] of, or having any estate or interest in any of the land affected by such action, whose possession or evidence of whose estate or interest is either recorded or known to the plaintiffs, must be designated in the complaint of such action, and given due notice thereof in the manner required by the provisions of this Chapter. Such an action is an action in rem, binding upon all the world.[18]

Sec. 09.46.070 Separate actions as to separate slide areas. An entity which is a permissible plaintiff under the provision of Section 09.46.050, may, in its discretion, bring a separate action under the provisions of this Chapter with respect to each separate slide area located within its boundaries; and its decisionas to the desirability of such separate action, and as to the area to be dealt with in each action shall be final.[19]

Sec. 09.46.080 Commencement of action; parties; contents of complaint. The action shall be commenced by the filing of a verified complaint with the court.[20] The party or parties commencing the action shall be named as plaintiff or plaintiffs. The defendants shall be described as "all persons claiming any interest in or lien upon, the real property herein described or any part thereof."[21] The complaint

shall contain

(1) a statement of the facts making applicable the provisions contained in Sections 09.46.030 to 09.46.070 inclusive; and

(2) a description of the entire real property[22] sought to be affected by the action; and

(3) a specification of the estate, title and interest owned, and in the actual possession of the plaintiff or plaintiffs in described parts of the entire real property sought to be affected by the action;[23] and

(4) a specification of the estate title and interest, so far as they are known to the plaintiffs or either of them, and so far as they are capable of being discovered by reasonably diligent search[24] by such plaintiff or plaintiffs, in each separate part of the entire real property sought to be affected by the action; and

(5) a specification of the street areas offered by the plaintiff, or plaintiffs, to be vacated in whole or in part[25] for judicial equitable allocation to adjoining landowners for the mitigation of the losses inflicted upon such adjoining landowners by the Act of God consisting of the earthslide; and

(6) a proposed replatting of the entire real property sought to be affected by the action, embodying the land boundaries as fixed by the Act of God, except as these have been liberalized by judicially directed use of the vacated lands.

(7) a statement of the relief demanded in the action.[26]

Sec. 09.46.090. Summons; issuance; form. Upon the filing of the complaint, the clerk shall forthwith issue a summons under the seal of the court and shall deliver it for service to a peace officer or to a person specially appointed by the court to serve it.[27] Upon request of the plaintiff separate or additional summons shall issue against any person found to have an estate or interest in the entire real property sought to be affected by the action.[28]

The summons shall contain[29] the name of the court and of ~~the~~ county in which the action is brought, the name of the plaintiff or plaintiffs; shall state the name and address of the attorney for the plaintiff or plaintiffs; a description of the entire real property sought to be affected by the action and shall be directed to "all persons claiming any interest in, or lien upon the real property described herein, or any part thereof,"[30] as defendants, and shall be substantially in the following form:[31]

In the Superior Court ~~of~~ the State of Alaska ~~in and for the Borough~~ (or City and Borough) of _____.

_____ Plaintiff	)	
	)	
vs	)	
	)	
All persons Claiming any Interest In, or Lien Upon, the Real Property Herein Described, or Any Part Thereof	)	Action No. _____

The people of the State of Alaska, to all persons claiming any interest in, or lien upon, the real property herein described, or any part thereof, defendants, greeting:

You are hereby required to appear and answer the complaint of _____ plaintiff, filed with the clerk of the above entitled court and county, within three months[32] after the first publication of this summons and to set forth what interest or lien, if any,[33] interest different from, or greater than that described in the complaint as your ~~interest~~, you have in or upon that certain real property or any part thereof, situated in the County of _____ particularly described as follows:

(here insert description of the entire real property sought to be affected by the action)[34]

And you are hereby notified that unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint, to wit. (here insert a statement of the relief so demanded.)[35]

Witness my hand and the seal of said court this ____ day of ____ A.D. _____[36]

(Seal)

_____
Clerk

Sec. 09.46.100 Summons; publication. The summons shall be published in a newspaper of general circulation published in the district in which the action is pending, or if none is published therein, then in a newspaper published in this State circulating in such district.[37] The newspaper in which publication is to be made shall be designated by an order of the court or a judge thereof to be signed and filed with the clerk.[38] No other order for the publication of the summons shall be necessary, nor shall any affidavit therefor be required, nor need any copy of the complaint be served, except as required by this Chapter.[39]

Such publication shall be made four times during four consecutive calendar weeks, once in each week and to each publication thereof shall be appended a memorandum in substance as follows:

"The first publication of this summons was made in (here insert name of newspaper) on the _____ day of ____ A.D. ____ (insert the date)"[40]

Sec. 09.46.110 Summons; memorandum of known interests; posting. A memorandum listing the names and addresses, so far as they can be ascertained by the plaintiff or plaintiffs through reasonably diligent inquiry,[41] of each person mentioned in the complaint as having an estate or interest in the entire real property sought to be affected by the action, identified in each case as to the lot or lots in which such interest exists, shall be appended to the summons.[42] A copy of the summons, and a copy of the said memorandum, shall be posted in a conspicuous place

on each separate parcel of the entire real property described in the complaint as affected thereby, within fifteen days after the first publication of the summons.[43]

Sec. 09.46.120 Summons; service on persons having known interests. A copy of the summons and complaint and of the memorandum of known interests described in Sec. 09.46.110 shall be personally served prior to the date of the last publication of the summons,[44] upon each person named in the memorandum of known interests, if he can be found within the state.[45] Such service shall be made by the person and in the manner prescribed in Rule 4 of the Rules of Civil Procedure for personal service of a summons.[46]

If he resides out of the State, within fifteen days after the first publication of the summons, a copy of the summons, complaint and memorandum of known interests shall be deposited in the United States Post Office, enclosed in a sealed envelope, postage prepaid, addressed to him at the address given in the said memorandum,[47] or if no address is there given, at the office of the Borough in which the action is brought.[48]

If he resides within the State and with due diligence[49] cannot be found within the State before the date of the last publication of the summons, the copies shall be mailed to him as above provided forthwith and within ten days[50] after the date of the last publication of the summons.

Sec. 09.46.130 Jurisdiction. Upon the completion of the publication and posting of the summons, its personal service or mailing, as required by Sections 09.46.100 to 09.46.120 inclusive, the court has complete jurisdiction over the plaintiff or plaintiffs and the entire real property described in the complaint as intended to be affected by the action and over the person of everyone having or claiming any estate, right title or interest in or to, or lien upon, all or any part of the property and shall be deemed to have obtained the possession and control of the property for the purposes of the action with complete jurisdiction to render the judgment provided for in this Chapter.[51]

Sec. 09.46.140 Appearance; time; restriction on content of answers; saving of rights of parties not litigable in this action. At any time within three months[52] after the first publication of the summons, or such further time not exceeding thirty days,[53] as the court for good cause may grant, any person having or claiming any estate, right title or interest in or to, or lien upon, all or any part of the property may appear and make himself a party to the action by pleading to the complaint. All answers must be verified and must

(1) specifically set forth the particulars in which the claimant's estate, right title or interest in or to, or lien upon all or any part of the property is different from, or greater than, the interest of such claimant as it is described in the complaint;[54] and

(2) be confined to rights based on events occurring at the time of, or since the time of the Act of God, consisting of the earthslide.[55]

To whatever extent, if at all, such answering party has rights against anyone whatsoever, based upon facts or events which occurred before such earthslide,[56] such claims shall remain unaffected by this action and shall be assertable subsequent to the conclusion of this action at any time and in any manner permitted by law, notwithstanding the judgment granted in this action;[57] recognizing however the finality of this judgment as to the consequences, with respect to land boundaries, of such earthslide.[58]

Sec. 09.46.150 Lis pendens. The plaintiff, on the commencement of an action authorized in this Chapter, and an answering defendant, on the filing of an answer, is privileged to file a notice of the pendency of the action in the form and at the place and with the effects specified in Sec. 09.45.790.[59]

Sec. 09.46.160 Vacating of streets in whole or in part. The vacating of streets in whole or in part by the voluntary action of a municipality, for the purpose of making it possible for the court to mitigate the hardships suffered by individuals because of the change in land boundaries caused by the Act of God, consisting of an earthslide can be accomplished by the offer of the municipality expressed in the complaint described in Sec. 09.46.080 followed by the court's approval thereof in the action authorized in this Chapter, without any other formalities of any kind. This provision is declared to be a special emergency substitute for the provisions contained in Sections 40.15.140 - 40.15.180 inclusive.[60]

Sec. 09.46.170 Judgement; proof of facts. In an action of the type authorized in this Chapter, judgment shall not be given by default,[61] but the court must require proof of the facts alleged in the complaint and other pleadings.

Sec. 09.46.180 Judgment; scope. The judgment shall

(1) determine the land boundaries of each parcel of land located within the entire area of real property sought to be affected by the action, whether owned publicly or privately;[62] and

(2) determine the person or persons having estates, rights, titles, interests and claims in and to each such parcel, whether legal or equitable, present or future, vested or contingent, or whether they consist of mortgages or liens of any description;[63] and

(3) approve and direct the proper filing of a new plat map covering the entire area of real property sought to be affected by the action, as a substitute for the plat maps heretofore filed, but rendered inaccurate by the Act of God, consisting of an earthslide.

Sec. 09.46.190 Judgment; standards.[64] In reaching the conclusions called for Sec. 09.46.180 the court shall give effect to the changes in land boundaries caused by the earthslide,[65] mitigated, however, so far as can equitably be done, by allocating to contiguous[66] lots parts of the land released by a municipality by its voluntary vacation of areas formerly constituting public ways, which such vacatings of streets shall be approved in this judgment.

Sec. 09.46.200 Judgment; effect. This judgment shall be conclusive with respect to land boundaries upon every person who at the commencement of this action had or claimed any estate, right, title or interest in or to any part of the entire area of real property described in the complaint as intended to be affected by this action, and upon every person claiming under any such person by title subsequent to the commencement of the action.[67]

Sec. 09.46.210 Judgment; recording. A certified copy of the judgment[68] shall be recorded, at the expense of the plaintiff or plaintiffs in the action, in the office of the recorder of the recording district[69] in which the affected land is situated.

Sec. 09.46.220 Procedure applicable. Except as otherwise provided in this Chapter, all rules of law relating to evidence, pleading, practice, new trials and appeals applicable to other civil actions shall apply to actions authorized by this Chapter.[70]

(Do not need sections like Cal. Code Civil Pro. 751.19, 751.20, 751.21)[71]

Sec. 09.46.230 Cumulative remedies. The remedies provided for by this Chapter are cumulative and in addition to any other remedy provided by law for quieting or establishing title to real property or the boundaries thereof.[72]

(Do not need sections like Cal. Code Civil Pro. 751.23 - 751.28)[73]

Sec. 09.46.240 Severability.[74] If any part, provision or section of this Chapter, or the application of any such part, provision or section in any particular respect, shall be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalid or ineffective, in whole or in part, such judgment shall be confined in its operation to the particular part, provision or section or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect, impair or invalidate the remainder of such part, provision or section or their application in other respects; and to the extent that such part, provision or section is not unconstitutional or otherwise invalid or ineffective, they shall remain in full force and effect.

