

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

KETCHIKAN GATEWAY BOROUGH, an Alaska municipal corporation and political subdivision; AGNES MORAN, an individual, on her own behalf and on behalf of her minor son; JOHN COSS, a minor; JOHN HARRINGTON, an individual; and DAVID SPOKELY, an individual;

Plaintiffs,

v.

STATE OF ALASKA; MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, in his official capacity;

Defendants.

Case No. 1KE-14-00016CI

FILED in the Trial Courts  
State of Alaska First District  
at Ketchikan

APR 28 2014

Clerk of the Trial Courts

By \_\_\_\_\_ Deputy

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT**

The State's<sup>1</sup> Opposition/Cross Motion ("Opp.") recognizes that no genuine issue of fact exists as to the legal effect of the RLC, and that the case may be resolved on summary judgment. *Compare* Plaintiffs' Motion for Summary Judgment ("MSJ") at 11-12, *with* Opp. at 9-10. But it is the Plaintiffs, not the State, that are entitled to judgment as a matter of law.

<sup>1</sup> Defendants, State of Alaska and Commissioner Hanley, are collectively referred to as the "State."

The positions taken by the State are unpersuasive because they are legally and factually incorrect. With respect to Plaintiffs' argument that the RLC violates the Anti-Dedication Clause, the State ignores longstanding case law which (1) adopts an extremely broad interpretation of "state tax or license" within which the RLC readily fits; (2) states that a court must consider the mandatory nature of a dedication in determining whether the Anti-Dedication Clause is violated; and (3) holds that the doctrine of constitutional avoidance does not support the State's argument that the Court should ignore the constitutional violation at issue here. The State's reliance on the Education Clause and matching grants analogy are red herrings. Its assertion that the RLC is a grandfathered dedication ignores the fact that the RLC was not enacted until after Statehood in 1962 and that the Territorial law that it claims provides for an RLC does not do so. Even if the Territorial law is considered a dedication (a position the Plaintiffs reject), it was repealed when the RLC and the other elements of the post-Statehood education funding system were enacted. In accordance with longstanding Attorney General Opinions, such repeal extinguished any claim of grandfather status.

Further, the State misapprehends longstanding case law adopting an extremely broad interpretation of the sources of public revenue that must be available to the Legislature to appropriate and to the Governor to veto. Rather, precedent compels the conclusion that the RLC violates the Legislative Appropriation Clause and the Governor's Veto Clause. It follows that Plaintiff Ketchikan Gateway Borough (the "Borough") has been forced to pay an unconstitutional dedication and is entitled to a refund of the 2014 RLC under assumpsit or restitution principles.

The Court should grant Plaintiffs' MSJ and declare that the RLC violates three provisions of the Alaska Constitution, order a refund of the 2014 RLC, and issue an appropriate injunction.

**I. Longstanding precedent holds that the RLC is a dedicated fund.**

The State does not contest the essential nature of the RLC, namely that it is a "payment compelled by the State to be collected by the Borough and paid to the KGB School District." *See* MSJ at 15. While these characteristics are the essence of a dedication, the State attempts to impose additional requirements that are not found in case law. Instead, the Court should follow Anti-Dedication Clause cases that are precisely on point and apply them to the facts of this case.

**A. The State misinterprets *State v. Alex* and other cases forbidding a mandatory exaction directed toward a dedicated source.**

As discussed in the MSJ, the Alaska Supreme Court in *State v. Alex* invalidated a statute authorizing private aquaculture associations to collect assessments from commercial salmon fishermen because it violated the dedicated funds clause. *See* MSJ at 13-15 (citing *Alex*, 646 P.2d 203 (Alaska 1982)). Through the RLC, the State accomplishes precisely what the regional associations did in *Alex*: it imposes a State-required exaction on a third party and then requires the proceeds of that exaction to go to a dedicated source. *See Alex*, 646 P.2d at 213. In *Alex*, the State by law provided for a royalty assessment, and then required an intermediary (the commercial buyers of salmon) to collect the proceeds of that assessment and pay them to a dedicated source (the trust fund of the aquaculture associations). *Id.* at 205-07. This is precisely the scheme created by the RLC: the State establishes a formula that requires a payment by the municipality, requires the intermediary (the municipality) to collect funds to support this payment, and

requires the municipality to annually pay the funds to a dedicated source (the school district).

Unable to distinguish these core features of the RLC from the royalty assessments in *Alex*, the State relies on immaterial distinctions, as well as features that actually prove the RLC is a dedication. First, the State argues that the RLC is not a source of public revenue because it “does not establish a tax or assessment on anything,” because “[a] borough or municipality can finance its local contribution any way it wishes.” Opp. at 12. This interpretation is a narrowed, hyper-textual interpretation of the Anti-Dedication Clause that was expressly rejected in *Alex* and the 1975 Attorney General Opinion on which *Alex* relied. Article IX, Section 1 prohibits “the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever . . .” *Alex*, 646 P.2d at 210 (quoting 1975 Alaska Op. Att’y Gen. No. 9 at 24 (May 2)) (emphasis added). The 1975 Attorney General Opinion concluded that “the Convention intended to prohibit any new dedicated funds of whatever description,” despite recognizing that the plain language of the Anti-Dedication Clause suggested a more narrow reading:

Accordingly, a gentle fiction that the term ‘tax or license’ includes royalties does not suffice. Either the Convention prohibited the dedication of any and all additional funds or it did not. The plain language of section 7 says that it did not. *The plain language of the Convention’s debates compels the conclusion that it did.*

1975 Alaska Op. Att’y Gen. No. 9 at 19-20 (emphasis added) (Ex. A).<sup>2</sup> Thus, it is the RLC’s status as a State-compelled exaction dedicated to a particular source, not whether it meets the State’s cramped definition of a “tax,” that creates the infirmity present here.

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<sup>2</sup> The 1975 Attorney General Opinion, which the Court characterized as “well researched,” was expressly adopted by *Alex*. 646 P.2d at 210.

In addition to setting forth the wrong test for whether a required payment violates the Anti-Dedication clause, the State's argument that the RLC "does not establish a tax or assessment on anything," *see* Opp. at 12, is inherently wrong: the RLC can in fact be viewed as a "tax" and "assessment" on both the Borough and its citizens even though labelling it such is expressly not required by Anti-Dedication Clause case precedent. The RLC "taxes" the Borough directly by requiring a payment to be made to a third party, and is no different than a state-compelled tax payment required of any corporation. Moreover, the RLC has historically been considered,<sup>3</sup> and is intended to operate as, a "tax" on the Borough's citizens with the Borough as the designated tax collector. The State concedes the RLC is calculated with reference to taxable property in the municipality, AS 14.17.410(b)(2) (cited at Opp. at 12 n.30), and that the RLC is limited to those governments who have taxing authority under Article X, Section II. Opp. at 6; *see also Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 399 (Alaska 1997) (accepting State's argument that the RLC drew a permissible distinction between REAAs and municipal districts "based on the constitutional differences between these two entities," namely the municipalities' ability to collect taxes). If the RLC was not intended to come from the tax contributions of the Borough's taxpayers, the State provides no suggestion of another source of these funds.<sup>4</sup>

<sup>3</sup> For example, the 1962 "required local effort" statute described the local contribution as a "required local *tax* effort," which was based on a one mill levy on all taxable property within the district. Laws of Alaska 1962, ch. 164, § 1.07(a)-(c) (emphasis added) (Ex. B). Even as recently as 2005, both the Legislature and the Attorney General's Office referred to a proposed decrease in the RLC as "*tax relief* for 'all of organized Alaska . . .'" *See* Dep't of Law Memorandum, April 25, 2005 (Ex. C) at 3 (emphasis added) (quoting Sen. Finance Committee, Hearing on SB 174, remarks of Sen. Wilken (April 20, 2001)).

<sup>4</sup> The lack of specificity as to the source of funds that the Borough may use to pay the RLC does not make it any less of a "tax." *See* Opp. at 12 (arguing that the Borough can finance its local contribution in any way it wishes). No tax of any kind specifies the

Second, the State attempts to distinguish the RLC by indicating characteristics that prove why it is a dedicated fund. The State argues that the RLC does not “create a pot of money that is available for the legislature to appropriate if it is not provided directly to school districts,” is “not collected by the State,” is “not deposited into the State treasury,” and “if the local contribution is invalidated by this Court based on it being ‘dedicated,’ the money will not be available to the legislature for expenditure.” Opp. at 11. Far from proving that the RLC is not a dedication, these attributes are all part and parcel of an impermissible dedication. A dedication is constitutionally invalid *because* it does not “create a pot of money that is available for the legislature to appropriate if it is not provided directly to [the dedicated source].” See Opp. at 11; compare *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1158 (Alaska 1997) (noting that *Alex* held unconstitutional the assessment because the “allocation of revenues to the regional associations was mandatory, leaving no discretion to the legislature to spend the money in any other way”).

That the money is “not collected by the State” is not relevant to an analysis under the Anti-Dedication Clause, as the assessments also were not collected by the State or its agencies in *Alex*. Instead, the “qualified regional associations” to whom the assessments inured were a coalition of “associations representative of commercial fishermen in the region,” and “representatives of other user groups interested in fisheries,” run by an independent board. See *Alex*, 646 P.2d at 205-06. The Commissioner of the Department of Commerce and Economic Development certified and “assist[ed] in and encourage[d]”

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source of the payment, because money is fungible. While the IRS bases income tax on the taxpayer’s income, for example, it imposes no requirement on how the money financing the tax payment is generated. Similarly, the RLC is based on the taxable property in the Borough, but it contains no technical requirement that the RLC actually be paid by tax revenues.

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their formation,” but as the Court recognized, the associations were “completely independent of government control.” *See id.* at 206, 213. Instead, as is true of the RLC, the compelled payment was orchestrated by the State, but never directly collected by the State.

The fact that the money “is not deposited into the State treasury” also shows why the RLC is a dedicated fund. *See Opp.* at 11; *see also Fairbanks Convention & Visitors Bureau*, 818 P.2d at 1158. The Anti-Dedication Clause prohibits funds from being directly dedicated to a source and bypassing the State treasury, as were the royalty assessments collected in *Alex* by the commercial buyers of salmon.

The fact that the money “will not be available to the legislature for expenditure” if the RLC is invalidated is also irrelevant to an Anti-Dedication analysis. The State asserts that this is the “most important[]” factor, but it provides no authority for this position or for its extrajudicial statement of the Anti-Dedication Clause’s supposed requirement. *See Opp.* at 10 (suggesting that a public source of revenue is dedicated for a special purpose only if it “remove[s] those ‘proceeds’ from the revenue available to the legislature for appropriation on an annual basis.”). No Anti-Dedication Clause cases have inquired into whether, if invalidated, funding would be available to the legislature for expenditure. In *Alex*, for example, the Supreme Court suggested that the unconstitutionally collected royalty assessments could be refunded to the commercial fishermen on whom the assessments were imposed, just as Plaintiffs propose in the instant case. *See* 246 P.2d at 204, 215 (noting that complaint in the court below sought a refund of all assessments that had been paid by fishermen, and discussing assumpsit cause of action).<sup>5</sup> Moreover,

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<sup>5</sup> The Superior Court in *Alex* had indeed ordered a refund of the unconstitutional royalty assessments, ordered that the funds be placed in escrow pending appeal, and after the Supreme Court ruled, ordered that the escrowed funds be returned to the plaintiff

rather than compel the legislature to place the royalty assessments in the general fund, the Court issued a permanent injunction to restrain future collection of the assessments (as the Plaintiffs request here) and provided guidance to the legislature to remedy the unconstitutional dedication. *See id.* at 205.

Third, the State implicitly requests a *per se* rule that assessments collected by local governments cannot constitute dedications because they are not State revenues. *See* Opp. at 13. But as stated above, the Alaska Supreme Court has held the opposite: a payment compelled by the State and collected by a non-State actor under that compulsion is still a dedication. *See supra* p. 6-7 (discussion of regional aquaculture associations being funded under State compulsion, but with no State collection action).

The State cannot distinguish clear authority under the Anti-Dedication Clause, therefore compelling a conclusion that the RLC violates that clause. Indeed, if the State's position is adopted, then the State could require payments from local governments or their residents, in an amount based on some measure of ad valorem or sales taxation, and further require that those funds be expended *for any* specific purpose which is a State responsibility. For example, if the RLC is held not to violate the Anti-Dedication Clause, what if the State were then to enact a mandatory contribution from any borough which houses a State courthouse in order to offset the cost of maintaining the court within that borough? What if the State required boroughs to contribute two mills to defray the costs of the State district attorney, troopers and jails? How about if the legislature then required each city to contribute a one-mill levy to support its local elected representatives

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fishermen. *See* Orders, Ex. D, at 2 CL 2. The Supreme Court affirmed the judgment of the Superior Court "in all respects." 646 P.2d at 215. The Superior Court entered judgment following the Supreme Court's mandate in an amount that included \$3,992,368.09 in favor of the plaintiff class against the State and a regional aquaculture association. Orders, Ex. D, at 8.

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to the legislature, and required each borough to pay the equivalent of an additional one-mill levy to pay for fuel to heat State facilities located within their boundaries? This slippery slope is exactly what the Framers of Alaska's Constitution expressly and emphatically sought to avoid. Moreover, their reasoning was embraced by the Alaska Supreme Court in *Alex* and its progeny.

**B. The State's analogy to the matching grant program is inapposite.**

The State's argument that the RLC is comparable to the Municipal Capital Project Matching Grant Program ("matching grant program"), or indeed any discretionary matching fund program, ignores the mandatory, annual nature of the RLC. Unlike the discretionary matching grant program, the RLC is infirm because "allocation of revenues to the [KGB School District] [i]s mandatory, leaving no discretion to the legislature to spend the money in any other way." *Fairbanks Convention & Visitors Bureau*, 818 P.2d at 1158. The mandatory nature of the RLC also explains why the State's analogy to a voluntary State-local cooperative program, *Opp.* at 15 n. 35, is inapposite.

The matching grant program may be attractive to municipalities, but participation in the program is not required. After money is appropriated to a municipality's individual grant account, the municipality "*may* draw amounts from its individual grant account for a capital project . . ." AS 37.06.010 (emphasis added). Only if the municipality elects to do so does it incur the local share requirement under AS 37.06.030. A municipality can elect not to identify a capital project and request that the legislature appropriate, and the governor approve, the draw for that particular project. But a municipality cannot elect to forego providing the RLC to a school district, making this comparison of little value.

**C. The Education Clause (Article VII, section 1) is irrelevant to the Borough's constitutional arguments.**

The State suggests that the Borough “assumes that the State is constitutionally required to provide full funding for public schools,” or that it implicitly seeks judicial interpretation of the Education Clause of the Alaska Constitution.<sup>6</sup> *See Opp.* at 17-21. But the State also recognizes, correctly, that the Borough has not sought to invalidate the RLC under the Education Clause. *See id.* at 18. The Borough will not address the extent to which the State must provide school funding, and it will not speculate in a case in which it has not presented the issue. Most importantly, the State does not argue, and cannot argue, that the RLC’s compliance with the Education Clause would excuse a violation of separate provisions of the Alaska Constitution. *Cf. Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1171 (Alaska 2009) (declining to read “implied exception” to dedicated funds provision based on separate constitutional provision relating to university ownership of land). The State may not establish a method of school funding that is unconstitutional in any manner, and its references to the Education Clause obscure the other plain constitutional violations present in the RLC.

