

IN THE SUPREME COURT OF THE STATE OF ALASKA

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

Appellants/Cross Appellees,

v.

KETCHIKAN GATEWAY BOROUGH; et al.,

Appellees/Cross-Appellants.

Trial Court Case No: 1KE-14-00016 CI

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Supreme Court No.: S-15811/15841

APPEAL FROM THE SUPERIOR COURT FIRST JUDICIAL DISTRICT AT KETCHIKAN THE HONORABLE WILLIAM B. CAREY, JUDGE

BRIEF OF APPELLANTS/CROSS APPELLEES STATE OF ALASKA and MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT

CRAIG W. RICHARDS ATTORNEY GENERAL

[Handwritten signature of Kathryn R. Vogel]

Kathryn R. Vogel (1403013) Rebecca Hattan (0811096) Margaret Paton-Walsh (0411074) Assistant Attorneys General Department of Law 1031 West Fourth Avenue, Suite 200 Anchorage, AK 99501 (907) 269-5275

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CONSTITUTIONAL PROVISIONS

Alaska Const. art. IX, § 7. Dedicated Funds.

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or 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 section by the people of Alaska.

Alaska Const. art. VII, § 1. Public Education.

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Alaska Const. art. X, § 2. Local Government Powers.

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.”

STATUTES

14.12.010. Districts of state public school system

The districts of the state public school system are as follows:

- (1) each home rule and first class city in the unorganized borough is a city school district;
- (2) each organized borough is a borough school district;
- (3) the area outside organized boroughs and outside home rule and first class cities is divided into regional educational attendance areas.

AS 14.12.020. Support, management, and control in general; military reservation schools

(a) Each regional educational attendance area shall be operated on an areawide basis under the management and control of a regional school board. The regional school board manages and controls schools on military reservations within its regional educational attendance area until the military mission is terminated or so long as management and control by the regional educational attendance area is approved by the department. However, operation of the military reservation schools by a city or borough school district may be required by the department under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by the regional educational attendance area is disapproved by the department, operation, management, and control of schools on the military reservation transfers to the city or borough school

district in which the military reservation is located.

(b) Each borough or city school district shall be operated on a district-wide basis under the management and control of a school board.

(c) The legislature shall provide the state money necessary to maintain and operate the regional educational attendance areas. The borough assembly for a borough school district, and the city council for a city school district, shall provide the money that must be raised from local sources to maintain and operate the district.

AS 14.17.410. Public school funding.

(a) A district is eligible for public school funding in an amount equal to the sum calculated under (b) and (c) of this section.

(b) Public school funding consists of state aid, a required local contribution, and eligible federal impact aid determined as follows:

(1) state aid equals basic need minus a required local contribution and 90 percent of eligible federal impact aid for that fiscal year; basic need equals the sum obtained under (D) of this paragraph, multiplied by the base student allocation set out in AS 14.17.470; district adjusted ADM is calculated as follows:

(A) the ADM of each school in the district is calculated by applying the school size factor to the student count as set out in AS 14.17.450;

(B) the number obtained under (A) of this paragraph is multiplied by the district cost factor described in AS 14.17.460;

(C) the ADMs of each school in a district, as adjusted according to (A) and (B) of this paragraph, are added; the sum is then multiplied by the special needs factor set out in AS 14.17.420(a)(1) and the secondary school vocational and technical instruction funding factor set out in AS 14.17.420(a)(3);

(D) the number obtained for intensive services under AS 14.17.420(a)(2) and the number obtained for correspondence study under AS 14.17.430 are added to the number obtained under (C) of this paragraph;

(E) notwithstanding (A)--(C) of this paragraph, if a school district's ADM adjusted for school size under (A) of this paragraph decreases by five percent or more from one fiscal year to the next fiscal year, the school district may use the last fiscal year before the decrease as a base fiscal year to offset the decrease, according to the following method:

(i) for the first fiscal year after the base fiscal year determined under this subparagraph, the school district's ADM adjusted for school size determined under (A) of this paragraph is calculated as the district's ADM adjusted for school size, plus 75 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the first fiscal year after the base fiscal year;

(ii) for the second fiscal year after the base fiscal year determined under this subparagraph, the school district's ADM adjusted for school size determined under (A) of this paragraph is calculated as

the district's ADM adjusted for school size, plus 50 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the second fiscal year after the base fiscal year;

(iii) for the third fiscal year after the base fiscal year determined under this subparagraph, the school district's ADM adjusted for school size determined under (A) of this paragraph is calculated as the district's ADM adjusted for school size, plus 25 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the third fiscal year after the base fiscal year;

(F) the method established in (E) of this paragraph is available to a school district for the three fiscal years following the base fiscal year determined under (E) of this paragraph only if the district's ADM adjusted for school size determined under (A) of this paragraph for each fiscal year is less than the district's ADM adjusted for school size in the base fiscal year;

(G) the method established in (E) of this paragraph does not apply to a decrease in the district's ADM adjusted for school size resulting from a loss of enrollment that occurs as a result of a boundary change under AS 29;

(2) the required local contribution of a city or borough school district is the equivalent of a 2.65 mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110, not to exceed 45 percent of a district's basic need for the preceding fiscal year as determined under (1) of this subsection.

(c) In addition to the local contribution required under (b)(2) of this section, a city or borough school district in a fiscal year may make a local contribution of not more than the greater of

(1) the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110; or

(2) 23 percent of the total of the district's basic need for the fiscal year under (b)(1) of this section and any additional funding distributed to the district in a fiscal year according to (b) of this section.

(d) State aid may not be provided to a city or borough school district if the local contributions required under (b)(2) of this section have not been made.

(e) If a city or borough school district is established after July 1, 1998, for the first three fiscal years in which the city or borough school district operates schools, local contributions may be less than the amount that would otherwise be required under (b)(2) of this section, except that

(1) in the second fiscal year of operations, local contributions must be at least the greater of

(A) the local contributions, excluding federal impact aid, for the previous

fiscal year; or

(B) the sum of 10 percent of the district's eligible federal impact aid for that year and the equivalent of a one mill tax levy on the full and true value of the taxable real and personal property in the city or borough school district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110; and

(2) in the third year of operation, local contributions must be at least the greater of
(A) the local contributions, excluding federal impact aid, for the previous fiscal year; or

(B) the sum of 10 percent of the district's eligible federal impact aid for that year and the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110.

(f) A school district is eligible for additional state aid in the amount by which the local contributions that would otherwise have been required under (b)(2) of this section exceed the district's actual local contributions under (e) of this section.

JURISDICTION

This is an appeal from the November 21, 2014 Order on Motion and Cross Motion for Summary Judgment and the January 23, 2015 Final Judgment of the superior court, the Honorable William B. Carey. This Court has jurisdiction over this case under AS 22.05.010 and Appellate Rule 202(a).

PARTIES

The State of Alaska and Michael Hanley, Commissioner of the Department of Education and Early Development (the State) are the appellants/cross-appellees. The appellees/cross-appellants are Ketchikan Gateway Borough and four individuals: Agnes Moran, on her own behalf and on behalf of her son, John Coss, a minor; John Harrington; and David Spokely (collectively, Ketchikan Gateway Borough or the borough).

ISSUE PRESENTED¹

The dedicated funds clause of the Alaska Constitution, article IX, section 7, prohibits the dedication of the “proceeds of any state tax or license” to any “special purpose.” This clause was written to prevent earmarking of state revenue that would deprive future legislatures of control over state finances. Alaska statute 14.17.410(b)(2) requires that local communities with taxing authority help fund their schools. Does the longstanding requirement that a local community pay local dollars directly to its local school district violate the Alaska Constitution’s prohibition against dedicating the “proceeds of any state tax or license”?

¹ The State will defer discussion of the issues raised in the borough’s cross-appeal until its cross-appellee brief because the borough has exercised its option to brief its cross appeal separately.

STATEMENT OF THE CASE

I. Introduction

Alaska has a long tradition of joint state–local involvement in public schools. As part of this tradition, the State, which must establish and maintain schools under the education clause of the constitution,² partners with local school districts to share both control and funding. [Exc. 117] The result is that public schools in Alaska have locally-controlled curricula and staffing, receive the vast majority of their funding from the State, have relatively equal funding from one school district to the next, and obtain an important, if small, percentage of their funding from their local municipalities.³ [See Exc. 57, 59, 85]

The borough challenges the constitutionality of this system by arguing that the Alaska Constitution’s dedicated funds clause, although designed to prevent the earmarking of state revenue, also prevents the State from mandating that local communities contribute to their local schools. [Exc. 10] Specifically, the borough challenges the required local contribution portion of the public school funding formula, found at AS 14.17.410(b) (the “local contribution”), which sets a floor for the amount that a municipality must contribute to its local school district. If given credence, the

² Alaska Const. art. VII, § 1.

³ See, e.g., AS 14.14.060 (giving school board power to appoint and control employees and administration subject to state law relating to salaries, tenure, financial support and supervision); AS 14.14.090(7) (giving school board oversight over curriculum). The term “municipality” is used in this brief to mean organized boroughs and home rule and first class cities in the unorganized borough, which together comprise the “municipal school districts,” have taxing authority, and are subject to providing local contributions to their schools under AS 14.17.410(b)(2). See AS 14.12.010.

borough's dedicated funds clause argument would mean that the dedicated funds clause stealthily wrought a drastic change to education funding that was not discussed at the constitutional convention during the dedicated funds debate, the education clause debate, or the local government debate, and then went unnoticed for the following sixty years. And in light of its dedicated funds theory, the borough's complaint is paradoxical: the borough protests that it is overpaying taxes but its legal argument identifies a purported infirmity not with the requirement that it pay, but rather with the fact that its payments are "dedicated" to its own schools, without an opportunity for the legislature or governor to divert the money to another purpose. [Exc. 23]

The Court should reject the borough's challenge to school funding and reverse the superior court's decision, which found a dedicated funds clause violation after declining to give any weight to the fact that the local contribution is, in the court's words: "a solely local matter and local source of funds." [Exc. 257] The dedicated funds clause does not apply to local money. The clause only concerns state revenue, and the superior court's decision to the contrary misreads precedent and ignores the clause's plain language and purpose. Therefore, because the local contribution is not state revenue it falls outside the reach of the dedicated funds clause. Additionally, because the local contribution statute merely imposes a financial obligation without generating a specific source of revenue or identifying an existing one, it is not a dedication of a specific tax or license at the state or local level. Finally, the constitutional history makes clear that the drafters never intended the dedicated funds clause to prevent the State from dedicating local funds to local schools; the delegates created an exception to the dedication prohibition for local money

for joint state–local cooperative programs and for taxes collected for local government units.

In sum, the superior court’s interpretation of the dedicated funds clause is not supported by the plain meaning of the clause, its constitutional history, or case law interpreting it, and should therefore be reversed. The sound governmental practice of requiring local governments to contribute to their schools does not violate the constitution.

II. Background.

A. Alaska’s dedicated funds clause was created to address the problem of earmarking of state revenue.

The dedicated funds clause of the Alaska Constitution, art. IX, § 7, came about as a result of considered debate. The clause reads:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [creating the Alaska Permanent Fund] or 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 section by the people of Alaska.⁴

As explained below, these words were intended to maximize the flexibility and control of future legislatures and prevent the earmarking of most forms of state revenue.

⁴ Alaska Const. Art. IX, § 7.

i. Constitutional convention delegates learned of other states' struggles with dedicated funds within state revenue.

The delegates to the Alaska constitutional convention made the unusual⁵ decision to include a dedicated funds prohibition in the constitution after receiving briefing from hired consultants at the Public Administration Service (PAS).⁶ The PAS consultants indicated that dedicated funds were a problem “bedeviling” other states and depriving state legislatures of control over state finances.⁷ A PAS staff paper on state finance identified the problem as one of “earmarked revenue” and declared that “earmarking or dedication of certain revenue for specified purposes or funds” results in “[t]he most severe obstacle to the scope and flexibility of budgeting.”⁸ The PAS staff wrote that earmarking could reach alarming percentages of state revenue: it cited Colorado as having approximately 90 percent of tax collections earmarked for special funds, and Texas as having only 15 percent of its 1951 tax collections unrestricted.⁹ The briefing described a legal cause for those constraints: 23 states dedicated revenue by constitutional provisions including some requiring that no money arising from a tax

⁵ At the time of statehood, only the Georgia constitution of 1945 had a dedicated funds prohibition. *See* Georgia constitution 1945, art. VII, § IX, ¶ IV (“[N]o appropriation shall allocate to any object, the proceeds of any particular tax or fund or a part or percentage thereof.”); *Myers v. Alaska Housing Fin. Corp.*, 68 P.3d 386, 389 n.11 (Alaska 2003) (identifying Georgia’s status as only other state with similar provision).

