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2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 FIRST JUDICIAL DISTRICT AT KETCHIKAN

4 KETCHIKAN GATEWAY BOROUGH, an)
5 Alaska municipal corporation and political)
6 subdivision; AGNES MORAN, an)
7 individual, on her own behalf and on behalf)
8 of her son; JOHN COSS, a minor; JOHN)
9 HARRINGTON, an individual; and DAVID)
10 SPOKELY, an individual,)

) Case No. 1KE-14-00016 CI

11 Plaintiffs,)

12 v.)

13 STATE OF ALASKA; MICHAEL)
14 HANLEY, COMMISSIONER OF)
15 ALASKA DEPARTMENT OF)
16 EDUCATION AND EARLY)
17 DEVELOPMENT, in his official capacity,)

18 Defendants.)
19)
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27 **STATE OF ALASKA'S OPPOSITION TO KETCHIKAN GATEWAY**
28 **BOROUGH'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION**
29 **FOR SUMMARY JUDGMENT**

30 **I. Introduction**

31 Plaintiffs Ketchikan Gateway Borough, Agnes Moran, John Coss, John Harrington
32 and David Spokely, ("Ketchikan Gateway Borough" or "the borough") have challenged
33 the statutory requirement that the borough provide part of the funding for the Ketchikan
34 Gateway Borough School District. In effect, the borough argues that the Alaska
35 Constitution requires the State to place the borough in a less desirable position. Under
36 the borough's reading of the dedicated fund, appropriation, and gubernatorial veto

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2 clauses, the State must depart from its longstanding, pre-statehood practice of requiring
3 local entities with taxing authority to make direct financial contributions to their local
4 schools. Instead, the borough argues that this Court should deem its direct financial
5 contribution to its school district to be a state tax and a source of state revenue, such that
6 the Court should require the State to deposit the money into the state treasury, with only
7 the possibility that that the proceeds will be appropriated to fund education and, absent a
8 gubernatorial veto, returned back to the borough as school funding. Although the
9 borough might perhaps gain some political advantage from this alternative approach to
10 education funding, the Alaska Constitution does not require it. The local contribution is
11 not a state tax or a source of public revenue, and therefore it is not subject to the anti-
12 dedication prohibition or subject to the state appropriation process. Instead, the local
13 contribution functions like state matching programs in which a local entity is expected
14 to put its own funds forward in order to receive other (appropriated) state funds. The
15 borough's argument to the contrary relies on an unspoken, unsupported assumption that
16 the Alaska Constitution requires all education funding to come from the state. The State
17 asks this Court to reject the borough's invitation to invalidate the methodology for
18 funding Alaska schools enacted by the Alaska Legislature, to deny the borough's
19 motion for summary judgment and instead to grant summary judgment to the State on
20 all of plaintiffs' claims.
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2 **II. Factual background**

3 In Alaska, the State is the primary source for financing schools, and, as a result,
4 district wealth is not determinative of school funding.¹ A formula spelled out in statute
5 determines the minimum funding that a district will receive from state and local
6 sources.² This minimum funding level is called “Basic Need.”³ The funding due to a
7 particular school district is adjusted for factors that make education more or less
8 expensive in that district: the number of students enrolled, the number of
9 correspondence students, school size, geographic cost differentials, and the number of
10 special needs students.⁴ The figure that results from these adjustments represents a
11 weighted student count called the “adjusted average daily membership.”⁵ Basic need for
12 a district is a product of the adjusted average daily membership of the district multiplied
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17 ¹ Exhibit 1. Exhibit 1 is page 1 of the Alaska Department of Education and Early
18 Development’s public school funding program summary for fiscal year 2014. This chart
19 lists Alaska’s school districts and describes the basic need of each district, as well as the
20 various sources of money that comprise that total. For example, the Ketchikan Gateway
21 Borough’s basic need in FY2014 is \$25,947,546. That amount includes \$4,198,727 of
22 local effort and \$21,748,819 of state funds. This exhibit also illustrates how eligible
23 federal impact aid dollars contribute toward basic need in federally impacted
24 communities. For example, Lower Yukon’s basic need of \$39,568.073 is comprised of
25 deductible impact aid in the amount of \$9,873,656, as well as \$29,694,417 in state aid.

26 ² AS 14.17.400.

³ *Id.*

⁴ AS 14.17.410.

⁵ *Id.*

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2 by the “base student allocation,” an amount of money defined in statute.⁶ The base
3 student allocation may go up or down depending on the availability of state revenue.⁷

4 Although basic need is an estimate of the minimum amount required by each
5 school district, not all of basic need is provided by the State. The federal government
6 contributes to school funding through impact aid.⁸ The State factors in 90 percent of a
7 school district’s eligible federal impact aid when computing a school district’s state aid
8 entitlement.⁹ Additionally, the statutory scheme contemplates that school districts
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15 ⁶ AS 14.17.470.

16 ⁷ *Id.*

17 ⁸ The federal Impact Aid Act provides financial assistance to local school districts
18 whose ability to finance public schools is negatively affected by federal presence,
19 activities, or land ownership. *See* 20 U.S.C. § 7701. The statute generally prohibits a
20 state from offsetting this federal aid by reducing state aid to a local district. *See*
21 20 U.S.C. § 7701 (2000 ed. and Supp. IV). However, the federal statute provides an
22 exception; it permits states to compensate for federal impact aid where “the Secretary of
23 Education determine[s] and certifies...that the State has in effect a program of State aid
24 that equalizes expenditures for free public education among local [school districts] in
25 the State.” § 7709(b)(1) (200 ed., Supp. IV). The Secretary of Education has certified
26 Alaska’s school funding as equalized, permitting the inclusion of 90% of eligible impact
aid to be reflected in the funding formula. *See* AS 14.17.410(b)(1). Alaska is one of
only three states to be so certified. *See Getting a Grip on the Basics of Impact Aid*,
National Association of Federally Impacted Schools 16 (March 2013), *available at*
http://www.ruraledu.org/user_uploads/file/ImpactAidTheBasics.pdf.

⁹ AS 14.17.410(b)(1).

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2 within boroughs and cities with taxing authority¹⁰ will receive some local funding from
3 their borough or city governments:

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5 The legislature shall provide the state money necessary to maintain
6 and operate the regional educational attendance areas. The borough
7 assembly for a borough school district, and the city council for a city
8 school district, shall provide the money that must be raised from
9 local sources to maintain and operate the district.¹¹

10 This local funding is consists of a required local contribution (“local
11 contribution”), as laid out in AS 14.17.410(b)(2), and a voluntary contribution as
12 provided for in AS 14.17.410(c).¹² Alaska Statute 14.17.410(b)(2) provides that

13 the required local contribution of a city or borough school district is
14 the equivalent of a 2.65 mill tax levy on the full and true value of the
15 taxable real and personal property in the district ... not to exceed 45
16 percent of a district’s basic need for the preceding fiscal year as
17 determined under (1) of this subsection.

18 ¹⁰ All boroughs and home rule or first-class cities are school districts.
19 AS 14.12.010. Not all school districts, however, are municipalities. Some districts,
20 called Regional Educational Attendance Areas, are in the unorganized part of the state,
21 and these school districts do not have taxing authority. AS 14.08.031. Alaska Const. art.
22 X, § 2 (“The state may delegate taxing powers to organized boroughs and cities only.”).

23 ¹¹ AS 14.12.020(c).

24 ¹² AS 14.17.410(c) states that: “In addition to the local contribution required under
25 (b)(2) of this section, a city or borough school district in a fiscal year may make a local
26 contribution of not more than the greater of (1) the equivalent of a two mill tax levy on
the full and true value of the taxable real and personal property in the district as of
January 1 of the second preceding fiscal year, as determined by the Department of
Commerce, Community, and Economic Development under AS 14.17.510 and
AS 29.45.110; or (2) 23 percent of the district’s basic need for the fiscal year under
(b)(1) of this section.”