Sec. 09. 46.250 Effective date. This act takes effect on the day after its passage and approval, or on the day it becomes law without such approval.[75]

PROJECT FOR LEGISLATION

Authorizing courts in a quiet title action so conducted as to bind all the world

(a) to embody in a recordable decree, the boundaries of land, both public and private, as they shall be found to exist subsequent to an Act of God, consisting of a landslide either great or small; and

(b) to accept land areas made available by proper authorities by the vacating or narrowing of streets or other public ways, to the extent they serve public welfare by minimizing the land losses caused by the said Act of God; and

(c) to approve for filing new land maps embodying the existing boundaries, both public and private, to be substituted for those approved and filed heretofore pursuant to law, modified only as modifications result from the facts recited in Clauses (a) and (b)

(Such legislation is necessary

(1) to avoid the complexity involving problems incapable of a practical solution, caused by a solar survey restoring all borderlines to the places where they existed before the landslides;

(2) so as to make each parcel owned, fully available for structures (thus avoiding what one cautious Anchorage owner recently did, namely building with sufficient set backs on all sides so as to make it certain that the building be on his land, however, the boundaries might be found to have been affected by the earth slides of 1964);

(3) to assure safety in the purchasing, mortgaging or leasing of land;

(4) to permit the issuance of title insurance policies, without the exceptions now necessary to care for the existing uncertainties as to boundaries;

(5) to confirm and establish the areas available for public uses in dedicated streets;

(6) to correct the heretofore approved and filed public records, consisting of land plats, so that they will accurately represent existing land boundaries;

(7) to substitute one action for each affected area, instead of the scores or maybe hundreds of separate quiet title actions otherwise likely to be brought.)

Essential features of the proposed new legislation

1. Designation of the court in which action shall be brought as the court having general original jurisdiction in the segment of the state in which the land affected by the action (or the major part thereof) is located.

2. Authorization of bringing of the action by
any borough, with or without the joinder of the city or cities included therein;
any city not included within the boundaries of a borough with respect to land within such city (Nome) or outside such city as to which the city has power, under statute to approve a land map (Cordova);
any school district which has the power, under statute, to approve a land map.

3. Permit the bringing of the action as to all, or as to a part only, of the land within the boundaries of the plaintiff, affected by a particular land slide.

4. Authorize the plaintiff bringing such action, in its discretion, to vacate or to narrow existing streets, in such manner as it believes will serve public welfare, so that the court can make use of such land to minimize the square footage loss caused by the Act of God to individuals.

5. Confine defendants joined, or joining, in such action to defenses based on events involved in or subsequent to the occurrence of the land slide involved in the action, saving, however, to each such party all claims based on other facts or events against any and all persons, so that such claims can be litigated at the option of such party without prejudice from the results reached in this quiet title action.

6. A severability clause, so that found invalidity of any one or more provisions leaves all the rest valid.

7. Embody in the act procedure found to constitute due process in handling an in rem action to meet the needs of California after the earthquake and fire of 1906 (Cal Code Civil Proc. §§ 751.1 - 751.28.
(This will involve cooperation of Supreme Court of Alaska so as to allow this emergency tightening of the procedures provided in Rule 4.)

THE PROPOSED EARTHSLIDE RELIEF ACT CONCERNING LAND BOUNDARIES CONSTITUTES A PROPER EXERCISE OF THE POLICE POWER OF THE STATE OF ALASKA.

A government finds its reasons for existence in the services which it renders to the group governed.[1] The services which are needed include the preservation of health and safety, the maintenance of morals, the conservation of natural resources and the service of the general welfare of the governed group. These services together, make up the police power of a state. Even if the exercise of the police power causes a deprivation of individual rights and property, this cannot prevent its operation.[2] As the Supreme Court of the United States has well said concerning the police power of a state:

"It is to be remembered that we are dealing with one of the most essential powers of government, -- one that is the least limitable. It may, indeed, seem harsh in its exercise, usually is on some individual, but the imperative necessity for its existence precludes any limitation upon it when not exercised arbitrarily xxx. There must be progress, and if in its march private interests are in the way, they must yield to the good of the community."[3]

The criterion as to whether particular state action is, or is not, within the scope of its police power is whether the action in question "is reasonably in the interest of the public health, welfare, comfort and morals, and is not arbitrary or discriminatory."[4]

Despite the relatively short judicial history of Alaska, a page by page review of the seventeen volumes of Territorial Reports and of the four volumes of reports since the beginning of statehood, (through 388 P. 2d) shows that Alaskan courts have been as willing to sustain state action as within the police power of the State, as the courts in other states of the country. In the following pages of this memorandum, Alaskan decisions have been grouped on the basis of the aspect of the police power dealt with.

I Conservation of natural resources.

Metlakatla Indian Community v Egan, 362 P. 2d. 901, 1961. Dealing with a statute concerning fish traps, Chief Justice Nesbitt considered at length the justification for resorting to the police power for the protection of natural resources (salmon) despite the detrimental effect that such legislation might have on some private individuals.

II Safeguarding of public morals.

In Territory v House No. 24, 7 Alaska 611, 1927, Judge Reed sustained the power of the Legislature to suppress houses of lewdness and prostitution.

In Boehl v Sabre Jet Room, Inc. 349 P. 2d, 585, 1960, Justice Dimond emphasized the broad scope of the police power in dealing with regulations of the liquor industry.

See also as to regulations of liquor, In re Ashland, 4 Alaska 486, 1912; In re Naka's License, 9 Alaska 1, 1934; Terr. of Alaska v Five Gallons, 10 Alaska 1, 1940; In Application of Wakefield, 10 Alaska 599, 1945;

In re Koye, 11 Alaska 556, 1948; U.S. v Bordinelli, 15 Alaska 88, appeal dism'd 16 Alaska 185, 233 F. 2d. 120, 1956.

III Promotion of public safety.

In City of Anchorage v Brady's Floor Covering, 13 Alaska 741, 105 F. Supp. 717, 1952, the court held invalid an ordinance requiring licenses for doing business, on the ground it exceeded the proper scope of the police power.

In City of Kodiak v Waltman, 17 Alaska 123, 1957, an ordinance imposing a license tax on automobiles of non-residents driven on the streets of Kodiak was sustained as a regulation proper under the police power.

In Matthews v Quinton, 362 P. 2d 932, 1961, the Supreme Court held unconstitutional a statute which authorized the transportation of school children to non-public schools. The Legislature had declared such transportation would protect the health and safety of school children. Justice Arend and the Chief Justice explained the result thus:

> "We do not mean to imply that the Legislature has no authority to provide by legislation for the health and safety of school children in Alaska xxx All we are saying xxx is that xxx (the disputed provision xxx does not effectuate the intent expressed therein by the Legislature."

In dissenting, Justice Dimond expressed the view that the majority opinion improperly curtailed the police power for the protection of health and safety.

IV Preservation of public health.

In United States v Commercial Co., 6 Alaska 94, 1918, Judge Bunnell of the District Court of Fairbanks, reached a result more understandable in 1918 than in 1966. He held a statute limiting the workday in Alaska to eight hours was an "unreasonable and invalid attempted exercise of the police power." Strangely he coupled this holding with a strong assertion that the police power of a state enables it to "prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity."

In Territory of Alaska v Craig Enterprises, 355 P. 2d. 397, 1960, the Supreme Court reversed a decision of the lower court that a lien provided for under the Alaska Employment Security Act was unconstitutional. Justice Dimond wrote the opinion, in which this language is found:

> "The Alaska Legislature has found that economic insecurity due to unemployment was a serious menace to the health, morals and welfare of the people of Alaska. Therefore it adopted the Alaska Employment Security Act in order to promote the public good and the general welfare of the citizens of Alaska. xxx (After discussing the lien as a part of the remedy provided by the Legislature, he continued:) There

can be no question that this was well within the authority of the Alaska Legislature."

Three things deserve notice in this case, (a) its reaffirmation of the propriety of caring for general welfare via the police power; (b) the weight properly accorded by the court to a legislative declaration of the need for the enactment to serve public welfare; and (c) the propriety of sustaining the details of a program, which, viewed as a whole serves public welfare.

V Zoning ordinances.

In City of Anchorage v Faulk, 14 Alaska 392, 113 F. Supp. 699, 1953, a zoning ordinance dealing with residential areas was sustained. District Judge Folta generalized his view thus:

"Nothing is more commonplace than the regulation and restriction of the use of land in a zone declared to be residential."

Two early Territorial decisions contain dicta of surprising relevance.

In Valentine v McGrath, 4 Alaska 102, 1910, the lay-out of the Town of Juneau was under consideration. District Judge Cushman, in the course of his opinion said:

"The systems of surveys and disposal of all government lands xxx contemplates the disposition of same in rectangular parcels, or at least with straight parallel side and end lines as more orderly, less wasteful and most beneficial to all concerned. For this reason, if not otherwise, the trustee should have the authority to straighten a ragged, irregular boundary between occupants, even if in so doing, such straightened boundary necessarily excluded portions of an occupant's improvements of small value."

In Alaska Gold Recovery Co. v Northern Mining & Trading Co., 7 Alaska 306, 1926, the court sustained a statute permitting a private mining company to condemn land, quoting with approval, the following passage from the opinion of Mr. Justice Holmes in Noble State Bank v Haskell, 219 U.S. 110:

"We have few scientifically certain criteria of legislation, and as it often is difficult to mark the line where what is called the police power of the states is limited by the Constitution of the United States, Judges should be slow to read into the latter a volumus mutare as against the law-making power."

The foregoing review of Alaskan cases makes it clear that Alaskan law recognizes the police power as an inherent ingredient in the existence of government; and permits the exercise of this power (without compensation to the persons thereby caused loss) whenever such an exercise is shown to be reasonably needed for the safeguarding of morals, health or safety, or for the conservation of natural resources, or for the promotion of the public welfare. The shortness of Alaskan history and the sparseness of its population have combined to make the number and variety of cases involving the police power less than those which can be found in older and more populous states. This is unimportant. The basic doctrine has had ample and generous acceptance. As new problems are encountered new applications of the basic doctrine are to be expected.