⁶ 3 Alaska Statehood Commission, *Constitutional Studies* pt. IX “State Finance” at 27-30 (November 1955), *available at* App. 1.

⁷ *Id.* at 27.

⁸ *Id.*

⁹ *Id.* at 28.

levied for one purpose be used for another purpose and others requiring that every law imposing a tax must clearly define the nature and purpose of the tax.¹⁰

The trouble with earmarks was described uniformly in terms of state rather than local or private money: “many states have less than half of the money of the state available for the kind of budgeting aimed at carrying out an effective and responsive program of services.”¹¹ And the issue was also cast in terms of the existence of distinct state funds other than a general fund—South Dakota, for example, was described as having between 454 and 530 “special funds.”¹² The problem of dedication was not identified as a problem between levels of government such as state to federal or local governments, but rather as a problem between departments at the state level. For example, the PAS staff paper quoted extensively from a speech given by the governor of New Jersey decrying the problem of dedicated funds in his state.¹³ He described his highway department, with its own \$50 million highway fund, as functioning as a government unto itself rather than being part of an integrated state administrative system.¹⁴ The PAS memorandum identified the creation a single general fund for state revenue as a solution that represented progress.¹⁵

¹⁰ *Id.* at 28-29.

¹¹ *Id.* at 30.

¹² *Id.* at 28.

¹³ *Id.* at 29-30.

¹⁴ *Id.* at 29 (quoting New Jersey Governor Edge).

¹⁵ *Id.* at 29.

The delegates considered the National Municipal League’s *Model State Constitution*, which included an anti-dedication clause.¹⁶ The discussion of the provision within the model state constitution never suggests that this provision would prevent a state from placing financial obligations on local governments, requiring local money for local schools, or using matching grants.¹⁷ Indeed, Georgia—the only state to have a dedicated funds clause and the source for the clause in the model state constitution—simultaneously had a requirement that local counties levy taxes to support their local schools.¹⁸

ii. The committee on finance and taxation proposed a dedicated funds clause targeted at state revenue with some explicit exceptions.

The committee on finance and taxation included a dedicated funds section in their proposal for the finance article of the constitution.¹⁹ The committee’s commentary explained that the purpose of the dedicated funds provision was for the *legislature* and *governor* to have control over *state* funds: “if allocation is permitted for one interest the denial of it to another is difficult, and the more special funds are set up the more difficult

¹⁶ National Municipal League, *Model State Constitution* § 706 (5th ed. 1948, reprinted 1954) (“no appropriation shall allocate to any object the proceeds of any particular tax or fund or a part or percentage thereof”) (following Georgia constitution), available at App. 2; see Victor Fischer, *Alaska’s Constitutional Convention* 142 (1975); *Myers v. Alaska Housing Fin. Corp.*, 68 P.3d 386, 389 (Alaska 2003).

¹⁷ See *Model State Constitution* at 43, explanatory articles.

¹⁸ Georgia Constitution 1945, art. VIII, § XII (requiring counties to levy taxes of not less than five mills to support schools).

¹⁹ 6 Proceedings of the Alaska Constitutional Convention App. V at 106-07 (Dec. 16, 1955).

it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state.”²⁰

The original proposal contained two explicit exceptions: one allowing dedication where it was necessary for participation in federal programs; and the other allowing dedications already in existence to continue.²¹ Concerning existing dedications, the delegates referenced only dedicated *territorial* taxes—excluding any tally of local taxes.²² They concluded 27 percent of territorial taxes were dedicated, including highway taxes and a tobacco tax that was earmarked for school construction.²³ Although territorial laws required local entities to pay for local schools and apply for a partial refund from the territory, these locally imposed taxes were not discussed or counted in this 27 percent figure as if they were dedications of Alaska’s revenue.²⁴

²⁰ *Id.* at 111.

²¹ 1975 Alaska Op. Att’y Gen. No. 9 at 3-4 (May 2, 1975). [Exc. 148-49]

²² *See* 6 Proceedings App. V at 111 (citing 27 percent figure); 3 Alaska Statehood Commission, *Constitutional Studies* pt. IX “State Finance” at 28 (November 1955) (deriving 27 percent figure in terms of “territorial tax collections” and percentage of “territorial revenue.”).

²³ *Id.*; 3B Proceedings at 2302 (Jan. 16, 1956); 4A Proceedings at 2370, 2408 (Jan. 17, 1956) (identifying fuel and tobacco taxes as largest existing earmarks).

²⁴ *Id.*; Alaska Compiled Laws, ch. 3, art. 4 §§ 37-3-32, 37-3-35, 37-3-53 (1949) (taxation requirements); Alaska Compiled Laws, ch. 3, art. 5 § 27-3-61 (1949) (partial refund provision) [Exc. 195, 197, 203-04]; *see also* Legislative Council Staff, *Dedicated Funds Memorandum* (July 18, 1962), *available at* App. 3 (listing dedicated funds of the state and making no mention of local payments to schools).

iii. The delegates created several implied exceptions to the proposed prohibition on dedication including exceptions for local money for state–local cooperative programs and tax receipts collected by the State on behalf of local governments.

The wording of the dedicated funds clause changed in important ways between the initial proposal and passage to narrow its effect.²⁵ The initial version submitted by the committee to the convention began: “*All revenues* shall be deposited in the State treasury without allocation for special purposes, except where participation in Federal programs will thereby be denied.”²⁶ Before the full convention’s consideration the committee inserted the word “public” before revenues, to clarify that donations or bequests by private individuals could have specific purposes attached to them.²⁷

The delegates soon learned that more exceptions would be needed for the provision to have the intended effect on state revenue without hampering the State’s ability to enter into necessary legal and contractual relationships. At the request of the committee on finance and taxation, finance specialists on the PAS staff commented on the proposed committee language. They pointed out that “[l]egal and contractual provisions will require segregation of certain moneys, e.g., pension contributions, proceeds from bond issues, sinking fund receipts, contributions from local government

²⁵ See 1975 Op. Att’y Gen. No. 9 at 3-6 (quoting language changes) [Exc. 148-51].

²⁶ *Id.* at 4 (emphasis added) [Exc. 149]; 6 Proceedings App. V at 106-07.

²⁷ 3B Proceedings of Alaska Constitutional Convention 2298 (Jan. 16, 1956) (Delegate Nerland: “The Committee felt that in inserting the word ‘public’ after ‘all’, making it ‘all public revenues’ would eliminate the question regarding such things as donations or bequests by private individuals that might have specific purposes attached to them.”).

units for state–local cooperative programs, and tax receipts which the State might collect on behalf of local government units.”²⁸

As a direct result of this memorandum, the committee moved to change the language from “All public revenue” to “The proceeds of any state tax or license.”²⁹ Delegate White explained that the previous version would have required the listing of seven exceptions but “[b]y going to the tax itself and saying that the tax shall not be earmarked, we eliminated all seven of those exceptions.”³⁰ As a 1975 attorney general opinion concluded, “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.”³¹ That opinion advised that “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.”³²

This Court upon review of the constitutional history agreed that the new language “proceeds of any state tax or license” was intended to create the exceptions listed in the

²⁸ Public Administration Service, Memorandum (Jan. 4, 1955 [sic]) [Exc. 240].

²⁹ 1975 Alaska Op. Att’y Gen. No. 9 at 8 [Exc. 153].

³⁰ 4A Proceedings 2363 (Jan. 17, 1956). Although the PAS memorandum actually listed six rather than seven exceptions, the exceptions listed in the PAS memorandum is nonetheless considered to be the source of this change. 1975 Att’y Gen. Op. No. 9 at 7-8 [Exc. 152-53]; *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1169 n.29 (Alaska 2009).

³¹ 1975 Atty Gen. Op. No. 9 at 8 [Exc. 153].

³² *Id.* at 9 n.2 [Exc. 154].

memorandum, rather than to strictly limit the definition of public revenue to taxes and licenses.³³ Within the context of the cases the Court has had for review, there was little need to focus on the importance of the word “state” in the phrase “proceeds of any state tax or license.” And until now there has been no occasion to consider the implied exceptions for “contributions from local governments for state–local cooperative programs” or “tax receipts which the state might collect on behalf of local government units.”

Just as the committee discussion on grandfathered dedications omitted mention of the existing mandatory local contributions to schools, the dedicated funds debate on the convention floor included no mention of local contributions toward funding of public schools.³⁴

iv. The dedicated funds clause has been interpreted through the years as applying expansively to different types of state public revenue.

The dedicated funds clause has been the subject of several attorney general opinions and a handful of Alaska Supreme Court cases in the years since its passage. But it has not yet been interpreted in the context of statutory mandates requiring local funds to go to local sources as a condition of state funding. Instead, the clause has been

³³ *Southeast Alaska Conservation Council*, 202 P.3d at 1169 n.29.

³⁴ Alaska Compiled Laws, ch. 3, art. 4 §§ 37-3-32, 37-3-35, 37-3-53 (1949) (taxation requirements); Alaska Compiled Laws, ch. 3, art. 5 § 27-3-61 (1949) (partial refund provision). [Exc. 195, 197, 203-04]; *see* 3B Proceedings at 2302 (Jan 16, 1955); 4A Proceedings at 2370, 2408, 2415 (Jan. 17, 1956).

interpreted with respect to state-received oil tax royalties,³⁵ the legislature's appropriation of a future revenue stream from a legal settlement,³⁶ Alaska Marine Highway Systems funding,³⁷ land grant provisions to the University of Alaska,³⁸ and a royalty assessment on the sale of salmon imposed through the State's taxing authority.³⁹ The creation of the permanent fund was interpreted as a clear dedication, necessitating a constitutional amendment to the dedicated funds clause.⁴⁰ A longstanding attorney general opinion opined that money that is outside of state revenue is not subject to the dedicated funds clause.⁴¹ And the attorney general has similarly opined that local communities are not

³⁵ 1975 Op. Att'y Gen. No. 9 at 17-19 [Exc. 162-64].

³⁶ *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386 (Alaska 2003).

³⁷ *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992).

³⁸ *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (Alaska 2009).

³⁹ *State v. Alex*, 646 P.2d 203 (Alaska 1982).

⁴⁰ *Southeast Alaska Conservation Council*, 202 P.3d at 1170 ("If only revenue collected as taxes of license fees were included there would have been no need to expressly exempt 'all mineral lease rentals, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State' to ensure that placing those revenues in the Permanent fund did not violate the constitution.").

⁴¹ 1991 Inf. Op. Att'y Gen., 1991 WL 916843, at *4-5 (April 2, 1991) (Trust Fund monies of Exxon Valdez fund are not revenues of state and therefore not subject to dedicated funds clause).

constitutionally prohibited from dedicating funds.⁴² But the Court has never determined whether the dedicated funds clause applies to local communities.⁴³

B. Education funding in Alaska historically and currently includes mandatory local dollars.

i. Historically, Alaska partially funded schools with local taxes and the constitutional history of borough formation indicates an expectation that this would continue.

Under the territorial law in effect at the time of the constitutional convention, Alaska cities and independent school districts had taxing power and were required to fund local public schools.⁴⁴ The convention debates over the creation of the borough system strongly suggested an intention to continue to have local taxes finance schools.⁴⁵ The delegates debated whether school districts should have their own taxing power or

⁴² 1988 Inf. Op. Att’y Gen., 1988 WL 249509, at *3 (July 29, 1988) (“We do not believe that this provision which only references “state” revenues, was drafted with the intention to restrict local governments in the management of their fiscal matters. After substantial research, we find no discussion in the constitution to automatically apply to the governing bodies of political subdivisions.”).

⁴³ *Cf. City of Fairbanks v. Fairbanks Conventions and Visitors Bureau*, 818 P.3d 1153, 1158 n.7 (Alaska 1991) (explicitly declining to reach issue of whether local bed tax ordinance which dedicated revenue from bed tax to particular purpose violated dedicated funds clause).