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2 Both the local contribution and any voluntary contribution are paid by the city or
3 borough directly to the school district, and the funds are incorporated into the city or
4 borough's school budget. And although this statute clearly specifies the amount of the
5 local contribution, the statute does not mandate the method that a city or borough must
6 use to obtain the funds.

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8 Finally, the statute contains a strong incentive for a city or borough to annually
9 satisfy the local contribution. Alaska Statute 14.17.410(d) provides that: "State aid may
10 not be provided to a city or borough school district if the local contributions required
11 under (b)(2) of this section have not been made." The requirement of a local financial
12 stake to access state and federal funds seeks to ensure prudent expenditure of state and
13 federal education dollars. The requirement is also not new. Pre-statehood, Alaska cities
14 and independent school districts had taxing power and were required to fund local
15 public schools.¹³ The territory then "refunded" a percentage of the school expenses to
16 the local entities.¹⁴ Following statehood the statutory expectation of local contributions
17 continued in school districts with taxing authority, including the newly formed
18 boroughs.¹⁵

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20 Ketchikan Gateway Borough paid its 2014 local contribution "under protest" by
21 sending to the Commissioner for Education a copy of its check to the borough with the
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23 ¹³ Alaska Compiled Laws, ch. 3, art. 4 § 37-3-32, 37-3-35, 37-3-53 (1949),
attached as Ex. 2.

24 ¹⁴ Alaska Compiled Laws, ch. 3, art. 5 § 37-3-61 (1949), *attached as Ex. 2.*

25 ¹⁵ *See Sec. 1.03, ch. 164, SLA 1962.*

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2 words “dedicated tax paid under protest” written on it.¹⁶ The Commissioner for
3 Education otherwise would not have seen the check; it was made out to the “KGB
4 School District” and the money went directly to Ketchikan Gateway Borough schools.¹⁷
5 State aid covered more than eighty percent of the borough’s basic need, so the
6 borough’s local contribution accounted for less than a fifth of the borough’s basic need
7 costs.¹⁸
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9 On January 13, 2014, Ketchikan Gateway Borough filed this lawsuit challenging
10 the State’s statutory scheme for school funding. On February 6, 2014, the borough
11 moved for summary judgment, arguing that the local contribution violates the
12 constitutional prohibition against dedicated funds, Art. IX, section 7, and also that it
13 unconstitutionally impinges on the legislature’s role in appropriating money to be
14 withdrawn from the State treasury and the governor’s opportunity to strike or reduce
15 items in an appropriation bill. But these claims are without merit because they rely on a
16 mischaracterization of the local contribution and also on an unspoken and erroneous
17 assumption about the meaning of Article VII, section 1 of the Alaska Constitution—the
18 education clause.
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23 ¹⁶ Brandt-Erichsen Aff. In Support of Ketchikan Gateway Borough’s Motion to
Dismiss Ex. G.

24 ¹⁷ *Id.*

25 ¹⁸ *Id.* Ex. F.

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2 **III. Standard for granting summary judgment**

3 A party is entitled to summary judgment “if the pleadings, depositions, answers
4 to interrogatories, and admissions on file, together with the affidavits, show that there is
5 no genuine issue as to any material fact and that any party is entitled to a judgment as a
6 matter of law.”¹⁹

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8 Once the movant meets the burden of establishing entitlement to summary
9 judgment, the nonmoving party must demonstrate the existence of a genuine issue of
10 material fact or that the movant is not entitled to judgment as a matter of law.²⁰

11 Courts “presume statutes to be constitutional, and the party challenging the
12 statute bears the burden of showing otherwise.”²¹ Doubts are resolved in favor of
13 constitutionality.²² The Court’s power to strike down a provision of law as
14 unconstitutional is “not a power that should be exercised unnecessarily, for doing so can
15 undermine the public trust and confidence in the courts and be interpreted as an
16 indication of lack of respect for the legislative and executive branches of government.”²³
17 It is also “a well-established rule of statutory construction that courts should if possible
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19 ¹⁹ Alaska R. Civ. P. 56(c).

20 ²⁰ *E.g., Weaver Bros., Inc. v. Chappel*, 684 P.2d 123, 126 (Alaska 1984); *State,*
21 *Dep’t of Highways v. Green*, 586 P.2d 595, 606 (Alaska 1978).

22 ²¹ *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1167 (Alaska
23 2009).

24 ²² *State, Dept. of Revenue v. Andrade*, 23 P.3d 58, 72 (Alaska 2001) (quoting
25 *Katmailand, Inc. v. Lake and Peninsula Borough*, 904 P.2d 397, 401 (Alaska 1995)).

26 ²³ *Brause v. State, Dept. of Health & Social Services*, 21 P.3d 357, 360 (Alaska
2001).

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2 construe statutes so as to avoid the danger of unconstitutionality. . . . [For] the
3 legislature, like the courts, is pledged to support the state and federal constitutions and
4 . . . the courts, therefore, should presume that the legislature sought to act within
5 constitutional limits.”²⁴ Whether the required local contribution violates the Alaska
6 Constitution is a matter of law.

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8 **IV. Argument**

9 The required local contribution does not run afoul of the Alaska Constitution’s
10 provisions regarding dedicated funds, appropriation power, or gubernatorial veto
11 authority because the contribution is not a state tax or a source of public revenue. The
12 local contribution statute does not impose a particular method or source of fund
13 collection, it does not result in the deposit of funds to the state treasury, and it does not
14 create a pot of money that the state legislature would otherwise be able to appropriate
15 but for its designation to the local school district. Instead, it is akin to countless other
16 matching fund programs in which the legislature appropriates money for a project
17 conditioned on a local government (or nongovernment recipient) appropriating some of
18 its funds as well. Ketchikan Gateway Borough’s strained interpretation rests on the
19 unspoken and wholly unsupported premise that the state is constitutionally required to
20 fully finance public education, and thus any local funds required for its support must be
21 state funds in hiding. But this stealth argument for a new constitutional interpretation of
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24 ²⁴ *Andrade*, 23 P.3d at 72 (quoting *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska
25 1978)).

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2 the education clause is contrary to the historical reality that Alaskan education has
3 always been funded with a combination of state (or territory), local, and federal dollars,
4 and the discussion at the Constitutional Convention contemplated a continuation of that
5 practice. Alaska has one of the most equitable education funding schemes in the nation,
6 a fact it can be proud of. And to date, the State has picked up the lion's share of the
7 costs of educating Alaska's children. This Court should resist the borough's invitation
8 to invalidate this funding methodology.
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10 **A. The required local contribution does not violate the Alaska**
11 **Constitutional provisions regarding dedicated funds, appropriation**
12 **power, or gubernatorial veto because the contribution is not a state**
13 **tax or a source of public revenue.**

14 **i. The local contribution does not create a dedicated fund in**
15 **violation of Article IX, section 7 of the Alaska Constitution**
16 **because it is not a source of public revenue.**

17 Article IX, section 7 of the Alaska Constitution provides that:

18 The proceeds of any state tax or license shall not be dedicated to any
19 special purpose except as provided in section 15 of this article
20 [creating the permanent fund] or when required by the federal
21 government for state participation in federal programs. This
22 provision shall not prohibit the continuance of any dedication for
23 special purposes existing upon the date of ratification of this section
24 by the people of Alaska.

25 There are two key parts to the dedication clause: first, there must be "the proceeds of
26 any state tax or license;" second, there must be a dedication to a special purpose—
something that removes those "proceeds" from the revenue available to the legislature
for appropriation on an annual basis. Here, because the local contribution is not the

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2 “proceeds of any state tax or license,” the local contribution does not result in a pledge
3 of State revenue that would otherwise have been available for appropriation by the
4 legislature.

