IN THE SUPREME COURT OF THE STATE OF ALASKA

State of Alaska, et al.,	)	
	)	
Appellants/Cross-Appellees,	)	
	)	
v.	)	
	)	
Ketchikan Gateway Borough, et al.	)	
	)	Supreme Court No. **S-15811/15841**
Appellees/Cross-Appellants.	)	
	)	

Trial Court Case # **1KE-14-00016 CI**

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

JOINT EXCERPT OF RECORD
(VOLUME 1 OF 1)

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Filed in the Supreme Court of
the State of Alaska, this ____
day of_____, 2015.

APPELLANT/CROSS-APPELLEE'S

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

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

Plaintiffs,

v.

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

Defendants.

Case No. 1KE-14-16 CI

FILED in the Trial Courts
State of Alaska, First District
at Ketchikan
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By _____ Deputy

COMPLAINT

Plaintiffs Ketchikan Gateway Borough, Agnes Moran, John Coss, John Harrington, and David Spokely, by and through their counsel of record, submit the following as their complaint.

Parties, Jurisdiction, and Venue

1. Ketchikan Gateway Borough ("the Borough") is a second-class borough, general-law municipality established under Article X, Section 3 of the Alaska Constitution, Chapter 52 SLA 1963 (1963 Mandatory Borough Act), and former AS 07.10.010; exists under AS 29.04.030(b); and is provided with the capacity to sue under AS 29.35.010(14).

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THIS MATTER IS FORMALLY ASSIGNED TO WILLIAM B. CAREY SUPERIOR COURT JUDGE

000262

2. Plaintiff Agnes Moran is an individual residing within the boundaries of the Borough. Ms. Moran pays property and sales taxes to the Borough. Ms. Moran is also an elected official of the Borough. As a public servant, taxpayer, and mother of a child attending school operated by the Ketchikan Borough School District ("KGB School District"), Ms. Moran possesses a sincere interest in ensuring that schools operated by the KGB School District receive adequate funding in a manner consistent with the Alaska Constitution. Ms. Moran is the natural mother of Plaintiff John Coss, a minor.

3. Mr. Coss is an individual residing within the boundaries of the Borough. Mr. Coss is an eighth grade student at Schoenbar Middle School, a public school within the Borough operated by the KGB School District. Pursuant to Alaska R.Civ.P. 17, this suit is brought on Mr. Coss's behalf by his mother and next friend, Plaintiff Agnes Moran. Mr. Coss is likely to continue to attend public schools within the KGB School District for the next four school years. Mr. Coss possesses a sincere interest in ensuring that schools operated by the KGB School District receive adequate funding in a manner consistent with the Alaska Constitution. Mr. Coss is threatened with reduced educational opportunities because of the State's current underfunding of education within the Borough.

4. Plaintiff John Harrington is an individual residing within the boundaries of the Borough. Mr. Harrington pays property and sales taxes to the Borough. Mr. Harrington possesses a sincere interest in ensuring that schools operated by the KGB School District receive adequate funding in a manner consistent with the Alaska Constitution.

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5. Plaintiff David Spokely is an individual residing within the boundaries of the Borough. Mr. Spokely pays property and sales taxes to the Borough. Mr. Spokely possesses a sincere interest in ensuring that schools operated by the KGB School District receive adequate funding in a manner consistent with the Alaska Constitution.

6. Defendant State of Alaska ("State") has enacted and enforced the unconstitutional statutory scheme that is the subject of this complaint. Defendant Michael Hanley is the Commissioner of the Department of Education and Early Development ("DEED"), the State agency responsible for enforcing the unconstitutional statutory scheme that is the subject of this complaint. The State and Commissioner Hanley are collectively referred to as "Defendants."

7. This court has jurisdiction over this action pursuant to AS 22.10.020.

8. Venue lies in this court pursuant to Alaska R.Civ. P. 3 because the First Judicial District is where the claims arose and is a judicial district where the Defendants may be personally served.

FACTS

9. Article VII, Section 1 of the Alaska Constitution provides that the State shall "establish and maintain a system of public schools."

10. The basic unit of school administration in Alaska is the school district. State funding for operation of school districts depends on whether the schools within the school district are located within an organized borough, a home-rule or first-class city that is outside an organized borough, or a regional educational attendance area ("REAA"). The REAAs are educational service areas established under AS 14.08.031(a)

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for the sole purpose of administering schools within an area of the unorganized borough.