⁴⁴ Alaska Compiled Laws, ch. 3, art. 4 § 37-3-32, 37-3-35, 37-3-53 (1949) [Exc. 195, 197, 202].

⁴⁵ 4A Proceedings 2652 (Delegate Doogan: “The borough , of necessity, . . . to provide for its operation would probably have a certain basic tax to provide schools”)

whether schools should be dependent on borough governments for money.⁴⁶ As Delegate

Victor Fischer explained during one part of the debate:

When you come to the borough though, the borough is interested in education. It will be one of the basic functions which it will be responsible for. . . . [W]e feel that education when it comes to the tax dollar, must compete with all the other necessary services that are required by the people of the area. It was felt that the borough assembly would best be able to say that so much . . . can be afforded of this tax dollar for education, so much for health, so much for police enforcement, etc.”⁴⁷

At least one delegate assumed that the borough might bear the entire cost of education, asking “Do you think the state would refund some to the borough assembly as they do in the cities now?”⁴⁸

Following statehood, the statutory expectation of local contributions continued in school districts with taxing authority, including the newly formed boroughs.⁴⁹

⁴⁶ 4A Proceedings 2620 (Jan. 19, 1956) (discussing that a borough could levy taxes for its schools but could not delegate its taxing authority to an independent school district within it); *id.* at 2629 (Delegate Davis: “I am wondering if . . . there is more than one city or village in the area, why they could not each levy the amount of taxes they needed within their own area . . . instead of leaving it up to the entire borough to say, “Mr. School District, you have got to get along with so much money.””)

⁴⁷ *Id.* at 2629-30.

⁴⁸ *Id.* at 2646 (Delegate Metcalf).

⁴⁹ *See* Sec. 1.03, ch. 164, SLA 1962 [Exc. 127].

ii. **Currently Alaska funds its schools with a formula that includes state and local contributions.**

There are approximately 131,000 children who attend public school in Alaska.⁵⁰ Public education is delivered to students by 53 school districts and by the state boarding school at Mt. Edgecumbe, which is treated as a separate district.⁵¹ Districts other than Mt. Edgecumbe consist of three types. Each of Alaska's 18 boroughs, as well as each home rule and first class city within the unorganized borough is a school district.⁵² The remaining 19 school districts are Rural Education Attendance Areas (REAs) in the unorganized borough.⁵³

Regardless of type of school district, the State today remains the primary funding source for all of Alaska's public schools, and, as a result, district wealth is not determinative of school funding.⁵⁴ [Exc. 117] A formula adopted in statute determines the

⁵⁰ Department of Education and Early Development, District Enrollment by Grade (updated Feb. 10, 2015), *available at* <http://education.alaska.gov/stats/DistrictEnrollment/2015DistrictEnrollment.pdf>

⁵¹ *Id.*

⁵² AS 14.12.010(1-2).

⁵³ AS 14.12.010(3).

⁵⁴ Exc. 117 is page 1 of the Alaska Department of Education and Early Development's public school funding program summary for fiscal year 2014. This chart lists Alaska's school districts and describes the basic need of each district, as well as the various sources of money that comprise that total. For example, the Ketchikan Gateway Borough's basic need in FY2014 is \$25,947,546. That amount includes \$4,198,727 of local effort and \$21,748,819 of state funds. This exhibit also illustrates how eligible federal impact aid dollars contribute toward basic need in federally impacted communities. For example, Lower Yukon's basic need of \$39,568,073 is comprised of deductible impact aid in the amount of \$9,873,656, as well as \$29,694,417 in state aid.

minimum funding that a district will receive from state and local sources.⁵⁵ This minimum funding level is called “Basic Need.”⁵⁶ The funding provided to a particular school district is adjusted for factors that make education more or less expensive in that district: the number of students enrolled, the number of correspondence students, school size, geographic cost differentials, and the number of special needs students.⁵⁷ The figure that results from these adjustments represents a weighted student count called the “adjusted average daily membership.”⁵⁸ Basic need for a district is a product of the adjusted average daily membership of the district multiplied by the “base student allocation,” an amount of money defined in statute.⁵⁹ The base student allocation may go up or down depending on the availability of state revenue.⁶⁰

Although basic need is an estimate of the minimum amount required by each school district, not all of basic need is provided by the State. The federal government

⁵⁵ AS 14.17.400.

⁵⁶ *Id.*

⁵⁷ AS 14.17.410.

⁵⁸ *Id.*

⁵⁹ AS 14.17.470.

⁶⁰ *Id.*

contributes to school funding through impact aid.⁶¹ The State factors in 90 percent of a school district's eligible federal impact aid when computing a school district's state aid entitlement.⁶² Additionally, the statutory scheme contemplates that school districts within boroughs and cities with taxing authority⁶³ ("municipal school districts") will receive some local funding from their borough or city governments:

The legislature shall provide the state money necessary to maintain and operate the regional educational attendance areas. The borough assembly for a borough school district, and the city council for a city school district, shall provide the money that must be raised from local sources to maintain and operate the district.⁶⁴

This local funding consists of a required local contribution, as laid out in

⁶¹ The federal Impact Aid Act provides financial assistance to local school districts whose ability to finance public schools is negatively affected by federal presence, activities, or land ownership. *See* 20 U.S.C. § 7701. The statute generally prohibits a state from offsetting this federal aid by reducing state aid to a local district. *See* 20 U.S.C. § 7701 (2000 ed. and Supp. IV). However, the federal statute provides an exception; it permits states to compensate for federal impact aid where "the Secretary of Education determine[s] and certifies...that the State has in effect a program of State aid that equalizes expenditures for free public education among local [school districts] in the State." § 7709(b)(1) (200 ed., Supp. IV). The Secretary of Education has certified Alaska's school funding as equalized, permitting the inclusion of 90 percent of eligible impact aid to be reflected in the funding formula. *See* AS 14.17.410(b)(1). Alaska is one of only three states to be so certified. *See Getting a Grip on the Basics of Impact Aid*, National Association of Federally Impacted Schools 16 (March 2013), available at http://www.ruraledu.org/user_uploads/file/ImpactAidTheBasics.pdf.

⁶² AS 14.17.410(b)(1).

⁶³ All boroughs and home rule or first-class cities are school districts. AS 14.12.010. Not all school districts, however, are municipalities. The REAAs are in the unorganized part of the state, and these school districts do not have taxing authority. AS 14.08.031; Alaska Const. art. X, § 2 ("The state may delegate taxing powers to organized boroughs and cities only.").

⁶⁴ AS 14.12.020(c).

AS 14.17.410(b)(2), and an optional voluntary contribution up to a cap, as detailed in AS 14.17.410(c).⁶⁵ Alaska Statute 14.17.410(b)(2) provides that:

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

Both the local contribution and any voluntary contribution are paid by the city or borough directly to the school district, and the funds are incorporated into the city or borough's school budget. And although this statute clearly specifies the amount of the *required* local contribution, the statute does not mandate the method that a city or borough must use to obtain the funds; and cities and boroughs have the freedom to determine the amount of any voluntary contribution they want to make, up to a statutory maximum that preserves the equalization of funding necessary to qualify for federal impact aid.⁶⁶

Finally, the statute contains an extremely strong incentive for a city or borough to annually satisfy the local contribution. Alaska Statute 14.17.410(d) provides that: "State aid may not be provided to a city or borough school district if the local contributions required under (b)(2) of this section have not been made." The requirement of a local

⁶⁵ AS 14.17.410(c) states that: "In addition to the local contribution required under (b)(2) of this section, a city or borough school district in a fiscal year may make a local contribution of not more than the greater of (1) the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110; or (2) 23 percent of the district's basic need for the fiscal year under (b)(1) of this section."

⁶⁶ AS 14.17.410(c).

financial stake to access state and federal funds seeks to ensure prudent expenditure of state and federal education dollars.

III. Procedural History.

A. The borough sued the State alleging that the required local contribution violates three provisions of the Alaska Constitution.

Ketchikan Gateway Borough informed the State that it was paying its 2014 required local contribution “under protest” by sending the Commissioner for Education and Early Development a copy of its check to the school district with the words “dedicated tax paid under protest” written on it. [Exc. 8, 89-90] No actual money accompanied this protest note. The original check was made out to the “KGB School District,” the money was sent to the Ketchikan Gateway Borough school district, and the money never entered state coffers. [*Id.*] State aid covered more than eighty percent of the borough’s basic need, so the borough’s local contribution accounted for less than a fifth of the borough’s basic need costs. [Exc. 85]

The borough then filed suit alleging that the required local contribution violated three provisions of the Alaska Constitution: the dedicated funds clause of Article IX, section 7; the legislative appropriation clause, article IX, section 13; and the gubernatorial veto clause, article II, section 15. [Exc. 1-14] The borough sought a refund of the local contributions paid under protest. [Exc. 8, 89-90] Although all of the constitutional provisions at issue pertain to appropriations of state revenue, the borough argued that because of the local contribution it was “underfunded” by the State. [Exc. 8] And it stated that the local contribution unjustly enriched the state “because it relieved the State of the

obligation to fully fund the KGB School District's Basic Need." [Exc. 12] But the borough also explicitly disclaimed any argument that the State is required to fully fund education, and made no argument that the local contribution is inconsistent with the State's obligations under the education clause of the constitution. [Exc. 158]

In its complaint, the borough alleged that its school district "receives less than 84 cents of every dollar from the State needed to adequately fund Basic Need." [Exc. 8] The borough argued that the local contribution "depletes the resources of the Borough and the Taxpayer Plaintiffs." [Exc. 8] The complaint characterized the local contribution as an "unfunded State mandate." [Exc. 8] The borough explained that it only provided its partial funding to its schools under duress and compulsion in order to be eligible for state funding. [Exc. 8-9]

The parties filed cross-motions for summary judgment. [Exc. 15-40, 94-116]

B. The superior court granted partial summary judgment to the borough, concluding that the local contribution violated the dedicated funds prohibition.

Ketchikan Superior Court Judge William Carey ruled on the cross motions for summary judgment in November 2014. [Exc. 244] The court granted partial summary judgment to the borough on the theory that the required local contribution violated the dedicated funds clause, but rejected the borough's arguments that the local contribution violated the appropriation or gubernatorial veto clause, granting partial summary judgment to the State on those issues. [Exc. 250-60, 261-65] The court agreed with the State that the borough was not entitled to a refund of the money it spent on the local contributions paid under protest because the State had not been unjustly enriched by the

borough's payments to its school district. [Exc. 268] The superior court denied a motion for partial reconsideration on the issue of refund, stating that "the KGB School District is the only party enriched by a [local contribution] payment." [Exc. 281] The issues on which the State prevailed are the subject of the borough's cross-appeal and will be discussed more fully in that briefing.

On the dedicated funds issue, the superior court framed the question not as whether the required local contribution was "the proceeds of any *state* tax or license" subject to the prohibition on dedication, but rather whether the local contribution was a "dedicated fund." [Exc. 245] Seizing on case law that interpreted the terms "tax" or "license" as broadly incorporating "any public revenues," the superior court determined that municipalities raise the funds necessary for the local contribution through local taxes, and that any funds raised through municipal taxes are a source of "public revenue." [Exc. 255-56] The court interpreted this Court's decision in *City of Fairbanks*⁶⁷ as eliminating the need for the revenue to be state money or the proceeds of a state—rather than local—tax in order to be within the reach of the dedicated funds clause. [Exc. 256] The court concluded, "the fact that the [local contribution] is, essentially, a solely local matter and local source of funds, does not weigh in the court's consideration of whether the [local contribution] consists of funds subjected to the dedicated funds clause." [Exc. 257]

⁶⁷ 18 P.2d 1153 (Alaska 1991).

The court likewise did not conclude that the local contribution infringed on the legislature’s control over the budgeting process, but found that the requirement to pay money to their schools meant that money was “not available for use throughout the Borough” and found the requirement infringed on the “Borough’s flexibility in budgeting.” [Exc. 259] Essentially, the court’s ruling interpreted the dedicated funds clause to mean that the State may not mandate a municipal government pay a specified amount to any particular cause.