Such a new problem is dealt with in the proposed Earthslide Relief Act Concerning Land Boundaries. The great earthquake of March 1964 moved segments of the Alaskan earth's surface in a generally northwesterly direction. Some of the moved segments were relatively small, involving only a few hundred lots. Others of the moved segments were tremendous in size, involving tens of thousands of square miles. In consequence there are grave uncertainties as to who owns what land. Nature has dealt roughly with both structures and boundaries. The needed point of beginning for new constructions and for future development, especially in urban areas, is certainty as to the location of street lines and lot lines.

There has been no occasion heretofore for Alaskan courts to discuss the relation between uncertainties in land titles and the doctrine of the police power. Other states have faced this and related problems.

When Arkansas was still largely unsettled, the legislature authorized a special variety of quiet title action applicable to lands sold for delinquent taxes. The purchaser at such a sale could begin his proceeding by a notice published in a newspaper calling on all challengers to show cause why the purchaser's title should not be confirmed. In the course of an opinion sustaining a challenger's claim the Supreme Court of the United States said:

> "It is a very great evil in any community to have titles to land insecure and uncertain; and especially in new States, where its result is to retard the settlement and improvement of their vacant landsxxx A prudent man will not purchase a law suit, or risk the loss of his money and labor upon a litigious title. The act now under consideration was intended to remedy this evilxxx The jurisdiction of the court over the controversy is founded on the presence of the property; and like a proceeding in rem, it becomes conclusive against the absent claimant, as well as the present contestant."[6]

A Nebraska quiet title statute, enacted in 1885 was found to base an unchallengable title in the person who has carefully conformed to the statute's provisions. The United States Supreme Court in reaching this result said:

> "(The State) has control over property within its limits; and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is subjection to its rules concerning the holding, the transfer, liability to obligations, private or public, and the modes of establishing titles thereto. It cannot bring the person of a non-resident within its limits xxx but it may determine the extent of his title to real estate within its limits; and for the purpose of such determination may provide any reasonable methods of imparting notice. The well-being of every community requires that the title of real estate therein shall be secure, and that there be convenient and certain methods of determining unsettled questions respecting it." [7](emphasis added)

The earthquake and devastating fire which swept San Francisco in April 1906, created an intolerable situation for an already sizable urban community. The burning of the official land records left most landowners without evidence of ownership; and also left many loaning institutions without the assurances of priority. The remedial statute, commonly spoken of as the McEnerney Act, was enacted by an extra session of the legislature, and became law on June 16, 1906.[8]

The presently proposed new Alaskan statute embodies the purpose and the unique procedure of this already tested California statute.

The first important discussion of the validity of this unique statute as a meeting of the demands of sec. 1 nent (a paraphrase for the police power) appears in the thirty-seven page 1906 decision of the Supreme Court of California.[9] Recognizing that the statute was a legislative response to "needs developed by the disaster of April 18, 1906;"[10] the court stressed the public concern with the existence of "some method by which the title can be made clear of record.[11] It then sustained all the unique features of this statute,[12] as justified by the uncertainties concerning titles infected by the catastrophe of Nature. It quoted with approval the decision of the United States Supreme Court in Hutardo v California:[13]

> "It follows that any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law." (emphasis supplied)

In American Land Co. v Zeiss,[14] the Supreme Court of the United States found that a decree granted pursuant to the McEnerney Act was conclusive as against a resident of California who never had received actual notice of the proceeding, and who apparently had been the owner of the land subject to a 99 year lease. This decision sustains the in rem character of a decree obtained by proper conformity to the statute's requirements, even in a case where the property right of the late claimant had been destroyed by the decree. The statute was declared to deal with a legitimate area for an exercise of the police power, the court saying:

> "As it is indisputable that the general welfare of society is involved in the security of the titles to real estate and in the public registry of such titles, it is obvious that the power to legislate as to such subjects inheres in the very nature of government."[15]

In Bradford v Trapp,[16] the conclusive effect of a decree obtained pursuant to the McEnerney Act was dramatically illustrated. Sixteen months after the McEnerney decree, a claimant established the fact that a deed in the chain of title confirmed by the McEnerney decree had been forged. The court said:

> "This appeal becomes practically a test of the strength of a McEnerney title. xxx Since the McEnerney suit brought in as defendants all persons claiming any estate in the property, respondent was in law a party thereto, as though he had been expressly named therein.xxx The forged deed in evidence was the equivalent of perjured testimony, and it is the settled law of this state that a judgment cannot be set aside because it is predicated upon perjured testimony. There must be an end to litigation."[17]

It is, perhaps, superfluous, to add paragraphs tying in the scope of the police power, as it has been delineated both in Alaskan decisions, and in the courts of sister states, and in the United States Supreme Court, to the present pressing problems caused as to land boundaries by the earth slide of 1964. The northwesterly movement of substantial land masses creates a pervading uncertainty as to who owns what. Are the proper boundaries of public and private ownerships at the places where they appear to be, as one observes curb lines, fence lines and similar surface markings, or are they at the places where a solar survey based upon the Seward meridian would place them on the basis of the lot lines as they existed before 1964? Certainty on this point is essential to the full utilization of the city's land. It is desirable to all persons holding land liens as security. It is vital to make the recorded plat maps representative of present facts. The welfare of the people of Alaska is at stake. Legislation to care for these necessities is not only proper; it is the duty of the legislature to provide machinery for the orderly settlement of these uncertainties.

1 Compare Shepard, History and Theory of Government, 7 Encyc. Soc. Sci. 8-9, 1957: "Whenever a group of human beings actuated by common interests and desires creates an organized institutional mechanism for the furtherance of these ends and for the adjustment and control of their relationships, there is government.xxx The functions of government are social control and public service."

2 Beverly Oil Co. v City of Los Angeles, 40 Cal. 2d 552, 254 P. 2d. 865, 1953.

3 Hadacheck v Sebastian, 239 U.S. 394, 36 S.Ct. 143, 60 L.Ed. 348, affirming the validity of a California zoning law in the City of Los Angeles.

4 Colt v Bernard, 279 S.W. 2d. 527, No. 1955.

Compare Powell on Real Property, para. 859, 1958: "It is apparent that the police power concept is not a static concept; but one which enlarges and changes its content with alterations in the accepted views as to the proper functions of government. The history of the United States is a record of steadily broadening ideas as to function of government in connection with land use."

This author proceeds in subsequent paragraphs to delineate the resorts to the police power in the background law of innkeepers, para. 860; in handling problems as to the segregation of races in public places, para. 861; in traditional statutes enacted for the preservation of public health, para. 862; in similar statutes enacted to promote public safety, para. 863, in statutes believed to safeguard public morals, para. 864; in statutes calculated to conserve public resources, para. 865; in modern statutes controlling the making of land subdivisions, para. 866; in the law of zoning, paras. 867-872; in the brief history of urban development, the prevention of blight and the evolution of planning, paras. 873-876.

5 Arkansas became separated from Missouri in 1819, and first became a state in 1836.

6 Parker v Overman, 18 How. 137, at 140, 1855, opinion by Justice Grier.

7 Arndt v Griggs, 134 U.S. 316, 33 L. Ed. 918, 10 S. Ct. 557, 1890, opinion by Justice Brewer.

8 Cal Code Civ. Pro. §§ 751.01 - 751.28.

Compare the Illinois Burnt Record Act of 1872, discussed in To-gah Bertrand v Taylor, 87 Ill. 235, 1877, where the court upheld the constitutionality of the act, saying: "It (the Burnt Record Act) was demanded as a matter of safety in a great emergency. It was not calculated to take any reasonable being by surprise. It was known throughout the civilized world that a large part of the City of Chicago had been destroyed by fire, and that the records of the courts and the records of deeds were all destroyed. This naturally commanded the attention of all reasonable persons everywhere, and called

upon them to attend and see what means would be adopted to mitigate the evils and dangers incident to the destruction. The legislation was not done in a corner, but before the observation of the civilized world. We cannot doubt the power of the General Assembly to pass the act."

9 Title & Documents Restoration Co. v Kerrigan, 150 Cal. 289. 88 P. 356, 1906.

10 At p. 301.

11 At p. 305.

12 These unique features, (duplicated in the proposed Alaskan statute) included (a) its declared in rem character (at pp. 306-318); (b) its "judicial" character, despite the absence of specifically named defendants (at pp. 318-322); and (c) its applicability to only part of the citizens of the state (at pp. 322-326).

13 110 U.S. 516, at 537, 1884.

The positions taken in this opinion were reiterated, and in some particulars, were broadened in Hoffman v Superior Court, 151 Cal. 386, 90 P. 939, 1907.

14 219 U.S. 47, 31 S. Ct. 200, 55 L.Ed. 82, 1911.

15 At 31 S.Ct. 204.

16 49 Cal App. 493, 193 P. 584, 1920, A petition to have the case reviewed by the Supreme Court was denied.

17 At p. 496.

Compare Crittenden v Dorn, 274 Fed. 520, 9th Circ. 1921, cert. denied 257 U.S. 648, 42 S.Ct. 57, 1921, where a claim that fraud destroyed one link in the title which had been confirmed by a McEnerney decree, was denied a hearing.

COUNCIL MEMORANDUM NO. 65-499

TO: City Council DATE: October 22, 1965

FROM: City Attorney

SUBJECT: L Street Replat

As the Council is aware an area approximately west of L Street moved about nine feet to the west and four feet to the north. This sliding of the earth created a problem in real property locations and descriptions in the area because the plat of the Original Townsite no longer represents the actual location of the property. This is an immediate concern of the City because an easement cannot be given to the State of Alaska along L Street for the purposes of constructing a state highway project and City streets and alleys are in some cases on private property.

The Office of Emergency Planning provided funds in the amount of $75,000 to the City to replat the L Street slide area. This money has been budgeted by the Council.

The practical aspects of replatting approximately 300 parcels are very great because some of the owners are probably unwilling and unavailable to sign correcting instruments. After several hours of research by my office it has been determined that no Alaska statute or procedure, other than condemnation, exists which will help solve the problem nor have useful precedents in case law been discovered.

After research and realization of the complexity of the problem Professor Richard R. Powell of Hastings College of Law was contacted in order to determine if he was interested in consulting with the City on a solution to the problem.

Professor Powell was contacted because he is probably the outstanding authority on Anglo-American real property law. Attached to this memorandum is an excerpt from the 1964-65 edition of Who's Who in America concerning Professor Powell showing his accomplishments in the field of real property law.

The professor was sufficiently interested in the problem we have to call our office. In the course of the telephone conversation from San Francisco he stated that in his opinion legislation would probably

be necessary. He quoted a fee of $2,500 plus expenses for advising the City on the problem, preparing proposed legislation and testifying before the legislature.