11. Alaska currently has fifty-three school districts. Each of Alaska's nineteen organized boroughs constitutes a borough school district ("Borough District"). Each of Alaska's fifteen home-rule and first-class cities within the unorganized borough constitutes a city school district ("City District"). Borough and City Districts are referred to collectively herein as "Municipal Districts." The remaining nineteen school districts are within the portion of the unorganized borough exclusive of City Districts. These school districts are divided into State-created REAAs.

12. The State has used various methods over the years to fulfill its responsibilities and obligations provided for in Article VII, Section 1 of the Alaska Constitution. The current State program for providing operating funds for education uses a specified education fund which consists of those funds appropriated by the Alaska State Legislature ("Legislature") for distribution to school districts, the State boarding school, centralized correspondence study, and pupil transportation. AS 14.17.300.

13. Each school district is eligible for "State aid" under AS 14.17.410 ("State Aid") in an amount determined by a formula, but if the appropriations in a given year are insufficient to pay the amounts authorized, then the amount provided by the State to each district, for centralized correspondence study, and the State boarding school, is reduced on a pro-rata basis. AS 14.17.400.

14. Whether a Municipal District or an REAA, each school district is entitled to be funded adequately according to its "Basic Need." According to *Alaska's Public School Funding Formula: A Report to the Alaska State Legislature*, DEED, p. 8, January

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15, 2001, Basic Need is the level of educational funding at which "all districts are considered equal" and that "provides all districts with needed resources." In accordance with AS 14.17.410, Basic Need is determined using a weighting formula which takes into account the relative costs of providing services in various school districts, the number of students with special needs, enrollment in each school and associated economies of scale, the costs of vocational and technical instruction, and the number of correspondence students. The formula multiplies some of these adjustment factors by the number of students in average daily attendance during a student count period and adds weighted amounts to arrive at an adjusted average daily membership. This number is then multiplied by the base student allocation in AS 14.17.470 to arrive at Basic Need.

15. The three sources of funding that fulfill Basic Need are "state aid, a required local contribution, and eligible federal impact aid." AS 14.17.410(b). However, the State requires different combinations of this funding depending on whether the district is a Municipal District, on the one hand, or an REAA, on the other hand.

16. State Aid is provided from the funds appropriated to the Public Education Fund (AS 14.17.300) by the Legislature. These funds are subject to veto by the Governor of the State of Alaska ("Governor") in accordance with Article II, Section 15 of the Alaska Constitution. If the balance in the Public Education Fund is insufficient to make the full payments of State Aid, then the DEED is required to reduce each district's Basic Need on a pro rata basis.

17. Municipal Districts must be funded with a "required local contribution" ("RLC") provided by their respective municipalities in accordance with AS 14.17.410(b)

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and AS 14.12.020(c). Not only are municipalities required to provide RLC payments to their districts -- the penalty for a Municipal District not doing so is that the State will not provide *any* State Aid to the Municipal District, AS 14.17.410(d), and the Municipal District will be disqualified from receiving supplemental funding under AS 14.17.490. Municipalities, therefore, are coerced to pay the RLC.

18. The RLC payments, which offset the amount of State Aid provided from the Public Education Fund to districts, are not appropriated by the Legislature to the Public Education Fund or for any other State expenditure. Correspondingly, the Governor is not given the opportunity to veto appropriations of RLC payments by the Legislature.

19. The RLC is 2.65 mills of the full and true value of the taxable real and personal property in the Municipal District in the second prior fiscal year (as of two preceding fiscal years ago). Taxable real and personal property in the "district" means taxable real and personal property within the City or Borough, because the City or Borough constitutes the district. The RLC is capped at 45% of a Municipal District's Basic Need in the preceding fiscal year. AS 14.17.410(b)(2).

20. Based upon the October 2013 student count period as reported by the KGB School District to DEED, expected FY 2014 Basic Need for the KGB School District is $25,947,546. The Alaska Department of Labor and Workforce Development reported the population estimate of the Borough at 13,938 as of July 2012 (the most recent data available). This represents a Basic Need amount of approximately $1,862 per person residing in the Borough.

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21. The Borough's FY 2014 RLC is $4,198,727. This is based upon a property tax equivalent to 2.65 mills on the full and true value of $1,584,425,200 (January 1, 2012 value) as determined by the Alaska Department of Commerce, Community, and Economic Development (DCCED). Because of certain optional property tax exemptions, the actual taxable value in the Borough in FY 2014 is $1,314,675,800. Therefore, the RLC equates to an actual mill levy of 3.19 on the FY 2014 taxable property within the Borough.

22. The per student amount for the Borough RLC payment in FY 2014 is approximately $1,900. This number equals the FY 2014 RLC divided by the actual number of students in average daily membership reflected in the October 2013 student count period as reported by the KGB School District to DEED.