Following denial of a partial motion for reconsideration filed by the borough on the issue of the refund, the superior court issued final judgment on January 23, 2015. [Exc. 288-89] The State timely appealed the court’s invalidation of the local contribution under the dedicated funds clause.

STANDARD OF REVIEW

This Court reviews a grant or denial of summary judgment de novo.⁶⁸ And the Court applies its independent judgment when interpreting constitutional provisions or statutes.⁶⁹ “[A] party raising a constitutional challenge to a statute bears the burden of demonstrating the constitutional violation. A presumption of constitutionality applies, and doubts are resolved in favor of constitutionality.”⁷⁰ This presumption “recognizes that the legislature, like the courts, is pledged to support the state and federal

⁶⁸ *State v. Schmidt*, 323 P.3d 647, 654 (Alaska 2014).

⁶⁹ *Id.* at 655.

⁷⁰ *Harrod v. State, Dep’t of Revenue*, 255 P.3d 991, 1000-01 (Alaska 2011) (quoting *State, Dep’t of Revenue v. Andrade*, 23 P.3d 58, 71 (Alaska 2001)).

constitutions and that the courts, therefore, should presume that the legislature sought to act within constitutional limits.”⁷¹ The Court’s power to strike down a provision of law as unconstitutional is “not a power that should be exercised unnecessarily, for doing so can undermine the public trust and confidence in the courts and be interpreted as an indication of lack of respect for the legislative and executive branches of government.”⁷²

ARGUMENT

The dedicated funds clause does not prohibit the State’s longstanding practice—pre-dating statehood—of requiring local governments to help fund local schools. The dedicated funds clause prevents the earmarking of state taxes, licenses, or other state public revenue that the constitutional delegates intended to preserve for the legislature to spend as it saw fit on an annual basis. The local contribution statute is outside the scope of the dedicated funds clause because it bears none of the hallmarks of a statute earmarking a source of state revenue: it is not an exercise of the State’s taxing authority, it does not impose a particular method or source of fund collection, it does not result in the deposit of funds into the state treasury, and it does not generate or identify a source of revenue that the legislature is able to appropriate.

On the contrary, the State’s delegation of partial financial responsibility over local schools is a permissible exercise of the State’s pervasive authority over education. It is akin to other exercises of state power that result in mandatory financial costs for specific

⁷¹ *Andrade*, 23 P.3d at 71 (citation omitted).

⁷² *Brause v. State, Dept. of Health & Social Services*, 21 P.3d 357, 360 (Alaska 2001).

purposes, such as a law dictating that employers pay their employees a minimum wage, or that drivers buy car insurance, or that companies pay for workers compensation insurance. In all of these cases the State exercises its authority in a way that directs money to a specific purpose. But because the State does not dedicate the “proceeds of any state tax or license,” it does not violate the dedicated funds clause.

The superior court’s decision to the contrary rests on the erroneous conclusion that the dedicated funds clause bans the dedication of *local* revenue. The court’s analysis misreads precedent and ignores the plain language of the clause, which concerns only the “proceeds of any *state* tax or license.” The dedicated funds clause, by its terms and constitutional history, applies only to state revenue. Because the required local contribution is not state revenue, the clause does not apply. And even if the clause applied to local money rather than just state revenue, the required local contribution would still survive. It does not create a state or locally dedicated fund because the borough is free to raise the money in any way it chooses and then appropriate the money from its general fund.

Finally, the constitutional history of the dedicated funds clause makes plain that the delegates intended to exempt from the clause’s reach the local funding portion of any state–local cooperative program. Public education is the quintessential state–local cooperative program. The dedicated funds clause was adopted for the narrow purpose of expanding the legislature’s year-to-year control over state finances; expansion of the clause to prevent the legislature from continuing financial partnerships with local communities in support of joint state–local responsibilities would contravene that

purpose. The State’s ability to engage in matching grant programs that condition state money on the receipt of local money is foundational to sound fiscal policy. It is not a constitutionally prohibited practice.

I. The required local contribution does not violate the dedicated funds clause because the clause applies only to state revenue.

A. The dedicated funds clause applies only to state revenue, not to local money.

The dedicated funds clause limits its scope to state money. Article IX, section 7 of the Alaska Constitution addresses only “proceeds of any *state* tax or license.” (emphasis added). The superior court misread this Court’s precedent and ignored the clause’s plain language in concluding that it applies to local money. [Exc. 257-58]

Although this Court has read the terms “tax or license” broadly to incorporate public revenue generally and include things like land sales, royalties and the like, it has never applied the dedicated funds prohibition to *local* rather than *state* public revenue. Out of the five Alaska Supreme Court cases that analyzed the dedicated funds clause, four discussed revenue that the Court considered to be state revenue, including an assessment on salmon authorized by state statute,⁷³ the State’s future revenue stream from a tobacco lawsuit settlement,⁷⁴ money generated by the Alaska Marine Highway

⁷³ *Alex*, 646 P.2d at 208 (concluding prohibition applied to both taxes and assessments).

⁷⁴ *Myers v. Alaska Housing Finance Corp.*, 68 P.2d 386, 390 (Alaska 2003) (endorsing superior court’s summation that precedent interpreted the constitutional phrase tax or license as including all state revenues, which would include money from lawsuit settlements).

System,⁷⁵ and revenue generated by University of Alaska lands.⁷⁶

In the remaining case that touched on the dedicated funds clause, *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*,⁷⁷ the tax in question was a local bed tax but the Court did not decide whether this tax violated the dedicated funds clause. Instead, the Court's decision dealt with a different constitutional provision that prohibits the use of initiatives to "dedicate revenue," article XI, section 7.⁷⁸ The Court noted that the constitution's initiative limitation was "extended by statute to home-rule municipalities."⁷⁹ No similar statute extends the dedicated fund limitation to home-rule municipalities or other local governments. And the Court explicitly noted that even though both parties agreed that the original ordinance created a dedicated tax, the Court was not deciding the issue of whether the local tax violated the dedicated funds clause.⁸⁰ Moreover, the Court concluded that an initiative that expanded the possible uses of the

⁷⁵ *Sonneman v. Hickel*, 836 P.2d 936, 938 n.3 (Alaska 1992) (noting that State did not contest applicability of dedicated funds clause to highway fund because revenues generated by State through transportation of passengers and freight are source of revenue).

⁷⁶ *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1172 (Alaska 2009) ("Because University land is state land, revenue from University land is state revenue for purposes of the dedicated funds clause.").

⁷⁷ 818 P.2d 1153 (Alaska 1991).

⁷⁸ *Id.* at 1155.

⁷⁹ *Id.* (citing AS 29.10.030(c)).

⁸⁰ *Id.* at 1158 n.7 ("We note that neither party addressed the issue of whether the ordinance itself violates article XI [sic], section 7 of the Alaska Constitution, prohibiting dedicated revenues. Our decision today should not be read as expressing any opinion on that question.").

proceeds of the tax, rather than further limiting them, did not violate the limitation on initiatives.⁸¹

The superior court misread this precedent. With respect to *City of Fairbanks*, the superior court declared that this Court issued a holding “under the dedicated funds clause,” when in fact its determination was under the initiative restrictions clause. [Exc. 257] Even more troubling, the superior court concluded that “[t]he fact that the funds in *City of Fairbanks* were the product of a local bed tax did not matter in the court’s determination that the tax proceeds were ‘proceeds of any state tax or license.’” [Exc. 257] This analysis is flawed because: (1) the Court in *City of Fairbanks* did not determine that the bed tax proceeds were the “proceeds of any state tax or license” because the initiative clause uses the different phrase “dedicate revenues”; and (2) the Court’s application of the constitutional initiative restriction to a local initiative was explicitly discussed and justified by citation to the statute that brought the local government within the provision’s restrictions.⁸²

This was no minor error: As a result of this misreading, the court declared that “the fact that the [local contribution] is, essentially, a solely local matter and local source of funds, does not weigh in the court’s consideration of whether [it] consists of funds subjected to the dedicated funds clause.” [Exc. 257] Presumably as a result, the court did

⁸¹ *Id.* at 1158-59 (holding that initiative did not made unconstitutional dedication despite leaving bed tax with some limitations on how it would be spent because initiative expanded spending discretion of city council compared to existing ordinance).

⁸² *Id.* at 1155.

not acknowledge that references in other cases to “public revenue” and “all revenue” were referring exclusively to *state* public revenue. The court believed the issue to be settled.

The superior court’s interpretation of the dedicated funds clause should be rejected both because it rests on this misreading of precedent and because it renders the word “state” in “state tax or license” meaningless. Applying this phrase to local money impermissibly ignores the plain meaning of the word “state” and its context “both in the text and according to the discussion at the constitutional convention which adopted the wording.”⁸³ In other sections within the finance and taxation article of the constitution the term “political subdivision” is used more than six times⁸⁴—the delegates would have

⁸³ *Alex*, 646 P.3d at 208; *see also Alascom, Inc. v. North Slope Borough, Bd. of Equalization*, 659 P.2d 1175, 1178 n.5 (Alaska 1983) (“A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”) (citation omitted).

⁸⁴ Alaska Const. art. IX, § 3 (“Standards for appraisal of all property assessed by the State or its political subdivisions shall be prescribed by law.”); Art. IX, § 4 (“The real and personal property of the State or its political subdivisions shall be exempt from taxation”); art. IX, § 5 (“Private leaseholds . . . in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable”); art. IX, § 10 (“The State and its political subdivisions may borrow money”); art. IX § 11 (creating exception to debt restrictions for debt from bonds “by a public enterprise or public corporation of the State or a political subdivision”).

drafted a provision about the dedication of local money if they had wanted to.⁸⁵ And the discussion at the constitutional convention about the dedicated funds clause was entirely centered around a desire to prevent the earmarking of *state* revenue, and to preserve the power of the legislature and governor to control state finances on an annual basis.⁸⁶ Thus, the superior court's interpretation is incorrect as a matter of law.

Further supporting the State's position is a 1988 attorney general's opinion that concluded the dedicated funds clause does not apply to local communities.⁸⁷ Attorney general opinions are entitled to some deference.⁸⁸

B. The local contribution is not state revenue.

The borough argued below that the required local contribution constitutes state revenue, but the non-state nature of the local contribution is evident from the face of the statute, from the borough's complaint, and from the superior court's decision. The statute

⁸⁵ This Court may derive meaning from the omission of a term in one provision that is included in another. *See, e.g., Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (“[W]here Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” (citation omitted)); *Ward v. State, Dep’t of Pub. Safety*, 288 P.3d 94, 99 (Alaska 2012) (Act’s treatment of certain crimes “confirms that the legislature was capable of framing language containing a chronological or sequential requirement when it wished.”); *Anderson v. State, Dep’t of Revenue*, 26 P.3d 1106, 1111 (Alaska 2001) (deriving legislature’s meaning by looking at what it required in other contexts).

⁸⁶ *See, e.g.,* 6 Proceedings App. V at 111; 3 Alaska Statehood Commission, Constitutional Studies pt. IX at 28; 4A Proceedings at 2407-08.

⁸⁷ 1988 Inf. Op. Att’y Gen., 1988 WL 249509, at *3 (July 29, 1988).

⁸⁸ *Bullock v. State, Dep’t of Community & Regional Affairs*, 19 P.3d 1209, 1216 (Alaska 2001) (“Attorney General’s opinions, while not controlling, are entitled to some deference in matters of statutory construction.”).

separates school funding into a “state aid” portion and a “local contribution.”⁸⁹ The mandatory nature of the local portion does not transform it into state revenue. The borough likewise calls the local contribution requirement an “*unfunded* State mandate” in its complaint precisely because there is no state money funding the requirement. [Exc. 8 (emphasis added)] Similarly, the borough refers to its school district as being “substantially underfunded by the State.” [Exc. 8] And the superior court succinctly put it: “here we are presented with an entirely local source of money.” [Exc. 257]

Each year it is up to the borough to determine how to raise the money to fund the local contribution including what type of tax to impose and who to impose it on. In Ketchikan Gateway Borough, for example, the voters chose to have property and sales taxes. [Exc. 22] The borough retains significant control over the amount it contributes to its schools—the statutory framework provides a floor and a ceiling for local school spending, but within that range the community has room for significant debate and decision-making.⁹⁰ For fiscal year 2014 the borough opted to fund more than three million above the state-mandated floor. [Exc. 22] These are local decisions, about how to raise and spend local money.