**D. Constitutional avoidance does not apply.**

The State’s brief misapprehends the doctrine of constitutional avoidance in asking the Court to apply the doctrine to resolve the case in the State’s favor. *See Opp.* at 8-9. The Alaska Supreme Court has held numerous times that the doctrine of constitutional avoidance applies only where the statutory scheme that a plaintiff claims is unconstitutional is ambiguous and capable of more than one interpretation. *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 384 (Alaska 2013) (constitutional avoidance “is a tool for choosing between competing plausible interpretations of a statutory text. Under

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<sup>6</sup> Alaska Const. Art. VII, § 1.

this tool, as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, [this Court's] plain duty is to adopt that which will save the Act.”); *see also Alex*, 646 P.2d at 207-08 (declining to interpret statute in a manner contrary to legislative intent in order to avoid constitutional questions). Nowhere in the State's brief does the State propose a “competing plausible interpretation” of the language of the RLC provisions; rather, it seeks to misapply the doctrine to avoid altogether a *legal determination* of the statute's constitutionality.

**E. The RLC does not qualify for the pre-Statehood dedication exemption in the Anti-Dedication Clause.**

The State's alternate argument that the RLC is “grandfathered” as a pre-existing dedication should be rejected because (1) the RLC was established *after* Statehood, and (2) the pre-existing statute was repealed. Both facts are fatal to the State's argument because, while the Anti-Dedication Clause permits “the continuance of any dedication for special purposes *existing on the date of ratification ...*,” Art. IX, Section 7 (emphasis added), it is well established by the Attorney General's own opinions that a dedication is only grandfathered if it existed before April 1956 and has not thereafter been repealed. No RLC was required by the legislature until 1962, long after the Constitution was ratified. Moreover, even if the pre-Statehood statutory scheme is considered a dedication – a position the Plaintiffs reject as set forth below – it was expressly repealed when the RLC and the other elements of the post-Statehood education funding statutes were enacted. Thus, the RLC is not a grandfathered pre-existing dedication.

The Territorial Law that the State claims establishes an RLC in fact does no such thing. Under that law, municipalities exercised independent judgment and discretion as to what they could afford to pay for schools, and were reimbursed by the Territory for a

portion of the support provided “from the moneys of the Territory appropriated for such purposes.” Ex. E at § 37-3-62.<sup>7</sup> Each year, the city councils determined “the amount of money to be made available for school purposes, [furnished] the school board of the city a statement of such sum, and [required] the treasurer to pay the sum available for school purposes to the treasurer of the school board.” *Id.* at § 37-3-35. Thus, no dedication was created because, unlike the current mandatory RLC provided for in AS 14.17.410(b)(2), the cities were not required to provide any particular amount to the school districts. Additionally, no dedication was created because the amount of State reimbursement depended on how much was appropriated by the legislature for such purpose.

Furthermore, even if this voluntary local payment and appropriation based State reimbursement scheme is construed as a dedication, the Attorney General Opinions hold that as soon as it was repealed, its grandfather status was extinguished. Repeal of the Territorial education funding scheme began in 1962. Laws of Alaska 1962, ch. 164 §§ 5.01-5.05 (Ex. B).<sup>8</sup> The 1962 legislation included a transition period. *See id.* at § 5.04. Thus, not all sections of the territorial education funding statute were repealed in 1962. For example, § 37-3-62 (State funding) was repealed in 1962, *id.* at § 5.04, but § 37-3-35 (city determination of funds available for schools) was not repealed until 1966. *See* Laws of Alaska 1966, ch. 98, § 59 (repealing all of AS 14.15 including § 37-3-35 which was codified as AS 14.15.330 and AS 14.15.380 in 1962).<sup>9</sup> The 1962 legislation implemented

<sup>7</sup> The State did not provide the Court with a complete copy of the Territorial Law it claims created the pre-existing dedication in Ex. 2 to its Opp. Therefore, Plaintiffs provide a complete copy in this Ex. E.

<sup>8</sup> The State’s Exhibit 3 is not a complete copy of the 1962 statute, so Plaintiffs have provided a complete copy in Ex. B.

<sup>9</sup> The recodified sections as well as the 1966 version of the Alaska statutes stating that they were repealed in SLA 1966, ch. 98, § 59, are provided in Ex. F.

the foundation formula with its basic need approach and mandatory RLC. Ex. B at §§ 1.01-4.02.

In March 1959, the Attorney General first addressed the grandfather clause after “diligently” researching the written transcript of the Constitutional Convention “minutes” and after reviewing audio recordings that were not transcribed at the time. 1959 Alaska Op. Att’y Gen. No. 7 at 1-2 (March 11) (Ex. G).<sup>10</sup> He concluded that “as a matter of compromise, a grandfather clause had been included in section 7 [the Anti-Dedication Clause] to permit all dedications existing on the date of ratification of the Constitution (April 24, 1956) to continue.” *Id.* at 2. He then concluded that repeal of pre-existing dedications removed them from protection under the grandfather clause because “the purpose of the prohibition would be defeated” by “denying the financial flexibility sought by the constitutional framers.” *Id.* at 3. He summarized:

[T]he intent of the drafters ... was to permit the continuance of existing dedications at the then existing rates until the Legislature saw fit to exercise the only power retained in relation to them: that is, the power to repeal.

...

Also note that *any repeal or repeal and re-enactment* of a dedication during that session takes the dedication from under the protection of the grandfather clause and a re-enactment either in 1957 or later is a nullity unless the dedication is required by the Federal Government for participation in Federal programs.

*Id.* at 5, 6 (emphasis supplied).<sup>11</sup>

<sup>10</sup> Excerpts from the audiotapes that were not transcribed are included in the Opinion at 4.

<sup>11</sup> The 1959 Opinion also concluded that it would be proper to dedicate “any revenues that are proceeds of neither taxes or licenses.” *Id.* at 3. However, the narrow view was rejected in the 1975 Attorney General’s Opinion (Ex. A) at 2 n.1. The 1975 Opinion stated that earlier opinions “erred in relying principally on legal lexicons and prior decisions to define ‘proceeds’, ‘taxes’, and ‘licenses’ and in relying too little on the files and minutes of the Constitutional Convention.” *Id.*

The Attorney General has consistently held that (1) for a dedicated fund to be grandfathered, it must have existed before April 1956; and (2) pre-existing dedications are no longer grandfathered if they are repealed, or they are repealed and re-enacted. It has “never wavered” from this belief. 1992 Alaska Op. Att’y Gen. (Inf.) 33 (Jan. 12, 1990, re-dated Jan. 1, 1992) (Ex. H); *see also* 1992 Alaska Op. Atty. Gen. (Inf.) 31 (Sept. 11, 1989, re-dated Jan. 1, 1992) (“In our opinion, it is likely a court would find that a repealed dedication cannot be revived.”) (Ex. I).

Like the Court in *Alex*, this Court should adopt the consistent reasoning of these Attorney General Opinions and reject the inconsistent position taken by the State in this case.<sup>12</sup> In accordance with the holdings of “diligently researched” longstanding Attorney General Opinions, the RLC was never grandfathered because the reimbursement scheme that existed pre-Statehood did not require any dedication or an RLC. Furthermore, even if the pre-existing reimbursement scheme is viewed as a dedication, it was fully repealed forty-eight years earlier.

## **II. The RLC also violates the Legislative Appropriation Clause and the Governor’s Veto Clause.**

The State defends the RLC against both the Legislative Appropriation Clause and Governor’s Veto Clause on the basis that the RLC does not enter the general fund or become subject to appropriation. But this simply points out the infirmity with the RLC – it is a State-compelled exaction on the Borough that can only be properly assessed, if at all, by becoming subject to appropriation (rather than dedication). That the legislature

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<sup>12</sup> *See Alex*, 646 P.2d at 210 (adopting “well reasoned” Attorney General Opinion on construction of Anti-Dedication Clause); *see also Myers*, 68 P.3d at 401 (quoting *Allison v. State*, 583 P.2d 813, 816–17 n.15 (Alaska 1978)) (noting that the attorney general’s opinion is entitled to “great weight,” because the attorney general is “the officer charged by law with advising the officers charged with the enforcement of the law as to the meaning of it.”).

has set up the RLC in this manner is a feature of its unconstitutionality, not a defense to its constitutionality. If the Court holds, as it should, that the RLC violates the Anti-Dedication Clause, it should also hold as a necessary corollary that the RLC bypasses the legislative process that the Anti-Dedication Clause is intended to preserve.

The State misapprehends the compelled nature of the RLC by stating at footnote 39 of page 17:

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

To the contrary, there are clear answers that distinguish the entire Borough budget from the RLC. The Borough's collection of taxes is generally a matter of Borough policy, but unlike taxes that form the basis for general Borough services, the RLC is assessed under color of State law and is a mandatory payment for the Borough. The "entire [B]orough budget" does not impermissibly bypass the legislative process in the manner that the RLC does.

The Alaska Supreme Court has addressed the Legislative Appropriations Clause only in the context of funds directly flowing from the state general fund, and has not had occasion to address the effect of a self-executing payment for a state function such as the RLC. However, in *Myers*, the dissenting justices suggested that an automatic payment flowing to a private entity upon receipt by the State was vulnerable to an attack under the Legislative Appropriation Clause because it operated without requiring an appropriation. *Myers*, 68 P.3d 386, 399 & 399 n.9 (Bryner, J., dissenting) (citing with approval memorandum opinion of Director of Legislative Services for the Legislative Affairs Agency; the majority did not address Appropriation Clause issues). Because the RLC

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threatens the power of appropriation and gubernatorial veto right by bypassing the process entirely by its own terms, it presents an even stronger case for invalidation under these clauses.

**III. The Borough is entitled to a refund under the principles of assumpsit and restitution.**

The State relies solely on its arguments as to the constitutionality of the RLC in arguing that the Borough is not entitled to a refund of the 2014 RLC. The Borough recognizes that its assumpsit and restitution arguments depend on the success of its constitutional challenges to the RLC as a whole. The State has not set forth legal authority separate from the RLC's constitutionality, and the Borough's request for a refund in assumpsit or restitution should be deemed unopposed if its constitutional challenges are well taken. The State concedes that it has been enriched by asserting that the RLC "leaves more money in state coffers because schools received part of their funding from local sources." Opp. at 15. Because the State's obligations have been lessened by the Borough's payment under protest of an unconstitutional assessment, the Borough is entitled to a refund.

**CONCLUSION**

For the reasons stated herein and in Plaintiffs' motion and memorandum, Plaintiffs respectfully request summary judgment, a declaratory judgment and injunction in their

favor, and an order to refund the 2014 RLC.

Dated this 28<sup>th</sup> day of April, 2014.

KETCHIKAN GATEWAY BOROUGH

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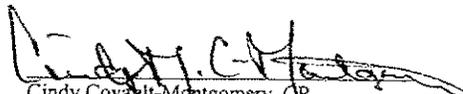
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# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU 99811

May 2, 1975

The Honorable Jay S. Hammond  
Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

Re: Dedication of Revenues Derived  
from the Lease or Sale of  
State Natural Resources

Dear Governor Hammond:

You have asked if dedication of the revenues from the lease or sale of state natural resources offends the state constitutional prohibition against dedicated funds. Art. IX, §7, Alaska Constitution.

The short answer is yes.

### DISCUSSION

The constitutional prohibition against dedicated funds is as follows:

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

It may be suggested that the phrase "proceeds of any state tax or license" is not ambiguous or doubtful and, there-

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fore, is not subject to judicial construction, Application of Babcock, 387 P.2d 694, 696 (Alaska 1963). However, whether the phrase includes royalties from oil and gas leases is a valid question and does require that the phrase be interpreted. 1/ Since there is a valid question as to whether a royalty or a bonus-royalty exacted by the government is a tax or license, an ambiguity or uncertainty exists and we should resort to the records of the Convention to determine intent. Alaska Public Employees Ass'n. v. State, 525 P.2d 12, 1415 (Alaska 1974). By examining this record, we may construe the words used in the Constitution with reference to their purpose and the purpose of Section 7. State v. City of Anchorage, 513 P.2d 1104, 1110 (Alaska 1973).

Section 7 of Article IX had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes, and (2) to prevent the creation of new special funds separate from the general fund. Public Adm. Sv., Constitutional

1/ 1969 Op. Atty. Gen. No. 3 and No. 5 took the view that the dedication of oil and gas royalty and bonus-related payments was not prohibited by Section 7 of Article IX of the State Constitution. They are expressly overruled insofar as they are inconsistent with this opinion. They erred in relying principally on legal lexicons and prior decisions to define "proceeds", "taxes", and "licenses" and in relying too little on the files and minutes of the Constitutional Convention. Their analysis of dedicated funds is otherwise excellent, and except for their conclusion with respect to revenues derived from the lease or sale of natural resources, they remain excellent statements of the law.

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Studies, v. 3, 2730 (1955); Minutes of Meetings of Com. on Finance & Taxation, Legislative Affairs Agency Files, 211, Constitutional Convention, Nov. 25, 1955 (hereinafter, Files); Preliminary Drafts of Article on Finance & Taxation and Memorandum of the Finance Com., Dec. 4, 1955, Files.

The rationale for the purpose is found in the Constitutional Studies, id., and, more succinctly, in the committee's commentary, 6 MINUTES, CONSTITUTIONAL CONVENTION, App. V, 111 (1956) (hereinafter, MINUTES). In essence, it is that the widespread existence of dedicated revenues lodged in special funds deprives both the governor and the legislature of "any real control over the finances of the state." Id.

The progression of Section 7 from its original draft to final version is worth following. It first appears in the committee minutes of November 24, 1955, as follows:

All tax revenues shall be deposited in a general fund to be established and maintained by the state. This provision shall not prohibit the continuance of any special fund for special purposes existing at the effective date of the constitution. Files.

At the December 2nd meeting of the committee, it was advised of certain requirements for federal funding in fish and wildlife programs which required dedication of license revenues.

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The committee thereupon amended its "tentatively adopted section" to include the phrase:

except as State participation in Federal programs might thereby be denied. Files.

The committee's markup of the December 9th draft shows several changes entered by hand. For one, the word "tax" is deleted as a modifier of the word "revenues". For another, the term "general fund" is deleted and the phrase "in the state treasury wo [without] aloc [allocation] for spec. purposes" is inserted. Files. A subsequent, undated, working draft reads in pertinent part as follows:

All revenues shall be deposited in the State treasury without allocation for special purposes, except where state participation in Federal programs will thereby be denied. Files.