5 Analysis of the dedicated fund clause has focused primarily on the first part of
6 the clause—the meaning of the phrase “proceeds of any state tax or license”—and the
7 Alaska Supreme Court has interpreted this phrase broadly to encompass “any source of
8 public revenue,”²⁵ including the grant of state land,²⁶ receipts from the marine highway
9 system,²⁷ and the sale of the right to future proceeds from a tobacco settlement.²⁸ But
10 despite this broad reading, the local contribution is not a “source of public revenue,” and
11 plaintiffs’ mere assertion that it is cannot make it so. [Mot. at 15] Because the statutory
12 scheme does not create a pot of money that is available for the legislature to appropriate
13 if it is not provided directly to school districts, there is no source of public revenue here.
14 The local contribution is neither a tax nor a state asset of any kind. The money is not
15 collected by the State; it is not deposited into the State treasury; and, most importantly,
16 if the local contribution is invalidated by this Court based on it being “dedicated”, the
17 money will not be available to the legislature for expenditure.
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23 ²⁵ *State v. Alex*, 646 P.2d 203, 210 (Alaska 1982).

24 ²⁶ *Southeast Alaska Conservation Council*, 202 P.3d at 1169-70.

25 ²⁷ *Sonneman v. Hickel*, 836 P.2d 936, 939-40 (Alaska 1992).

26 ²⁸ *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 390 (Alaska 2003).

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2 The borough relies heavily on *State v. Alex* arguing that the “same constitutional
3 infirmities present in *Alex* ... are present with the [local contribution].” [Mot. at 14] But
4 *Alex* involved a constitutional challenge to a statute that imposed a “royalty assessment”
5 on the sale of salmon in order to fund aquaculture associations. The tax could be “equal
6 to either two or three per cent of the fair market value of the fish but may not exceed
7 three per cent of the fair market value of the fish.”²⁹ In contrast, AS 14.17.410(b)(2)
8 does not establish a tax or assessment on anything; it only provides a formula for the
9 required amount of local contribution. A borough or municipality can finance its local
10 contribution in any way it wishes.³⁰ Unlike the statutory schemes that have run afoul of
11 the anti-dedication clause,³¹ the education funding statute has only one part—a
12 requirement that localities contribute to the funding of their school districts. And the
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15 ²⁹ Former AS 16.10.530(a).

16 ³⁰ Although the amount of the contribution is calculated by reference to the taxable
17 real property within the borough, AS 14.17.410(b)(2), the statute does not create a tax
18 on property and KGB indicates that it funds the local contribution through a
19 combination of property taxes and sales taxes. [Mot. at 8]

20 ³¹ See *Alex*, 646 P.2d at 207 (royalty assessment on sale of salmon dedicated to
21 aquaculture associations); *Southeast Alaska Conservation Council*, 202 P.3d at 1170
22 (grant of state land to University of Alaska with revenues from the land dedicated to the
23 university). Moreover, even those precedents where no violation of the dedication
24 clause was found involved a two-part scheme: Alaska Marine Highway revenues were
25 held not to be dedicated to fund the system, because “[t]he act clearly states that the
26 fund is part of the general fund and it may not be spent until and unless it is
appropriated by the legislature.” *Sonneman*, 836 P.2d at 939. Similarly, the sale of the
future proceeds of the tobacco settlement to the Alaska Housing Finance Corporation
and the dedication of the sale proceeds to rural school improvements was held not to
violate the anti-dedication clause because the tobacco settlement was not a traditional
source of revenue and the future proceeds could constitutionally be reduced to present
value, sold and the money appropriated for rural schools. *Myers*, 68 P.3d at 392.

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2 absence of any statutory provision creating a source of public revenue means—
3 crucially—that no additional revenue will be available to the legislature for
4 appropriation if the borough does not “dedicate” the local contribution to its local
5 school district.

6 The significance of this is apparent from Ketchikan Gateway Borough’s attempt
7 to reduce the dedicated tax question into a question of whether the local contribution is
8 mandatory. The Borough relies on *Fairbanks v. Fairbanks Convention & Visitors*
9 *Bureau* for the proposition that the royalty assessment in *Alex* was “problematic because
10 ‘the allocation of revenues to the regional associations was mandatory, *leaving no*
11 *discretion to the legislature to spend the money in any other way.*” [Mot. At 17
12 (emphasis added)] And indeed, Ketchikan Gateway Borough repeatedly asserts that
13 “[t]he RLC is a dedication because it is not available annually for appropriation as the
14 Legislature sees fit each year.” [Mot at 20, *see also* Mot. At 17 (“The payment of the
15 RLC is mandatory, leaving the legislature without discretion to collect these revenues
16 and use them in some other way. Instead, the RLC is earmarked for use by school
17 districts.”)] But this simply ignores reality. Here, if the borough was not directed to
18 provide its local contribution to the local school district the legislature would have no
19 discretion to spend the money in any other way. The money would remain with the
20 borough.
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24 Indeed, Ketchikan Gateway Borough complains that the impact of the local
25 contribution is that its school district “has been substantially underfunded by the State,

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2 with the Plaintiffs being forced to make up the difference. ... The shortfall in this
3 funding depletes the resources of the Borough and the taxpayer Plaintiffs.” [Mot. at 9]
4 But if the local contribution is a source of public revenue, then it belongs to the State,
5 not the borough and the taxpayer plaintiffs. The same internal contradiction is apparent
6 in the borough’s argument that “[t]he State was enriched by the Borough’s payment of
7 the [local contribution] to the KGB School District even though it did not directly
8 receive the [local contribution] because the [local contribution] reduced the amount of
9 money that the State itself provided to the KGB School District.” [Mot. at 22] The
10 notion that the State has been somehow unjustly enriched by the local contribution is
11 flatly inconsistent with the idea that the local contribution is actually “a source of public
12 revenue.”
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14 Although Ketchikan Gateway Borough analogizes the local contribution to the
15 royalty assessment in *Alex*, because the education funding statutes do not create or
16 impose a tax, a better analogy can be found in the concept of matching grants. For
17 example, the State’s capital project matching grant program provides that the legislature
18 will appropriate money to be deposited in accounts for each municipality in the state.³²
19 A municipality is then able to draw on the funds in that account if it also makes a local
20 contribution to the capital project.³³ Under Ketchikan Gateway Borough’s theory of the
21 local contribution, this sort of matching requirement somehow transforms local money
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24 ³² See AS 37.06.010.

25 ³³ AS 37.06.030.

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2 into state revenue, but the borough identifies no legal authority to support this untenable
3 claim.

4 Finally, the purpose of the dedicated fund clause is not served by application of
5 the clause to the local contribution requirement. As the Alaska Supreme Court noted in
6 *Alex*, the dedicated tax prohibition was prompted by a concern among delegates at the
7 Alaska Constitutional Convention that “earmarking curtailed the exercise of budgetary
8 controls and simply amounted to an abdication of legislative responsibility.”³⁴ But these
9 concerns are not present with a local contribution; the local contribution is not an
10 earmark any more than the privately or locally or federally controlled portion of any
11 other jointly funded endeavor.³⁵ Local contribution to education likewise does not
12 curtail the legislature’s budgetary control; on the contrary it leaves more money in state
13 coffers because schools receive part of their funding from local sources. Finally, even
14 were this Court to entertain the borough’s view—which the State rejects—that a
15 statutory provision requiring a local contribution to education creates a dedicated fund,
16 statutory provisions doing just that have been in effect since Territorial days, and thus
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21 ³⁴ *State v. Alex*, 646 P.2d 203, 210 (Alaska 1982).

22 ³⁵ Indeed, an intent to exempt matching fund programs and other non-tax, non-
23 license money motivated the amendment limiting the dedication prohibition to “the
24 proceeds of any tax or license” from the prior version’s “all public revenues.” 1975 Op.
25 Alaska Att’y Gen. No. 9 at 6-8 (May 2) (concluding Constitutional Convention
26 amendment narrowing “all public revenues” to “the proceeds of any tax or license”
stemmed from desire to avoid having to list exceptions for certain moneys including
“contributions from local government units for state-local cooperative programs.”).