In contrast, the money has none of the hallmarks of state revenue. The determination of what should be taxed and by how much is not made by the State; the money is not collected by the State; it is not deposited into the State treasury; and, most

⁸⁹ AS 14.17.410(b)(1) (“[S]tate aid equals basic need minus a required local contribution and 90 percent of eligible federal impact aid for that fiscal year . . .”).

⁹⁰ AS.14.17.410(b-c).

importantly, if the “dedication” of the local contribution to local schools is invalidated based on it being “dedicated,” the money assessed by the borough in its property and sales taxes will not be available to the legislature for expenditure. It will remain in the borough’s coffers for local appropriation.

*State v. Alex*⁹¹ does not control this case or establish that the required local contribution constitutes state revenue. *Alex* involved a dedicated funds clause challenge to a statute that imposed a “royalty assessment” on the sale of salmon in order to fund aquaculture associations. Facially, it is tempting to see the similarity to the local contribution—both situations involve statutes requiring one entity to pay money directly to an entity other than the State. But there the similarities end.

Alex is readily distinguishable for several reasons. First, in *Alex* the State was using its own direct taxing authority because the statute purported to authorize the collection of money by an entity that did not have any taxing authority.⁹² By contrast, the municipalities subject to the local contribution requirement have their own taxing authority,⁹³ meaning the local contribution statute is not itself a mechanism for raising money using the State’s direct taxing power. Second, the statute in *Alex* expressly

⁹¹ 646 P.2d 203 (Alaska 1982).

⁹² *Id.* at 211 (holding salmon assessments were an exercise of the taxing power and that the taxing power could not be delegated to regional aquaculture associations). Indeed, *Alex* also held that the statute impermissibly delegated the legislature’s taxing power because the aquaculture associations could decide whether to impose the assessment in the first place. *Id.*

⁹³ Alaska Const., art. X, § 2.

identified what was to be taxed. The tax was on the value of salmon sold by commercial fishermen in an amount of two or three percent of the fair market value.⁹⁴ In contrast, AS 14.17.410(b)(2) does not establish a tax or assessment on anything; it only provides a formula for calculating the required amount of local contribution. A municipality can finance its local contribution in any way it wishes.⁹⁵

Perhaps most importantly, the State contended in *Alex* that the salmon assessment money could still be freely appropriated by the legislature.⁹⁶ In other words, the State conceded that the royalty assessments were state revenue, only asking the Court to evaluate whether the assessment was close enough to a “tax or license” to be subject to the dedicated funds clause.⁹⁷ The Court in *Alex* was never asked to evaluate whether the dedicated funds prohibition applied to money that was not *state* revenue, or money raised by a third party independent of the State’s direct taxing authority, or money that was not otherwise subject to appropriation by the legislature. This is the first time the Court has been presented with those questions. For these reasons, *Alex* is not controlling.

⁹⁴ Former AS 16.10.530(a).

⁹⁵ Although the amount of the contribution is calculated by reference to the taxable real property within the borough, AS 14.17.410(b)(2), the statute does not create a tax on property and KGB indicates that it funds the local contribution through a combination of property taxes and sales taxes. [Exc. 22]

⁹⁶ 646 P.2d 203, 207 (Alaska 1982) (noting State’s argument that “current administration and future legislatures would be free to do as they please with the assessment funds, subject only to a moral obligation to carry out the policy of the originating legislature”).

⁹⁷ *Id.*

Because the education funding statutes do not create or impose a tax, instead of an analogy to the royalty assessment in *Alex*, a better analogy can be found in the concept of matching grants. For example, the State's capital project matching grant program provides that the legislature will appropriate money to be deposited in accounts for each municipality.⁹⁸ A municipality may draw on the funds in that account if it also makes a local contribution to the capital project.⁹⁹ Under the borough's theory, this sort of matching requirement somehow transforms the local contribution money into state revenue. The borough provides no legal authority for its claim that local funds can be transformed in this way.

No other viable theory for the transformation of this money into state revenue has been offered, either. The borough disclaimed any argument that the State has a legal obligation to fully fund public schools such that any money spent on schools is de facto state money. [Exc. 138 (explicitly waiving argument that State has obligation to provide full funding)] Likewise, the borough does not explain why the mandatory nature of the requirement turns the local contribution into state revenue given that the State never receives it. The money is akin to other money that state law dictates must go from one party to another, be that through minimum wage laws or mandatory insurance requirements. A monetary obligation imposed by the State does not create state revenue.

⁹⁸ See AS 37.06.010.

⁹⁹ AS 37.06.030.

Accordingly, because the dedicated funds clause applies only to state revenue, and the required local contribution is not state revenue, the school funding formula does not violate the dedicated funds clause and the superior court's decision must be reversed.

II. The local contribution lacks necessary characteristics of dedicated funds violations and would not violate the clause even if the clause applied to local money.

Even if the dedicated funds clause applies to local money, a dedicated funds problem exists only when both parts of the constitutional prohibition are satisfied: there must be a specific incoming source of revenue and a specific outgoing dedication to a particular purpose. Unlike the statutory schemes that have run afoul of the dedicated funds clause in the past, the education funding statute has only one part—a requirement that localities contribute to the funding of their school districts.¹⁰⁰ The superior court erred in determining that the local contribution met the criteria for a dedication even locally, because AS 14.17.410(b)(2) does not identify or impose an actual tax or revenue source, a necessary component to an unconstitutional dedication.

¹⁰⁰ See *Alex*, 646 P.2d at 207 (royalty assessment on sale of salmon dedicated to aquaculture associations); *Southeast Alaska Conservation Council*, 202 P.3d at 1170 (grant of state land to University of Alaska with revenues from the land dedicated to the university). Moreover, even those precedents where no violation of the dedicated funds clause was found involved a two-part scheme: Alaska Marine Highway revenues were held not to be dedicated to fund the system, because “[t]he act clearly states that the fund is part of the general fund and it may not be spent until and unless it is appropriated by the legislature.” *Sonneman*, 836 P.2d at 939. Similarly, the sale of the future proceeds of the tobacco settlement to the Alaska Housing Finance Corporation and the dedication of the sale proceeds to rural school improvements was held not to violate the anti-dedication clause because the tobacco settlement was not a traditional source of revenue and the future proceeds could constitutionally be reduced to present value, sold and the money appropriated for rural schools. *Myers*, 68 P.3d at 392.

The borough does not fund its local contribution through a “school tax” dedicated to the support of its schools. Instead, it funds education through, according to its own pleadings, a combination of sales and property taxes. [Exc. 7, 22, 43] The money goes from those general taxes into the borough assembly’s general fund to then be appropriated by the assembly. In this way, there is no specific local tax or license being dedicated to a special purpose—there is instead a financial obligation that the borough appropriates money to fulfill on an annual basis. The borough gets significant input into the amount it pays—AS 14.17.410(b)(2) sets the floor for that amount, but the borough can and does give well above the floor.¹⁰¹ [Exc. 85] For fiscal year 2014, for example, the required local contribution was just over 4 million, and the borough voluntarily paid an additional 3 million on top of the required floor. [Exc. 85] This reflects the debates that the constitutional delegates anticipated would happen within boroughs to determine how much of each local tax dollar should go toward schools, subject to the oversight and framework imposed by the State.¹⁰²

Simply having a financial obligation is not the same as having a dedicated funds problem. The superior court conflated the two, holding that the financial obligation on the borough to help fund its schools “infringes greatly on the Borough’s flexibility in budgeting and further illustrates the dedicated nature of the funds.” [Exc. 259] But the State has numerous financial obligations that it must appropriate for on an annual

¹⁰¹ AS 14.17.410(c) (describing voluntary local contribution).

¹⁰² 4A Proceedings 2629-30 (Jan. 19, 1956).

basis.¹⁰³ This is not a dedicated funds problem because money is not pre-pledged from a particular source of revenue to a particular purpose.

Finally, when the superior court imported the dedicated funds prohibition into the local context, it failed to include an exception for matching state grant programs equivalent to the exception the State has for matching federal grant programs. The constitutional debate on dedicated funds showed an early and uncontroversial determination that the clause is not meant to prevent the government from gaining access to funds from a different government that require dedications or matching grants.¹⁰⁴ The aims of the clause regarding flexibility and control would not be served by preventing the borough from participating in matching grant programs. Thus, even if the dedicated funds clause did apply to the borough, the borough would still be able to pay its share of school funding in order to receive state aid for its schools.

Accordingly, even if the dedicated funds clause applies to local money, the required local contribution does not create a dedicated funds violation.

¹⁰³ See, e.g., AS 47.25.455(a) (“The department shall pay at least \$280 a month to a person eligible for assistance under this chapter . . .”); AS 39.20.110–39.20.130 (state employees entitled to per diem and/or a mileage allowance when traveling for official business); AS 39.20.360 (unpaid state employee compensation owed to named beneficiary of deceased state employee); AS 39.27.011 (classified and partially exempt employees entitled to compensation according to salary schedule).

¹⁰⁴ 1975 Op. Att’y Gen. No. 9 at 3-4 (May 2, 1975) (citing Dec. 2, 1955 committee notes discussing federal program exception as derived from federal requirement to dedicate license revenues in certain fish and wildlife programs as condition of federal funding) [Exc. 148-49].

III. Even if the local contribution is state revenue, it is not subject to the dedicated funds clause because the constitutional history shows an intention to exempt it.

A. The delegates changed the wording of the dedicated funds clause to avoid having to list an exception for state–local cooperative programs and taxes for local government units.

The Court has recognized that the delegates changed the language of the dedicated funds clause from “all public revenue” to “the proceeds of any state tax or license” to create a series of several desired exceptions listed in a PAS memo.¹⁰⁵ The Court has also repeatedly held that the implied exceptions listed in that memo should inform interpretation of the clause.¹⁰⁶

Two of the implied exceptions are relevant to the local contribution discussion. One is an exception for “contributions from local government units for state–local cooperative programs.” [Exc. 240] Another is for “tax receipts which the state might collect on behalf of local government units.” [Exc. 240] School funding is a quintessential state–local cooperative program, and was viewed as such at the time of the constitutional convention: “While convention deliberations show that the delegates generally viewed education as a borough function, they also considered it a concurrent state responsibility as set out in Article VII, of the constitution which stipulates that the

¹⁰⁵ *Southeast Alaska Conservation Council*, 202 P.3d at 1169 n.29 (citing the exceptions to the clause from the PAS memo); *see also* PAS Memorandum (January 4, 1955) [Exc. 240].

¹⁰⁶ *Southeast Alaska Conservation Council*, 202 P.3d at 1169 n.29 (citing the exceptions to the clause from the PAS memo); *Alex*, 646 P.2d at 210 (citing 4 Alaska Const. Conv. Proceed. 2363).

state must provide for a system of public education throughout the state.”¹⁰⁷

With this implied exception, the delegates ensured that the local portion of state–local cooperative programs could remain dedicated to those programs, even if the money went through state coffers.¹⁰⁸ Similarly, under the implied exception for local tax receipts, when state tax collectors received money on behalf of local government units they were able to dedicate that money back to the local government as intended.¹⁰⁹

Thus, even if the borough convinces the Court that the state imposition of a financial obligation on the borough is the equivalent of a tax, or somehow converts the money into state revenue, it is nonetheless the sort of revenue that may permissibly be dedicated, because the constitution “allow[s] for the setting up of certain special funds, such as [those listed in the PAS memorandum].”¹¹⁰

B. If the constitutional convention delegates had intended the dedicated funds clause to have the drastic effect the borough advocates, they would have discussed it, but they did not.

The borough argues that the dedicated funds clause radically changed the way education may be financed by prohibiting the State from mandating local contributions to local schools. But the borough has not yet pointed to a single portion of the constitutional convention minutes to support this position. The delegates did not discuss the dedicated

¹⁰⁷ Victor Fischer, *Alaska’s Constitutional Convention* 123 (1975).

¹⁰⁸ *Alex*, 646 P.2d at 210 (“[T]he change . . . was intended . . . to allow necessary dedication of funds once they were received and placed in the general fund.”).