It is requested that Council authorize the City to retain Professor Powell at the fee of $2,500 plus expenses to assist in solving the real property problems created by the earth slides. This request is based upon the following factors:

1. The field of real property law is extremely complex and any legislation or resolution of the problem must be thorough, meticulous and accord with due process;

2. Professor Powell has vast experience in the field of real property law having taught at Columbia University for 40 years, having been the reporter of the Restatement of Property Law and the author of the most outstanding treatise on property law in this country, and having been on retainers to many large property owners with unique problems;

3. It will save the City and the taxpayers money to have a comprehensive statute concerning the effect on land ownership caused by earth slides with the most simple procedure to resolve conflicts. Without legislation title problems will be unresolved and City ownership will not be finally determined. The Office of Emergency Planning funds available for the L Street replat are unavailable for the Turnagain area which eventually must be replatted. An expert in the field is more likely to know exactly what is needed to accomplish the result with the least time and expense and to produce a procedure which will survive a court test and finally determine all ownership questions;

4. Professor Powell being an expert in his field will be a more convincing witness before the legislature because he will be able to explain with authority exactly what his proposal accomplishes, answer any questions and explain why anything else would be unsatisfactory;

5. If an interested party should initiate a court challenge to any statutory procedure to solve the problem the fact that an expert in real property law studied the problem and suggested the solution would certainly carry great weight with the court in upholding the statute.

6. Further the fact that Professor Powell was interested enough in our problem to call instead of writing and wanted to know when the legislature meets in order to determine the work timetable indicates his eagerness to work on the problem;

7. The sum of $2,500 is certainly more than reasonable in view of what attorneys would normally charge and his unsurpassed qualifications;

8. The City Attorney's office is of the opinion that the amount of time and research involved by the office would be some two months to insure a trustworthy solution, the short period of time before the legislature starts, the purposes to be achieved, the reasonableness of the fee, the need of testimony before the legislature which may dispel doubts as to property rights and the most skillful approach to the problem would be to engage a person whose experience would save the City not only the City Attorney's office time, but that of other departments because of the thousands of instruments, hours of work and many other proceedings to try to resolve finally this problem, which should be resolved;

9. The money is available from the L Street replat funds.

Karl L. Walter, Jr.
City Attorney

KLW:VDC:pj

Copy

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KLW:VDC:pj

Karl L. Walter, Jr.
City Attorney

THE EARTHSLIDE RELIEF ACT CONCERNING LAND BOUNDARIES COMPLIES WITH ALL CONSTITUTIONAL REQUIREMENTS OF DUE PROCESS.

In the drafting of this proposed legislation, great care has been employed to include all of the methods of giving notice of the pendency of the action which caused actions under the California McEnerney Act to be sustained as conclusive actions in rem, binding on all persons in the world, known or unknown, existent or yet to be born.

The criteria of jurisdiction and due process.

It has long been unquestioned law that a state court has jurisdiction over any controversy affecting land within the borders of the state.

Parker v Overman, 18 How. 137, 1855:

"The jurisdiction of the court over the controversy is founded on the presence of the property:xxx" It is worthy of note that special statutory remedy under consideration by this Court was (like the California McEnerney Act, and like the proposed Alaskan statute) one in which no defendants were named; it was simply addressed to "all persons" who chose to challenge the plaintiff's claim.

Arndt v Griggs, 134 U.S. 316, 10 S. Ct. 557, 1890:

"(The State) has control over property within its limits xxx whether the owner be stranger or citizen. It cannot bring the person of a non-resident within its limits xxx but it may determine the extent of his title to real estate within its limits; and for the purpose of such determination may provide any reasonable methods of imparting notice."

Title & Documents Restoration Co. v Kerrigan, 150 Cal. 289, 88 P. 356, 1906, in sustaining the constitutionality of the McEnerney Act, said:

"xxx the legislature may provide entirely novel and unprecedented methods of procedure, provided that they afford the parties affected the substantial securities against arbitrary and unjust spoilation which are embraced within the system of jurisprudence prevailing throughout the land."

American Land Co. v Zeiss, 219 U.S. 47, 31 S. Ct. 200, 55 L.Ed. 82, 1911, in sustaining the validity of the McEnerney Act, said:

"The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, ~~barring~~ having reference to the subject with which the statute deals."

Mullane v Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 1950, found that a statute establishing a mode of service which could be used by a trust company in securing a judicial settlement of its accounts with respect to a common trust fund, was insufficient, said:

"The statutory notice (by publication alone) to known beneficiaries is inadequate, not because in fact it fails to reach everyone, but because, under the circumstances, it is not reasonably calculated to reach those who could easily be informed by other means at hand.xxx The mails today are recognized as an efficient and inexpensive means of communication. Moreover, the fact that the trust company has been able to give mailed notice to known beneficiaries at the time the common trust fund was established is persuasive that postal notification at the time of accounting would not seriously burden the plan."

(This defect was remedied by New York Banking Law §100-c, by an amendment, enacted by N.Y. Laws ,c. , requiring mailing to all known beneficiaries.)

In this case the opinion of the Court, written by Justice Jackson held that publication alone constituted "due process" as to "those beneficiaries whose interests or whereabouts could not with diligence be ascertained.xxx However great the odds that publication will never reach the eyes of such unknown parties, it is not in the typical case much more likely to fail than any of the choices open to legislators endeavoring to prescribe the best notice practicable.xxx The vital interest of the state in bringing any issues as to its fiduciaries to a final settlement can be served only if interests or claims of individuals who are outside of the State can somehow be determined. A construction of the due process clause which would place impossible or impractical obstacles in the way could not be justified."

Thus the criterion of jurisdiction is the simple physical fact that the affected land is in the State; and the criterion of due process is the reasonable completeness of the methods prescribed for giving notice to interested parties of the pendency of the action.

Factors assuring "due process" in this Act.

The relevant provisions of the proposed statute are

(a) publication (§09.46.100). Cf. Cal. Code Civ. Proc. §751.06.
(b) posting (§09.46.110). Cf. Cal. Code Civ. Proc. §751.08.
(c) personal service on persons with known interests "if he can be found within the state" (§09.46.120). Cf. Cal. Code Civ. Proc. §751.10.
(d) mailing to non-residents (§09.46.120). Cf. Cal. Code Civ. Proc. §751.10.
(e) mailing to residents who cannot be found within the state. (§09.46.120). Cf. Cal. Code Civ. Proc. §751.10.
(f) filing a lis pendens. (§09.46.150). Cf. Cal. Code Civ. Proc. § 751.13.
(g) requirement that judgment be given only on proof of facts, and not on default, (§09.46.170). Cf. Cal. Code Civ. Proc. §751.14.

These seven factors have been held to constitute due process under the comparable California statute. Any deviation, even in detail, from these provisions of the California statute, make less certainly helpful the long line of California and United States decisions upholding the due process quality of the California enactment.

It would be hard to find a more detailed exposition of the reasons why the procedure embodied in the Alaskan statute assures a conclusive decree in rem, than in the seven page segment in the opinion of Chief Justice White in American Land Co. v Zeiss, 219 U.S. 47, at 64-71, dealing with the "adequacy of the safeguards which the statute provides."

There is nothing to controvert the above stated position in the only Alaskan cases found on the topic of due process:

Terr. of Alaska v 188 Cases of Liquor, 10 Alaska 414, 1944;
Anderson v Scholes, 12 Alaska 295, 1949;
Schlothan v Einstoss 17 Alaska 293, 1957.

Proposed new Alaskan statute on earthslides
Submitted by Richard R. Powell, in December 1965

At the threshold, a decision is necessary as to where in the Alaskan statutes, the new provisions, if enacted, are to be located. In Title 9 of the Code of Civil Procedure there is a series of chapters dealing with "Actions Affecting Real Property." It would seem that this is a convenient locale for the proposed new provisions. Because of the importance of these provisions, and also because it will be helpful to stress their emergency character and their separate needs as to procedure from those of other civil actions, I suggest they be assigned a separate chapter designation (viz. 46). This will also permit the fairly numerous sections (25 in this draft) to numbered in the manner commonly used in the other existing statutes of Alaska.

In the proposed draft of this new statute, herewith submitted, it has seemed useful to me to make rather numerous comments, so that the officials of the City of Anchorage, and later, perhaps, the Legislature of the State, and still later, perhaps, the judges of the State can see the reasons which have caused me, in making the draft, to insert specific bits of language. As to each such Comment, a separate number has been inserted in the text of the proposed draft, so as to identify the item of words as to which the comment has relevance.

(1) The statute deserves an "interest catching" short title. This facilitates a quick grasp of the purpose of the fairly long statute, and, one can hope, creates an initial favorable reaction in a reader's mind. This purpose will not be served if the "short title" appears as the last section of the statute, as it sometimes does. I have not been able to find so firm a crystalized Alaskan statutory policy, to put this last, that the putting of it first is likely to be objectionable to anyone. The short-title suggested, namely "Earthslide Relief Act Concerning Land Boundaries" is longer than I would like to have it, but I have not found any shortening which leaves it as useful as I think these six words are.

(2). Certainty as to the location of the boundaries of land, both private and public, has been recognized, both in Alaskan and other states' decisions, as vitally affecting "public welfare" and as, therefore, within the permissible scope of "police power" enactments. Thus the judicial recognition of the location of boundaries, at the place where the earthslide put them, involves no compensable "taking" of property, but, rather, a return to the certainties essential to public welfare, which had been upset by the unscrutable Act of God.

No other channel to certainty is possible. If one sought to lay out on the face of Anchorage the boundaries as they existed before March 1964, in accordance with a solar survey, shifts in street lines and lot lines would be found shifted to unacceptable locations not only by the earthslides affecting parts of Anchorage itself but also by the more widespread earthslide which occurred as to the whole land mass, extending inland from Anchorage to Glenallen. The resulting shifts in location would not vary merely by some four to nine feet, but this amount plus an additional item of up to eighteen more feet to care for the large land mass slide.

It is hoped that the detailed enumeration of the many ways in which public welfare will be served, in this first section of the statute's text, will create a growing predisposition in favor of the statute as a whole. The location of this material at the very beginning of the statute seems to me to be vital.

(3) While I was in Anchorage I was told about one cautious resident of the City, who desired to build since the earthquake, but had such uncertainty as to the exact land owned by him that he placed his structure far enough inside each of his former lot lines, to make it certain that he would be found to own the site of the building. This involved a wastage of land use which cannot be allowed to continue necessary in a growing urban community. The exact location of this lot should be ascertained and the full facts should be available in presenting the proposed statute to the legislature. This statute, by reestablishing certainty as to boundaries, would clearly serve the "public welfare" of the State.

