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

KETCHIKAN GATEWAY BOROUGH, et al.,)
)
Plaintiffs,)
)
v.)
)
STATE OF ALASKA, et al.,)
)
Defendants.)

Case No. 1KE-14-00016 CI

**STATE OF ALASKA’S OPPOSITION TO KETCHIKAN GATEWAY
BOROUGH’S MOTION FOR PARTIAL RECONSIDERATION**

The plaintiffs, Ketchikan Gateway Borough, Agnes Moran, John Coss,
John Harrington, and David Spokely (“the Borough”), have moved for reconsideration
of the part of this Court’s November 21, 2014, order on summary judgment denying its
request for a refund of its required local contribution. Alaska Civil Rule 77(k)(1)
provides that a party may request reconsideration when:

- (i) The court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or
- (ii) The court has overlooked or misconceived some material fact or proposition of law; or
- (iii) The court has overlooked or misconceived a material question in the case; or
- (iv) The law applied in the ruling has been subsequently changed by court decision or statute.

Although the Borough recognizes at least the first two bases for reconsideration
in a footnote, [Mot. at 2, n.2] it fails to explain which of the provisions it believes are
implicated by the court’s order. In fact, the essence of its argument appears to be an
internally contradictory assertion that, even though there is no constitutional
requirement that the State fully fund education, the State nevertheless would have had to

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2 pay more for education in the absence of the required local contribution and, therefore,
3 was unjustly enriched. Because the Borough expressly disavowed any claim that the
4 State is required to fully fund education and because this Court expressly addressed and
5 correctly dismissed the argument that the State would have had to pay more in
6 education funding without the required local contribution, none of the criteria for
7 reconsideration have been met and this Court should deny the motion.
8

9 The plaintiffs argue that the State received a “tangible benefit” from the required
10 local contribution, because “the amount of educational funding provided by the State
11 was significantly reduced as a result of the RLC.” [Mot. at 1-2] But the Borough
12 expressly declined to argue that the State would have to make good any shortfall created
13 by the invalidation of the required local contribution in its reply on summary judgment;
14 [Reply at 10]¹ dismissing Article VII, Section 1 of the Alaska Constitution—the
15 education clause—as “irrelevant” [Reply at 10] and thus, this argument and any claim
16 relying upon it cannot properly be considered by the court on reconsideration.²
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18 Indeed, the Borough—at least ostensibly—continues to deny that its refund claim
19 relies upon an assumption that the State must make up any difference between statutory
20 “basic need” and the level of state aid provided for in AS 14.17.410. [Mot. at 2]³
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22 ¹ “The Borough will not address the extent to which the State must provide school
23 funding, and it will not speculate in a case in which it has not presented the issue.”

24 ² See e.g., *Clemensen v. Providence Alaska Medical Center*, 203 P.3d 1148, 1155
(Alaska 2009).

25 ³ “The State has no legal obligation to fully fund *any* State program other than
26 those to which funds may be lawfully dedicated...Therefore, whether the State has to
fully fund education is not controlling.”

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2 Yet without this assumption, the Borough’s claim that “for every dollar the RLC
3 covered of education funding, one less dollar was required of the State” [Mot. at 2]
4 makes no sense. Moreover, this Court’s order did not “overlook[] or misconceive” this
5 point. To the contrary, the order notes the Borough’s argument that the “RLC payment
6 lessened the state’s obligation” and explicitly rejects it, both because “neither party has
7 argued that the Alaska Constitution’s education clause compels the state to fully fund all
8 public schools in Alaska;” and because “without this showing one cannot conclude the
9 state received any benefit from KGB’s payment.” [Order at 24-25]
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11 The Borough appears to believe that the statutory formula determining “basic
12 need” represents the State’s determination of “what level of funding was adequate to
13 fulfill its constitutional duty” and infers from that a State “obligation” to pay the
14 equivalent of the required local contribution if the Borough did not pay it. [Mot. at 4]
15 Not only does the Borough offer no authority for this conclusion, the argument is
16 plainly inconsistent with other elements of the statutory scheme. Indeed, the education
17 funding statutes expressly acknowledge that the legislature might decline to appropriate
18 sufficient money to pay the State’s share of basic need in a particular year and allow
19 that in such a circumstance, the State will reduce funding for school districts on a pro
20 rata basis. AS 14.17.400(b). The Borough’s view of basic need simply cannot be
21 reconciled with this statute and, therefore, should be rejected.
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24 Nor does language from the State’s opposition to the motion for summary
25 judgment—quoted out of context and misconstrued—suggest otherwise. [Mot. at 3]
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2 The State did not concede that the required local contribution leaves money in state
3 coffers that would otherwise be paid for education. In fact, the full quotation is:

4 “Local contribution to education likewise does not curtail the legislature’s budgetary
5 control; on the contrary it leaves more money in state coffers because schools receive
6 part of their funding from local sources.” [State’s Opp. & MSJ at 15]

7
8 Properly understood, the State’s comment merely indicates that absent a statutory
9 formula providing for *any local funding*, the State would likely devise a system in
10 which it paid more for education. This is a far cry from the implicit concession that
11 KGB assumes, which is that the State must make up any difference created by the
12 invalidation of the required local contribution, therefore establishing that the State was
13 unjustly enriched by the required local contribution. Additionally, as the State argued,
14 under the current statute a municipality’s payment of the required local contribution
15 actually triggers a spending obligation by the state. [State’s Opp. & MSJ at 21]

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17 Finally, the Borough ignores the last step of the test for unjust enrichment: that
18 the defendant “accepted and retained the benefit under circumstances making it
19 inequitable for her to retain the benefit without paying [the plaintiff] the value thereof.”⁴
20 Although the Borough has “the burden of proving the value of the benefits [it] conferred
21 upon [the State],” instead it merely asserts that because the Court has “concluded[] the
22 RLC was the result of an unconstitutional dedication, ... it is unjust that the State benefit
23 from the unlawful RLC.” [Mot. at 4] But if this prong of the test requires only that the
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26 ⁴ *Bennett v. Artus*, 20 P.3d 560, 563 (Alaska 2001).

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2 plaintiff prevail on their claim to establish that it was inequitable not to require
3 restitution, it would always be met. Here, there is no unjust enrichment, not merely
4 because the State has no obligation to pay the equivalent of the required local
5 contribution if the Borough does not have to, but also because the money was never
6 paid to the State and benefits Borough residents—and one of the plaintiffs directly—by
7 supporting the local school district. Moreover, if State funding must cover the full cost
8 of education in Alaska that does not mean that the plaintiffs’ tax burden will be lessened
9 in any way. Thus, the circumstances here simply do not make it “inequitable” for the
10 State not to pay the Borough the equivalent of the required local contribution—the State
11 cannot refund money that it did not receive.
12

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14 Because the plaintiffs have failed to show that this Court “overlooked or
15 misconceived” a “statute, decision or principle directly controlling,” “some material fact
16 or proposition of law,” or “a material question in the case,” this Court should deny their
17 motion for reconsideration.
18

19 DATED: December 18, 2014.

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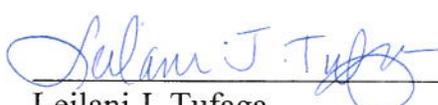
CERTIFICATE OF SERVICE

I certify that on this date true and correct copies of the **State of Alaska's Opposition to Ketchikan Gateway Borough's Motion for Partial Reconsideration** and this **Certificate of Service** were served via e-mail and U.S. First Class Mail on the following:

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