This version was the same as that of December 16, 1955, submitted, December 19, 1955, to the Convention. 6 MINUTES, App. V, 106-07.

Prior to the Convention's consideration and debate of the committee proposal, the committee prepared several changes, one of which was to insert the word "public" after the word "all" so that it would read: "All public revenues shall be deposited . . . ." 3 MINUTES 2297.

The purpose of this change was to "eliminate the question regarding such things as donations or bequests . . . that might

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have specific purposes attached to them." Ibid., 2298. With respect to the exception in section 7 (then section 8), the committee spokesman said:

There are some federal participation programs which do require specific things that might conflict with a total prohibition on this subject . . . . We have provided that any funds, which are allocated at the time this constitution is approved, do not come under this provision . . . . Ibid., 2302.

By express language in the committee proposal and in its explanation, we then had a "total" prohibition on any dedication of any public revenues but for two explicit exceptions. That this included proceeds from the conveyance of state lands or interests in state lands cannot be denied. Indeed, the subject was quickly brought up with respect to school lands. In response to questions, the committee spokesman explained that if Congress made a grant of lands dedicated for school purposes, the federal exception clause would apply and funds could be dedicated. The necessary inference is, of course, that if the land grant were general, the proceeds could not be dedicated. Ibid., 2317-19.

During this colloquy, the chairman remarked of then section 8 (prohibition against dedicated funds) that the committee wished to postpone its consideration by the Convention because it had a number of changes to recommend. Ibid., 2318.

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When the section was brought up the following day, the committee moved to delete the phrase: "All public revenues shall be deposited . . ." and substitute the phrase "The proceeds of any state tax or license . ..". Ibid., 2361. If we use a plain-language rule to interpret this alteration, we must conclude that a substantive change of dramatic proportions was proposed and adopted, i.e., from a broad prohibition against dedicating any revenues to a lesser prohibition against dedicating tax or license revenues. The record, however, indicates nothing of the sort being intended or perceived.

The immediate result was a flurry of questions and subsequent debate over including the proceeds of licenses in the prohibited category. Ibid., 2361-2376. Debate ensued on a motion to strike the word "license". It revealed a strong majority against dedicated funds of whatever kind and a vote against the amendment of 44 to 10. Ibid., 2377. It also revealed, almost certainly, the origins and intent of the committee's amendment from "all public revenues" to "the proceeds of any tax or license."

During the debate, a delegate asked about the use of sinking funds to retire bonds. Answering for the committee, Delegate White responded as follows:

. . . [T]his suggested committee change came about because under the old language where it said 'All revenues shall be deposited without

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allocation . . .', we ran into a situation where we had listed seven exceptions that we were afraid we were going to have to make. By going to the tax itself and saying that the tax shall not be earmarked, we eliminated all seven of those exceptions. Now in this case the sinking funds for bonds, all this prohibits is the earmarking of any special tax to that sinking fund. You could still set up a sinking fund from the general fund or the state treasury. Ibid., 2363.

The "situation" the committee "ran into" was a memorandum of January 4, 1956, consisting of comments by the consultants from the Public Administration Service (PAS) on the committee's proposal. Files. The comment on dedicated funds is set out in its entirety below:

At the request of the Committee on Finance and Taxation, finance specialists on the Public Administration Service staff in Chicago prepared comments on the Finance Committee proposal. These comments, supplemented as a result of Mr. Sady's discussions with these specialists, follow:

Section 8: The intended purpose of this section to prohibit the earmarking of certain revenues for special purposes is certainly laudable. It is doubtful, however, that a strict interpretation of this provision could be applied. Legal and contractual provisions will require the segregation of certain moneys, e.g., pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units.

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This section might be revised by the deletion of the words in brackets and by the addition of the underlined words, as follows:

"Section 8: All public revenues shall be deposited in the State treasury without allocation for special purposes. [; except where state participation in Federal programs will thereby be denied.] This provision shall not prohibit the continuance of any allocation existing upon the date of ratification of this Constitution by the people of Alaska, nor the earmarking of tax revenues and other receipts where necessary to enable the State to participate in Federal programs, to repay public debt, to maintain any individual or corporate or other local government equity therein, or to maintain duly established revolving funds." Ibid.

The jump from the amendments proposed by PAS to those of the committee is not explained in the records of the Convention. But it is clear that the several exceptions listed in the PAS memorandum are those referred to in quotation from the debate, supra, and that the committee proposed its change for no other purpose than meeting the problems raised by the memorandum: "By going to the tax itself and saying that the tax shall not be earmarked, we eliminated all seven of those exceptions." 4 MINUTES, 2363 (1956).

The important thing to note is that no intent was shown to limit the class of revenues which could not be dedi-

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cated. 2/ Rather, the intent of the amendment was to change the language so as to avoid setting forth specific exceptions "[b]y going to the tax itself . . . ." Id.

In a later discussion of the article on the initiative and the prohibition there against dedicating any "revenues", Delegate White expressed concern that the Committee on Style and Drafting "retain the idea of dedicating of taxes" when it

2/ The committee's records reveal ample consideration of taxes and licenses but none of other revenues. The committee focus may have inadvertantly led it to an implicit understanding that the phrase "taxes or licenses" covered all governmental revenues. Ironically, by changing the original language: "All public revenues shall be deposited . . . without allocation . . ." to the phrase: "The proceeds of any state tax or license . . . shall not be allocated . . .", the committee (and the Convention) failed to express the intended result. By its plain language, the prohibition on dedications applies to the "proceeds of any tax or license." Contrary to the expressed intent, 4 MINUTES 2363 (remarks of Delegate White), the prohibition is not directed at the tax but, rather, at the proceeds. Since the general fund consists of those proceeds, under the terms of the literal language, one could not "set up a sinking fund from the general fund or the state treasury." Id.

Because interpreting Section 7 by its plain language so as to prohibit sinking funds, retirement funds, and the like, would thwart the expressed will of the Convention, a plain-language interpretation would be improper. Instead, the section should be interpreted to give it its full effect, i.e., to except certain necessary dedications arising from contractual obligations routinely entered into by every state. PAS Memorandum, supra.

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came to the finance article. Delegate Sundborg took this to refer to "taxes" being more limited than "revenues", i.e., not to include more than taxes, but Delegate White stated that the reason was otherwise:

The reason we made the distinction . . . is because all proceeds coming to the state are revenues really, and you have to dedicate or allocate revenues to special purposes, whereas what we are trying to get at is the allocation or dedicating or earmarking of the proceeds of a particular tax to a particular purpose. 4 MINUTES 2969.

In other words, the prohibition of Section 7 was aimed at revenue sources, and the Convention's concern, then, was not to exempt some sources of revenue from the prohibition against dedications but, rather, to exempt certain kinds of necessary dedications of revenues from that prohibition after their receipt. As a sampling of the debates clearly shows, the Convention clearly intended to prohibit any new dedications of any source of revenues:

WHITE: Mr. Emberg, the committee's idea here is to prevent earmarking for anybody except in the case outlined . . . I think I can speak for a majority of the committee in saying that you can go on making exceptions to this for deserving groups ad infinitum. But the committee feels that if you accept the principle of not earmarking, it puts everyone in the same position and that the legislature will then be . . . able to decide each case

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on its own merits. If you go the other route and allow for earmarking . . . you are then back to the situation that most states now find themselves in, where an everincreasing percentage of their revenues are earmarked for special purposes and an everdecreasing amount is available to the general fund . . . So the committee would suggest that the Convention accept the idea of preventing earmarking or reject it. 4 MINUTES, 2364 (emphasis added.)

In response to a typical argument that ". . . unless you have a fair share of earmarked funds for special certain purposes, particularly public works . . . you often times do not get them", the answer was: "They have to sell their viewpoint [to the legislature] along with everybody else." Ibid., 2365, 2367.

The suggestion was raised that a name other than "license" might be used to avoid the prohibition. The committee response was as follows:

AWES: I think. . . the odds are all in favor of the court saying these are all licenses in fact, and bringing them within the restrictions of this section. . . . I think I might give a few indications of the committee's thinking at the time we adopted this proposal. The latest figures that we had before us, about 27 per cent of the funds of Alaska were earmarked and with the figure of 27 per cent, I think Alaska was right among the lowest ranking with the states in the matter of earmarking. Texas . . . 90 per cent . . . the majority . . . around 50 per cent up to 75 per cent of their funds. . . . I

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think earmarking is bad; from an accounting standpoint it's bad. It is inefficient, undoubtedly, because it deprives the legislature of that adaptability that you get when you take a certain amount of money with no strings attached and allocate it without limitations. I think inefficiency is one of the big arguments against earmarking. I think the other one is that, eventually, you do get so many funds earmarked that the legislature just does not have the money to work with for current operating expenses . . . . The committee felt . . . . after seeing the extent to which earmarking is growing in the states and the impossibility of doing away with earmarking once you get it, that the advantage is weighted in favor of limiting earmarking [to certain exceptions] and that is the reason we adopted the provision that we did. Ibid., 2367-68 (emphasis added).

~~In other words, it mattered little to the committee what name the revenues had, it was prohibiting, subject to certain exceptions, the dedication of sources of revenues. It did not want the legislature's hands tied by any additional dedicated funds. And it felt that "the odds were all in favor of the court" upholding its design if sources of revenue were designated by names other than "tax or license."~~

Another member of the committee, one who did not originally favor the committee's proposal, saw it as a reasonable compromise:

PERATROVICH: Mr. President . . . I do not say that we should go overboard and earmark all the revenue that we take in . . . but I think . . . there is some good derived from such an [existing] program . . . . I was satisfied with the language here. I figure that the compromise, that the allocations that are now in existence would be retained . . . . Ibid., 2369-70 (emphasis added).

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The "compromise" was, of course and as stated, that the existing dedications could be retained. But this could be a compromise only if no new dedications of any source of revenue could be created.

Another member of the committee, agreeing on the value of existing dedications for highways, airports, and schools, cautioned on the needs of other programs:

BARR: Mr. President . . . The health program demands an immense amount of money so, therefore, the legislature should have a fair/size sum in the general fund subject to appropriation for those purposes. I am afraid if we had 50 per cent of our funds earmarked, we would have practically nothing left for our health program and things of that sort. Ibid., 2370-71 (emphasis added).

The same member pointed out, in arguing against an amendment to delete the word "license", that the amount of license fees received in fiscal 1954-55 was \$2 million out of a total tax of \$15.7 million. The Convention was unwilling to exempt 13 per cent of the then revenues from the prohibition against dedications (although a substantial percentage of license fees were already dedicated). It hardly seems likely that it intended to exempt the revenues from the leasing of resources. Consider the following from the debate on deleting the word "license":

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AWES: I . . . would like to make a few more comments on the amendment that is now before us. I think the question is much more fundamental, much more basic than just the question of whether we will strike 'or licenses'. The question goes right to the heart of the matter. Do we want earmarking or do we not? Once you strike 'licenses' and then you make this exception and that exception, and what it really amounts to is an admission that you really don't want to do away with earmarking . . . . As soon as [additional] exceptions are made to this section, then I think the section should be stricken. Ibid., 2374.

On the motion to strike "or license", the vote was 44 against and 10 for. Ibid., 2377. On a subsequent motion to strike the entire section, the vote was 41 against and 8 for (6 absent). By an overwhelming majority, the Convention wanted no additional exceptions and wanted no additional earmarking. Delegate Herman expressed the sentiment precisely:

HERMAN: . . . . I am not opposed to funds for roads . . . and I think the funds that are already earmarked are probably properly earmarked, but I would hate to see the door left open to earmarked additional funds with the probable effect of reducing the general fund to the point where the services to the citizens of the Territory had to be seriously curtailed. I oppose striking section 7. Ibid., 2409 (emphasis added).

Having determined that there would be no additional exceptions and that there would be a prohibition, the Convention then debated whether the existing dedications should also be

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prohibited, i.e., whether the compromise should be retained.

The proposed amendment was moved by Delegate Buckalew.

BUCKALEW: Mr. President . . . . I just want to point out to the delegates that the committee has admitted that it is a bad practice to  earmark funds; they have admitted that the sensible, sound way to run a state is to abolish this practice which leads to evils as far as the fiscal management of the state is concerned. I ask you to let the new State of Alaska . . . start off with a clean slate and no earmarked  funds at all. . . . (emphasis added).

PERATROVICH: I would like to express my view. . . . I, too, felt that after I heard the arguments in the committee, that perhaps  it was dangerous to give free rein in the new state in earmarking funds. However, I realize . . . that there was some good being accomplished by those earmarked  funds that we have on the books today. . . . [O]ur proposal here is the outcome of compromise. We went both sides . . . perhaps it is a good thing to  retain the provisions that we now have on the books but not permit any further earmarking of funds. . . .

\* \* \* \*

NERLAND: . . . . [I]n spite of a feeling by the committee that  earmarked funds, in general, should be frowned upon, it was felt that those  now on the statute books should be left in effect as long as the legislature saw fit to leave them there.

\* \* \* \*

WHITE: Mr. President . . . . I can only say that . . . if this convention decides -- as it apparently has decided -- that  earmarked funds are bad, then all  earmarked funds are bad and we should . . . wipe them out here and now. . . .

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The proposed amendment failed on a voice vote, and the compromise was retained: No new earmarked funds, but those existing may remain. Ibid., 2413-2416 (emphasis added).

The debates show conclusively (as do the committee records) that the real concern was about earmarked funds, not taxes or licenses, but funds. At one point, the section used the words "all public revenues". This was amended to "proceeds of any tax or license", but the record shows that the purpose of the change was not to reduce the prohibition but, rather, to allow necessary allocation of revenues to reduce the prohibition or to enlarge the exceptions. The committee's amendment from "all public revenues" to "proceeds of any tax or license" was adopted by a vote of 47 to 7. The very same delegates who defeated the efforts to reduce or eliminate the prohibition and who defeated the amendments to enlarge the exceptions were those who voted for the change from "all public revenues" to "proceeds of any tax or license". Indeed, Delegate White, who supported the elimination of all existing dedications, was the principal proponent and committee spokesman for that change. On this record, it is difficult to see how the committee's amendment can reasonably be interpreted as opening the door to create new dedicated funds from resource revenues. On the record, any new dedication is precisely what the Convention overwhelmingly voted to prohibit.

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The 1969 Op. Atty. Gen. No. 5 states that the Convention simply did not consider oil revenues. The record contradicts this. An attempt was made to amend section 7 so as to freeze existing dedications so that they could not be repealed by the legislature. Questions were raised, among them, the following:

STEWART: How would royalties, for instance, on the production of oil be regarded under this provision? Would they be considered taxes or licenses?

PRESIDENT EGAN: Does the Chairman . . . have the answer . . . or anyone on the committee? Mr. Nolan? [member of the committee]

NOLAN: Mr. President, I would imagine that they would just go into the general fund.

STEWART: I was thinking if they were earmarked . . . [before the prohibition took effect] we can see the very, very large revenues deriving from oil lands. If they were earmarking them, for instance, for schools even, it might be that the revenue from those lands would amount to millions and millions a year, far beyond even our requirements for schools.