(4) When Anchorage was laid out originally, adequate and reasonably wide public streets and alleys were "reserved" so that the City became owner in fee simple of these public ways. The areas reserved provided adequate space for sewers, water mains and for the installations of other public utilities. To whatever extent an erstwhile straight street has been bent (L. Street) or obliterated (M Street) it is vitally important that the areas available for future public uses be made certain and that all possibility of existing public uses being treated as "encroachments" be eliminated. Both such certainty and such elimination will serve the public welfare of a city still in the early stages of urban growth.

(5) The clause in proposed Section 09.46.020, dealing with voluntary vacating of streets in whole or in part, may conceivably cause many property owners to welcome (rather than to oppose) the creation of the new procedure. The phrase "in an equitable manner" recognizes the desirability of a court participating in this lessening of hardships caused by the earthslide. Thus these provisions, hopefully, can elicit both popular and judicial favor for the enactment.

(6) The making accurate of "public records," which by factors beyond human control, have been made inaccurate or unhelpful, is a favored aspect of "serving the public welfare." This point was stressed in both the California and Federal cases sustaining the McEnerney Act, which reestablished the land records destroyed by the San Francisco earthquake of 1906.

(7) It would seem that the landowners in the slide areas would welcome the establishment of a procedure, by which they could regain lost certainties, in a publicly brought and publicly paid for single court action, and without their incurring any expense. It seems difficult to imagine any good reason for any single owner to spend money in opposition to the proposed action. They will be getting all they had except as Nature deprived them of it. Many will be getting more than seemed possible because of the city's vacating of some public ways wholly or in part. No one has anything to gain by opposition. The one action (in place of very many) will save for citizens much in the way of legal expense and will also serve "public welfare" by lessening the court time required for the getting of good results.

(8) and (9) The clause in proposed Section 09.46.020 dealing with a change in the Court established rules of procedure calls for a careful weighing of the merits of two available alternative modes of drafting. Under the statutes of Alaska, the legislature can make such a change, if it expresses a desire to make the change

and gives a two-thirds vote for it. Under Alaskan decisions the change has to be brought about by a legislative declaration of an intent to make the changes. See Rule 93 and Leege v. Martin, 379 P. 2d 447. Can a two-thirds vote of the Legislature be counted on? If that is doubtful, then the language of this clause needs softening, and efforts should be begun to persuade the Supreme Court to amend its rules so as to permit the tighter in rem procedure to be applied in the very narrow area of these earthslide relief cases, because of the uncommon emergencies with which they deal and because of the value of being able to use the United States Supreme Courts decisions on due process, made with reference to this in rem procedure, authorized in the California McEnerney Act. The latter course of action would be smoother if it can be managed.

(10) It is clear that when a Legislature has said that certain action is needed to serve public welfare, courts are hesitant to reject the statute, thus substituting its opinion for the expressed view of the Legislature. I therefore advise leaving in this last paragraph of Section 09.46.020.

(11) It will be noted that the first 46 words in Section 09.46.030 make the new type of action available where the change in the location of boundaries has been caused either by a local earthslide (i.e. L. Street) or by a massive earthslide, (i.e. to area between the Anchorage seashore and Glenallen.) In both of these cases the present and past boundaries are in different locations by solar survey. Any attempt to establish boundaries by remeasuring distances westward from the Seward Meridian would create a maximum of chaos in any urban community, such as Anchorage.

(12) This first clause of Section 09.46.050 describes Anchorage and other similar boroughs of Alaska.

(13) The first half of the second clause, of Section 09.46.050, describes Nome and other similar cities of Alaska.

(14) The second half of the second clause of Section 09.46.050 is designed to cover Cordova, and other similar cities of Alaska.

(15) Under the Alaskan statutes some school districts have power to approve land maps. If, by the forces of Nature, which are beyond the power of man to control, these erstwhile approved maps have ceased to be correct, it would seem that a correction of such maps should be made possible under this new statute.

(16) I have included this fourth clause of Section 09.46.050, without prior discussion with anyone. Maybe it can be omitted. My thought in including it, was to make it clear that the proposed legislation was not local legislation ~~was not local legislation~~ confined in its benefits to a few spots only, in the large State of Alaska. Perhaps no one would ever invoke Clause 4. Its presence in the statute might reasonably silence persons feeling only a slight concern with the welfare of Anchorage and some other few cities or areas.

(17) In the cases testing the "due process" provisions of the McEnerney Act of California, frequent stress is laid on the value of having before the Court "every person in actual and peaceable possession" of the affected land. The provisions of Section 09.46.060 are designed to make these precedents applicable to the proposed Alaskan statute.

(18) and (67) The importance of securing an adjudication "binding upon all the world" cannot be overstressed. This was the unique feature of the McEnerney Act. Here again we find the undesirability of one of the Alaskan Rules of Court. In Rule 60b. the provision resembles Federal Rule 60b. It provides:

"On motion the Court may relieve a party from a final judgment. The motion shall be made not more than one year after judgment is entered. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, or to grant relief to a defendant not personally served, or to set aside a judgment for fraud upon the court."

California has Code of Civil Procedure 473a which omits the eighteen underlined words in the above quoted rule. The one year short statute of limitations is probably helpful in sustaining due process; but the ability to cancel a judgment fixing boundaries on an application merely showing the applicant not to have been "personally served" would nullify the needed efficacy of the other safeguards, including personal service on known persons plus publication and posting. Thus we are faced again with the problem discussed supra in Comments 8 and 9. Whatever solution is determined upon there, will apply also to the problem now raised. The reported California cases do not include any (which I have found) in which the application to set a McEnerney judgment aside was made within the one year period. They do include cases where the application, being made after the year, failed, and this failure was based on the in rem character of the action.

(19) This will enable any locality to clear up existing uncertainties as to boundaries in the area where these uncertainties are most pressingly troublesome, as for example, in the L. Street slide area of Anchorage. It will also permit the workability of the statute to be tested with a minimum of expense for title searches. With the experience thus acquired, the other needed actions (if any) can be more easily managed.

(20) This sentence conforms to present Rule 3 of the Alaskan Rules.

(21) This unique titling of the action (without the naming in the title of any specific persons) is modelled on the McEnerney Act of California (Cal. Code Civ. Pro §751.04). The known parties affected are required to be named in the complaint (see proposed Section 09.46.080(4)) and they are all required to be personally served (see proposed Section 09.46.120)

(22) The term "entire real property sought to be affected" allows the action to affect, simultaneously, all the lots of a subdivision or other sizable area, thus enabling one action to produce results based upon a common disaster which has happened as to all the area suffering that disaster. As to all, the operative facts and the applicable rules of law are the same. One action (instead of scores or hundreds) can attain justice with a minimum of court time and a minimum of legal expense by individuals.

(23) This provision will put before the court the exact areas as to which it is hoped to obtain a confirmation of public rights of way. It could probably be satisfied by a map (as for example of the L. Street slide area) showing the streets and alleys as they survived the earthslide. The City would wish (I think) not to claim "actual possession" of the land included in the public ways of the plat as they existed before the earthslide. Thus the city would be admitting the extent to which its boundaries had been altered by the Act of God. This puts the City on the same basis as it claims private owners also are.

(24) Compliance with the requirements of Section 09.46.080(4) will require title searches on each lot, plus a physical inspection, to make sure that there is no "possession" which gives reasonable notice of unrecorded rights. If all persons thus discovered are given due notice of the action, the claim of "due process," based on publication and posting, will be strengthened by the doctrine of representation, under which the joinder of available persons can base a judgment binding on others. As to the "doctrine of representation," see Restatement of the Law of Property, §§ 180-186, and Powell on Real Property paras. 294-296.

(25) The Alaskan statutes have specific provisions for the "vacation of plats or streets." (Sections 40.15.140 - 40.15.180). The proposed statute calls for a substitute procedure. This clause is the first step in this substituted procedure, which is dealt with in proposed Section 09.46.160 and requires court approval and "equitable allocation to contiguous lots" (proposed Section 09.46.190). It does not seem likely to me, that this substituted emergency procedure is likely to incur anyone's opposition.

(26) This statement of the relief demanded should certainly be patterned on the provisions of proposed Section 09.46.180; and perhaps should also contain the qualification implicit in the last paragraph of proposed Section 09.46.140.

(27) The first sentence of proposed Section 09.46.090 conforms to Alaskan Rule 4(a).

(28) The second sentence of proposed Section 09.46.140 is adapted from Alaskan Rule 4(a), so as to make it fit the peculiarities of an action affecting many parcels of land.

(29) The third sentence of proposed Section 09.46.140 is an amalgamation of Alaskan Rule 4(b) and California Code of Civil Procedure §751.05.

(30) The phrase "or any part thereof" takes on special meaning because of the many parcels simultaneously affected by the action.

(31) - (36) The form of the Summons differs from that in other actions (a) in the manner of describing the defendants; (b) in the allowance of three months after the first publication for answer; (c) in requiring a description of the "entire real property." Otherwise it conforms (I believe) with the existing Alaskan practice. In the first two of the three above described deviations, it follows the format used under the California McEnerney Act which has passed the test of "due process."

(37) and (38) The first two sentences of proposed Section 09.46.100 conform to Alaskan Rule 4(E)(3).

(39) The third sentence of proposed Section 09.46.100, assumes that the new type of action necessarily requires a publication and hence dispenses with the procedures prescribed with respect to a type of action in which publication is only sometimes necessary.

(40) The memorandum required by the last sentence in proposed Section 09.46.100 to be appended to the summons, serves to give notice as to the beginning of the three months period allowed for answer.

(41) The requirement of "reasonably diligent inquiry" is essential to "due process." This requirement would be met (I believe) by the securing of a title search as to each lot plus the physical inspection of each lot followed by such further inquiry as to unrecorded interests as such inspection showed to be necessary.

(42) This memorandum required by the first sentence of proposed Section 09.46.110 serves as a partial amplification of the Summons designation of the defendants as "All persons etc." and also provides a list of those to be served in accordance with the provisions of proposed Section 09.46.120. The unique feature of the McEnerney Act in California and of this proposed statute is its "in rem" character, permitting the judgment to become binding on persons other than those listed, if the requirements of the statute are carefully observed.

(43) The stipulated period of posting (within fifteen days) can be altered slightly but I think it should not be less than ten or more than thirty. The fact of such posting was stressed in the due process cases on the McEnerney Act of California.

(44) - (46) The first of these provisions can easily call for over a thousand copies of the summons, complaint and memorandum in a case involving only the L Street slide of Anchorage. These provisions conform largely, but not completely, with existing Alaskan Rule 4.

(47) - (48) In so far as a known address is available this paragraph largely resembles existing Alaskan Rule 4. The last clause is modelled on California Code of Civil Procedure §751.10 (part of the McEnerney Act) which authorizes mailing "to the county seat of the county in which the action is brought." I think I was told, while I was in Anchorage, that in Alaska, the "borough" is the entity corresponding to the County of California.