¹⁰⁹ *Id.*

¹¹⁰ *Southeast Alaska Conservation Council*, 202 P.3d 1162, 1169 (Alaska 2009).

funds clause as though it would disturb the education funding system existing at the time, which included mandatory local funds going directly to local schools.¹¹¹ Indeed, to the contrary, the delegates clearly expected that this system would continue—the State would retain responsibility for schools and local governments would need tax levying authority to support their schools.¹¹²

The delegates never discussed the radical interpretation the borough proposes because it was outside the reach of the dedicated funds clause. This omission is particularly noteworthy because the delegates did talk about the impact the clause would have on schools, discussing the tobacco tax dedication for schools as falling within the grandfathered clause exception.¹¹³ The mandatory local funding was not discussed in either the context of the grandfather clause or the sort of funding they expected to be prohibited.¹¹⁴

“Under the ‘dog that didn’t bark’ canon of statutory construction, the absence of greater discussion is a meaningful indication that the convention was *not* charting a radical course” in the area of local funding for schools.¹¹⁵

¹¹¹ See, e.g., 3B Proceedings at 2302 (Jan. 16, 1956); 4A Proceedings at 2370, 2408, 2415 (Jan. 17, 1956).

¹¹² See, e.g., 4A Proceedings at 2620, 2629-30, 2646, 2652 (Jan. 17, 1956).

¹¹³ See, e.g., 4A Proceedings at 2370, 2408, 2415 (Jan. 17, 1956).

¹¹⁴ 3B Proceedings of Alaska Constitutional Convention 2302 (Jan. 16, 1956).

¹¹⁵ *Glover v. State, Dep’t of Transp., Alaska Marine Highway Sys.*, 175 P.3d 1240, 1248-49 (Alaska 2008) (internal footnote omitted) (applying canon to constitutional provision on sovereign immunity and noting that name of canon derives from Sir Arthur Conan Doyle’s short story, “Silver Blaze”).

C. Alaska’s long-settled practice of mandatory local contributions supports the State’s interpretation.

“Long settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions”¹¹⁶ The weight given to past practice is even more compelling here, because the settled practice of requiring local contributions dates back to the first years of statehood. As this Court noted, “[c]ontemporaneous interpretation by those participating in its drafting has traditionally been viewed as especially weighty evidence of the framers’ intent.”¹¹⁷

Here, the requirement of local funding for public schools, in addition to being a pre-statehood practice, was codified into State law shortly following statehood.¹¹⁸ The newly formed boroughs were given the obligation to help fund their schools.¹¹⁹ The fact that delegates who enacted the dedicated funds clause participated in this early lawmaking is further evidence that the clause was not intended to limit the legislature’s ability to place specific financial obligations on boroughs, particularly within the cooperative realm of public schools.

In sum, the constitutional history of the dedicated funds clause and its subsequent longstanding interpretation make clear that the clause does not prohibit the sound practice of state-mandated local funding of public schools.

¹¹⁶ *Okanogan Indians v. United States (The Pocket Veto Case)*, 279 U.S. 655, 689 (1929).

¹¹⁷ *Bradner v. Hammond*, 553 P.2d 1, 4 n.4 (Alaska 1976).

¹¹⁸ See Sec. 1.03, ch. 164, SLA 1962 [Exc. 127].

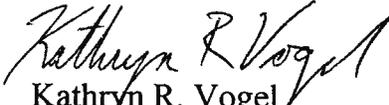
¹¹⁹ *Id.*

CONCLUSION

Based on the foregoing, this Court should reverse the superior court's award of partial summary judgment to the borough, grant summary judgment to the State, and remand for entry of summary judgment in favor of the State.

DATED May 12, 2015.

CRAIG W. RICHARDS
ATTORNEY GENERAL

By: 
Kathryn R. Vogel
Alaska Bar No. 1403013
Rebecca Hattan
Alaska Bar No. 0811096
Margaret Paton-Walsh
Alaska Bar No. 0411074
Assistant Attorneys General

Phone: (907) 269-5275
Attorneys for Defendants

5522A

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CONSTITUTIONAL STUDIES

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Appendix F

scope of the budget so that the financial plan of the state is not considered piecemeal. The legislature should be able to see at one time what the total financial needs and tax burden of the state are to be.

The widening scope of the budget document raises the question of the inclusion of estimates of legislative and judicial expenditures with those of all executive agencies. The constitutions of New York, Maryland, and West Virginia include this requirement.⁴⁵

Earmarked Revenue. The most severe obstacle to the scope and flexibility of budgeting results from the earmarking or dedication of certain revenue for specified purposes or funds. To the extent that this device is permitted in any given state it bedevils both the legislature and the administrative fiscal officers alike, curtailing the exercise of proper controls of each branch of government over the finances of the state. The device of "dedicated" revenues became widespread after the general adoption of the state gasoline tax, originated by Oregon in 1919. The usual justification of earmarking tax receipts is that it guarantees that the yield of a tax will actually be used to benefit the groups subject to taxation, and so reduces taxpayer resistance. However, in many cases, there is no relationship between the incidence of the tax and the purpose to which

⁴⁵ The New York provision states: "Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, certified by the comptroller, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as he may

its revenue is dedicated. The most common forms of dedication are revenues produced by gasoline and motor vehicle license taxes for road purposes and a variety of tax receipts for educational and welfare purposes.

It is reported that 37 states have one or more sources of revenue reserved for specified purposes; of these 23 states dedicate revenue by constitutional provision.⁴⁶ The extent of dedication has in many cases grown to seemingly uncontrolled extremes. In Colorado approximately 90 per cent of tax collections are earmarked for special funds.⁴⁷ In Texas, only 15 per cent of 1951 tax collections were unrestricted; constitutional provisions dedicated 45 per cent and the remaining 40 per cent of tax collections were earmarked by statute. Subsequent tax increases have served to increase the proportion of dedicated revenue. Kansas has over 140 dedicated funds which embrace over 80 per cent of the state's revenue.⁴⁸ Since 1930 South Dakota special funds ranged from 454 to 530. In Alaska dedication has already begun. The dedication of 1954-55 Territorial tax collections amounted to almost 27 per cent of total territorial revenue.⁴⁹

⁴⁶ Louisiana State Law Institute, Constitution Revision Project-No. 42. Revenue Finance and Taxation, 1947.

⁴⁷ Proceedings of the National Tax Association, 1944, p. 345.

⁴⁸ Your Government. Bureau of Government Research, University of Kansas, Vol. II, No. 8, 1947.

⁴⁹ Based on Staff Memorandum No. 4, Alaska Legislative Council, September, 1955.

Impetus to dedicated funds often comes from the constitutional requirements found in many states that no money arising from a tax levied for one purpose shall be used for another purpose or the provision that every law imposing a tax must clearly define the nature and purpose of the tax.

Attempts to reverse the trend toward dedication have encountered considerable resistance from the benefitting interests. Some progress has been made in Georgia, which adopted a single general fund in its new constitution of 1945.⁵⁰ After several attempts, New Jersey passed a statute creating a single state general fund in 1945. This provision was also incorporated in the new constitution of 1947.⁵¹ Governor Edge of New Jersey in trying to obtain fiscal reform and urging the establishment of a single state fund said in his Annual Budget message of 1945:

"The existence of a \$50,000,000 State Highway Fund side by side with the General State Fund has resulted in unbalanced services and administrative organization, complicated accounting procedures and a confused and incomplete picture of state finances. It has also made it necessary to engage in fiscal gymnastics to keep accounts orderly as between two funds

"Modern government has become too complex to allow the continuance of separate funds like the Highway Fund. This concept of such a separate fund connotes that the Highway Department is, in effect, a government unto itself, instead of being part of an integrated state administrative system As long as a separate fund of the size of the Highway Fund exists there must be a fractionalization of the fiscal program and policy of the state. . . .

⁵⁰ Georgia Constitution, Article VII, Sec. II and Sec. IX

⁵¹ New Jersey Constitution, Article VIII, Sec. II, Par. 2

"A single State Fund will make for better budgeting, a more unified and effective control of expenditures, simplified accounting procedure, and a clearer, more complete picture of state finances . . ."

The dedication of revenue leads a particular group of taxpayers to feel that revenues derived from certain licenses or fees belong to them as a group, hence they tend to consent more readily to the imposition of such taxes but will resist en masse any attempt at diversion, regardless of the worthiness of the purpose. As Governor Edge points out over-all planning of the fiscal program of the state is prevented; moreover the relationship between the dedicated revenue produced bears no consistent relationship to the needs to be met or services to be provided thereby, let alone the comparative needs of other agencies which must rely upon specific appropriations to carry on essential services. The legislature, whose responsibility it is not only to lay taxes but to spend the receipts in the best interests of the people, abdicates its authority and responsibility when it submits to the demands of a pressure group and resorts to the dedication device. As shown, many states have less than half of the money of the state available for the kind of budgeting aimed at carrying out an effective and responsive program of services. There is ample and eloquent testimony and considerable experience to the effect that constitutional earmarking of revenues should be avoided at all costs.

MODEL STATE CONSTITUTION

WITH
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Appendix 2

respect to the budget.

The legislature shall make no appropriation for any fiscal period in excess of the income provided for that period. The governor may strike out or reduce items in appropriation bills passed by the legislature, and the procedure in such cases shall be the same as in case of the disapproval of an entire bill by the governor.

Section 705. *Appropriations for Private Purposes Prohibited.* No tax shall be levied or appropriation of public money or property be made, either directly or indirectly, except for a public purpose, and no public money or property shall ever be appropriated, applied, donated, or used directly or indirectly, for any sect, church, denomination, or sectarian institution. No public money or property shall be appropriated for a charitable, industrial, educational or benevolent purpose except to a department, office, agency or civil division of the state.

Section 706. *Expenditure of Money.* No money shall be withdrawn from the treasury except in accordance with appropriations made by law, nor shall any obligation for the payment of money be incurred except as authorized by law. The appropriation for each department, office, or agency of the state, for which appropriation is made, shall be for a specific sum of money, and no appropriation shall allocate to any object the proceeds of any particular tax or fund or a part or percentage thereof.⁴

No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates. The governor shall have authority to reduce expenditures of state departments, offices and agencies under appropriations whenever actual revenues fall below the revenue estimates upon which the appropriations were based, or when other changed circumstances warrant economies, and, through allotments or otherwise, to control the rate at which such appropriations are expended during the fiscal year, provided that the legislature, by resolution concurred in by a majority of all the members, may exempt specific appropriations for the legislative department from the exercise of this power by the governor.

Section 707. *Purchasing Methods.* All public purchases made by the government of this state, or by any of its cities, counties, or other civil divisions, shall, so far as practicable, be made under a system of competitive bidding. Centralized purchasing shall be practiced wherever practicable.

Section 708. *Post-auditing.* The legislature shall, by a majority vote of all the members, appoint an auditor who shall serve during its pleasure.⁵ It shall be the duty of the auditor to conduct post-audits of all transactions and of all accounts kept by or for all departments, offices and agencies of the state government, to certify to the accuracy of all financial statements issued by accounting officers of the state, and to report his findings and criticisms to the governor and to a special committee of the legislature quarterly, and to the legislature at the end of each fiscal year. He shall also make such additional reports to the legislature and the proper legislative committee, and conduct such investigation of the financial affairs of the state, or of any department, office or agency thereof, as either of such bodies may require.

Section 709. *Excess Condemnation.* The state, or any civil division

on a draft originally prepared for the National Municipal League by the American Judicature Society which was published by the society, February 1920, in its journal and republished in slightly revised version in the *Journal* of August 1922. This draft appeared with only slight modifications in the first, second, and third editions of the Model.

The 1931 edition made at least three fundamental changes, including a new method of selecting judges proposed by the American Judicature Society, a change in the composition of the judicial council, and elimination of specific provisions for district court and county court departments of the general court of justice. The last change was to permit greater flexibility and further progress toward complete unification.

Since then there has been a good deal more writing and thinking about the unified court idea. A number of drafts for

unified court systems have been written since in New Jersey and the New Jersey constitution now provides for the most nearly unified court system of any state. The American Judicature Society has published a proposed plan for organization of the judiciary of Arkansas which calls for a court of justice in two divisions, appellate division and trial division, with provision for one or more judges of the trial division to sit in each county. Proposals designed to make for greater flexibility than prevails in existing court systems have been made in other states.