\* \* \* \*

NOLAN: They wouldn't be earmarked because they are not under any existing law now, the earmarking of them, so this section [exceptions] would not apply to it. It would go into the general fund. Ibid., 2381-2382 (emphasis added).

Not only did the Convention consider oil revenues, but it was advised by the committee spokesman that the prohibition

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against dedicating the proceeds of any tax or license would require that, there being no existing dedication, oil revenues be placed in the general fund, i.e., that they could not be dedicated. The committee did not say whether oil revenues were a tax or a license, but it clearly thought they were covered and advised the Convention to that effect. This is, of course, consistent with the similar colloquy concerning school land and general land grants. Revenues from the former could be dedicated (federal requirement) but not from the latter. 3 MINUTES 2317-19. (While this earlier discussion occurred before the amendment from "all revenues" to "proceeds of", the committee had apparently already decided upon that change and the colloquy should be read in that light. See remarks of Delegate Nerland, Ibid., 2318.)

Arguably, the term "any tax or license" is broad enough to include royalties on oil or gas imposed by the state. A "royalty" is a share of the product or profit paid to the owner of the property. Black's Law Dictionary (rev. 4th ed. 1968). And a "royalty bonus" is simply consideration for the mineral lease paid over and above the royalty. Id. Since a "tax" is a pecuniary burden levied on individuals or property to support the government or a ratable portion of the produce of property levied by the sovereign, and since a license (a) generally consists of a charge for engaging in an activity otherwise unlawful or tortious, or (b) is simply another means of raising revenue for the govern-

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ment, or (c) both, id., it is reasonable to suggest that the term as used in section 7 is broad enough to include royalties and royalty bonuses (lease bonuses). As we have seen, no one at the Convention suggested that royalties were not covered by section 7, and a spokesman for the Committee on Finance and Taxation said that they were. All royalties are not taxes; most are payable to private property owners. But when paid to governments, they do not differ substantively from taxes. (Royalties paid by American corporations to foreign governments are treated as taxes under the Internal Revenue Code. Larger fictions exist at law.)

But something more than royalties is at stake here. Suppose Alaska were to produce and sell its own oil and gas, rear and sell fish or shell fish, mine and sell copper or gold. It already sells timber and leases land for farming and grazing. Indeed, the very concept of the land grants to Alaska from Congress was that the new state would become wealthy through the sale of its newly acquired resources. 1958 U.S. Code Cong. & Adm. News 2933, et seq. And the Convention was well aware of this. 3 MINUTES 2319; 4 MINUTES 2449, et seq. Accordingly, a gentle fiction that the term "tax or license" includes royalties does not suffice. Either the Convention prohibited the dedication of any and all additional funds or it did not. The plain language of section 7 says that it did not. The plain language of the

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Convention's debates compels the conclusion that it did:

The question goes right to the heart of the matter. Do we want earmarking or do we not? . . . As soon as exceptions are made to this section, then I think the section should be stricken. Ibid., 2374.

The Convention answered that question with a resounding vote against earmarking and against any exceptions other than those existing and those required by federal law.

That the Convention intended to prohibit any new dedicated funds of whatever description is further demonstrated by the record. A motion was made to change the cut-off date for existing dedications from "the date of ratification" of the Constitution, i.e., 1956, to the "effective date" of the Constitution, i.e., sometime in the indefinite future. 5 MINUTES 3415. Opponents of the motion offered the following:

. . . . It seems to me that if we adopt the provision as it now stands without the amendment, all we are doing is saying 'dedicated funds existing as of April 1956'; that is all we are saying . . . . To me it seems vital that this existing language be maintained or that some other language be put in which would freeze the existing earmarked funds. Otherwise, we are opening up ourselves, and not just ourselves but the people of Alaska, up to a race for earmarked funds prior to the date of ratification, and that would seem a most dangerous thing to do. I see no reason why we cannot say, 'as of such and such a date, any funds existing can continue.' Ibid., 3417 (emphasis added).

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. . . . In substance, the effect of [the] amendment would be that, until the time that we received statehood, the legislature can go ahead and continue to earmark funds, and all of those earmarked funds then would, in substance, be exempt under the Constitution. . . . We would then be in the identical position of those states that have 90 per cent of their funds earmarked. The intent of this section -- and it is clear and patent and only a sophist could insist that it is something other than what it reads -- is that sometime this year, in the spring, at that date, at a precise date on which this Constitution is ratified, that earmarked funds or dedicated funds existing at that time will at least be permitted to continue under statehood, and it means, in substance, if at that time no limited funds are earmarked, that that is the cut-off date. . . . There will be no more earmarked funds, and earmarked funds which are created by the legislature in future years will not be subject to the [exemption] provisions of this article. If we substitute the words "effective date", it means that the whole validity of section 7 is done away with, because the legislature from year to year to year can and will dedicate more and more funds and, eventually, by the time this Constitution becomes effective, the section will be completely ineffective. . . . [T]he intent of the article would be destroyed by the amendment. Ibid., 3418-3419 (emphasis added).

The proposed amendment failed on a voice vote. Ibid., 3420.

The Convention clearly intended that neither the Governor nor the legislature should be deprived of "real control over the finances of the state." 6 MINUTES, Appendix V, 111. It recognized the need for allocating or earmarking of funds

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once received for contractual obligations and the like, supra., pp. 4-7, but it firmly opposed any additional earmarking of revenues for any purpose. E.g., 4 MINUTES 2409. It expressly sought to avoid

. . . the situation that most states now find themselves in, where an ever-increasing percentage of revenues are earmarked for special purposes and an ever-decreasing amount is available to the general fund. . . . Ibid., 2364.

The situation the Convention expressly sought to avoid is precisely the situation that is developing. The renewable resources fund, AS 34.11.010, the proposed Alaska mineral lease bonus fund, CSHB 324, the proposed fund for parks and recreation, SB 147, and the proposed fund for hydro-electric projects, CSHB 171 and SB 185, demonstrate a trend toward "an ever-increasing percentage of revenues" being dedicated to special purposes. In spite of the Convention's clearly expressed intent that "[t]here will be no more earmarked funds. . . .", 4 MINUTES 3419, and in spite of the express command that there will be no new dedications, even of oil and gas royalties, 4 MINUTES 2381-2382, this is precisely what is happening.

The legislature has dedicated 5 per cent of oil and gas bonuses, rentals, and royalties, up to a maximum fund of

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\$250 million in a renewable natural resources development fund. AS 37.11.010. Since the permanent fund arises only from surpluses in the development fund, the maximum might never be reached. Similar schemes are proposed for special funds for parks and recreation (1 per cent), SB 147, and for hydro-electric power (15 per cent), HB 171 and SB 185. 3/ By far the most far reaching proposal to date, is the Alaska mineral lease bonus permanent fund, CSHB 324.

With 5 per cent of bonus-royalty (bonus-lease) revenues already dedicated, AS 37.11.010, the proposal for the lease bonus permanent fund would dedicate an additional 90 per cent from which only the income may be expended, thereby effectively dedicating still more revenues and effectively depriving the Governor and the legislature of "any real control over the finances of the state." 6 MINUTES, App. V, 111.

It is well settled that constitutions and legislative acts are to be interpreted in accordance with their purpose.

3/ CSHB 171 deletes the 15 per cent dedication and, instead, establishes a loan fund dependent upon annual appropriations. To this extent, it does not offend the constitutional prohibition. However, those appropriations are to be made from the Alaska mineral lease bonus permanent fund, CSHB 324, which does dedicate revenues and would be unconstitutional.

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Alaska Public Employees Ass'n v. State, 525 P.2d 12 (Alaska 1974). Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.

Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

Very truly yours,

Avrum M. Gross  
Attorney General

AMC:pg:JLH

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.

## Article II

### Preparation of Public School Foundation Budget

**Sec. 2.01. Computation by District.** By October 30 of the pre-fiscal year, each district shall submit to the commissioner its computations for the following fiscal year of the district's basic need as defined by Sec. 1.02; its required local effort as defined by Sec. 1.07; and the amount of state aid to which the district would be entitled under Sec. 1.03. Each district shall make the computations in the manner prescribed in this Article. Such computations shall serve as the basis for requesting legislative appropriations, and for preliminary payments under the public school foundation program.

**Sec. 2.02. Estimated Average Daily Membership.** Each district shall prepare an estimate of its average daily membership for the fiscal year. In making this estimate, the district shall take into consideration its average daily membership in preceding years, the pattern of growth or decline in preceding years, and any other pertinent information available to the district. The result of this estimate shall be known as the "estimated average daily membership."

**Sec. 2.03. Computation of Teachers' Salary Allotment.** a. In computing the teachers' salary allotment, the district shall first determine

(1) the number of teachers which it will be allowed for the fiscal year under the schedule of allowable number of teachers set forth in Sec. 1.04c; provided, that the average daily membership figure to be used in that schedule is the "estimated average daily membership" as defined by Sec. 2.02; and

(2) the number of teachers which it plans to hire for the fiscal year.

b. The district shall use the lower number of teachers computed under paragraphs (1) and (2) of Subsec. a. as the "allowable number of teachers" in computing the teachers' salary allotment under the provisions of Sec. 1.04.

**Sec. 2.04. Computation of Average Daily Membership Allotment.** The average daily membership allotment of each district shall be computed as required by Sec. 1.05, except that the "estimated average daily

membership" as defined by Sec. 2.02 shall be used in place of "average daily membership."

**Sec. 2.05. Computation of Attendance Center Allotment.** The attendance center allotment for each district shall be computed by using the number of attendance centers which are or will be in operation by the end of the pre-fiscal year.

**Sec. 2.06. Computation of Required Local Effort.** a. In computing the required local tax effort, the district shall use the "full and true value of the taxable real and personal property within the district" as determined by the Local Affairs Agency. Once the local tax effort is correctly computed, it shall be the final figure in satisfaction of Sec. 1.07b and it shall not be recomputed during the fiscal year.

b. The district shall estimate the amount of Public Law 874 money it will receive in the pre-fiscal year, and one-half of the estimate of money to be received shall be included in the total sum of required local effort as provided by Sec. 1.07a. This figure shall be adjusted at a later time but before final accounting for the fiscal year to reflect one-half of the Public Law 874 money actually paid or credited to the district during the pre-fiscal year.

**Sec. 2.07. Determination of Full and True Value by Local Affairs Agency.** The Local Affairs Agency, in consultation with the assessor for each district, shall determine the full and true value of the taxable real and personal property within each district. Exemptions granted under Chapter 129, SLA 1957, known as the Alaska Industrial Incentive Act, shall be honored. If there is no local assessor or current local assessment for a district, then the Local Affairs Agency shall make the determination of full and true value from such information as is available. In making the determination, the Local Affairs Agency shall be guided by Sec. 11, Ch. 174, SLA 1957. The determination of full and true value shall be made on or before September 15 and sent by registered mail on or before that date to the president of the school board in each district. Duplicate copies shall be sent to the commissioner. The district may obtain judicial review of the determination by filing a motion in the superior court of the judicial district in which the district is located within 10 days after receipt of the deter-

mination. The superior court may modify the determination of the Local Affairs Agency only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

**Sec. 2.08. Duty of Commissioner to Examine and Tabulate Computations.** a. The commissioner shall examine the allotment computations submitted by each district to determine that they are correctly computed. If the allotments are incorrectly computed, the commissioner shall either obtain a correct computation from the district, or make a correct computation based on information available to him, with notice of the corrected computation being given to the district.

b. The commissioner shall reduce these computations to a report in tabular form or such other form as will assist in examining the computations of the districts and shall transmit the report to the governor. The commissioner shall maintain additional copies of this report in his office as a matter of public record. This report shall be entitled 'Public School Foundation Program Computations.'

**Article III**

**Procedure for Payment of Public School Foundation Funds to Districts**

**Sec. 3.01. Allocation of Funds on Preliminary Computations.** The commissioner shall determine on or before June 15 of each year the amount of state aid to which each district is entitled on the basis of the pre-fiscal year computations. Beginning July 15 of the fiscal year and on the fifteenth of each month thereafter, for seven successive months, one-twelfth of each district's state aid entitlement shall be distributed.

**Sec. 3.02. Payment under Adjusted Computations.** Each district shall make a report at the end of the first nine weeks of school, which shall contain a new estimate of its average daily membership for the fiscal year and any other information which will aid the commissioner in making a more accurate determination of the amount of state aid to which the district is entitled. The commissioner shall, on the basis of this new estimate and information, make a recomputation of the total amount of state aid to which each district is entitled. On or before December 1, the

commissioner shall notify each district of any changes made in its entitlement to state aid. The commissioner shall also determine at that time whether or not the money in the public school foundation account is sufficient to meet the obligations for the fiscal year, and, if such money is not sufficient, he shall immediately inform the governor of the amount of additional appropriation he estimates will be necessary to carry out the public school foundation program for the rest of the fiscal year. Beginning January 15 and on the fifteenth of each month thereafter, each district's recomputed entitlement shall be distributed in five equal installments, provided that one-half of the June payment shall be withheld pending a final determination of the district's state aid entitlement.

**Sec. 3.03. Payment under Final Computation.** On or before June 15, each district shall transmit to the commissioner a final computation of the state aid to which the district is entitled. The commissioner shall process each district's computation in the manner provided by Sec. 2.08a. Any money owing to a district shall be obligated by the commissioner prior to June 30. If the district received more money than its state aid entitlement, it shall immediately, after notice from the commissioner of such overpayment, remit the amount of overpayment to the commissioner to be returned to the public school foundation account.

**Sec. 3.04. Restrictions Governing Receipt and Expenditure of Money from Public School Foundation Account.** a. The public school foundation money distributed to any district during any year, together with the money acquired from local effort, shall be received, held, and expended by the district school board subject to the provisions of law and regulations of the State Board of Education.

b. Each district shall maintain financial records of the receipt and disbursement of public school foundation money and money acquired from local effort. The records shall be in such form as the State Board of Education shall prescribe by regulation and shall be subject to audit by the commissioner or the State Board of Education at any time.

**Article IV**

**General Provisions**

**Sec. 4.01. Regulations.** The commis-

sioner is authorized to promulgate regulations pursuant to the Administrative Procedure Act to implement this Act.