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2 would qualify for the exemption in the clause governing dedications in existence at the
3 time of ratification.³⁶

4 The local contribution is not a “source of public revenue,” because without the
5 requirement that it be paid to school districts, there is no statutorily-created source of
6 money that the State could collect and deposit in the state treasury. Instead, the local
7 contribution represents a commonplace—and constitutional—measure to incorporate
8 local funding into the State’s system for financing public schools. Because the local
9 contribution does not violate the anti-dedication clause, the State asks the Court to grant
10 summary judgment in its favor on Count I of Ketchikan Gateway Borough’s complaint.
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12 **ii. The required local contribution does not circumvent the**
13 **appropriation power of the legislature or the veto power of the**
14 **Governor.**

15 The fact that the local contribution is not a source of public revenue is fatal also
16 to Ketchikan Gateway Borough’s claims that the statute violates both the appropriation
17 clause of article IX, section 13 of the Alaska Constitution and the governor’s line item
18 veto requirement of article II, section 15. As logic dictates, the constitutional power to
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20 ³⁶ The dedicated fund clause’s exemption for dedications of state funds already in
21 law at the time of statehood reads: “This provision shall not prohibit the continuance of
22 any dedication for special purposes existing upon the date of ratification of this section
23 by the people of Alaska.” Alaska Const. art. 9 § 7. If, and to the extent, that this Court
24 determines that a mere statutory requirement of local contribution is a dedicated fund,
25 the local contribution would be covered by that exemption because the Territory was
already requiring local contributions to school maintenance. *See* Alaska Compiled
Laws, ch. 3, art. 3 §§ 37-3-32, 37-3-35, art. 4 § 37-3-53, art. 5 § 37-3-62 (1949), *attached*
as Ex. 2 (requiring local funding of education and providing for refund of only a
percentage of school costs).

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2 appropriate is limited to funds within the state treasury, leaving the legislature
3 powerless to appropriate funds within the treasury of a city or borough.³⁷ Likewise, the
4 governor's constitutional authority to strike or reduce an item in an appropriation bill is
5 limited to appropriations authorized by the legislature, leaving the governor powerless
6 to veto an appropriation of funds by a city or borough.³⁸ So, because the local
7 contribution is collected by, deposited in, and appropriated from the borough's treasury
8 and not the State's, the local contribution is not subject to appropriation by the
9 Legislature or vulnerable to a line-item veto by the Governor.³⁹ The State, therefore,
10 asks for summary judgment on Count II of the complaint.
11

12 **B. The Court should reject Ketchikan Gateway Borough's attempt to**
13 **argue through implication, without authority or explanation, that the**
14 **State is constitutionally required to provide full funding for public**
15 **schools.**

16 The unspoken assumption underlying Ketchikan Gateway Borough's argument is
17 that the "pervasive state authority"⁴⁰ over education translates into an obligation to be

18 ³⁷ The Alaska Supreme Court previously defined "appropriation" as "the setting
19 aside from the public revenue of a certain sum of money for a specified object, in such a
20 manner that the executive officers of the government are authorized to use that money,
21 and no more, for that object, and not other.'" *Thomas v. Rosen* 569 P.2d 793, 796
(Alaska 1977)(quoting *State ex rel. Finnegan v. Dammann*, 264 N.W. 622, 624 (1936)).

22 ³⁸ See *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371(Alaska 2001)
(governor's line-item veto authority limited to article II appropriation "items" contained
23 in an appropriation bill).

24 ³⁹ If borough taxes, locally collected and locally spent, could be appropriated by the
25 state Legislature, as the borough suggests, it is not clear why such appropriation power
26 would be limited to just the local contribution as opposed to the entire borough budget.

⁴⁰ *Maccauley v Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

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2 the sole source of funding for education in the state. In other words, Ketchikan Gateway
3 Borough assumes that the State is constitutionally required to provide full funding for
4 public schools. It claims, for example, in the introduction to its motion for summary
5 judgment that the State has “abdicated” its “constitutional duty to ‘establish and
6 maintain a system of public schools’”⁴¹ “by unconstitutionally requiring the Borough to
7 fund the Ketchikan Gateway Borough School District ... with an annual required local
8 contribution.” [Mot. at 2] Notably, however, Ketchikan Gateway Borough has not
9 expressly asked this Court to interpret the Alaska Constitution’s education clause⁴²—
10 either in its complaint or in its motion for summary judgment.
11

12 This is doubtless because even a cursory review of the minutes from the Alaska
13 Constitutional Convention reveals that the delegates had no intention of shifting full
14 financial responsibility for public schools to the State and away from local government.
15 To the contrary, in the debate over the local government article, the delegates repeatedly
16 indicated their expectation that boroughs and cities would contribute (or continue to
17 contribute) to funding their local schools. For example, Delegate Vic Fischer explained
18 that the Local Government Committee decided to limit the taxing power to cities and
19

20
21 ⁴¹ [Mot. at 1-2 *citing* (Alaska Const. art. VII, § 1).]

22 ⁴² The education clause reads in full: “The legislature shall by general law
23 establish and maintain a system of public schools open to all children of the State, and
24 may provide for other public educational institutions. Schools and institutions so
25 established shall be free from sectarian control. No money shall be paid from public
26 funds for the direct benefit of any religious or other private educational institution.”
Alaska Const. art. VII, § 1.

1
2 boroughs⁴³—rather than allowing school and other service districts to tax—because “[i]t
3 was felt that the borough assembly would be best able to say that so much, on the basis
4 of presentation, say by these districts or boards, that so much can be afforded out of this
5 tax dollar for education, so much for health, so much for police enforcement, etc.”⁴⁴ And
6 Victor Rivers clearly expected that boroughs would have a significant role in paying for
7 education, noting with respect to the city of Kenai:
8

9 I don’t know what percentage in an organized borough the
10 legislature would desire to refund to the borough [for school
11 expenses], but I can assume that if and when they are ready to
12 organize into a borough they would have sufficient ways and means
13 to come in under and be able to adopt the borough system of
14 government based upon what the legislature had, by that time,
15 established as the amounts they would give from the state level.⁴⁵

16 In response, Delegate Irwin Metcalf asked, “Do you think the state would refund some
17 to the borough assembly as they do in the cities now?”⁴⁶ So, for one delegate at least,
18 there seemed to be a possibility that the new borough governments would have the *full*
19 *responsibility* for funding local schools—i.e. that the State might pay nothing—in stark
20

21 ⁴³ Alaska Constitution article X, section 2 provides that “[a]ll local government
22 powers shall be vested in boroughs and cities. The State may delegate taxing powers to
23 organized boroughs and cities only.”

24 ⁴⁴ 4A Proceedings of Alaska Constitutional Convention 2630 (Jan. 19, 1956).

25 ⁴⁵ *Id.* at 2645-46.

26 ⁴⁶ *Id.* at 2646.

1
2 contrast to Ketchikan Gateway Borough's apparent assumption that the delegates
3 intended the State to be wholly and solely responsible for funding education.⁴⁷

4 Moreover, Ketchikan Gateway Borough's argument ignores the fact that some
5 kind of local contribution has remained an integral part of Alaska's school funding
6 system since before statehood. Under the territorial laws of Alaska, cities had the duty
7 "to provide the necessary funds to maintain public schools" and had the power to levy
8 taxes to pay for those schools, as did independent school districts.⁴⁸ The territory then
9 refunded a percentage of the money expended by cities and independent school
10 districts.⁴⁹ Following statehood, the Alaska legislature continued to expect local
11 contributions.⁵⁰ The local contribution requirement has existed in some form for more
12 than fifty years—a reality that cuts strongly against the borough's implied assumption
13 that the delegates intended to shift the obligations to fund public schools wholly to the
14 State.
15
16

17
18 ⁴⁷ See also, *Alex*, 646 P.2d at 212 n.9 (quoting a constitutional convention delegate
19 as expressing the sentiment that "two governmental functions ... the cities and the
20 boroughs ... [are] plenty. *They can provide for everything including the schools.*"
21 (Emphasis added)).