Since the 1931 revision of the Model State Constitution was in law with or ahead of those states, there has appeared to be no necessity for reconsideration of its basic objectives. The changes made in 1938 were designed simply to profit from the wealth of experience in drafting unified court plans since 1931 and to supply a few omissions in earlier drafts.

VII. FINANCE

BY A. E. RICE

Article VII of the Model State Constitution is intended to include all provisions relative to state finance and financial procedure which the Committee deemed it necessary to write into the constitution. These provisions relate to general taxing and borrowing powers, debt limitations, budgeting, expenditure control, purchasing methods, post-auditing, and excess condemnation. Accounting procedure, for example, is not specifically outlined in the article, since the necessity for such procedure is taken for granted. At the same time it is assumed that it may be adequately provided for by statute.

Sections 700, 701, 702, 703 and 704 concerning taxing and borrowing powers, debt limitations, and excess condemnation, require no explanation other than to say that they represent the consensus of opinion of the Committee on these matters, and that in most instances they follow rather closely the provisions of existing state constitutions on such subjects. Sections 705, 706, 707, 708 and 709 do not need explanation, since they relate mainly to procedural matters.

Inasmuch as an organization of some kind is required to implement fiscal procedure, we may begin by sketching what would appear to be the most appropriate departmental structure. The Committee purposely avoided in section 506 and elsewhere the mention of specific departments by name, because it did not wish to dignify the administrative departments with constitutional status. It was inclined to leave these departments (limited to twenty in number) to be set up by statute, so that their organization might be flexible at all times. It felt that a small state government might be adequately provided for by setting up ten or twelve administrative departments, while a large state government might require fifteen or twenty such departments. In any event, it was assumed that one of the most important of these departments, appearing in the administrative organization of every state, would be a department of finance.

The trend in recent years, under the re-organizational state governments, has been decidedly in the direction of integrating their financial functions in a department of fi-

ent phases of the budget plan without any coordination.

The legislature is not limited in its action upon the governor's budget and budgetary measures. It may amend his general appropriation bill by increasing, decreasing, or striking out any of the items, or by adding new items. As a safeguard against ill-advised action by the legislature either in changing the general appropriation bill or in passing special appropriation bills, the governor is given the power to veto, as a whole or in part, items in such bills.

As a further check, the legislature is not permitted to appropriate for any fiscal year in excess of the expendable resources of the state government for that year. The Maryland budget amendment and a few other amendments and laws copied from it (most of which have been repealed) have placed restrictions upon the power of the legislature to increase the governor's expenditure proposals in the budget. But the Maryland experience clearly indicates that this restriction is not a success, that methods of evasion are constantly employed by the legislature.

Anyhow, it would appear that such a provision is unnecessary in a state government where the administrative organization centers responsibility in the governor, as is proposed in this *Model State Constitution*. If the legislature appropriates more money than is required to carry on the administrative activities of the government, the governor can prevent its expenditure, since he is in complete control of these activities. The only remaining need for such a provision is to catch the appropriations which are made for local purposes, the expenditure of which the governor does not control. In such cases the governor may exercise his veto power and thus prevent these appropriations from becoming law unless repassed by a two-thirds vote of the legislature, in which case the responsibility is clearly upon that body.

Expenditure of Money

Section 706 provides a check against indefinite and continuing appropriations, since no money may be paid out of the state treasury except in accordance

with all accounts to be closed at the end of the fiscal year, or very soon thereafter, and a complete budget to be set up for the ensuing fiscal year.

Appropriations for capital purposes, which may not be expended during the fiscal year, should be renewed or extended by new appropriations. Indefinite or revenue appropriations should not be authorized by the legislature, since neither can be properly controlled. This, of course, would exclude mill levies and revenues earmarked for special funds, of which some states, like Colorado and Oklahoma, have scores or even hundreds. All such revenues should go into a general fund in the state treasury to be appropriated and expended under the budget plan, thus giving the widest scope and flexibility to this plan. Fortunately for better budgetary planning, continuing appropriations and special funds have been abolished, greatly reduced in number, or discontinued in practice by a number of the states.

A final provision of section 706 gives the governor authority to reduce expenditures under appropriations, when in his judgment it is necessary or desirable, and through allotments or otherwise to control the rate at which appropriations are expended during the fiscal year. This is in line with a practice which has increased rapidly, especially during the depression years. The governors of more than half the states have been empowered to reduce expenditures under legislative grants whenever estimated revenues failed to materialize or other conditions made it seem advisable. Allotments, that is, monthly or quarterly allocations, have been widely used as a method of controlling the rate of expenditure under appropriations for all operating purposes, and also as a means of producing work programs for the various administrative departments and agencies. The practice appears to be both efficacious and sound.

Purchasing Methods

Section 707 provides for centralized purchasing of supplies, materials, and contractual services, under a system of competitive bidding, for the state government and for its local subdivisions. This provision merely emphasizes what has become

ALASKA
STATE LEGISLATURE
LEGISLATIVE COUNCIL

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BOX 2199-JOUREAU

July 18, 1962

MEMORANDUM

TO: The Legislative Council
FROM: Staff
SUBJECT: Dedicated Funds

In the process of reviewing the general revenue and taxation study, the Legislative Council directed that the staff further investigate the use of dedicated funds. This memorandum specifically lists and explains the major dedicated funds of the state with emphasis on funds having taxes, licenses or special fees as their source of revenue.

During the 1960-1961 fiscal year, less than 10 per cent. of the net state tax and license collections were paid into dedicated funds. This figure does not include the amounts credited to the special motor fuel accounts, or paid to cities in the form of shared taxes. Also excluded are those nontax revenues (including some of the mineral leases) used for special purposes. In a study prepared in 1955, the Tax Foundation, Inc., found that a number of states made extensive use of tax dedication for special purposes and noted that "as a result of earmarking, legislatures in 24 states had a voice in the expenditure of less than 50 per cent of fiscal 1954 tax collections."¹

Article IX, Section 7, of the Alaska Constitution prohibits the further dedication of tax and license revenue:

"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 on the date of ratification of this constitution by the people of Alaska."

¹ The Tax Foundation, Inc., Earmarked State Taxes, Project Note No. 38, 1955.

Since 1959 the Alaska legislature has created a number of "special accounts" which differ from dedicated funds. A dedicated fund may be used only for the purposes set forth in the statute establishing it. It has been the practice of the legislature in the past three years to appropriate the money in some dedicated tax and license funds for purposes set out in the statute establishing the funds, but money in these funds in excess of the specified programs may not be diverted by legislative action. The only way the legislature may alter the uses of a dedicated fund is simply by abolishing the fund by law. A "special account" is a portion of the general fund consisting of the receipts from a particular tax source and serves to identify the amount of revenue collected from the source. The law establishing each major Alaskan (motor fuel tax) "special account" provides that the legislature "may" appropriate from it for public works undertakings. However, there is no prohibition against appropriating the resources of the "special accounts" for other purposes should the need arise.

The "special account" has the advantage of allowing the identification and appropriation of specific state resources, while providing maximum fiscal flexibility. Since the "special account" is not actually dedicated, it does not violate Article IX, Sec. 7, of the Constitution.

Dedicated funds are said to guarantee the availability of public funds for certain important services (e.g. schools and highways). The opposite view is that outright dedication limits legislative control over the appropriation and expenditure of state money. Dedication can lead to surpluses in some funds while the general operating fund is lean. The drawbacks to dedication, noted in the experience of other states, led to the development of the constitutional prohibition which Alaska has and to the replacement of some dedicated funds with "special accounts" in the general fund.

The Fish and Game Fund is the only dedicated tax fund created by the legislature since the ratification of the constitution. As is detailed later in this memorandum, this dedication is required for participation in federal programs and so is constitutional. The legislature has abolished a number of tax dedications since statehood. Taxes no longer dedicated to special funds include the highway fuel tax, the aviation fuel tax, the watercraft fuel tax, and the school tax. In an opinion dated March 11, 1959, the Attorney General held that after the ratification of the constitution "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."

A description of dedicated funds follows.

State Tax and License Funds

1 - Fish and Game Fund. The Fish and Game Fund was first established in 1957 and was continued by the Fish and Game Code of Alaska, Ch. 94, SLA 1959. Receipts from all sport fishing and hunting licenses and big game tags are placed in the fund. The federal aid programs in wildlife and sport fish restoration require the maintenance of such a fund if the state is to be eligible for participation in the federal matching programs.² No money in the fund may be used for purposes other than those directly connected with the Department of Fish and Game. Portions of the fund are used to match federal money, but the greater part of the fund is used for state fish and game management as appropriated by the legislature. For the 1962-1963 fiscal year \$704,741 was appropriated from the fund for the following purposes:

State Game Management	\$200,490
State Sport Fish Management.	194,246
Developmental (capital) Projects.	84,000
To Match Federal Wildlife Aid	144,005
To Match Federal Fish Restoration Aid.	<u>82,000</u>
Total	\$704,741

Revenues to the fund for 1962-1963 are estimated at \$670,410, and the additional \$34,000 appropriated for the year will come from fund balances.

The amount of federal aid to be received for the state matching portion is:

Wildlife Aid.	\$432,014
Fish Restoration Aid	246,000

² 16 USC Sec. 669; 16 USC Sec. 777.

Federal aid is apportioned to the state according to formulas which include consideration of the area of the state and the number of license holders. State programs eligible for federal matching assistance are planned and executed by the appropriate divisions of the Department of Fish and Game after the money has been appropriated by the legislature. Actual federal aid receipts have not been subject to appropriation by the legislature. If the state is to continue to participate in the federal aid program, the present dedication of the Fish and Game Fund must be maintained.

- 2 - Oil and Gas Conservation Fund. All money collected under the provisions of the oil and gas conservation act (Ch. 40, SLA 1955) is paid into the Oil and Gas Conservation Fund. The sources of this fund are (1) a tax of 5 mills on each barrel of oil produced in the state; (2) a tax of 5 mills on each 50,000 cubic feet of natural gas produced in the state; (3) fees for well drilling permits at \$50 per permit. The taxes levied by Ch. 40, SLA 1955, are in addition to the oil and gas production taxes levied by Ch. 7, ESLA 1955. The Oil and Gas Conservation Fund was established to carry out the administration of the oil and gas conservation act and was originally "appropriated to the Alaska Oil and Gas Conservation Commission...no such moneys shall revert to the general fund at the end of any fiscal period, but shall remain in the Oil and Gas Conservation Fund to cover future operating expenses of the Commission."³ The State Organization Act of 1959 abolished the Alaska Oil and Gas Conservation Commission and transferred its duties to the Department of Natural Resources. However, the fund was not abolished and is now administered by the Department of Natural Resources. For the two-year period beginning July 1, 1961, and ending June 30, 1963, it is estimated that \$85,420 will be received into the fund, \$4,250 from well drilling permits, and \$81,170 from the taxes on production. Of this total \$25,000 was appropriated in 1961-1962 for the administration of the Division of Mines and Minerals, Department of Natural Resources, and for 1962-1963 \$60,000 was appropriated for the construction of an addition to the minerals building in Anchorage. Since the taxes were dedicated to the fund prior to the ratification of the constitution, the fund will continue unless abolished by the legislature.
- 3 - School Fund: Construction (Cigarette Tax). The first 5¢ per pack cigarette tax goes to this fund to be used for "rehabilitation, construction

³ Sec. 15, Ch. 40, SLA 1955.

and repair of Alaska's school facilities...and for costs of insurance on buildings comprising such facilities during the periods of such rehabilitation, construction and repair and for the life of any such building."/4 Licenses for manufacturers, distributors, vendors, buyers and retailers are also paid to the fund. The additional 3¢ per pack levied in 1961 goes to the general fund. Resources of the school construction fund are divided according to a formula set out in the rules and regulations of the State Board of Education. The fund is first divided between district and state-operated schools on the basis of the proportion of students in each system. After an initial allotment of \$3,000 to each district, the district portion is distributed on the basis of the amount of average daily membership and number of professional personnel in each district. The money is paid directly to the districts and has not been subject to appropriation by the legislature. However, the portion reserved for state schools is appropriated, along with general fund money, for the construction and rehabilitation of schools in the state system. For fiscal year 1962-1963 \$217,500 in cigarette tax receipts was appropriated for state school construction. It is expected that over \$1,200,000 will be distributed directly to districts from the same source during the year. Although the state participates directly in school district operation costs, the cigarette tax payments constitute the only state contribution for school construction in districts. The dedication of the 5¢ per pack tax also preceded the ratification of the constitution.