Sec. 4.02. **Definitions.** As used in this Act, unless the context otherwise requires:

(1) "average daily membership" means the aggregate days of membership of pupils divided by the actual number of days the school is in session for the year;

(2) "commissioner" means the commissioner of the Department of Education for the State of Alaska;

(3) "district" means any independent, incorporated city or borough school district, but does not include state rural schools;

(4) "elementary school" means a school consisting of grades one through eight, or any appropriate combination of grades within this range;

(5) "fiscal year" means the year beginning July 1 and ending June 30 for which allotments and entitlements are computed or distributed;

(6) "pre-fiscal year" means the year immediately prior to the fiscal year;

(7) "Public Law 874 money" means federal funds allowed school districts as provided in Public Law 874 of the 81st Congress, as amended, 20 U.S.C., Ch. 13;

(8) "public school foundation account" means the account created by Sec. 1.08 of this Act for use in financing education in public elementary and secondary schools;

(9) "secondary school" means a school consisting of grades seven through twelve, or any appropriate combination of grades within this range. When grades seven through eight, nine, or ten are organized separately as a junior high school, or grades ten through twelve are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of this Act;

(10) "state minimum salary schedule" means the minimum salaries required by Secs. 37-6-1, 37-6-2 and 37-6-3, ACLA 1949, as last repealed and re-enacted by Ch. 51, SLA 1961, and as further amended or repealed and re-enacted;

(11) "taxable real and personal property" means all real and personal property taxable under the laws of Alaska, but does not include household goods and personal effects;

(12) "teacher" means any regular or special teacher, principal, supervisor, superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of a public elementary or secondary school for whom certification is required as a condition of employment.

#### Article V

##### Formal Provisions

Sec. 5.01. **Repealer.** The following statutes are superseded by this Act in the manner and according to the schedule provided by Sec. 5.04 of this Act, and are repealed effective July 1, 1964:

Sec. 37-3-61, ACLA 1949, as amended by Ch. 49, SLA 1955.

Sec. 37-3-62, ACLA 1949, as amended by Ch. 77, SLA 1951, Ch. 68, SLA 1953, and Ch. 49, SLA 1955.

Sec. 37-3-63, ACLA 1949, as amended by Ch. 77, SLA 1951, Ch. 49, SLA 1955, and Ch. 129, SLA 1960.

Sec. 37-3-64, ACLA 1949, as amended by Ch. 68, SLA 1953.

Sec. 37-3-66, ACLA 1949, as amended by Ch. 77, SLA 1951, and Ch. 49, SLA 1955.

Sec. 5, Ch. 77, SLA 1951, as amended by Ch. 49, SLA 1955.

Sec. 6, Ch. 49, SLA 1955, as amended by Ch. 129, SLA 1960.

Sec. 5.02. **State Aid to Newly Established District Schools.** a. Whenever a state school becomes a district school, the school shall continue to be considered a state school for purposes of financial support until the expiration of a complete fiscal year following the date on which the school becomes a district school. This subsection does not prevent a local government from expending money to contribute to the financial support of a state school which becomes a district school.

b. For each fiscal year thereafter, the state shall disburse to the district only that money to which the district is en-

titled under the public school foundation program.

(c) For the purposes of this section:

(1) "state school" means a school operated by the State Department of Education and entirely financed by state money; and

(2) "district school" means any school which comes under the jurisdiction of a district as that term is defined in this Act.

Sec. 5.03. **Repealer.** Ch. 90, SLA 1960, as amended, is repealed.

Sec. 5.04. **Transition.** Existing law shall be superseded and this Act put into operation in the following manner:

(1) for the fiscal year 1962-63, budgets

shall be prepared, state aid computed, and appropriations disbursed in accordance with existing law;

(2) during the fiscal year 1963-64, state aid shall be disbursed in accordance with existing law;

(3) beginning on July 1, 1963, budgets shall be prepared and state aid computed in accordance with this Act;

(4) beginning with the second session of the third Alaska legislature in 1964, appropriations shall be made in accordance with this Act;

(5) beginning on July 1, 1964, state aid shall be disbursed in accordance with this Act.

Sec. 5.05. **Effective Date.** This Act takes effect July 1, 1962.

Approved May 4, 1962

## CHAPTER 165

### AN ACT

Relating to state elections; amending Ch. 83, SLA 1960; and providing for an effective date.

(S.S.S.B. 147)

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

Section 1. Ch. 83, SLA 1960, is amended by adding a new Sec. 5.14 to read:

Sec. 5.14. **Party Committeemen and Committeewomen Elected at Primaries.** At such primary election, the members of the respective political parties shall also elect the members of the district and state central committees for the terms and in the number now provided, or as may hereafter be provided, in the party rules of organization of the respective parties. Party rules of organization may also provide for additional ex officio members of such committees.

(a) In the election years when a President of the United States is not to be elected, each major political party shall elect its national committeeman and its national committeewoman.

(b) To qualify as a candidate for election to the district or state central

committee, national committeeman, or committeewoman, a person must have registered a party preference in the preceding primary election.

(c) District committees shall be elected from and by the voters of each major senate district as provided in the party rules. State central committee members shall be elected from and by the voters of the state as provided in the party rules.

(d) Candidates for election to the district and state central committees, national committeeman, and national committeewoman shall file their nominating petitions or declarations with the secretary of state as required of candidates for state offices, and shall pay a fee of \$10 for district office, and a fee of \$20 for a state-wide office.

(e) The names of all candidates shall be printed on separate ballots for each political party. Voters who declare their party preference shall be issued a ballot for that party at the same time as

# MEMORANDUM

State of Alaska  
Department of Law

To: Scott Nordstrand  
Deputy Attorney General

Date: April 25, 2005

File No:

Tel. No.: (907) 465-3600

Fax: (907) 465-2520

From: Kathleen Strasbaugh  
Neil Slotnick  
Assistant Attorneys General  
Labor & State Affairs Section

Subject: Interpretation of  
AS 14.17.510(c)

## I. Introduction and Short Answers

You have requested that we answer two questions concerning AS 14.17.510(c), which limits to 50 percent the amount of an annual increase in the assessed value of the property in a city or borough school district that may be used to determine the amount of local contribution the district is required to make to obtain state funds for education.

The first question is whether the 50 percent discount allowed in AS 14.17.510(c) applies to an increase in a district's assessment on account of the annexation of additional territory. The short answer is yes.

The second question is how to apply the 50 percent discount when a district is formed after 1999, the base year from which increases covered by AS 14.17.510(c) are calculated. We believe that the legislature or the Department of Education and Early Development will have to determine through statute or regulation an appropriate base year for a newly formed district.

## II. Discussion

### A. AS 14.17.510(c) and Annexation

AS 14.17.510(c) provides:

(c) Notwithstanding AS 14.17.410(b)(2) and the other provisions of this section, if the assessed value in a city or borough school district determined under (a) of this section increases from the base year, only 50 percent of the annual increase in assessed value may be

included in determining the assessed value in a city or borough school district under (a) of this section. The limitation on the increase in assessed value in this subsection applies only to a determination of assessed value for purposes of calculating the required contribution of a city or borough school district under AS 14.17.410(b)(2) and 14.17.490(b). In this subsection, the base year is 1999.<sup>1</sup>

The effect of this subsection is to reduce the required local effort toward education and to increase the state aid for education in organized communities in which the assessed value of property is increasing. An annexation increases the assessed value of property in an organized community. Therefore, if we were to follow the plain language of the statute, it would appear that only fifty percent of the increase of assessed value over the base year valuation caused by an annexation would be included in the calculation of local effort.

In Alaska, however, we cannot assume that this plain language interpretation will control. “The objective of statutory construction is to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others.” *City of Dillingham v. CH2M Hill Northwest, Inc.*, 873 P.2d 1271, 1277 (Alaska 1994). Thus, “[s]tatutory construction begins with an analysis of the language of the statute construed in light of its purpose.” *Borg-Warner Corp. v. AVCO Corp.*, 850 P.2d 628, 633 n.12 (Alaska 1993). The Alaska Supreme Court has established a continuum, under which “the plainer the language of a statute, the more convincing contrary legislative history must be to interpret a statute in a contrary manner.” *Dillingham*, 873 P.2d at 1276.

Here, the legislative history does not provide a clear directive to overcome the plain meaning of the statute. This subsection was adopted in 2001. Ch. 95 §2, SLA 2001. In testimony before the Senate Finance Committee, the subsection was described

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<sup>1</sup> AS 14.17.410(b)(2) requires a city or borough school district to contribute the equivalent of a four mill tax levy of the full and true value of taxable property as determined by the Department of Commerce and Economic Development (DCED), not to exceed 45 percent of a district’s basic need. AS 14.17.490(b) prohibits a district from receiving the difference between its funding under AS 14.17.410 in 1999 and subsequent fiscal years if the district does not make the four mill contribution. AS 14.17.510(a) requires DCED to assess the full and true value of taxable property in the city or borough in consultation with the city or borough’s assessor.

as an effort to provide tax relief for “all of organized Alaska” by splitting the cost of increases in assessed value with local taxpayers. Sen. Finance Committee, Hearing on SB 174, *remarks of Sen. Wilken* (April 20, 2001). It was anticipated that additional general fund contributions would be required to make up the discount. Sen. Finance Committee, Hearing on SB 174, *remarks of Sens. Hoffman, Leman, and Wilken* (April 20, 2001).<sup>2</sup> The House Finance Committee discussed the effect of the 50 percent discount on education funding, but apparently the intent of subsection was not clear to its members. House Finance Committee on CSSB 174, *remarks of Rep. Davies* (May 6, 2001.)

On this history, it seems that in adopting subsection 510(c), the Senate Finance Committee intended to benefit property taxpayers in existing organized communities that had an increase in assessed value over the base year.<sup>3</sup> The focus appears to be on providing taxpayer relief from the increase in taxation caused by property appreciation. We find no evidence that the drafters ever addressed the question of appreciation of the municipal tax base through annexation. Yet, an increase in the required local effort would affect all municipal taxpayers, regardless of whether that increase was caused by annexation or appreciation. Furthermore, if annexed property were fully included in the calculation of local effort, it could create a disincentive to annexation—a result that would appear to be the opposite of legislative intent, which favored having a tax base and local effort. In sum, given the legislative intent to provide protection for municipal taxpayers from increases in the municipal tax base, we cannot say on this record that the legislature did not intend for the plain meaning of the statute to control.

Similarly, the canons of statutory construction for tax statutes do not fit well with this statute. Under well-settled law, exemptions to taxes are construed narrowly in favor of the government. *State, Dep’t of Revenue v. Alaska Pulp America, Inc.*, 674 P.2d 268, 276 (Alaska 1983) (“tax exemptions are construed narrowly against the taxpayer”); *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870, 879 (Alaska 1985)

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<sup>2</sup> The subsection was briefly addressed at an April 24, 2001, Senate Finance Committee hearing, when the word “annual” was added to the subsection, but little was added to the discussion of April 20.

<sup>3</sup> In his presentation to the Senate Finance Committee, Sen. Wilken presented a chart showing assessment changes in several municipalities, though it is not clear from the testimony whether the changes were increase or decreases. In the fiscal note accompanying the bill, 19 school districts showed increased state aid as a result of this section.

("[s]tatutes granting tax exemptions are narrowly construed."); *Union Oil Co. of California v. State, Dep't of Rev.*, 677 P.2d 1256, 1260 (Alaska 1984) (the principle that tax exemption laws are strictly construed against the exemption extends to exemptions by contracts). If this statute were a tax exemption, arguably we should construe it to favor full inclusion of annexed property. Yet, here, this statute is not a tax exemption. This statute is a determination of the tax base for local effort for education. The municipality may still tax all annexed property at the same rate that it taxes other property. We cannot conclude that this rule of construction overcomes the plain language of the statute that governs all increases in value since 1999, without regard to whether the increases were due to annexation or appreciation. Therefore, the Department of Community and Economic Development should treat increases in the municipal tax base caused by annexation the same as it treats increases caused by appreciation.

#### B. The Base Year for Newly Organized Municipal Districts

To address this second question, we first examined other sections of AS 14.17 to determine if the legislature had provided guidance on new municipal districts that might assist us in determining how AS 14.17.510(c) would apply to a newly formed municipal school district. *Cf. Bullock v. State, DC&RA*, 19 P.3d 1209, 1214-15 (Alaska 2001) (court will generally construe statutes *in pari materia* where two statutes deal with the same subject matter; principle of statutory construction that all sections of an act are to be construed together so that all have meaning and no section conflicts with another). Alaska Statute 14.17.410(e) addresses new municipal districts, and AS 14.17.490 uses fiscal year 1999 as a base year, but neither provides assistance in answering our question.

Unlike AS 14.17.410(e), AS 14.17.510(c) does not make any provision for newly organized city or borough school districts. Section 410(e) sets out alternate formulas for the calculation of the required local effort in the first three fiscal years the district operates schools after July 1, 1998. Section 510(c) assumes a 1999 base year for the purpose of calculating the 50 percent discount of full and true value, and makes no reference to section 410(e). The purpose of 410(e) is to ease the transition of a new district as it assumes its local obligation responsibilities. This is different from the purpose of 510(c), which is to provide property tax relief for districts with appreciating tax bases, although both could be seen as tax-relief measures.

AS 14.17.490 also adopts 1999 as a base year, but its purpose is to provide a mechanism to determine what additional state aid can be paid to those districts that might otherwise lose aid as a result of 1998 legislative changes in the school funding formula, and under what circumstances that aid will be reduced. It lacks any direct reference to new school districts, and would not apply to a district not in existence in 1998. Thus,

other statutes are of no assistance in trying to apply 510(c) to a new municipal school district.

If a new district does not have a 1999 DCED assessment, 1999 cannot be used as a base year for the purpose of determining eligibility for the 50 percent discount. Without further legislative guidance, we see two possible alternatives here. First, we could assume that since AS 14.17.410(e) was adopted in the same act as AS 14.17.510(c), section 410(e) is the exclusive tax relief for new districts, and 510(c) does not apply. This interpretation seems peculiarly harsh and inapt, given the legislative intent to encourage formation of municipal school districts. Alternatively, we could assume that the entire value of the municipality represents an increase from 1999. This result, too, would not be satisfactory. It would give the new municipality too large an exemption from the local effort requirement.

In order for the statutory scheme to work properly, a base year must be specified. We do not believe, however, that this office can find an implied-in-law base year that the assessor could use for a new municipality that did not have assessed property in 1999. Under well-settled law, we are very reluctant to “add missing terms or hypothesize differently worded provisions in order to reach a particular result.” *Hickel v. Cowper*, 874 P.2d 922, 927-28 (Alaska 1994); *see also Hootch v. State-Operated School Systems*, 536 P.2d 793, 804 (Alaska 1975) (rejecting request “to insert into the constitution a concept not present in the original document”); *Municipality of Anchorage v. Suzuki*, 41 P.3d 147, 150-51 (Alaska 2002) (“In ascertaining the plain meaning of a statute, we refrain from adding terms.”).

In our view, resolution of this issue will require a policy-making body—either the legislature or the state board—to designate a base year. The legislature has some time in which to take action. When a new municipality is formed, it likely will not assume school duties for two years. AS 29.05.140. Following that time, there is a three-year transition tax-ramp-up period allowed for under AS 14.17.410(e). Thus, the legislature will have five years to address this issue. If the legislature has not acted within that time to specify how to apply AS 14.17.510(c) to new municipal districts, the Department of Education and Early Development should adopt regulations to provide for the selection of a base year.<sup>4</sup> If no policy-making body has addressed this issue, we will have to revisit the matter. At this time, we do not see a logical way to apply 510(c) to a new municipal school district without some authority to designate a base year.