23. In FY 2014, the Borough and its residents provided $4,198,727 in these compulsory payments, and an additional $3,851,273 in optional local contributions and in-kind contributions allowed by AS 14.17.410(c), for a total property tax mill equivalent of 6.12 mills based on the FY 2014 assessed value in community resources allocated to operation of KGB School District schools.

24. The Borough raised revenues to meet these and other areawide Borough expenditures for FY 2014 through an areawide property tax levy of 5 mills and an areawide sales tax levy of 2.5%. There are additional taxes levied and fees charged for Borough service area and nonareawide functions, and additional sales and property taxes are levied by cities within the Borough for city services. These taxes are paid to the Borough by the taxpayer Plaintiffs Agnes Moran, John Harrington, and David Spokely

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("Taxpayer Plaintiffs").

25. As a result of the RLC, the KGB Borough School District has been substantially underfunded by the State, with the Borough and Taxpayer Plaintiffs being forced to make up the difference. The KGB School District receives less than 84 cents of every dollar from the State needed to adequately fund Basic Need. The shortfall in this funding depletes the resources of the Borough and the Taxpayer Plaintiffs. The RLC consumes just under two-thirds of the Borough's areawide property tax levy, and the remainder of the levy (as well as additional sales tax revenue) is devoted to other education-related operations funding by the Borough.

26. The RLC component of the State's education funding scheme is an unfunded State mandate imposed on the Borough and the Taxpayer Plaintiffs. It is a mandatory State tax or other State revenue source, or a dedicated fund, that is dedicated to a special purpose and is not subject to appropriation by the Legislature or veto by the Governor.

27. On October 9, 2013, the Borough paid $4,198,727 to the KGB School District to satisfy the FY 2014 RLC. The Borough notified Defendant Hanley that the $4,198,727 payment "was made under protest ..." because it is unconstitutional and illegal.

28. The Borough made this payment under duress and compulsion because without the payment, the KGB School District would receive *no* State Aid in FY 2014. Without State Aid, the KGB School District would be unable to operate, and students within the Borough and the KGB School District (including Plaintiff Coss) would be

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deprived of educational opportunities.

29. The Borough is restricted by AS 29.45.090 with respect to a maximum mill rate of 30 mills for property taxes other than those required to pay bonds, and a limit of total property tax revenues of $1,500 per person residing in the Borough. The anticipated FY 2014 Basic Need of $25,947,546 is approximately $1,862 per person residing in the Borough. Thus, the Borough would be precluded from taxing its residents to make up for lost State Aid if all State Aid were withheld. The maximum that the Borough could levy is $20,907,000 (13,938 x $1,500) which is only 80.6% of the FY 2014 projected Basic Need for the KGB School District.

30. The Borough notified Defendant Hanley that it intended to take legal action to invalidate the RLC and seek repayment from the State of the entire $4,198,727 that it paid under protest.

31. Should the RLC continue to be enforced against the Borough, the Borough will continue to suffer devastating fiscal harm. In addition to the millions of dollars that the Borough has paid in RLCs prior to FY 2014 and the recent $4,198,727 paid under protest for FY 2014, the Borough will be coerced into paying millions of dollars per year in the future in unconstitutional and illegal RLC payments.

COUNT I: DECLARATORY JUDGMENT AS TO ARTICLE IX, SECTION 7 OF ALASKA CONSTITUTION (AS 22.10.020(g))

32. Plaintiffs reincorporate herein by reference the allegations set forth above in paragraph 1 through 31.

33. Article IX, Section 7 of the Alaska Constitution provides that "[t]he

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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." This anti-dedication clause prohibits any and all dedications beyond those mentioned in the text of the provision.

34. The RLC is a legislatively mandated payment required to be made directly to a dedicated payee (the Muncipal Districts) on an annual basis. It therefore constitutes a dedicated tax or other source of State revenue, or a dedicated fund, in violation of Article IX, Section 7 of the Alaska Constitution.

35. Plaintiffs request a declaratory judgment that the RLC component of the education funding statutory scheme is a dedicated tax or revenue, or a dedicated fund, in violation of Article IX, Section 7 of the Alaska Constitution, and is therefore unconstitutional. Further, Plaintiffs request a permanent injunction barring future enforcement of the unconstitutional RLC statutory scheme.

COUNT II: DECLARATORY JUDGMENT AS TO ARTICLE IX, SECTION 13 OF ALASKA CONSTITUTION AND ARTICLE II, SECTION 15 OF ALASKA CONSTITUTION (AS 22.10.020(g))

36. Plaintiffs reincorporate herein by reference the allegations set forth above in paragraphs 1 -35.

37. Article IX, Section 13 of the Alaska Constitution provides: "No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by

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law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void."