(49) - (50) As to Alaskan residents who can't be located, this last paragraph of proposed Section 09.46.120, provides a mode of service by mail which is modelled on California Code of Civil Procedure §751.10. I have provided for such mailing within ten days after the date of the last publication of the summons. If it is thought that convenience requires more than ten days for this operation, it can be lengthened but certainly not beyond thirty days. The publication period is roughly one month; the time for answer is three months. Hence all services by mail ought to be complete a month (or more) before the ending of the time to answer.

(51) This Section 09.46.130 is an exact copy of the provision in California Code of Civil Procedure, §751.11. It is the crux of the in rem character of the action.

(52) The three months time for answer is more liberal than the existing Alaskan rule on publication. This liberality is justified (in my judgment) by the unique binding power of the judgment sought.

(53) This thirty day permissible extension of the time to answer is modelled on California Code of Civil Procedure, §751.12. Some such period is helpful to rebut a claim of arbitrariness, but the period needs to be kept short.

(54) and (55) These provisions will prevent this action from being protracted greatly in duration and increased greatly in complexity. If any named party could bring into litigation all of his pre-earthquake quarrels, there would be no predictable time for the action's completion. Also some of the issues so ~~in~~spected might require a jury trial, thus complicating the court's task. By confining a defendant's answer to (a) the presentation of the particulars in which he claims something "different from" or "greater than" the interest of such claimant as it is described in the complaint; and (b) to claims based on the earthslide itself, or events occurring since the earthslide, the focus of the action is kept within a managable narrowness.

(56) - (58) The restrictions on permissible answers, discussed above in (54) and (55), make it necessary to save to any litigrant any other claims he may have; but this saving needs to be protected from using these other claims as a means for upsetting the finalities as to boundaries of specific parcels, accomplished by this action.

(59) Proposed Section 09.46.150 incorporates the existing Alaskan provisions of Sections 09.45.790. It seems unnecessary to set out in full the provisions already adequately covered in the existing statute. See also Cal. C. Civ. Pro. §751.13.

(60) Proposed Section 09.46.160 allows the vacating of public streets in whole or in part by (a) the offer of the municipality expressed in the complaint; plus (b) the judicial approval of the allocation of the released lands to owners of "contiguous lands" (see proposed Section 09.46.190), without other formalities, and specifically without conforming to the provisions of existing Sections 40.15.140 - 40.15.180 inclusive. It would appear that "owners of contiguous lands" would be as fully protected by these emergency provisions as by those normally usable. A legislative approval of the substitute procedure will be highly useful in discouraging "hold-up" litigations.

(61) The exclusion of a judgment by default is modelled on California Code of Civil Pro. § 751.14. I believe this is an important factor in the allowance of an in rem binding force of the judgment finally obtained. It gives to that judgment the weight of a judicial consideration of the issues involved.

(62) - (63) The language of this proposed Section deserves careful thought by the City Attorney of Anchorage. I have phrased it in a manner which seems to me to be adequate; but one more conversant with local factors may easily see particulars which need modification or amplification.

For example, the opinion of the Attorney General of Alaska #6, dated September 14, 1964 takes a position, which I believe to be sound, as to the ownership of land submerged by the earthslide. Implementing his position, it is necessary to settle where the boundaries now are of the privately owned properties, which have been submerged. It might be useful to include in proposed Section 09.46.180, a subdivision which would give to this opinion of the Attorney General the additional weight of a judicial acceptance. When Anchorage deals with the Tournagin area this would be very important. In the map which I have, showing the overlay of the present shoreline on the former plat of lots the owners of these lots need a decision as to the effects in moving their boundaries caused by the earthslide. This will define the areas as to which avulsion has extended private ownership onto land now submerged. This is in no way in conflict with the theory of the proposed action. Accretion and avulsion have never been applied to cases except those involving water boundaries. They are both irrelevant to changes of boundaries by landslide. This may make it useful in defining the scope of the judgment to permit the boundaries, as established by it, to be consistent with continued private ownership of lands under water.

(64) - (66) Proposed Section 09.46.190 embodies the basic theory of the action. If this theory is not accepted, I can see no possible solution which will not disrupt any urban community. If it were argued that boundaries between city lots now exist at the places where, by solar survey, they were located before March 27, 1964, each city lot in the slide areas would be several feet distant from all existing fence or curb lines plus an additional removal from the expected location due to the large land mass slide which occurred from Anchorage to Glenallen. Any such dislocation would be intolerable by private and public owners alike. The utilization of street areas released in whole or in part to mitigate the hardships of persons, whose ownerships have decreased in square footage is an emergency act of grace participated in by both the releasing cities and the courts in an exercise of its equity powers. (It will be useful to compile an exact list of (a) lots not decreased in square footage under the proposed replatting; and (b) lots which are decreased, with a statement, as to each, of the amount of decrease).

(67) See Comment (18) supra.

(68) - (69) The provisions of proposed Section 09.46.210, both as to place of recording and as to the person paying the costs of recording need to be checked (and possibly modified) by the City Attorney. See Cal. Code Civ. Pro. §751.16.

(70) Proposed Section 09.46.220 is modelled on California Code of Civil Procedure §751.17. It stresses the general conformity of the proposed action to those heretofore familiar to the bench and bar of Alaska.

(71) Under the McEnerney Act a separate action had to be maintained for each parcel of land. Hence a separate "index and register" of these actions was necessary (Cal. Code Civ. Pro. §751.19). There is no such need in the proposed procedure. Similarly §751.20 as to the joinder of all parties of this action in any subsequent action; and §751.20 authorizing an executor, administrator, guardian or other fiduciary to be either plaintiff or defendant are either inappropriate or cared for by general provisions of Alaskan law.

(72) Proposed Section 09.46.230 is modelled on California Code of Civil Procedure §751.22. It is believed to be a useful clarification of the relation between the proposed type of action and the existing quiet title action.

(73) There is no need, in this statute, to include such provisions as are found in California Code of Civil Procedure §§751.23 - 751.28, establishing a procedure by which persons could be certain to be made parties in any subsequently brought action under the McEnerney Act. Parties shown to have interests by the records or by on-the-ground-inspection are required in the proposed statute to be joined. Anyone not thus covered is permitted to request his joinder, if he has matters which he believes deserve consideration.

(74) Proposed Section 09.46.240 is modelled on a severability clause which I drew in 1964 for inclusion in a New York State general revision of the law on Powers of Appointment sponsored by the New York Temporary Commission on Estates. It was adopted by the Legislature of New York as Real Property Law §168, by New York Laws of 1965, chapter 684. Such a clause is an important ingredient in any statute designed to make changes or additions to existing law.

(75) Proposed Section 09.46.250 requires such changes as may be injected by the proposed statute being labelled an "emergency" bit of legislation.

JUDICIARY COMMITTEE MINUTES MARCH 26, 1966

Chairman Guess called the meeting to order at 10 a.m. All members were present.

Mr. Andrew Stancioff of Ocean Mining, a subsidiary of Ocean Science and Engineering, Inc. asked to be heard on SB 262. Mr. Stancioff spoke against the proposition that existing permittees should be allowed to extend their permits for 6 or 8 years as would be the case under SB 262. Mr. Charles Herbert, Deputy Commissioner of the Department of Natural Resources was present to answer questions. It was noted that Mr. Herbert's letter to the Resources Committee on SB 262 is on page 691 of the House Journal. The bill is not in the committee so no action was taken.

Meeting was adjourned.

JUDICIARY COMMITTEE MINUTES MARCH 28, 1966

Chairman Guess called the meeting to order at 10 a.m. Present were members Stevens, Metcalf, Taylor, Josephson and Hillstrand.

Mr. Mike Holmes, Deputy Attorney General, appeared at the request of the committee to answer questions on HB 368 and 369. No action was taken on the bills.

Mr. Kent Edwards of the Legislative Council staff and Commissioner Holdsworth of the Department of Natural Resources appeared with draft copies of committee substitutes for HB 384 and 386 which were prepared at the request of the committee. No action was taken on the bills.

Meeting was adjourned.

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / BOX 2170 — JUNEAU 99801

March 21, 1966

The Honorable Gene Guess
Chairman
House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: Highway Beautification Bills

Dear Mr. Guess:

As a result of the hearings on House Bills 368 and 369 before the House Judiciary Committee on March 12, 1966, we have re-examined the existing State law to attempt to determine whether Alaska now has sufficient statutory authority to do the things necessary to comply with Federal Highway Beautification Act of 1965 (PL 89-285). Enclosed with this letter are the comments of Mr. Bruce Campbell, Special Assistant to the Commissioner of Highways. We agree with Mr. Campbell's conclusions and would like to make some additional statements on the legal implications of the existing statutes and their relationship to PL 89-285.

At the outset we would like to point out that we share the Committee's concern about radically changing the existing State law regulating outdoor advertising and junkyards. Until now no insoluble problems have arisen under the existing State statutes. However, we sincerely feel that PL 89-285 has placed some fairly stringent requirements on the State that simply cannot be met under the existing law. We are particularly concerned about this because the Department of Highways and the Department of Law will be responsible for seeing that the Federal requirements are met and if we cannot achieve compliance with the Federal statute and regulations, the State will be liable for an enormous monetary penalty in that as much as 20 percent of its total federal-aid for highway construction may be withheld by the United States Bureau of Public Roads. We are convinced, from our meetings with BPR officials in Washington, D.C., that the Federal Government means to obtain compliance with PL 89-285 and that the penalty will be invoked against those states that do not provide for effective control over outdoor advertising and junkyards within the meaning of PL 89-285.

JUNKYARDS. Under PL 89-285 each state must have made provision for effective control of the establishment and maintenance along certain federal-aid highways of outdoor junkyards which are within one thousand feet of the nearest edge of the right of way and visible from the main traveled way. Effective control means that the junkyards must be either screened so that they are not visible from the highway or completely removed from sight.

The existing Alaska junkyard statute basically regulates the location of junkyards and requires that a person using or proposing to use a location for a junkyard must obtain a certificate of approval for the location. We are in complete agreement with Mr. Campbell's observations about the problems presented by the fact that most certificates issued under AS 08.60 would be issued by cities and boroughs except to note that those permits issued for locations outside the cities and boroughs are issued by the Commissioner of Public Safety rather than by the Commissioner of Health and Welfare.