22 ⁴⁸ Alaska Compiled Laws, ch. 3, art. 3 §§ 37-3-32, 37-3-35 (1949), Alaska
23 Compiled Laws, ch. 3, art. 4 § 37-3-53 (1949), *attached* at Ex. 2.

24 ⁴⁹ Alaska Compiled Laws, ch. 3, art. 5 § 37-3-61 (1949). The percentage refunded
25 ranged from seventy-five to eighty-five per cent of the amount expended by the local
26 entities for the maintenance of the schools. Alaska Compiled Laws, chapter 3, art. 5 §
37-3-62 (1949).

⁵⁰ Sec. 1.03, ch. 164, SLA 1962 ("The amount of state aid shall be determined by
subtracting the required local effort (Sec. 1.07) from the basic need (Sec. 1.02)."),
attached at Ex. 3.

1
2 The borough's argument for the unconstitutionality of the local contribution
3 statute relies on its unspoken and wrong assumptions about the Constitutional
4 obligations in the education clause. The Court should reject the borough's argument
5 under the principal of constitutional avoidance, which cautions that the Court should
6 particularly refrain from ruling a statute unconstitutional "when the issues are not
7 concretely framed" because that "increases the risk of erroneous decisions."⁵¹
8

9 **C. The borough cannot bring an action in assumpsit against the State of**
10 **Alaska because its 2014 local contribution was not a tax and was paid**
11 **to the Ketchikan School District and not to the State.**

12 Ketchikan Gateway Borough's request for a refund of its 2014 local contribution
13 is also flawed, because, as explained above, the local contribution is not a state tax and
14 it was paid to the school district, not the State. The borough argues that "[t]he State was
15 enriched by the Borough's payment of the [local contribution] to the KGB School
16 District even though it did not directly receive the [local contribution] because the [local
17 contribution] reduced the amount of money that the State itself provided to the KGB
18 School District." [Mot at 22] But to the contrary, the borough's payment of its local
19 contribution triggered a statutory obligation on the part of the State to provide
20 substantial funding to the Ketchikan Gateway Borough School District.⁵² Moreover,
21
22

23
24 ⁵¹ *Brause v. State, Dept. of Health & Social Services*, 21 P.3d 357, 360 (Alaska
2001)

25 ⁵² AS 14.17.410(d).

1
2 implicit in this argument is the idea—debunked above—that the State has the sole
3 responsibility to provide full funding for education throughout Alaska.

4 Because the local contribution is a constitutional means for financing public
5 schools and not an unconstitutional tax, and because it was paid to the Ketchikan
6 Gateway Borough School District and not to the State, the borough is not entitled to a
7 refund and its claims for assumpsit and restitution must fail.
8

9 **IV. Conclusion**

10 For the reasons stated above, defendants request the Court grant summary
11 judgment to defendants and deny Ketchikan Gateway Borough's request for summary
12 judgment, declaratory judgment, injunctive relief, and an order to refund the 2014 local
13 contribution.
14

15 DATED March 28, 2014.

16 MICHAEL C. GERAGHTY
17 ATTORNEY GENERAL

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1
2 Certificate of Service

3 This is to certify that on this date,
4 a copy of the foregoing document
5 is being served by mail to the following:

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19 Theresa Dizon 03/20/2014
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Public School Funding Program

FY2014 Foundation CLOSEOUT

Prepared 3/14/2014

School District	\$5,680 Basic Need	Required Local Effort	Eligible Federal Impact AID	Impact AID Percent	Deductible Impact AID 90.0%	State AID	FY2014 Adjusted Floor	Quality Schools	FY14 Total State Entitlement
Alaska Gateway	7,840,899	0	314,780	100.00%	283,302	7,557,597	0	22,087	7,579,684
Aleutian Region	1,283,907	0	27,538	100.00%	24,784	1,259,123	12,924	3,617	1,275,664
Aleutians East	5,578,271	615,516	697,008	36.36%	228,089	4,734,666	0	15,713	4,750,379
Anchorage	421,828,040	95,445,433	20,220,105	48.73%	8,867,931	317,514,676	0	1,188,248	318,702,924
Annette Island	4,394,843	0	1,557,224	100.00%	1,401,502	2,993,341	0	12,380	3,005,721
Bering Strait	38,564,871	0	10,781,828	100.00%	9,703,645	28,861,226	0	108,633	28,969,859
Bristol Bay	2,492,782	715,872	104,567	58.12%	54,697	1,722,213	0	7,022	1,729,235
Chatham	3,119,570	0	200,093	100.00%	180,084	2,939,486	0	8,788	2,948,274
Chugach	2,544,413	0	81,068	100.00%	72,961	2,471,452	5,345	7,167	2,483,964
Copper River	6,518,652	0	328,179	100.00%	295,361	6,223,291	0	18,362	6,241,653
Cordova	4,243,301	709,139	25,495	41.77%	9,584	3,524,578	0	11,953	3,536,531
Craig	5,220,090	338,704	549,217	43.95%	217,243	4,664,143	0	14,704	4,678,847
Delta/Greely	9,829,467	0	425,005	100.00%	382,505	9,446,962	0	27,689	9,474,651
Denali	6,836,562	658,294	6,904	29.87%	1,856	6,176,412	0	19,258	6,195,670
Dillingham	7,245,067	526,870	645,901	39.94%	232,176	6,486,021	0	20,409	6,506,430
Fairbanks	150,773,101	26,940,883	13,670,315	55.28%	6,801,255	117,030,963	0	424,713	117,455,676
Galena	20,756,310	80,489	154,777	7.07%	9,848	20,665,973	0	58,468	20,724,441
Haines	3,873,362	907,376	0	58.19%	0	2,965,986	0	10,911	2,976,897
Hoonah	2,408,831	195,429	166,661	27.08%	40,619	2,172,783	0	6,785	2,179,568
Hydaburg	1,509,460	40,849	102,253	30.75%	28,299	1,440,312	0	4,252	1,444,564
Iditarod Area	5,656,258	0	272,896	100.00%	245,606	5,410,652	0	15,933	5,426,585
Juneau	50,131,226	12,464,402	0	51.63%	0	37,666,824	0	141,215	37,808,039
Kake	1,935,914	75,414	358,343	51.53%	166,189	1,694,311	0	5,453	1,699,764
Kashunamiut	5,338,746	0	2,039,069	100.00%	1,835,162	3,503,584	0	15,039	3,518,623
Kenai Peninsula	97,611,766	22,720,017	0	51.78%	0	74,891,749	0	274,963	75,166,712
Ketchikan Gateway	25,947,546	4,198,727	0	52.06%	0	21,748,819	0	73,092	21,821,911
Klawock	2,620,752	147,806	496,121	55.67%	248,572	2,224,374	0	7,382	2,231,756
Kodiak Island	30,205,104	3,806,666	1,863,753	31.01%	520,155	25,878,283	0	85,085	25,963,368
Kuspuk	7,368,778	0	1,892,597	100.00%	1,703,337	5,665,441	0	20,757	5,686,198
Lake & Peninsula	9,134,406	391,926	1,589,851	29.06%	415,810	8,326,670	0	25,731	8,352,401
Lower Kuskokwim	73,423,770	0	17,622,665	100.00%	15,860,399	57,563,371	0	206,828	57,770,199
Lower Yukon	39,568,073	0	10,970,729	100.00%	9,873,656	29,694,417	0	111,459	29,805,876
Mat-Su	169,151,309	25,355,209	0	49.24%	0	143,796,100	0	476,483	144,272,583
Nenana	6,296,791	75,994	4,460	66.37%	2,664	6,218,133	0	17,737	6,235,870
Nome	9,443,114	834,289	74,899	39.67%	26,741	8,582,084	0	26,600	8,608,684
North Slope	29,804,664	12,884,157	3,584,282	36.21%	1,168,082	15,752,425	0	83,957	15,836,382
Northwest Arctic	37,799,321	1,972,985	4,990,139	26.87%	1,206,765	34,619,571	0	106,477	34,726,048
Pelican	404,643	39,553	0	76.29%	0	365,090	78,322	1,140	444,552
Petersburg	6,678,771	901,121	0	48.17%	0	5,777,650	0	18,813	5,796,463
Pribilof	2,002,541	0	489,987	100.00%	440,988	1,561,553	0	5,641	1,567,194
Saint Mary's	3,736,077	36,034	0	31.97%	0	3,700,043	0	10,524	3,710,567
Sitka	16,471,602	3,051,149	12,822	59.55%	6,872	13,413,581	0	46,399	13,459,980
Skagway	1,167,581	460,310	0	41.33%	0	707,271	0	3,289	710,560
Southeast Island	5,146,137	0	171	100.00%	154	5,145,983	0	14,496	5,160,479
Southwest Region	12,711,386	0	3,924,646	100.00%	3,532,181	9,179,205	0	35,807	9,215,012
Tanana	1,141,510	24,863	162,913	100.00%	146,622	970,025	0	3,216	973,241
Unalaska	5,798,712	1,462,492	26,281	51.25%	12,122	4,324,098	0	16,334	4,340,432
Valdez	7,686,744	3,383,888	4,972	42.60%	1,906	4,300,950	0	21,653	4,322,603
Wrangell	4,074,434	470,852	693	69.65%	434	3,603,148	0	11,477	3,614,625
Yakutat	1,666,285	181,364	148,818	50.72%	67,932	1,416,989	0	4,694	1,421,683
Yukon Flats	7,792,846	0	568,366	100.00%	511,529	7,281,317	0	21,952	7,303,269
Yukon/Koyukuk	13,475,800	0	1,075,034	100.00%	967,531	12,508,269	0	37,960	12,546,229
Yupitit	8,947,704	0	2,970,269	100.00%	2,673,242	6,274,462	0	25,205	6,299,667
Mt. Edgecumbe	3,903,864	0	0	100.00%	0	3,903,864	0	10,997	3,914,861
TOTALS:	1,411,105,974	222,114,072	105,203,694		70,470,392	1,118,521,510	96,591	3,974,947	1,148,620,348