---

<sup>4</sup> The department has specific authority to adopt regulations necessary to implement chapter 17 of title 14. AS 14.17.920. Here, if the legislature fails to act, a regulation determining the base year would be necessary and consistent with legislative intent.

III. Conclusion

We conclude that AS 14.17.510(c) applies to all increases in value for an existing municipality. For new districts, the legislature or the department should specify a base year. If a base year is not specified by the legislature or the department, we conclude that the assessor would have no authority to imply a base year for application of AS 14.17.510(c) to a new municipal school district.

SCS/nfp

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

WAYNE ALEX, WILLIAM A. THOMAS, )  
JR., ED MAKI, JOHN C. MARTIN, )  
WARREN S. WESTROM, DICK )  
WORKMAN, MARK W. WHITE, CARL )  
SIMS, BRUCE R. GILBERT, FRED )  
CHAMBERS, DOUGLAS D. KARNS, )  
HAROLD D. BIELESKI and LEO R. )  
ALBECKER, JR., )

Plaintiffs, )

vs. )

SOUTHERN SOUTHEAST REGIONAL )  
AQUACULTURE ASSOCIATION, et )  
al., )

Defendants. )

COURTS  
JUNEAU DISTRICT  
ALASKA

*Reed*

1JU-78-191 CIV

PRELIMINARY INJUNCTION

Plaintiffs have moved for a preliminary injunction in the above-captioned matter. Based upon the pleadings and presentations of counsel, the court makes the following:

FINDINGS OF FACT

1. This court entered a decision and order on July 13, 1979, granting plaintiffs' motion for summary judgment and declaring that involuntary assessments against sale of salmon for the support of aquaculture associations under AS 16.10.530 is unconstitutional. That decision and order is incorporated by this reference.

2. The Southern Southeast Regional Aquaculture Association and the Northern Southeast Aquaculture Association have in place for the current season, assessment programs pursuant to AS 16.19.530, and absent a further order of this court, the assessments will be collected and paid over to the associations. The bulk of the assessment funds would be collected between the present date and the end of the 1979 fishing season. In the normal course and without further

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order of this court, the funds would be withheld from the fishermen illegally, would be passed along from the fish buyers and processors to the aquaculture association, and would be expended for programs which are already underway and to which the aquaculture associations are committed.

3. The continued collection of assessments under the statute, now declared void, or any expenditure of those funds or other action placing them out of the reach of the fishermen, would be an illegal act. The injury to fishermen of the continued assessments is real, and any countervailing injury to the aquaculture associations is not legally cognizable because it flows from constitutionally impermissible acts.

4. An appeal is planned in this case, and if the decision of this court were to be reversed, it would be difficult to put the parties back to the status quo ante if assessments were terminated and amounts previously collected were refunded pending appeal.

Based upon the foregoing Findings of Fact the court makes the following:

CONCLUSIONS OF LAW

1. Plaintiffs are entitled to an order enjoining the expenditure of funds collected under AS 16.10.530.

2. In order to protect the interests of the defendants pending any decision on appeal, the amounts to which the aquaculture associations would otherwise be entitled under programs authorized pursuant to AS 16.10.530, should be collected and held in trust pending final disposition by this court.

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P.O. BOX 1211, JUNEAU, ALASKA 99802

Based upon the foregoing Findings of Fact and  
Conclusions of Law,

IT IS ORDERED:

1. That the defendants shall be and are enjoined from transferring, committing or expending any proceeds for any assessments collected in Southeast Alaska for fish delivered to processors after July 13, 1979, under the authority of AS 16.10.530, except as provided in this injunction.

2. That the processor defendants shall continue to collect such assessments as have heretofore been authorized pursuant to AS 16.10.530, and shall, in the ordinary course of business, forward all proceeds of those collections as follows:

a) Those assessments which would otherwise be forwarded or transferred to Northern Southeast Regional Aquaculture Association, shall be deposited in an account established for the purposes of this order at the First National Bank of Anchorage, Juneau Branch, which account shall bear interest at the highest prevailing rate and shall be subject to the further order of this court.

b) Those assessments which would otherwise be forwarded or transferred to Southern Southeast Regional Aquaculture Association, shall be deposited in an account established for the purposes of this order at the National Bank of Anchorage, Anchorage Downtown Branch, which account shall bear interest at the highest prevailing rate and shall be subject to the further order of this court.

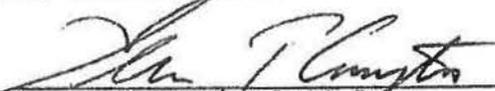
c) Those assessments which any commercial fisherman has agreed that, on a form approved by this court, may be

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collected or expended as a voluntary assessment under AS 16.10. 540 and which the defendants have agreed may be offset against any obligation under AS 16.10.530, shall be forwarded to defendant Southern Southeast Regional Aquaculture Association, Inc. or Northern Southeast Regional Aquaculture Association, Inc. as may be appropriate.

This injunction shall remain in effect until modified or superseded by this court.

DATED this 16 day of August, 1979.

  
Superior Court Judge

CERTIFICATION

The undersigned certifies that on the 16 day of August, 1979, a true copy of this document was served on the following attorneys:

Ellis, Sand; Szopdex; Pope, Ruddy, Monroe  
Horton, Kozell, Koster, [unclear], Korman

By Harold H. [unclear]

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

WAYNE ALEX, WILLIAM A THOMAS, )  
JR., ED MAKI, JOHN C. MARTIN, )  
WARREN S. WESTROM, DICK WORKMAN, )  
MARK W. WHITE, CARL SIMS, BRUCE R. )  
GILBERT, FRED CHAMBERS, DOUGLAS )  
D. KARNS, HAROLD D. BIELESKI, and )  
ERO R. ALBECKER, JR., )

Plaintiffs,

Vs.

SOUTHERN SOUTHEAST REGIONAL  
AQUACULTURE ASSOCIATION, et al.,

Defendants.

30

JP

1JU-78-191-Civ.

ORDER

Pursuant to a Stipulation to Amend Order filed by the parties in this court on the 23 day of April, 1981,

IT IS ORDERED that this court's order of August 16, 1979 in the above-captioned case is amended to provide that no further royalty assessments are to be collected under AS 16.10.530 after April 1, 1981 in either the Southern Southeast Region or the Northern Southeast Region.

DATED this 30 day of April, 1981 at Juneau, Alaska.

*Alan Thompson*  
Superior Court Judge

ATTORNEY GENERAL, STATE OF ALASKA  
STUART S. HAYES  
PO BOX 11060 JUNEAU ALASKA 99801

1ST

*may 81*  
*Michael Thomas, Douglas Pope*  
*William Council, Thomas Keeter*  
*James R. Martin*

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, NORTHERN  
SOUTHEAST REGIONAL AQUACULTURE  
ASSOCIATION, and SOUTHERN  
SOUTHEAST REGIONAL AQUACULTURE  
ASSOCIATION,

Appellants,

v.

WAYNE ALEX, WILLIAM A. THOMAS,  
JR., ED MAKI, JOHN C. MARTIN,  
WARREN S. WESTROM, DICK WORKMAN,  
MARK W. WHITE, CARL SIMS, BRUCE R.  
GILBERT, FRED CHAMBERS, DOUGLAS D.  
KARNS, HAROLD D. BIELESKI, and  
LEO R. ALBECKER, JR.,

Appellees.

File No. 5065, 5086  
and 5147

BARBATEI

TO: Superior Court of the State of Alaska,  
First Judicial District at Juneau.

The State of Alaska, Northern Southeast Regional  
Aquaculture Association and Southern Southeast Regional  
Aquaculture Association filed appeals from a judgment of  
the Superior Court, First Judicial District at Juneau  
in Civil Action No. 133-75-191 entitled, "WAYNE ALEX,  
WILLIAM A. THOMAS, JR., ED MAKI, JOHN C. MARTIN, WARREN  
S. WESTROM, DICK WORKMAN, MARK W. WHITE, CARL SIMS,  
BRUCE R. GILBERT, FRED CHAMBERS, DOUGLAS D. KARNS, HAROLD  
D. BIELESKI and LEO R. ALBECKER, JR., Plaintiffs vs.  
SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, et al.,  
Defendants". The case was heard by this court on January  
7, 1981. On April 23, 1982, the court filed its written  
opinion.

IT IS ORDERED:

The judgment of the Superior Court entered on November  
15, 1979, is affirmed.

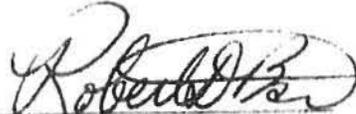
The Appellees shall recover from the Appellants costs  
and Attorney's Fees as shown below:

Costs and Attorney's Fees	
Duplicating Appellee's brief	309.00
Attorney's Fees	750.00
Total	\$ 1,059.00

Mandate  
Page 2  
Supreme Court Nos. 5056, 5086  
and 5142

Entered by direction of the Court and pursuant to  
Appellate Rule 507 at Anchorage, Alaska, on May 4, 1982.

CLERK OF THE SUPREME COURT



Robert D. Bacon

FILED AND ENTERED  
APPELLATE COURTS of the  
STATE of ALASKA  
MAY 4 1982  
BY  CLERK  
Deputy

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

3 WAYNE ALEX, et al., )  
4 Plaintiff, )  
5 vs. )  
6 SOUTHERN SOUTHEAST REGIONAL )  
7 AQUACULTURE ASSOCIATION, ) No. 1JU-78-191 Civil  
8 et al., )  
9 Defendant. )

10 CORRECTED  
11 PARTIAL SUMMARY JUDGMENT

12 Judgment in favor of the plaintiff class is hereby  
13 entered against the State of Alaska and the Northern Southeast  
14 Regional Aquaculture Association in the sum of \$1,268,447.85,  
15 plus prejudgment interest at 8 percent to August 1, 1982 of  
16 \$321,190.24, for a total of \$1,589,638.09.

17 Judgment in favor of the plaintiff class is hereby  
18 entered against the State of Alaska and the Southern Southeast  
19 Regional Aquaculture Association in the sum of \$3,080,226.22,  
20 plus prejudgment interest at 8 percent to August 1, 1982 of  
21 \$912,141.37, for a total judgment of \$3,992,368.09.

22 Judgment is hereby entered authorizing the transfer of  
23 all funds in the trust accounts established pursuant to this  
24 court's August 16, 1979 order to the State of Alaska, to be add-  
25 ed to the amount appropriated by § 6 at 139 SIA 1982, for the  
26 purpose of satisfying this judgment and any additional orders  
27 entered in this action.

28 Judgment is hereby entered directing the State of  
29 Alaska to transfer \$227,381.13 to the Northern Southeast Region-  
30 al Aquaculture Association.

31 Judgment is hereby entered directing the State of  
32 Alaska to transfer \$206,986.75 to the Southern Southeast Region-  
33 al Aquaculture Association.

34 Judgment is hereby entered making the State of Alaska  
35 primarily liable for amounts due the plaintiff class to the

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1 extent those amounts may be satisfied by funds from the appro-  
2 priation in § 6 ch. 139 SLA 1982 and funds remaining after the  
3 transmittal of the indicated sums to the aquaculture asso-  
4 ciations. The aquaculture associations shall be liable on a  
5 proportionate basis for any amounts which the State of Alaska is  
6 unable to satisfy from those funds.

7 The plaintiff class shall promptly file its motions  
8 regarding costs and attorneys fees.

9 All matters relating to the assignment of any remain-  
10 ing causes of action will be determined at a future date and are  
11 not encompassed in this partial summary judgment.

12 All matters relating to additional amounts to be  
13 transferred to the Northern Southeast Regional Aquaculture Asso-  
14 ciation and the Southern Southeast Regional Aquaculture Asso-  
15 ciation will be determined at a future date and are not encom-  
16 passed in this partial summary judgment.

17 All matters relating to interest accruing to the  
18 Northern Southeast Regional Aquaculture Association and the  
19 Southern Southeast Regional Aquaculture Association will be de-  
20 termined at a future date and are not encompassed in this par-  
21 tial summary judgment.

22 All matters relating to the sharing of costs among  
23 defendants, and to costs and attorneys fees incurred by the  
24 Northern Southeast Regional Aquaculture Association and the  
25 Southern Southeast Regional Aquaculture Association, will be de-  
26 termined at a future date and are not encompassed in this par-  
27 tial summary judgment.

28 Dated October 15, 1982, nunc pro tunc to September  
29 21, 1982, at Juneau, Alaska.

30   
31 Superior Court Judge

ATTORNEY GENERAL, STATE OF ALASKA  
JAMES H. BROWN  
1000 N. SITKA AVENUE, JUNEAU  
ALASKA 99801  
PHONE 485-3800

# 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*



MR. RALPH J. RIVERS  
ATTORNEY GENERAL OF ALASKA  
*Chairman of Commission*

MR. FRANK A. BOYLE  
AUDITOR OF ALASKA  
*Secretary of Commission*

MR. NORMAN C. BANFIELD  
ATTORNEY AT LAW—JUNEAU  
*Member of Commission*

*Alaska Law Compilation Commission*

J. OLIVER TUCKER  
*Editor in Chief*

### Volume II

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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).

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[Alaska]

## NOTES OF DECISIONS

There is imposed upon the council the legislative power and duty of providing the means to support the public schools, and upon the board the executive power and duty of superintending, directing, and governing them. *Brace v Solner* (1901) 1 A 361.

"Maintenance" is the act of maintaining. To maintain is to hold or preserve in any particular state or condition; to keep from falling, declining, or ceasing; to supply with means of support; to provide for, to sustain, to keep up. *Brace v Solner* (1901) 1 A 361.

"Supervision" means having general oversight of, especially as an officer vested with authority; oversight; inspection; the act of supervising; su-

perintendance. *Brace v Solner* (1901) 1 A 361.

To "control" is to exercise a directing, restraining, or governing influence over; to direct; to regulate; to guide. *Brace v Solner* (1901) 1 A 361.

The law imposed the duty upon the town council to provide for an election for the choosing of members of the school board, and to declare the results. *Brand v Nome* (1906) 3 A 29.

Under similar provisions of the former law relating to the first election of the school board, it was deemed one of the rights of the electors to fix the terms of the members of the first board, where they were of unequal duration. *Brand v Nome* (1906) 3 A 29.

**§ 37-3-33. Expenditure and custody of funds: Treasurer's bond: Power to employ teachers and maintain schools.** All money available for school purposes, except for the construction and equipment of school houses and the acquisition of sites for the same, shall be expended under the direction of said board, and the treasurer of said board shall be the custodian of said money, and he shall, before entering upon the duties of the office, give his bond with sufficient sureties to the city in such sum as the council may direct and subject to its approval, but not less than twice the amount that may come into his hands at any one time as treasurer, conditioned that he will honestly and faithfully disburse and account for all money that may come into his hands as such treasurer, which bond shall be filed with the municipal clerk. He shall pay no money from the treasury except for the purpose authorized by law and on warrants signed by the clerk and countersigned by the president of the board. The said board shall have the power to hire and employ the necessary teachers, to provide for heating and lighting the schoolhouse and in general do and perform everything necessary for the due maintenance of a proper school. [L 1923, ch 97, § 30, p 207; CLA 1933, § 1305.]