The paramount reason that AS 08.60 does not give the State the "effective control" required by PL 89-285 is that it contains absolutely no provision for the city, borough or Commissioner of Public Safety to revoke a certificate once it is issued. Authority to revoke a license may not be implied. See 33 Am.Jur., Licenses, § 66. And, even if such authority could be implied, there is no way that the owner can be paid just compensation by the city, borough, or Department of Public Safety for the taking or damaging of his junkyard. If a borough, for example, has issued a certificate of location to a particular junkyard owner and a federal-aid primary highway is placed so that the junkyard is within one thousand feet of the nearest edge of the right of way, the junkyard must, under PL 89-285, be either moved or screened. If, under Federal regulations, it is necessary that it be moved, the borough could not simply revoke the certificate of location. First of all, it has no authority to revoke the certificate. Second, to do so would deny the certificate holder due process of law and damage his property without just compensation in violation of the Alaska State Constitution.

How then could the State effect the removal of the junkyard? Not by condemnation certainly, because under State law the Department of Highways can only acquire by condemnation property reasonably necessary to construct and maintain highways.

Acquisition of junkyards or other properties within one thousand feet of the right of way on the basis that they are unsightly is not authorized by the condemnation statutes of the State.

These deficiencies in AS 08.60 cannot be cured by the promulgation of regulations. In absence of statutory authority a regulation cannot be promulgated to authorize license revocation. Nor can a municipality give itself the power of eminent domain by simply promulgating a regulation.

In other words, the State will not have provided for "effective control" within the meaning of PL 89-285 unless substantial revisions are made to AS 08.60 such as those proposed in HB # 368.

The reason it is important to provide for "effective control" of junkyards as soon as possible is that the Federal Government will only pay for the removal of the junkyards lawfully in existence on the effective date of PL 89.285 (October 22, 1965) or after January 1, 1968. Those lawfully established after October 22, 1965, and before January 1, 1968, will have to be removed, probably pursuant to purchase or condemnation by the State, but no federal aid will be available to pay for their acquisition. In other words, if a junkyard is certified and established today and, due to its location relative to a federal-aid highway, it must be removed to comply with PL 89-285, it will have to be purchased or condemned with 100 percent State funds to meet the just compensation requirements of the State Constitution. The State cannot simply order it removed under the police power of the State without just compensation. So it is urgent that the law be changed so that junkyards cannot be lawfully established at all within one thousand feet of the edge of the right of way of highways on the federal primary system. And, correlatively, the law must be changed so that those now in existence can be purchased or condemned. Under PL 89-285, those junkyards lawfully in existence before October 22, 1965, can be acquired with the assurance of federal reimbursement.

OUTDOOR ADVERTISING. With regard to outdoor advertising, PL 89-285 provides that by January 1, 1968, each state must have made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs which are within 660 feet of the nearest edge of the right of way and visible from the main traveled way of the system. The penalty for not having made provision for effective control is withholding of ten percent of all federal-aid for highway construction.

Has Alaska provided for effective control in its already existing statutes? Unfortunately the control purported to be exercised by the Alaska statutes is so overwhelming that it is unconstitutional.

AS 19.25.090 provides: "Except as provided in § 100 of this chapter, all outdoor advertising is prohibited." The sole exception specified in § 100 is for signs for rural businesses listing the type of establishment, service offered and the distance to it. The sign is to be designed by the Department of Highways and is to be installed within one mile of the establishment. All other outdoor advertising is prohibited: signs on business premises advertising the business of the place; for sale signs; signs in cities; signs in industrial and commercial areas, etc. The Department of Public Safety is charged with the responsibility of enforcing AS 19.25.090 and 100 and ordering the removal of offending signs. The only standard provided the Department as to what outdoor advertising is in violation is in AS 19.25.080 which states that the purposes of AS 19.25.080, et seq is to have outdoor advertising "along the highways of the state" removed. There is no definition of the term highway and, more important, no statement as to how far from a highway outdoor advertising may be legally maintained: 50 feet? 500 feet? 5000 feet? Apparently it is up to the Department of Public Safety to decide, with no legislative guidelines to help him.

In Schloss Poster Advertising Co. v. Rock Hill, 2 S.E.2d 392 (S.C. 1939), a similar law was held unconstitutional. In that case an ordinance making it unlawful to erect or maintain any billboards facing on any public street without FIRST obtaining permission from the city council, and investing that body with uncontrolled discretion which might be exercised arbitrarily and in the interests of a favored few, was held invalid on the ground that there was an absence of standards to guide the discretion of the administering authority.

City ordinances have also been held void, which absolutely prohibit the erection of billboards on private property anywhere within municipal limits, on constitutional grounds. Ruth v. Colonie, 99 N.Y.S.2d 471.

The rule that a statute or ordinance must create and impose a standard or guide for its enforcement and cannot give uncontrolled discretion to officials in enforcing it applies to

statutes and ordinances prohibiting or regulating billboards and other outdoor advertising. See Wolverine Sign Works v. Bloomfield Hills, 271 N.W. 823 (Mich. 1927).

See also numerous cases collected in 58 A.L.R.2d 1318, et seq.

In our opinion AS 19.25.090 would be held unconstitutional if challenged in a court action. This would not, in our opinion, excuse the State from compliance with PL 89-285. In order to make the existing Alaska statutes regulating outdoor advertising constitutionally valid and also to make them provide the Department of Highways with the means to provide "effective control" within the meaning of PL 89-285, substantial revisions are required. We felt that a complete revision of the statutes relating to outdoor advertising would be the most appropriate means to tailor the Alaska statutes to the detailed requirements of the Highway Beautification Act of 1965. However, we certainly realize that HB # 369 is not the only approach. It would be possible, by substantial amendment to AS 19.25, to comply with PL 89-285. However, based on our considerable study of the matter we believe that the approach taken in HB # 369 is the most appropriate one in that it assures compliance with PL 89-285 and will provide maximum federal reimbursement of just compensation paid to owners of outdoor advertising that must ultimately be taken by the State.

The urgency for enactment of a bill to provide for "effective control" of outdoor advertising within the meaning of PL 89-285 is the same as in the case of junkyards. Signs erected after October 22, 1965 (the effective date of PL 89-285), will be lawfully erected and when the State has them removed it will have to pay just compensation for them but there will be no federal reimbursement. Therefore, it is imperative that, as soon as possible, it is made unlawful to install these signs within 660 feet of the right of way of federal primary highways.

If we can provide any further information on this subject, please let us know.

Yours very truly,

WARREN C. COLVER
ATTORNEY GENERAL

By
Michael M. Holmes
Deputy Attorney General

MMH/grg

cc: Governor Egan
Bruce Campbell
Jane Ashen

UH-434
(Rev. 1/64)

MEMORANDUM State of Alaska

TO: Michael M. Holmes
Deputy Attorney General
Department of Law

DATE: March 16, 1966

FILE NO: 01-1041

SUBJECT: Junkyards and Outdoor Advertising

FROM: B. A. Campbell
Special Assistant to the
Commissioner for Engineering
Department of Highways

I have reviewed proposed House Bills 368 and 369 concerning the control of junkyards and the control of outdoor advertising. I have also reviewed Public Law 89-825, specifically Title I and II, which require certain control of outdoor advertising and junkyards in order to qualify for complete Federal-aid apportionment. In addition to this, I have reviewed Title 19, specifically section 25, which pertains to the control of outdoor advertising, and Title 8, specifically section 60, which concerns itself with the regulation of junkyards.

During the hearing held on Saturday, March 12, with the House Judiciary Committee it was the feeling of the committee that existing junkyard regulations contained in Title 8 were sufficient to comply with Title II of Public Law 89-825 and that outdoor advertising statutes as contained in Title 19 would be sufficient to comply with Title I of Public Law 89-825 with certain amendments. I do not concur completely with the House Judiciary Committee concerning this matter. The following are points that I believe should be clarified in the existing legislation so that it will allow the Department of Highways the necessary tools to comply with Title I and Title II of Public Law 89-825.

Referring first to junkyard regulations, I find the following:

(1) Title II of Public Law 89-825 requires regulation of garbage dumps and sanitary fills as well as junkyards. Title 8 of the existing law does not include garbage dumps and sanitary fills. Amendment would be necessary to include garbage dumps and sanitary fills under Title 8.

(2) Under 8.60.060 a person either using or proposing to use a location for a commercial or public junkyard must obtain a certificate of approval for the location. It specifically states that if the location is in a city, the certificate shall be procured from the city council or its designee. If the location is outside the city but within an organized borough, the certificate shall be procured from the assembly of the organized borough or its designee. If the location is outside an incorporated city or borough, the certificate of location shall be obtained from the Commissioner of Health and Welfare. This means that State regulations made by the Commissioner of Health and Welfare can only be enforced in those areas outside cities and organized boroughs.

DH-434
(Rev. 1/64)

MEMORANDUM State of Alaska

TO: Holmes

DATE: March 16, 1966

FILE NO: 01-1041

SUBJECT: SHEET NO. 2

FROM: Campbell

In order for compliance with Title II of Public Law 89-825, which requires effective control of the establishment and maintenance along the interstate system and the primary system of outdoor junkyards which are within 1,000 feet of the nearest edge of right of way and visible from the main traveled way of the system, it would be necessary for each city, each organized borough, and the Commissioner of Health and Welfare to adopt regulations meeting the minimum requirements of Title II of Public Law 89-825. It would be very difficult, if not impossible, for the State to exert the necessary influence to require each city and each organized borough to adopt such regulations. In addition, the Federal-aid primary system in Alaska traverses nearly every city and nearly every organized borough in Alaska. This would mean that in order to impose effective control as we envision it as required under Public Law 89-825, the action of innumerable city councils and borough assemblies would be required. We feel this would be very difficult and time-consuming to accomplish. It would also require the considerable expenditure of State funds in liaison between the Department of Highways, Department of Health and Welfare, Department of Public Safety, and all the cities and boroughs in which these necessary regulations must be adopted.

It would appear to be much simplier to simply pass a bill, essentially in conformance with HB 368, to regulate junkyards adjacent to the Federal-aid primary system throughout Alaska. This would in no way prevent either the cities or the boroughs from issuing regulations more restrictive, but it would centralize and provide by statute the minimum requirements as needed to conform with Public Law 89-825 and would eliminate the need for 30 or 40 separate legislative groups comprising city councils and borough assemblies in passing regulations to conform with the Federal Act.

We also must remember that many of these governing bodies may not desire to pass regulations in conformance with the Federal Act since they are not directly concerned with the apportionment or expenditure of Federal-aid highway funds. Their interests are more oriented towards the local level. I think it would be safe to say that getting all concerned city councils and borough assemblies to adopt regulations that would conform to Public Law 89-825 would be a monumental task.