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ALASKA COMPILED LAWS
ANNOTATED

2

TITLES 37-54

COMPILED LAWS OF ALASKA

1949

*Containing the General Laws of the
Territory of Alaska*

Annotated with Decisions of the District Courts of Alaska,
the Circuit Court of Appeals, and the Supreme
Court of the United States

Published under Authority of Ch 28, SLA, 1947



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§ 37-3-24. **Lien and liability for taxes: Action to enforce liability.** All taxes levied and assessed by the school board under this article shall be a lien upon the property assessed and such lien shall be prior and paramount to all other liens and encumbrances, and may be foreclosed by an appropriate action in any court of competent jurisdiction. The owner of the property assessed shall be personally liable for the amount of taxes assessed against such property; and such taxes, together with penalties and interest, may be collected after the same become due, in a personal action brought in the name of the school district against such owner in any court of competent jurisdiction. [L 1929, ch 97, § 30, p 206; CLA 1933, § 1324.]

§ 37-3-25. **Additional powers and remedies to collect taxes.** In addition to the remedies given by the last section, the school board shall have the same power to levy and collect taxes and to enforce the lien against personal or real property as is now by law granted or may hereafter be granted to the common council of municipal corporations and in such proceedings the school board shall have the same power as the common council of a municipal corporation, and the clerk of the school board shall have the same power and duties as the clerk of an incorporated city. [L 1929, ch 97, § 31, p 207; CLA 1933, § 1325.]

§ 37-3-26. **Consent to taxation: Record and report of receipts and disbursements.** Any community incorporated in accordance with the provisions of this article shall be deemed to have consented to the imposition of such taxes as are authorized by and may be imposed under its provisions for school purposes. The clerk of the school board in each district shall keep a record of all monies collected and distributed and shall annually transmit to the Commissioner of Education a verified statement showing such receipts and disbursements, which statement shall be kept on file in the office of the Commissioner of Education. [L 1929, ch 97, § 32, p 207; CLA 1933, § 1326.]

Article 3

City Schools and School Districts

- § 37-3-31. City schools to be established and maintained.
- § 37-3-32. City as school district: Buildings and funds: School board.
- § 37-3-33. Expenditure and custody of funds: Treasurer's bond: Power to employ teachers and maintain schools.
- § 37-3-34. Reports to Commissioner of Education.
- § 37-3-35. Submission of budget to council: Determination of amount available: Order for payment to school board treasurer: Tax levy.

§ 37-3-31

EDUCATION

§ 37-3-36. Report of expenditures to council.

§ 37-3-37. Record and minutes of school board: Account of receipts and expenditures: Inspection of records.

§ 37-3-31. **City schools to be established and maintained.** City schools shall be established and maintained as provided in Chapter 97 of the Session Laws of Alaska, 1923 [§§ 37-3-32-37-3-37 herein], and such other laws as may have been heretofore or may hereafter be enacted relative thereto. [L 1929, ch 97, § 16, p 200.]

§ 37-3-32. **City as school district: Buildings and funds: School board.** Every city shall constitute a school district, and it shall be the duty of the council to provide the same with suitable school houses, and to provide the necessary funds to maintain public schools therein, but such schools when established shall be under the supervision and control of a school board of three members. The members of such board first elected shall hold their office for one, two, and three years, respectively, and until their successors are elected and qualified, and one member of said board shall be elected each year thereafter for a term of three years and until his successor is elected and qualified. They shall each, before entering upon the duties of their office, take an oath in writing to honestly and faithfully discharge the duties of their trust. Within seven days after each annual election the board shall organize and shall annually elect one of their members president, one treasurer, and one clerk of the board. In case a vacancy in membership of said board occurs from death, resignation, removal or other cause, such vacancy may be filled by appointment by the council of the city with the consent of the remaining members of the board, and in event the remaining members of the board do not consent to have the vacancy filled by the council, such vacancy shall be filled by special election upon at least ten days notice called by the council. When a vacancy is filled by appointment by the city council the appointee shall serve only until a successor is elected at the next general election. [L 1923, ch 97, § 29, p 206; CLA 1933, § 1301.]

CROSS REFERENCES

Time when term of school officers begins: § 16-1-56.

Vacancies in school board, see also: § 16-1-57.

Removal of school board members: § 16-1-61.

COLLATERAL REFERENCES

47 Am Jur 299, 340.

Notes: 19 ALR 545 (schoolhouse as a "public building"), 20 ALR 240 (schoolhouse as an "outhouse" or "outbuilding"), 161 ALR 1308 (constitutionality, construction, and application of statutes declaring that school buildings are civic centers or otherwise providing for use of such buildings for other than school purposes).

930

[Alaska]

§ 37-3-36

EDUCATION

Tax levy. As soon as a city school board shall leave [be] organized after the annual election they shall estimate the amount of money necessary for school purposes for the ensuing school year and submit such budget to the city council. The city council shall then determine the amount of money to be made available for school purposes, and shall furnish the school board of the city a statement of such sum, and shall require the treasurer to pay the sum available for school purposes to the treasurer of the school board. The amount of money to be made available by the municipality for school purposes shall be determined by resolution of the council before the tax levy is made, and such amount may be levied as a separate tax or as a part of the municipal tax. [L 1923, ch 97, § 32, p 207; CLA 1933, § 1307.]