- 4 - Sick and Disabled Fishermen's Funds. Sixty per cent of the receipts from individual commercial fishing licenses are covered into the Sick and Disabled Fishermen's Fund. Money in the fund is used to provide benefits for sick and disabled fishermen licensed to fish commercially in Alaska and qualifying for aid under the provisions of Ch. 100, SLA 1951, as amended. The fund is administered by the Commissioner of Labor with the assistance of the fishermen's fund advisory and appeals council. The commissioner must consult with the council before rendering a negative decision on an appeal filed for care under the fund./5

The Department of Labor estimates that \$70,000 will be expended from the fund during fiscal 1962 for approximately 1,200 injuries. The

/4 Sec. 16, Ch. 187, SLA 1955.

/5 Sec. 13, Ch. 64, SLA 1959, as amended by Ch. 93, SLA 1960.

costs covered include hospital expenses, transportation, professional fees and drugs. Receipts to the fund during fiscal 1961 exceeded \$155,000, and the balance in the fund on June 30, 1961, was approximately \$188,000. It is the practice of the state to invest the unused balances of the fund. It is interesting to note that the estimates of revenue to the fund for the fiscal years ending 1962 and 1963 exceed the estimated expenditures, indicating that the fund should maintain a substantial balance in future years. For 1962-1963 \$10,732 was appropriated from the fund to cover costs of administration of the program. The dedication of license fees to the fund is constitutional since it took place prior to the ratification of the constitution.

- 5 - Engineers and Architects Registration Fund. All license, registration and examination fees collected by the Board of Engineers and Architects Examiners go in a special fund in the state treasury. Expenses of the Board are paid from the fund. If, at the end of any calendar year, the fund balance exceeds \$10,000, the excess over \$10,000 goes to the general fund. During the fiscal year 1960-1961 over \$11,000 went into the Engineer's and Architects Registration Fund from license and examination fees. During the same year approximately \$11,000 was paid out for expenses of the board. The special fund has been in existence since 1939 and has never been appropriated by the legislature. Expenses are paid on vouchers drawn by the board and approved by the Department of Administration. The Board of Engineers and Architects Examiners is the only regulatory board in the state which uses a special fund. All other boards⁶ pay licensing and examination fees directly to the general fund, and receive annual appropriations for operating expenses.
- 6 - Special State Land Fund. Receipts from land application fees and from charges for copies of maps and records received by the director of lands, Department of Natural Resources, are deposited into a special contingency fund. According to law, the fund may be used to cover the costs of processing land applications.⁷ The fund is allocated to the division of lands by the governor and at the end of a fiscal year any unallocated fund balance over \$10,000 reverts to the general fund. During the 1961-1962 fiscal year \$505,115 was paid into the contingency fund, and \$91,173 was expended. Objects of expenditure for the fiscal year were as follows:

⁶ Except for the Board of Governors of the Alaska Bar Association which maintains its own accounts.

⁷ Sec. 5(10), Art. II, Ch. 169, SLA 1959, as amended by Ch. 57, SLA 1960.

Personal Services	\$ 61,460
Contractual Services	11,194
Commodities	8,387
Equipment	<u>10,132</u>
Total	\$ 91,173

The constitutional prohibition of dedication does not apply to the special land fund since its sources of revenue do not include taxes or licenses.

- 7 - Radio-Telephone Fund. Net tolls and rental fees resulting from the operation of the state radio-telephone system are deposited in the radio-telephone fund. Partial maintenance and operation of the system is carried out with money in the fund, in addition to regular general fund appropriations. For the fiscal year ending June 30, 1962, \$20,673 was appropriated from the fund. For the current fiscal year \$12,000 was appropriated. Annual receipts to the fund average about \$11,000, but prior year balances have allowed in the past for appropriations which exceed receipts. The fund was established in 1937. Since no taxes or licenses are involved, the constitutional prohibition on dedication does not apply.

Special Accounts

In addition to dedicated funds, the state treasury includes a number of important special accounts. These accounts constitute portions of the general fund and are subject to direct appropriation by the legislature. They include:

- 1 - The highway fuel tax account consisting of all receipts from the 8¢ a gallon tax on motor vehicle fuel and the 2¢ a gallon tax on motor fuel used in stationary engines and in certain nonhighway mobile equipment. According to law, the legislature may appropriate amounts from this account for various highway purposes. For fiscal 1963, \$4,187,650 is appropriated from the account. This amount constitutes the total estimated receipts from the tax for the year, and it is appropriated to cover part of the cost of highway maintenance. Highway construction appropriations and the remainder of the maintenance costs for 1962-1963 are appropriated from the state general fund.
- 2 - The aviation fuel tax account made up of the 3¢ per gallon tax on regular aviation fuel and the 1 1/2¢ per gallon tax on jet fuel. Under

the present statute, the legislature may appropriate money from the account for aviation facilities. For fiscal 1963 \$1,164,000 is appropriated from the account as follows:

Division of Aviation, Administration . . .	\$ 504,588
Equipment.	30,000
Construction Projects.	<u>629,412</u>
Total	\$1,164,000

- 3 - The watercraft fuel tax account which receives the 3¢ per gallon levy on marine fuel. The law establishing the account provides that the legislature may appropriate from the account for water and harbor facilities. For fiscal 1963, \$572,366 is appropriated from the account for:

Administration	\$ 58,741
Maintenance	12,000
Construction Projects.	<u>501,625</u>
Total	\$ 572,366

Other Funds and Accounts

Various special purpose funds are maintained by the state. These include:

- 1 - Loan funds, including the veterans loan fund and the agricultural revolving fund.
- 2 - Bond funds established under the bonding laws.
- 3 - Retirement funds for teachers and state employees.
- 4 - Other trust funds including the unemployment compensation fund, second injury fund, and the permanent school fund.
- 5 - Funds for the receipt of some federal grants.
- 6 - Working capital and revolving reimbursement funds established to fit the special needs of the Department of Highways and the Department of Public Works. Included are the equipment revolving fund, the federal highway aid revolving fund and the building construction revolving fund.

- 7 - A few small administrative funds including the FICA administration fund, the boiler inspection fund, and the pest and disease control fund.

ALASKA
STATE LEGISLATURE

LEGISLATIVE COUNCIL

File Copy
BOX 2199-UNEAU

October 17, 1962

M E M O R A N D U M

TO: The Legislative Council

SUBJECT: Dedicated funds: supplement to staff memorandum
of July 18, 1962

In a memorandum of July 18 the use of the major earmarked revenue funds of the state was described. The memorandum was prepared as an information document without recommendation. It was noted that less than 10 per cent of the net state tax and license collections were paid into dedicated funds. No consideration was given in the memorandum to the problems in financial management and accounting that arise from a proliferation of statutory funds, whether they be tax funds or simply administrative funds. Since the release of the original memorandum, additional suggestions concerning the fund structure of the state have been received from the Department of Administration. It is the purpose of this memorandum to review these suggestions, since they tied with the Council study of funds and also with the current study of budgeting procedures.

Proposed Fund Structure

In a letter to the Council dated August 21, 1962, Commissioner of Administration Floyd Guertin noted:

"It is felt that a sweeping revision is needed in our fund concept in order to develop a sound financial management program for the state. This can be done by repealing in the various laws all references to the establishment of independent funds so as to arrive at the following funds by type:

General

The General Fund

Special Revenue

World War II Veterans
Agricultural Loan Fund
Fish and Game Fund

Working Capital Fund

Equipment Revolving Fund

Utility or Other Enterprise Fund

International Airports Revenue Fund

Bond Funds

U. of Alaska Gymnasium and Utilities Construction Fund
Military Construction Fund
Ferries, Roads & Highways Construction Fund
Bush Airfield Construction Fund
Hospital Construction Fund
Vocational Education School Construction Fund
(one fund for each bond issue)
Bond Redemption Fund (A composite fund consisting
of all the Bond Redemption Funds)

Trust and Agency Funds

Teachers' Retirement Fund
Public Employees' Retirement Fund
Public School Permanent Fund
U. of Alaska Permanent Fund
Trust and Agency Fund (deposits from the various
departments held in trust)

Since each fund carries with it restrictions and limitations, the use of many funds brings about inflexibility in budgeting and in other phases of financial administration. In the State's operation, this practice has been used as a device to avoid legislative review in order that a given program may continue without being evaluated as a part of total State needs when balanced against the total financial resources of the State. As a result, programs are being carried out with insufficient legislative review and direction.

Article IV, Section 13 of the State Constitution provides in part that, 'No money shall be withdrawn from the treasury except in accordance with appropriations made by law.' We believe the spirit and intent of this provision is not being adhered to under present practice, where expenditures are made in several program areas without legislative appropriation."

Effect of Proposed Fund Structure

The proposal of the executive branch suggests eliminating from statute the following funds:

1) Oil and Gas Conservation Fund; 2) Agricultural Pest and Disease Control Fund; 3) Radio-Telephone Fund; 4) Engineers

and Architects' Registration Fund; 5) Vocational Rehabilitation Fund; 6) Old Age Assistance Fund; 7) Boiler Inspection Fund; 8) Aeronautical Revolving Fund; 9) Building Construction Revolving Fund; 10) Military Revolving Fund; 11) Land Fee Registration Fund; 12) School Construction Fund (cigarette tax).

In addition, the following funds would be eliminated under the proposal and replaced by special accounts in the general fund:

1) Sick and Disabled Fishermen's Fund; 2) Second Injury Fund; 3) Surplus Property Fund; 4) Small Business Enterprises Revolving Fund.

Among the funds that would be eliminated or replaced by accounting, seven may be termed "special revenue funds" since each has its own source of dedicated revenue. The other listed funds are fed either by appropriation or other method not involving dedicated taxes and fees. Future dedications of taxes and licenses are prohibited by the State Constitution and if the tax or license funds now existing are eliminated they cannot be restored. The special revenue funds on the list are:

1. Oil and Gas Conservation Fund (special tax on production)
2. Radio-Telephone Fund (tolls from state radio system - not a tax or license)
3. Engineers and Architects Registration Fund (fees for registration and examination paid to board)
4. Sick and Disabled Fishermen's Fund (60 per cent of commercial fishing licenses)
5. Boiler Inspection Fund (fees paid by those inspected - not a tax or license)
6. Land Fee Registration Fund (receipts from application fees and special charges - not a tax or license)
7. School Construction Fund (5 cents tax per pack of cigarettes)

While proposing the change in fund structure, the Department of Administration representatives point out that they are not suggesting any change in present state programs or in current tax levies. Rather they maintain that simplification of the fund structure and dedication pattern would lead to increased legislative fiscal control over the programs involved. They note that implementation of this proposal could lead to total review of all programs by the legislature and authorization for expenditure only through appropriation. The various motor fuel tax "special accounts" are cited as successful examples.

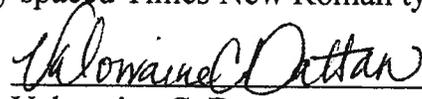
Summary

There is little question that an excessive number of funds complicates fiscal management, obscures the financial facts available to both the executive and legislative branches, and reduces control through budgetary and appropriation processes. The recent trend toward the elimination of statutory funds in Alaska shows recognition of the problems. However, the suggestions proposed by the Department of Administration would cause a major change in the financial structure of the state, and their adoption would involve a number of policy decisions. For example, if the funds were abolished how would the legislature choose to finance the program for school construction currently covered by the distribution of the cigarette tax under a Board of Education formula? Would appropriations be made to districts and state schools on the basis of prior practices or would the legislature develop its own formula? In addition to the policy questions, a legislative decision to streamline the fund structure would involve the introduction and drafting of a number of separate bills. Representatives of the Department of Administration will appear with the Council on the subject of these revisions, if such an appearance is desired.

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Saul R. Friedman
Jermain Dunnagean & Owens, PC
3000 A Street, Ste. 300
Anchorage, AK 99503

I further certify, pursuant to App. R. 513.5, that the aforementioned documents were prepared in 13 point proportionately spaced Times New Roman typeface.



Valorraine C. Dattan
Law Office Assistant

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100