(3) We must remember that the purpose of Title II of Public Law 89-825 and HB 368 is to protect the public investment in highways, to promote safety and recreational value of public travel, and to

DH-434
(Rev. 1/64)

MEMORANDUM State of Alaska

TO: Holmes

DATE: March 16, 1966

FILE NO: 01-1041

SUBJECT: SHEET NO. 3

FROM: Campbell

preserve natural beauty. In issuing certificates for junkyards local governments (city councils or organized borough assemblies) may require only that junkyards be screened. This may be done by any number of methods, the most inexpensive of which is usually a board fence. I can think of one shining example between Eagle River and Chugiak on the Glenn Highway just northeast of Anchorage where a junkyard is being used on the south side of the highway and a board fence has been erected around it. This board screen is constructed of lumber of various ages, sizes, and descriptions, and erected in a variety of methods. From my own observation, I am not sure in my own mind which would mar the landscape more, the junkyard or the fence erected to screen it. Certainly neither would, in my estimation, "promote the safety and recreational value of public travel or preserve the natural beauty." By having a State law such as HB 368, uniform regulations could be adopted providing for minimum screening requirements of all junkyards within 1,000 feet of the highway right of way on the Federal-aid primary system. I believe this would be much more desirable than having a variety of varying regulations promulgated by the various cities and boroughs. The tourist and highway traveler, in most instances, does not realize or care when he traverses across a city limit or organized borough boundary. He has a right to expect uniform highway construction, signing, and, I believe, beautification. I think it is important to consider here that the purpose of Public Law 89-825 is to provide recreational value of public travel and to preserve the natural beauty. The main purpose is not to regulate junkyards per se.

(4) Of primary concern to this Department is the effective control of junkyards within the meaning of Title II of Public Law 89-825 with regard to existing junkyards which have been granted a certificate by either the city or the borough but are not in conformance with the requirements of Title II of Public Law 89-825. As an example, I cite the following hypothetical example:

A year ago a person secured a certificate for the development of a junkyard approximately 800 feet off a section of the Federal-aid primary system in Alaska. As a condition of this certificate, certain restrictions have been incorporated by the issuing agency. The junkyard owner has complied with these conditions. In addition, he has spent $10,000 having his site cleared and another $10,000 having it graded. Also, he has spent $5,000 having an access road constructed to it. Thus, based on the issuance of a certificate,

DH-434
(Rev. 1/64)

MEMORANDUM State of Alaska

TO: Holmes

DATE: March 16, 1966

FILE NO: 01-1041

SUBJECT: SHEET NO. 4

FROM: Campbell

the junkyard owner has invested $25,000 for the development of a junkyard which complies with all the conditions of his certificate. Since he is within 800 feet of the right of way he now is in non-compliance with Title II of Public Law 89-825. What recourse is open to the Department of Highways to comply with the requirements of Title II? As I see it under existing statutes, we must go to the city or borough which issued the certificate and request that they amend or withdraw it. If they amend the certificate and require the owner to screen his junkyard, a condition which was not required in the original certificate, I believe this is unfair treatment of the junkyard owner since he has made his investment based upon certain conditions included in the original certificate in good faith. If the certificate is withdrawn and the junkyard owner required to move, again I feel this is unfair treatment since, again, the junkyard owner has acted in good faith and invested $25,000 as a result of the certificate being issued to him. It is my opinion that if conditions must be changed through no fault of his own after he has acted in good faith he should:

1) Either be grandfathered, which means he can remain under the terms of his original permit until such time as he would normally go out of business, or
2) Be compensated for the additional costs he must incur to conform with the new regulations.

If he is grandfathered under the new regulation or certificate, he will not be in compliance with Title II. Hence, it appears that the only alternative is to require him to move or screen his junkyard. It is my feeling that HB 368, which provides for compensation for the moving or screening of those junkyards which were legal at the time of the passage of this Bill, is fair and equitable. In addition, I feel that it is desirable to allow Federal funds to participate in 75% of the cost. Situations similar to this could occur in future years under the following conditions:

(a) A section of the Federal-aid highway system which is presently designated as Secondary could be redesignated as Primary, thus requiring junkyards adjacent to conform with Title II. Certificated junkyard owners along this highway would find themselves in a predicament, as indicated above, where they now must either move or screen their junkyards to comply with Title II. For this I believe they should be paid just compensation as outlined in HB 368, since they were legal and certificated at the time the system designation was changed through no fault of their own.

DH-434
(Rev. 1/64)

MEMORANDUM State of Alaska

TO: Holmes

DATE: March 16, 1966

FILE NO: 01-1041

SUBJECT: SHEET NO. 5

FROM: Campbell

(b) A new highway location may be determined by the Department of Highways and may pass within 1,000 feet of a certificated junkyard. Again, the junkyard owner comes under the requirements of Title II for regulation through no fault of his own and I believe, again, should be paid just compensation as provided in HB 368 since he must incur additional expense to either move or be screened.

Actually, under (a) and (b) above I do not see that under the existing Title 8 statute that the Department of Highways has any legal authority to force junkyard owners to comply with the requirements of Title II. Our only recourse is to go to the certifying authority, either the city or the borough, and request that they reregulate the junkyard in question to comply with Title II. Under the present act the junkyard owner must accomplish this if the borough or city so designates, at his own expense.

Title I, Public Law 89-825, requires effective control of outdoor advertising adjacent to the interstate and primary highway system. This act provides basically that outdoor advertising cannot be permitted within 660 feet of the highway right of way line except in industrial and commercial areas. In our meeting before the Judiciary Committee on Saturday, March 12, it was the feeling of the committee that existing statutes, with some amendments, contained in 19.25.080 through 19.25.130 of Alaska Statutes were sufficient to control the outdoor advertising within the requirements of Title I, Public Law 89-825. I have some questions which remain unanswered concerning this matter.

First of all, I note under the purpose of the outdoor advertising statutes it is explained it is the purpose of this act to protect the public safety and the welfare of persons using the highways of the State by having the outdoor advertising along the highways removed, thereby eliminating a source of distraction to vehicle operators and persons on the highway. I assume then that section 19.25.090 which follows and prohibits all outdoor advertising must apply only to that advertising adjacent to or visible from the highway. I grant that generally this act is sufficient to control signing along the highway, but I feel that it goes too far. As an example, most modern gas stations have a large sign on the premises near the front of their station which indicates the type of oil products they handle. I think we are all familiar with the round sign that carries the word "Texaco", the shield shaped sign that carries the word "Shell", and the other signs that carry the words "Chevron" and "Union". These, generally, are located in such a manner as to present a minimum of

DH-434
(Rev. 1/64)

MEMORANDUM State of Alaska

TO: Holmes

DATE: March 16, 1966

FILE NO: 01-1041

SUBJECT: SHEET NO. 6

FROM: Campbell

distraction to the driving public. Under section 19.25.090, I believe, these signs would have to be removed. I am not sure whether this is good or not. Without these signs it would be impossible, or next to impossible, for a driver to tell the type of gas that was sold at any service station without driving in and asking. Since this is the age of the credit card, it is very important to most people to know the type of gas that they are about to purchase. I think that these sign have a purpose useful to the traveling public and when regulated by proper regulations do not constitute a source of distraction to the vehicle operator, as outlined in section 19.25.080.

I believe that the proposed legislation in bill 369 is desirable in that certain on-premise advertising, when properly regulated, can be allowed. I would say that it was an awfully fine line that distinguishes between the informational sign and the advertising sign in many instances. In addition, I feel that it would be necessary for us, in the uniform application of the existing law, to remove much advertising on buildings in urban areas adjacent to the Federal-aid primary system. In Anchorage, for instance, the Federal-aid primary system traverses the full length of Fifth Avenue. There are many advertising signs on buildings and on top of buildings along this route that I think should come down if we are going to force rural gas station operators to remove gas identification signs. Therefore, I believe that the permission of some advertising on premises and in some commercial and industrial areas, as provided in HB 369, is desirable.

Section 19.25.100 provides for the erection of certain rural signs in an Alaskan motif to identify road houses and other places of business on the rural highway system. This Department has recently negotiated with the Bureau of Public Roads and received approval of such signs. We are unique among the 50 states since only Alaska has the many miles of completely rural highway system which require this type of signing. The Bureau of Public Roads is allowing us to use signs similar to the sign presently installed on the Interstate System in other states to identify the services of gas, food, and lodging. We can use only these three words and cannot identify the type of gas, lodging, or other information that might be desirable. Under Section 19.25.100 it is provided that each owner or manager of the rural establishment shall install the sign at his own expense. This Department would prefer that this be changed to allow the Department to install the signs without cost to the owner or manager after a suitable application had been

DH-434
(Rev. 1/64)

MEMORANDUM State of Alaska

TO: Holmes

DATE: March 16, 1966

FILE NO: 01-1041

SUBJECT: SHEET NO. 7

FROM: Campbell

made and approval had been given for such a sign. Since these signs, in most instances, must be within the right of way, it is our feeling that it is much more desirable to have the Department erect and maintain these signs. In order to insure uniformity and compliance with the Uniform Manual on Traffic Control Devices, it is essential that all these signs be manufactured either by the Department or under its jurisdiction. It also follows that we must maintain the signs since they are within the right of way. In keeping with the scenic beauty of our highway system we feel that all highway signs should be kept in good state of repair. Nothing would be worse, we feel, than run-down, faded, bullet-ridden signs. If we leave it to the owner of the establishment to maintain the sign, I am certain that in many instances poor maintenance will occur. Therefore, we feel it is very desirable to change section 19.25.100 to allow the Department to install and maintain the signs since we believe this will be in the best interest of the motoring public. Any regulation, we feel, must have a penalty for the erection of the sign. If, as proposed under HB 369, a 30-day grace period is allowed the sign owner, he can erect a sign, leave it in position 30 days until after he is notified, take it down and move it someplace else within a few feet for another 30 days. I think this loop-hole in HB 369 should be plugged by making it a misdemeanor to erect the sign initially.

BAC/mth

JUDICIARY COMMITTEE MINUTES MARCH 29, 1966

Chairman Guess called the meeting to order at 9 p.m. Present were members Metcalf, Taylor and Stevens.

The committee considered HB 505. It was moved and seconded that HB 505 "Do Pass". Motion carried.

Meeting adjourned.

JUDICIARY COMMITTEE MINUTES APRIL 1, 1966

Chairman Guess called the meeting to order at 9 a.m. All members were present.

The committee considered SB 282. It was moved and seconded that SB 282 "Do Not Pass". Motion carried.

The committee discussed CSHB 295 and the committee recommended it "Do Pass" by unanimous consent with the following amendments:

On page 1 - line 14: insert after "of" the words "or passenger on"

Line 15: insert after "operate" the words "or ride"

Line 22: delete all matter after the word "passenger"

Line 23: delete the whole line and insert - "and the operator has effective liability coverage for the protection of the passenger against bodily injury in the sum of not less than $10,000 when the operator is riding on a public highway."

The committee next considered HB 447. The bill was reported out "Do Pass" by unanimous consent.

Meeting adjourned.