§ 37-3-36. Report of expenditures to council. The school board shall whenever required by the city council, but not oftener than once each month transmit to the council a detailed report and statement of the moneys expended and for what and to whom paid. [L 1923, ch 97, § 33, p 207; CLA 1933, § 1308.]

§ 37-3-37. Record and minutes of school board: Account of receipts and expenditures: Inspection of records. The clerk of the school board shall keep in permanent form the minutes of the meetings and a record of all the proceedings of the board. The treasurer of the school board shall keep accurate and full account of all the moneys received and expended by him, and shall preserve the proper vouchers for all expenditures. All the records and files of the school board shall be open to inspection by the public at all reasonable times. [L 1923, ch 97, § 34, p 209; CLA 1933 § 1309.]

Article 4

Independent School Districts

- § 37-3-41. Incorporation authorized: Area.
- § 37-3-42. School board: Management of school matters: Organization and election of officers: Assessor.
- § 37-3-43. Manner of incorporation: Petition and order for election: Notice of election.
- § 37-3-44. Qualifications of electors: Ballots.
- § 37-3-45. Oath of election judges: Canvass: Certificates of results.
- § 37-3-46. Order of District Judge declaring incorporation: Powers of district.
- § 37-3-47. Qualifications of election judges: Canvass of votes for school board members: Certificates of election.
- § 37-3-48. Qualifications and oath of school board members.
- § 37-3-49. Term of office of school board members.
- § 37-3-50. Filling vacancy in membership of board.

for the conduct of the election hereinbefore authorized, to give notice of election, designate and provide polling places, appoint judges of election and attend to all matters pertaining to such election. [L 1935, ch 77, § 12, p 162.]

§ 37-3-53. **Board to prepare and present budget: Proportioning funds between city and outside territory: Levy and collection of taxes: Delinquent taxes: Exemptions.** On or before the first day of May each year the school board shall determine the amount of funds needed for all school purposes for the following school year beginning on the first of July and ending on June 30, the year following. It shall, at the same time, determine the proportion of the funds to be raised within the city and the proportion of the funds to be raised outside the city based on assessed valuations. It shall then present the budget to the city council for its approval or rejection of the city's share of the budget. The city council shall at its first meeting in May determine the amount it shall set aside for school purposes as its share of the school expenses for the school year and transmit this information to the school board.

The board shall then determine the share to be paid by that portion of the district lying outside the city and levy the rate outside accordingly and this rate shall be the same as is necessary to raise the city's share within the city. The city council shall transmit to the treasurer of the school board on the first day of each quarter of the fiscal school year one-fourth of its share of the budget. The assessor appointed by the school board shall, on or before the first of October of each year collect one-half of the taxes due from all taxable property outside the city limits but within the district and, on or before the first of March of each year, he shall collect the other half. The penalties for the non-payment of taxes outside the city but within the district shall be the same as is fixed by the city council for the non-payment of taxes within the city and the rates of interest on delinquent taxes shall also be the same. Residents of the Independent School District living outside of the city limits shall be allowed the same exemption of taxes as is permitted within the city. [L 1935, ch. 77, § 13, p 162.]

§ 37-3-54. **Lien and liability for taxes: Enforcement: Board to have taxing powers and duties of council: Refunds.** All taxes levied and assessed by the school board under this article shall be a lien upon the property assessed and such lien shall be prior and paramount to all other liens and encumbrances, and may be foreclosed by an appropriate action in any court of competent jurisdiction. The owner of the property assessed shall be personally liable for the amount of taxes assessed against such property; and

such taxes, together with penalties and interest, may be collected after the same has become due, in a personal action brought in the name of the school district against such owner in any court of competent jurisdiction. Provided: that the school boards in independent school districts in the levy and collection of taxes shall have all of the powers and duties given to the common council of municipal corporations and the laws relative to the levy and collection of taxes in municipal corporations are hereby extended to Independent School Districts.

Further provided: That all provisions in Sections 1331 to 1336 inclusive, Compiled Laws of Alaska 1933 [§§ 37-3-61-37-3-66 herein], requiring refunds of Territorial money to cities and incorporated school districts, and establishing procedures therefor, are hereby made applicable to Independent School Districts. [L 1935, ch 77, § 14, p 163; am L Ex Sess 1946, ch 7, § 2, p 46, effective March 29, 1946.]

§ 37-3-55. Record and statement of receipts and disbursements. The clerk of the school board in each district shall keep a record of all monies collected and distributed and shall annually transmit to the Commissioner of Education a verified statement showing such receipts and disbursements, which statement shall be kept on file in the office of the Commissioner of Education. [L 1935, ch 77, § 15, p 163.]

Article 5

Maintenance of City Schools and Incorporated District Schools

- § 37-3-61. School maintenance refund.
- § 37-3-62. Amount of refund.
- § 37-3-63. Annual budget or statement of proposed expenditures.
- § 37-3-64. Restriction of expenditures.
- § 37-3-65. Quarterly account of maintenance expenses: Preparation and submission.
- § 37-3-66. — Approval by Commissioner: Warrants: Advancements and refunds.

§ 37-3-61. School maintenance refund. Such per centum of the total amount expended for the maintenance of public elementary schools and high schools, within the limits of any incorporated city or incorporated school district or independent School District as the Legislature may from time to time direct, shall be refunded to the school fund of said incorporated city or incorporated school district or Independent School District from the moneys of the Territory as hereinafter set forth: Provided, that no expense incurred for the construction of buildings or for the repair, alter-

CITY AND INCORPORATED DISTRICT SCHOOLS § 37-3-64

ation or improvement of buildings or for the purchase of building sites or for interest on bonded or other indebtedness shall be considered expenses for maintenance within the meaning of this article. [L 1929, ch 97, § 58, p 217; CLA 1933, § 1331; am L Ex Sess 1946, ch 12, § 1, p 93, effective July 1, 1946.]

§ 37-3-62. **Amount of refund.** Where the total resident school enrollment by school year is less than 150 pupils, eighty-five per centum and where it is 150 pupils or over and less than 300, eighty per centum and where it is 300 pupils or over, seventy-five per centum of the total amount expended for maintenance of public elementary schools and high schools within the limits of incorporated cities or incorporated school districts or independent school districts shall be refunded to such city or school district from the moneys of the Territory appropriated for such purposes. [L 1931, ch 119, § 1, p 234; CLA 1933, § 1332; am L Ex Sess 1946, ch 12, § 1, p 93, effective July 1, 1946.]

§ 37-3-63. **Annual budget or statement of proposed expenditures.** The school board of each incorporated city or incorporated school district shall annually before the first day of July submit to the Commissioner of Education a budget or detailed statement of proposed expenditures for the maintenance of the schools of such incorporated city or incorporated school district during the following school year. Said detailed statement shall be submitted in duplicate and shall set forth the salaries of teachers in each grade and of janitors or other employees of the school district, and proposed expenditures for fuel, light, water, school books and supplies, janitor's supplies, manual training, domestic science, library, and for miscellaneous purposes. The Commissioner of Education may disapprove or reduce any items in the budget and shall approve for Territorial refund only such parts of the proposed expenditures as come within the purview of this article, and are reasonable and necessary. No refund of Territorial moneys shall be made to any school board for expenditures not previously approved by the Commissioner of Education; Provided, that items which it is not possible to include in the annual budget of expenditures may be submitted at a later date. [L 1929, ch 97, § 59, p 218; CLA 1933, § 1333.]

§ 37-3-64. **Restriction of expenditures.** No expenditures for the following purposes shall be considered as expenditures for maintenance within the meaning of this article.

- (a) Levying and collecting taxes.
- (b) Conducting regular or special school elections.