**§ 37-3-34. Reports to Commissioner of Education.** The clerk of the school board shall from time to time make such reports to the Commissioner of Education as shall be by the latter or by the Territorial Board of Education required. [L 1923, ch 97, § 31, p 207; CLA 1933, § 1306.]

**§ 37-3-35. Submission of budget to council: Determination of amount available: Order for payment to school board treasurer:**

§ 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.

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INDEPENDENT SCHOOL DISTRICTS

§ 37-3-43

- § 37-3-51. Bond of treasurer and assessor: Custody of funds: Compensation of officers.
- § 37-3-52. Board to provide for elections.
- § 37-3-53. Board to prepare and present budget: Proportioning funds between city and outside territory: Levy and collection of taxes: Delinquent taxes: Exemptions.
- § 37-3-54. Lien and liability for taxes: Enforcement: Board to have taxing powers and duties of council: Refunds.
- § 37-3-55. Record and statement of receipts and disbursements.

**§ 37-3-41. Incorporation authorized: Area.** The people of any incorporated city and its adjacent settlement, or settlements may incorporate as Independent School Districts in the manner hereinafter provided, but such districts shall not embrace more than two hundred fifty (250) square miles of territory. [L 1935, ch 77, § 1, p 157; am L Ex Sess 1946, ch 7, § 1, p 45, effective March 29, 1946.]

**§ 37-3-42. School board: Management of school matters: Organization and election of officers: Assessor.** Each school district organized under the provisions of this Act shall have a school board of five (5) members to be elected as hereinafter provided, who shall have the exclusive management and control of school matters in the district, subject to the Territorial School Laws and regulations promulgated by the Commissioner of Education and the Territorial Board of Education.

Within seven (7) days after each annual school board election, which election shall be on the same day and at the same time as the city election in such districts, the board shall organize and annually elect one of its members as president, one as treasurer, and one as clerk of the board. Said board shall also have the power, and it shall be its duty, to appoint from its number or from among the residents of the Independent School District, an assessor who shall place an assessed valuation on all real and personal property outside the city included in the district and included within the limits of the district in accordance with the valuations of similar property within the city; and it shall further be his duty to act as tax collector in the district located outside the city, and who, before assuming the duties of his office, shall take an oath in writing to honestly and faithfully discharge the duties of his office. [L 1935, ch 77, § 2, p 157.]

**§ 37-3-43. Manner of incorporation: Petition and order for election: Notice of election.** The manner of incorporation of Independent School Districts shall be as follows: A petition praying for such incorporation shall first be presented to the Judge of the United States District Court of the Judicial Division in which the

proposed school district is located. Such petition must be signed by as many voters as would be equal to twenty-five per cent (25%) of the number of people who voted in the proposed school district at the last General Election and who are residents of the proposed school district, and shall specify as nearly as may be possible the location, boundaries, and number of inhabitants of the proposed school district, and specify the name by which it is to be known.

The Judge of the District Court, upon presentation and filing of such petition, shall order an election in said proposed district for the purpose of determining whether the people of the community desire such incorporation, and shall, by said order, designate the date of such election, the places and hours of voting, and appoint three qualified voters in the proposed school district to supervise and appoint judges and election officers for such election.

A printed or typewritten copy of said order shall be posted in three public places within the limits of the proposed school district for at least thirty (30) days prior to the day of election, and such posting shall be sufficient notice of such election. [L 1935, ch 77, § 3, p 158.]

**§ 37-3-44. Qualifications of electors: Ballots.** The qualifications of the electors at said, or any subsequent school district election, shall be as follows, to-wit: All citizens of the United States, twenty-one (21) years of age and over, who are actual and bona fide residents of Alaska, who have been such residents continuously during the entire year immediately preceding the election, and who have been such residents continuously for thirty (30) days next preceding the election in such school district, and who are able to read and write the English language as prescribed by an Act of the United States Congress on March 3, 1927, entitled, "An Act to prescribe certain qualifications of voters in the Territory of Alaska, and for other purposes," shall be qualified to vote at such elections; provided, however, that the requirements of this section as to ability to read and write shall not apply to any person who is incapacitated from complying therewith by reason of physical disability alone. The persons appointed to conduct such first election shall provide a form of printed or written ballots suitable for determining the question whether the voter is in favor of, or against, the incorporation of the district, and the election of five directors who must be qualified electors of the school district and whose term of office shall be as hereinafter prescribed. [L 1935, ch 77, § 4, p 159.]

**§ 37-3-45. Oath of election judges: Canvass: Certificates of results.** The judges of election shall, before entering upon the

duties of their offices, impartially discharge their duties, canvass and compile the results, and seals a certificate of incorporation cast in favor of incorporation. One of all ballots and oaths cast in favor of incorporation proposed to be incorporated shall be filed with the Clerk of the District Court the third of said certificate. [L 1935, ch 77, § 5, p 159.]

**§ 37-3-46. Order of Powers of district.** If a majority of the voters are in favor of incorporation, the order of writing entered in the District Court shall declare that the district is incorporated, and shall describe the school district, and shall describe the powers hereinafter conferred upon the school district, and shall describe the boundaries of the school district.

**§ 37-3-47. Qualifications for school board members.** The qualifications of election shall be as follows: All citizens of Alaska, who are also canvass the voters of the school board and in the district where such election, the judges shall issue the greatest number of ballots, and deliver to the voters the date for any office shall be as hereinafter prescribed. [L 1935, ch 77, § 7, p 160.]

**§ 37-3-48. Qualifications of school board members.** The school board members shall, before entering upon their office, and before entering upon their office, which shall be filed with the District Court in which the election was held. [L 1935, ch 77, § 8, p 161.]

duties of their offices, take an oath in writing to faithfully and impartially discharge the duties of their trust and they shall duly canvass and compile the votes cast and issue under their hands and seals a certificate in triplicate showing the number of votes cast in favor of incorporation and the number of votes cast against incorporation. One of said triplicate certificates, together with all ballots and oaths of the judges of election, shall immediately be filed with the Clerk of the District Court in which the district proposed to be incorporated is situated. Another of said certificates shall be filed with the Territorial Board of Education, and the third of said certificates shall be filed with the School Board. [L 1935, ch 77, § 5, p 159.]

**§ 37-3-46. Order of District Judge declaring incorporation: Powers of district.** If a majority of the votes cast at said election are in favor of incorporation the District Judge, by an order in writing entered in the records of the court, shall adjudge and declare that the district in which such election has been held is a school district corporation, and the same shall thenceforth exercise the powers hereinbefore and hereinafter designated, and such other powers as may be granted by law. Said order shall designate the school district by name and may correct or more definitely describe its boundaries. [L 1935, ch 77, § 6, p 160.]

**§ 37-3-47. Qualifications of election judges: Canvass of votes for school board members: Certificates of election.** The said judges of election shall be qualified voters in the school district and shall also canvass the vote cast at said election for members of the school board and in case the majority of the votes cast in the district where such election is held have voted for incorporation, the judges shall declare the five candidates, who have received the greatest number of votes for such office, duly elected and shall issue and deliver to them certificates of their election. No candidate for any office shall be eligible to serve as judge of election. [L 1935, ch 77, § 7, p 160.]

**§ 37-3-48. Qualifications and oath of school board members.** The school board chosen at said election as well as those chosen at subsequent elections shall be qualified voters in the school district, and before entering upon the duties of their offices severally take an oath in writing to faithfully and honestly discharge the duties of their office, which oath shall be filed with the Clerk of the District Court in which the incorporated school district is situated. [L 1935, ch 77, § 8, p 160.]

§ 37-3-49. **Term of office of school board members.** The term of office of the school board members of an Independent School District shall be five (5) years, one member retiring each year and one new member being elected to take his place, except that the terms of the first five members shall be as follows: Immediately after qualifying as board members, the board shall assemble and shall by lot draw the numbers 1, 2, 3, 4, and 5. The member drawing Number 1 shall hold office until the next regular school election at which time his successor shall be elected; the member drawing Number 2 shall hold office until the second school election following at which time his successor shall be elected; the member drawing Number 3 shall hold office until the third school election following at which time his successor shall be elected; the member drawing Number 4 shall hold office until the fourth school election following at which time his successor shall be elected; the member drawing Number 5 shall hold office until the fifth school election following at which time his successor shall be elected. [L 1935, ch 77, § 9, p 160.]

§ 37-3-50. **Filling vacancy in membership of board.** In case a vacancy in the membership of said board occurs from death, resignation, removal, or other causes, such vacancy shall be filled by the remaining members of the board, and [the successor?] shall serve as a member of said board until the next school election. In case the remaining members of the board cannot agree, they shall call a special election for the purpose of filling such vacancy. [L 1935, ch 77, § 10, p 161.]

§ 37-3-51. **Bond of treasurer and assessor: Custody of funds: Compensation of officers.** The treasurer and assessor of the school board shall give such bond with such sureties as the school board may require. Said bonds to be conditioned for the honest and faithful disbursing and accounting of all monies that may come into the hands of such officers by virtue of their offices. The treasurer of the board shall be custodian of all funds belonging to the school district. The board shall have the power, subject to the approval of the Territorial Commissioner of Education, to fix the compensation of the Clerk, treasurer and assessor, which compensation shall be paid from funds belonging to the school district and raised by taxation therein, and the district shall not be entitled to refund from the Territory on account of any compensation so paid. [L 1935, ch 77, § 11, p 161.]

§ 37-3-52. **Board to provide for elections.** The school board shall have the power and it shall be their duty to prescribe rules

for the conduct of notice of election, judges of election election. [L 1935, c

§ 37-3-53. **Board funds between city taxes: Delinquent taxes:** Delinquent taxes of May each year the funds needed for all beginning on the first following. It shall of the funds to be the funds to be raised. It shall then its approval or rejection city council shall at it shall set aside for expenses for the school board.

The board shall the tion of the district l accordingly and this the city's share with to the treasurer of the of the fiscal school y assessor appointed b of October of each y taxable property out on or before the first other half. The per the city but within t city council for the rates of interest on c dents of the Independ limits shall be allowe within the city. [L

§ 37-3-54. **Lien an have taxing powers** levied and assessed be a lien upon the pro paramount to all oth closed by an approp diction. The owner liable for the amount

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

§ 37-3-55

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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-

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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.

# ALASKA STATUTES

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## Title 14 Education

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DECEMBER 1962

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at the next general election. (§ 37-3-32 ACLA 1949; am § 1 ch 51 SLA 1951)

**Sec. 14.15.300. Expenditure and custody of funds.** Money available for school purposes, except for the construction and equipment of schoolhouses and the acquisition of school sites, shall be expended under the direction of the school board. The treasurer of the board is the custodian of the money. Before entering upon the duties of the office, the treasurer shall give his bond with sufficient sureties to the city in the sum the council directs and subject to its approval, but not less than twice the amount that may come into his hands at any one time, conditioned that he will honestly and faithfully disburse and account for all money that may come into his hands as treasurer. The bond shall be filed with the municipal clerk. The treasurer shall not pay money from the treasury except for the purpose authorized by law and on warrants signed by the clerk and countersigned by the president of the board. (§ 37-3-33 ACLA 1949)

**Control over money paid to board.**—When once city money has been appropriated for the maintenance of schools, and paid over to the treasurer of the school board, the city no longer has control over it, or right to it, except, perhaps, as an ultimate reversioner. Such money passes into the custody of the treasurer of the school board, to be expended under the direc-

tion of the board for the maintenance of schools. *Ketchikan v. Strong*, 6 Alaska 114.

**Duty of governing body.**—The governing body of the city has the duty of providing the school district with suitable schoolhouses and maintaining public schools therein. *Blue v. Stockton*, Sup. Ct. Op. No. 15 (File No. 7), 355 P. (2d) 395.

**Sec. 14.15.310. Power of board to employ teachers and maintain schools.** The school board may hire and employ the necessary teachers, provide for heating and lighting of schools and perform everything necessary for the due maintenance of proper schools. (§ 37-3-33 ACLA 1949)

**Sec. 14.15.320. Reports to department.** The clerk of the school board shall make such reports to the department as it requires. (§ 37-3-34 ACLA 1949)

**Sec. 14.15.330. Submission of budget to council.** As soon as a city school board is organized after the annual election it shall estimate the amount of money necessary for school purposes for the ensuing school year and shall submit a budget to the city council. The city council shall then determine the amount of money to be made available for school purposes, shall furnish the school board of the city a statement of the sum, and shall require the treasurer to pay the sum to the treasurer of the school board. (§ 37-3-35 ACLA 1949)

Cited in *Blue v. Stockton*, Sup. Ct. Op. No. 15 (File No. 7), 355 P. (2d) 395.

37-3-32 ACLA 1949; am § 1 ch 51

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treasurer of the school board.

Sec. 14.15.340. Tax levy. The amount of money to be made available by the municipality for school purposes shall be determined by the city council by resolution before the tax levy is made. The amount may be levied as a separate tax or as a part of the municipal tax. (§ 37-3-35 ACLA 1949)

Sec. 14.15.350. Report of expenditures to council. The school board shall, when required by the city council, but not more often than once each month, transmit to the city council a detailed report and statement of money expended and for what and to whom the money was paid. (§ 37-3-36 ACLA 1949)

Cited in Blue v. Stockton, Sup. Ct.  
Op. No. 15 (File No. 7), 355 P. (2d)  
395.

Sec. 14.15.360. Record and minutes of school board. The clerk of the school board shall keep the minutes of the meetings and a record of all the proceedings of the board in permanent form. The treasurer of the school board shall keep an accurate and full account of all the money received and expended by him, and shall preserve the proper vouchers for all expenditures. (§ 37-3-37 ACLA 1949)

Sec. 14.15.370. Inspection of records. The records and files of the school board are open to inspection by the public at all reasonable times. (§ 37-3-37 ACLA 1949)

Article 4. Independent School Districts.

Section	Section
380. Determining budget of an independent school district	490. Limitation on submission of proposition
390. Presentation of budget to city council	500. Notice of tax referendum
400. Levy and collection of taxes	510. Form of ballot and election
410. Penalties and interest on taxes outside city	520. Purpose and general limitations on sales tax
420. Manner of assessment, levy and collection of school district taxes	530. Persons ineligible to vote
430. Lien and liability for taxes and taxing power of school board	540. Power of certain independent school districts to levy, assess and collect taxes
440. Property subject to taxation and assessment	550. Vote required for approval
450. Refunds	560. Manner of levy, assessment and collection of taxes
460. Consumer's sales tax	570. Effect upon city's obligation for schools
470. Levy and collection of tax	580. Joint agreement for use of tax records
480. Referendum required	590. Record and statement of receipts and disbursements

Sec. 14.15.380. Determining budget of an independent school district. Before May 2 in each year the school board of an independent school district shall

(1) determine the amount of funds needed for all school pur-

poses for the following school year, beginning on the July 1 and ending on June 30, the year following;

(2) determine the proportion of the funds to be raised inside the city and the proportion of the funds to be raised outside the city based on assessed valuations. (§ 37-3-53 ACLA 1949; am § 58 ch 174 SLA 1957)

Provisions directory. — The provisions of AS 14.15.380—14.15.420, so far as they prescribe the time for the performance of the acts specified, are purely directory. In re Haines Independent School District's Delinquent Taxes, 12 Alaska 662; Miller v. Anchorage Independent School Dist., 12 Alaska 591.