Sec. 3. In furtherance of the provisions contained in the compact, there shall be three members of the commission from the State of Alaska, appointed by the governor and confirmed by the legislature in joint session. One such commissioner shall be the administrative or other officer of the Alaska Department of Fish and Game charged with the conservation of the state's marine fisheries resource; another commissioner shall be a member of the legislature of this state who is a member of the committee on resources; and another member shall be a citizen of this state who has a wide knowledge of and interest in the marine fisheries problem.

Sec. 4. The term of each commissioner

is four years. A commissioner holds office until his successor is appointed and qualified, but such successor's term expires four years from the legal date of expiration of the term of his predecessor. Any commissioner may be removed from office by the governor upon charges and after a hearing. The term of any commissioner who ceases to hold the qualifications required terminates and a successor may be appointed. Vacancies occurring in the office of a commissioner from any reason or cause shall be filled for the unexpired term in the same manner as for a full term appointment.

Sec. 5. This Act takes effect July 1, 1962.

Approved May 4, 1962

CHAPTER 163

AN ACT

Requiring an applicant for a commercial fishing license to file a signed statement of filing of the Alaska net income tax return; amending Sec. 3, Art. III, Ch. 94, SLA 1959; and providing for an effective date.

(C.S.H.B. 396)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Sec. 3, Art. III, Ch. 94, SLA 1959, is amended to read:

Sec. 3. **Issuance of Licenses.** a. Licenses herein required shall be issued to any qualified person by the commissioner or his duly authorized deputies, pursuant to written application accompanied by the required fee and containing such reasonable information as may be required by the commissioner. Such applications shall be simple in form and be executed by applicants or their respective agents under the penalties of perjury.

b. An application for a commercial fishing license shall include a signed statement on a form furnished by the commissioner stating, under the penalties of perjury, that the applicant has filed any net income tax return due the state for the previous tax year, or, if the applicant did not file an Alaska net income tax return for the previous tax year, that he did not earn income in Alaska during that year. The commissioner shall reject no license application for the sole reason of failure to pay a tax.

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved May 4, 1962

CHAPTER 164

AN ACT

Creating a public school foundation program; providing a system for allocating state aid to local school districts; repealing certain laws in conflict therewith; and providing for an effective date.

(C.S.H.B. 420)

Be it enacted by the Legislature of the State of Alaska:

Article I

State Aid to Local School Districts

Section 1.01. Declaration of Intent. It is the intention of the legislature, in enacting this public school foundation program, to assure an adequate level of educational opportunities for those in attendance in the public schools of the state. This Act shall not be interpreted as preventing any public school district from providing educational services and facilities beyond those assured by the foundation program.

Sec. 1.02. Basic Need. For the purposes of this Act, the "basic need" for each school district shall be the sum of the following:

- (1) the teachers' salary allotment (Sec. 1.04);
- (2) the average daily membership allotment (Sec. 1.05); and
- (3) the attendance center allotment (Sec. 1.06).

Sec. 1.03. State Aid. The amount of state aid shall be determined by subtracting the required local effort (Sec. 1.07) from the basic need (Sec. 1.02).

Sec. 1.04. Teachers' Salary Allotment.

a. The teachers' salary allotment for each district shall be the product of the "teacher salary average" times the "allowable number of teacher units."

b. The teacher salary average is the sum derived by dividing the total amount which the district was required to pay to the full-time teachers employed by the district in the year two years prior to the fiscal year under the state minimum salary schedule, divided by the total number of full-time teachers employed by the district in the year two years prior to the fiscal year. If the legislature raises the state minimum salary scale by a law effective during the fiscal year, the teacher salary average shall be recomputed as if the new salary scale had been in effect in the year two years prior to the fiscal year.

c. The allowable number of teacher units for each district is the number of teachers employed by the district for the fiscal year, but not to exceed the number of teacher units which is allowed to the

district for the fiscal year by this subsection.

(1) Each district is entitled to the number of teacher units for elementary schools which corresponds to the average daily membership for its elementary schools in the following elementary schedule. Each district is entitled to the number of teacher units for secondary schools which corresponds to the average daily membership for its secondary schools in the following secondary schedule; provided, that if a school district has two or more secondary attendance centers, it shall separately compute the allowable number of teacher units for each of its secondary attendance centers which has an average daily membership of 301 or more pupils.

Schedule of Allowable Number of Teacher Units

Elementary Schedule		Secondary Schedule	
Average daily membership	Allowable No. of teacher units	Average daily membership	Allowable No. of teacher units
8-15	1	Under 10	1
16-30	2	10-15	2
31-45	3	16-25	3
46-60	4	26-40	4
61-75	5	41-60	5
76-100	6	61-80	6
		81-100	7
101-300	6 plus 1 for each 20 pupils, or major fraction thereof, between 101 and 300	101-300	7 plus 1 for each 20 pupils, or major fraction thereof, between 101 and 300
301 and over	16 plus 1 for each 25 pupils, or major fraction thereof, over 300	301 and over	17 plus 1 for each 25 pupils, or major fraction thereof, over 300

(2) If a district has less than 600 pupils in average daily membership, it shall not be allowed any teacher units for administrators in excess of teacher units allowed by paragraph (1) of this subsection.

(3) If a school district has an average

daily membership of 600 or more students, it is entitled to teacher units, as an allowance for superintendents and assistants, in addition to those otherwise allowed in this subsection. Each such district is entitled to the number of teacher units which corresponds to the total elementary and secondary average daily membership in the following schedule:

Total average daily membership	Allowable No. of teacher units
601-3000	1
3001-5999	2
Over 6000	3

(4) Each district is entitled to additional teacher units as an allowance for principals and vice principals as follows:

(a) A school district with an average daily membership of 700 or more is allowed a teacher unit for each building with eight or more classrooms, as an allowance for a principal for such building.

(b) A school district having one or more buildings with 24 or more classrooms in use as regular classrooms with teachers assigned is also allowed a teacher unit for each such building, as an allowance for a vice principal for such building.

(5) This schedule of allowable number of teacher units is only for use in determining allotments under the public school foundation program, and does not prohibit a district from hiring a greater number of teachers to be paid from its own funds.

Sec. 1.05. Average Daily Membership Allotment. The average daily membership allotment for each district shall be as follows:

(1) If the district lies in the Southeastern Senate District: \$140 times average daily membership;

(2) If the district lies in the Southcentral Senate District: \$150 times average daily membership;

(3) If the district lies in the Central and Northwest Senate Districts and that part of the Southcentral Senate District lying west of 152° west longitude: \$160 times the average daily attendance.

Sec. 1.06. Attendance Center Allotment. The attendance center allotment for each district shall be the product of the number

of attendance centers in the school district times \$1,000. For the purposes of this section, "attendance center" means each elementary or secondary school which functions as a distinct administrative unit and is allocated a principal by the district school board; provided, that the State Board of Education may designate as attendance centers, in addition to those which qualify under this definition, those schools which it determines should be considered as attendance centers because of remote location or other special circumstances.

Sec. 1.07. Required Local Effort. a. The required local effort of each district shall be the sum of the required local tax effort of the district and one-half of any Public Law 874 money received from the federal government in the pre-fiscal year.

b. The required local tax effort for each district is the amount of revenue raised from local sources which is equivalent to the amount which would be raised from a mill levy on the full and true value of taxable real and personal property within the district. The specific amount of this mill levy shall be established by the first session of the third Alaska legislature. The amount of the required local tax effort may be raised from any source available to the district and does not have to be derived from property taxes.

c. Every district which is charged by law with the responsibility of providing public education or which has assumed such responsibility voluntarily is required to raise each year a sum equivalent to the required local tax effort.

Sec. 1.08. Public School Foundation Account. a. There is hereby established the public school foundation account consisting of appropriations for distribution to districts in accordance with the provisions of this Act.

b. The money of the public school foundation account shall be used only in aid of public schools as provided by this Act.

c. Any money in the public school foundation account which is not allocated, as provided in this Act, prior to the end of the fiscal year for which appropriated shall revert to the general fund.