Board may provide for discharge of obligations of its predecessor. — In levying a tax for school purposes during the first year of its existence, a

school district has the power to provide by taxation for the discharge of obligations incurred by its predecessor, even though such obligations antedate the organization of the school district. In re Haines Independent School District's Delinquent Taxes, 12 Alaska 662.

Applied in Anchorage v. Chugach Elec. Ass'n, Inc., 17 Alaska 481, 252 F. (2d) 412.

Cited in In re Delinquent Tax Roll, 16 Alaska 286.

Sec. 14.15.390. Presentation of budget to city council. The school board shall 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. (§ 37-3-53 ACLA 1949; am § 58 ch 174 SLA 1957)

Sec. 14.15.400. Levy and collection of taxes. The school board shall determine the share to be paid by that portion of the district lying outside the city and levy the rate outside accordingly. The rate shall be the same as is necessary to raise the city's share inside 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, before October 2 of each year collect one-half of the taxes due from all taxable property outside the city limits but within the district and, before March 2 of each year, he shall collect the other half. (§ 37-3-53 ACLA 1949; am § 58 ch 174 SLA 1957)

Sec. 14.15.410. Penalties and interest on taxes outside city. The penalties for the nonpayment of taxes and the rate of interest on delinquent taxes outside the city but within the district are the same as those fixed by the city council for the nonpayment of taxes within the city. Each resident of the independent school district living outside the city limits is entitled to the same exemption of taxes as is permitted within the city. (§ 37-3-53 ACLA 1949; am § 58 ch 174 SLA 1957)

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interest on taxes outside city. of taxes and the rate of in-the city but within the district e city council for the nonpay-ch resident of the independent y limits is entitled to the same d within the city. (§ 37-3-53 1957)

**Sec. 14.15.420. Manner of assessment, levy and collection of school district taxes.** Taxes shall be assessed, levied, equalized, and collected in the manner provided for assessment, levy and equalization and collection of taxes by municipal corporations. (§ 37-3-53 ACLA 1949; am § 58 ch 174 SLA 1957)

**Sec. 14.15.430. Lien and liability for taxes, and taxing power of school board.** Taxes levied and assessed by the school board under §§ 380—590 of this chapter are a lien upon the real and personal property assessed after June 30 of the year in which they are levied until paid. The lien is prior and paramount to all other liens and encumbrances, except unpaid taxes, interest and penalties previously imposed and levied by a taxing unit on the property and may be foreclosed in the manner prescribed for municipal corporations. The owner of the property assessed is personally liable for the amount of taxes levied and assessed against the property, together with penalties and interest. The taxes, together with penalties and interest, may be collected after they are due, in a personal action brought in the name of the school district against the owner. Each school board in an independent school district has all of the powers and duties of the common council of a municipal corporation in the levy and collection of taxes. The laws relative to the levy and collection of taxes by municipal corporations are extended and made applicable to independent school districts. (§ 37-3-54 A ACLA 1949; am § 1 ch 96 SLA 1951; am § 1 ch 124 SLA 1953; am § 1 ch 63 SLA 1955; am § 59 ch 174 SLA 1957)

**Priority of school district tax liens.**—The right of the legislature to make school district tax liens prior to all others, giving them priority over a mortgage or other lien, appears to be well settled. Bentley v. Kirbo, 169 F. Supp. 38.

**Over federal tax liens.**—Federal tax

liens are not entitled to priority over those of an independent school district. Bentley v. Kirbo, 169 F. Supp. 38.

Cited in Anchorage v. Chugach Elec. Ass'n, Inc., 17 Alaska 481, 252 F. (2d) 412; Hess v. Mullaney, 12 Alaska 696, 91 F. Supp. 139.

**Sec. 14.15.440. Property subject to taxation and assessment.** Property in the school district, not expressly exempt, is subject to taxation, and shall be valued and assessed at its true and fair value in the name of its owner of record. However, the assessed value of an unimproved, unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is fixed at \$200 for each 20 acres or fraction of 20 acres. If the surface ground of a claim is used for other than mining purposes and has a separate and independent value for nonmining uses, the improvements and personal property incidental to nonmining uses shall be assessed at their true and fair value. (§ 37-3-54 A ACLA

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Title 14

Education

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SEPTEMBER 1966

Sec. 14.14.200. Duties. An advisory school board shall advise and assist the department through the local official administering the school, and shall do so in the manner the department prescribes by regulation. (§ 1 ch 98 SLA 1966)

Chapter 15. School Districts and City Schools.

Article

- 1. Classes of School Districts (Repealed)
- 2. Districts Outside Incorporated Towns (Repealed)
- 3. City Schools and School Districts (Repealed)
- 4. Independent School Districts (Repealed)
- 5. Maintenance of City Schools and Incorporated District Schools (Repealed)
- 6. Annexation of Territory (Repealed)
- 7. Consolidated School Districts (Repealed)
- 8. Dissolution of School Districts (Repealed)

Article 1. Classes of School Districts.

Section

10. [Repealed]

Sec. 14.15.010. Classes of school districts.

Repealed by § 59 ch 98 SLA 1966, effective July 1, 1966.

Editor's note.—The repealed article derived from § 37-3-1, ACLA 1949.

Article 2. Districts Outside Incorporated Towns.

Section

20—220. [Repealed]

Secs. 14.15.020—14.15.220.

Repealed by § 59 ch 98 SLA 1966, effective July 1, 1966.

Editor's note.—The repealed article derived from § 37-3-1 et seq., ACLA 1949; § 1, ch. 24, SLA 1951; § 1, ch. 67, SLA 1951; §§ 1, 2, ch. 119, SLA 1960.

Article 3. City School and School Districts.

Section

230—370. [Repealed]

Secs. 14.15.230—14.15.370.

Repealed by § 59 ch 98 SLA 1966, effective July 1, 1966.

Editor's note.—The repealed article derived from § 37-3-1 et seq., ACLA 1949; § 1, ch. 51, SLA 1951.

Article 4. Independent School Districts.

Section

380—590. [Repealed]

Secs. 14.15.380—14.15.590.

Repealed by § 59 ch 98 SLA 1966, effective July 1, 1966.

Editor's note.—The repealed article derived from § 37-3-1 et seq., ACLA 1949; § 1, ch. 96, SLA 1951; §§ 1—5, ch. 109, SLA 1953; § 1, ch. 124, SLA 1953; § 1, ch. 63, SLA 1955; §§ 58, 59, ch. 174, SLA 1957; §§ 2, 3, ch. 66, SLA 1959; §§ 1, 2, ch. 123, SLA 1960.

§ 14.1

A

Section 600—7E

Secs

Rep

Edito derived

1949;

1949; §

ch. 68,

Section 760—80

Secs

Rep

Edito

derived 1949.

Section 810—94

Secs

Rep

Edito

derived SLA 19

Section 950—96

Secs

Rep

Edito

derived 1949.

Article

1. State

2. Prep

3. Proce

14.1

4. Gene

Section

10. Pub

20. Stat

30. Req

40. Bas

Sec.

March 11, 1959

1959 Opinions of the  
Attorney General, No. 7

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

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

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

Dear Governor Wade:

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

Section 7 reads as follows:

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

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

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

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

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

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

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

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

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

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

are "required" will be permitted. Any attempted dedication of funds after April 26, 1956, which is not absolutely required for participation in Federal programs must be covered into the general fund, any statute not withstanding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1957) (D. no. 1957)

The first question is whether H.B. 126, which is substantially a re-enactment of Ch. 10, SLA 1949, the Alaska Property Tax Act, violates § 7 of the Constitution by providing in § 4 of the bill that the tax levied by the State shall be turned over to the local political subdivision wherein collected.

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

Hon. Hugh J. Wade  
Acting Governor of Alaska

March 11, 1959  
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express intent of the constitutional framers: that each obligation of government be judged both on its own merits and in comparison with the merits of others in the computation of the budget. (See page 31 et seq. of the written transcripts from the January 24, 1956, session of the Convention for the proposition that a dedication is present when a tax proceed is earmarked from the time it is collected.) Also note that at foot 118, tape 3, it is indicated that the return of liquor license fees and business license fees to political subdivisions constituted a dedication, but since they were earmarked at the time of ratification, they would continue to be dedicated.

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

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

Very truly yours,

J. GERALD WILLIAMS  
ATTORNEY GENERAL

By  
Jack O'Hair Asher  
Assistant Attorney General

JO'HA:bb

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

cc: Department of Finance  
Alaska Office Building  
Juneau, Alaska

1992 Alaska Op. Atty. Gen. (Inf.) 33 (Alaska A.G.), 1990 WL 538917

Office of the Attorney General

State of Alaska  
File No. 663-90-0092  
January 12, 1990

Redated January 1, 1992

**\*1 Legislative proposal to reenact statutory dedications of vehicle, aviation, and marine fuel tax**

Hon. Mark Hickey  
Commissioner  
Dep't of Transportation and Public Facilities

At your request we have reviewed the advice given in our memorandum of September 11, 1989. You asked whether, under any theory, [AS 43.40.010](#) could be amended to revive dedications of motor fuel taxes in effect before statehood. Chapter 20, SLA 1960, amended the motor fuel tax levy by deleting a mandatory dedication of revenue for transportation-related purposes. The amendment inserted a new provision that made it discretionary whether the legislature appropriated the motor tax receipts for transportation purposes. Chapter 20 also added ferries as an item of expenditure for which motor fuel tax receipts may be expended. In pre-statehood dedication, only highway projects were listed as objects of expenditure. There was no mention of ferries because the ferry system was not established until shortly after statehood.

We have researched the legislative history of chapter 20, SLA 1960, to determine why the legislature changed the mandatory dedication provision to the discretionary provision now appearing in [AS 43.40.010\(g\)](#). We believe that this amendment was probably made in response to advice given by this office. On March 11, 1959, Attorney General Williams advised Governor Wade as follows:

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

1959 Op. Att'y Gen. No. 7, at 5 (Mar. 26). Chapter 20 changed the purpose for which motor fuel taxes are dedicated. That enactment added ferries to the list of transportation-related items of expenditure for which the tax receipts were dedicated. The legislature probably considered the amendment to constitute a change in purpose which effectively destroyed the dedication. Perhaps it could have been argued that the addition of ferries was not actually a change in purpose but merely a more specific way of describing the term "highway projects." In recent times, it is common to refer to the ferry system as the "marine highway system." However, that does not change the fact that the legislature materially changed the dedication in a manner that effectively repealed it. There can be no question that the legislature has the power to repeal a dedication. The repeal remains effective even though the legislature may have been mistaken as to the effect of the amendment made in chapter 20, SLA 1960.

\*2 Another possible construction would be that it is not correct to interpret the words set out in [AS 43.40.010\(g\)](#) in a manner that destroys the dedication. The operative phrase reads as follows: "The legislature may appropriate funds from [the highway fuel tax account] for expenditure . . ." Before amendment, the phrase used the mandatory "shall" in the place of the directory "may." A creative interpretation may leave an account dedicated for highway purposes that may or may not be expended. However, it may only be expended for highway purposes. It is unlikely such an interpretation is valid. This type of amendment appears in other statutes establishing distinct funds and accounts and has been consistently used to state nonbinding preference

for the use of certain funds. This achieves the legislature's purpose of paying lip service to an intent to spend the money to benefit those from whom tax revenues are collected while not requiring it to do so if other expenditures have a higher priority.

In summary, we believe that the legislature's intent in enacting chapter 60, SLA 1960, was to destroy the dedication of motor fuel tax receipts. This was done in order to expand the purposes for which the fund could be used to include expenditures for the ferry system. We have never wavered from our opinion that a change in the purpose of a dedication works to destroy it.

Let me know if this answers your questions.

James L. Baldwin  
Assistant Attorney General  
Governmental Affairs Section - Juneau

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1992 Alaska Op. Atty. Gen. (Inf.) 31 (Alaska A.G.), 1989 WL 448126

Office of the Attorney General

State of Alaska  
File No. 663-90-0092  
September 11, 1989

Redated for printing January 1, 1992

**\*1 Re: Legislative proposal to reenact statutory dedication of vehicle, aviation, and marine fuel tax**

Hon. Steve Cowper  
Governor  
P.O. Box A  
Juneau, Ak. 99811

Dear Governor Cowper:

At the request of Bob Evans, we have researched the request by the Department of Transportation and Public Facilities (DOT/PF) to introduce a bill to reenact the dedication of certain tax receipts. These receipts were dedicated at statehood but were amended in ch. 20, SLA 1960, to delete the mandatory dedications. Under the Alaska Constitution, dedications that predate statehood are allowed to continue. [Alaska Const. art. IX, sec. 7](#). However, in 1978 we issued an opinion in which we discussed the ability of the legislature to revive a previously repealed dedication. In that opinion we discussed the history of the dedicated-fund provision of the constitution. We noted that the constitutional convention considered and expressly rejected an amendment that would have allowed the repeal and revival of preexisting dedicated funds. 1978 Op. Atty Gen. No. 22 at 7 (June 2). This is strong evidence upon which to base an interpretation against revival.

The words of the spokesman for the committee on finance and taxation of the constitutional convention are very convincing: WHITE: The reason the committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year and then 50 years from now bring it back into being. We do not intend that to be the case.

4 Minutes of the Alaska Constitutional Convention 2405 (Jan. 17, 1956). In our opinion, it is likely a court would find that a repealed dedication cannot be revived.

We believe that the legislature has the power to repeal a pre-statehood dedicated fund. The wording of [section 7](#) allows pre-statehood dedicated funds to continue to earmark receipts. However, nothing in this section prohibits the legislature from enacting a law that removes the dedication. Certainly, from the debate quoted above, it appears that the framers drafted [section 7](#) under the assumption that the legislature has the power to destroy preexisting dedicated funds. The sole basis for protection from legislative tinkering would arise only through the vesting of rights in the continued existence of the dedicated fund. The tax revenues in question here are not pledged to pay bonds or other properly authorized indebtedness; therefore, the legislature was free to repeal the dedication of the fuel tax receipts.

We hope this memorandum answers your questions.

Sincerely,

Douglas B. Baily  
Attorney General  
James L. Baldwin

Assistant Attorney General

1992 Alaska Op. Atty. Gen. (Inf.) 31 (Alaska A.G.), 1989 WL 448126

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