38. Article II, Section 15 of the Alaska Constitution provides that the Governor "may, by veto, strike or reduce items in appropriation bills."

39. Under State law, RLC payments must be provided directly to Municipal Districts instead of being paid into the State treasury for possible appropriation by the Legislature to school districts, or for some other purpose to be determined by the Legislature. Instead, the RLC circumvents the Legislature's authority to appropriate the funds by compelling a direct transfer from the Borough or City to the respective Borough or City District. The RLC therefore violates the appropriations power of the Legislature provided for in Article IX, section 13 of the Alaska Constitution.

40. Similarly, the Governor has no opportunity to exercise his item veto power. The RLC therefore violates Article II, section 15 of the Alaska Constitution.

41. Plaintiffs request a declaratory judgment that the RLC component of the education funding statutory scheme violates the appropriations power of the Legislature provided for in Article IX, Section 13 of the Alaska Constitution and/or the Governor's veto power provided for in Article II, Section 15 of the Alaska Constitution. Further, Plaintiffs request a permanent injunction barring future enforcement of the unconstitutional RLC statutory scheme.

COUNT III: ASSUMPSIT

42. Plaintiffs reincorporate herein by reference the allegations set forth above in paragraphs 1 - 41.

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43. The Borough remitted the FY 2014 RLC to the KGB School District, as required by AS 14.17.410(b). This payment was required in order to compensate for the State's failure to fully meet the Basic Need of the KGB School District. The RLC is unlawful, as it constitutes an unconstitutional dedicated tax or other revenue source, or dedicated fund, and circumvents the Legislature's power to appropriate funds and the Governor's right to exercise an item veto over any appropriation.

44. The Borough made this payment under duress, namely the threat of all State Aid for the KGB School District being withheld. The Borough made this payment under express protest.

45. The State has been unjustly enriched by the RLC because it relieved the State of the obligation to fully fund the KGB School District's Basic Need.

46. The State should be required to pay back the $4,198,727 RLC for FY 2014, and any subsequent RLCs, in assumpsit.

COUNT IV: RESTITUTION

47. Plaintiffs reincorporate herein by reference the allegations set forth above in paragraphs 1 - 46.

48. The RLC is a form of imposition or assessment (hereafter "assessment") required by the State under the color of public authority.

49. The RLC is an illegally collected assessment, as it constitutes an unconstitutional dedicated tax or other source of revenue, or dedicated fund, and circumvents the Legislature's power to appropriate funds and the Governor's right to exercise an item veto over any appropriation.

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50. The State was unjustly enriched as a result of the RLC because it relieved the State of the obligation to fund the KGB School District's Basic Need.

51. The State should be required to pay back the $4,198,727 RLC for FY 2014, and any subsequent RLCs, in restitution.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

1. For a declaratory judgment that the RLC component of the State education funding statutory scheme is a dedicated tax or other revenue, or a dedicated fund, in violation of Article IX, Section 7 of the Alaska Constitution;

2. For a declaratory judgment that the RLC component of the State education funding statutory scheme violates the requirement of a legislative appropriation under Article IX, Section 13 of the Alaska Constitution;

3. For a declaratory judgment that the RLC component of the State education funding statutory scheme violates the requirement that the Governor have the opportunity to exercise an item veto under Article II, Section 15 of the Alaska Constitution;

4. For a permanent injunction (a) prohibiting Defendants from requiring the Borough to pay the RLC in accordance with AS 14.12.020 and AS 14.17.410(b); (b) prohibiting Defendants from denying State Aid in accordance with AS 14.17.410 and State supplemental aid in accordance with AS 14.17.490(c) to the KGB School District as a result of enjoining the State from requiring the Borough to pay the RLC; and (c) requiring Defendants to fund the Basic Need of the KGB School District notwithstanding the absence of an RLC;

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5. For an order requiring the State to pay back the FY 2014 RLC of $4,198,727, and any subsequent RLCs paid by the Borough;

6. For Plaintiffs' full attorneys' fees and costs; and

7. For such other, further, and different relief as the court deems just and proper.

Dated this 13th day of January 2014.

KETCHIKAN GATEWAY BOROUGH

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

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

Plaintiffs,

v.

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

Defendants.

Case No. 1KE-14-00016CI

FILED in the Trial Courts
State of Alaska First District
at Ketchikan
FEB 06 2014
Clerk of the Trial Courts
By

PLAINTIFFS' MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiffs Ketchikan Gateway Borough ("Borough"), Agnes Moran, John Coss, John Harrington, and David Spokely (collectively "Plaintiffs"), by and through their counsel of record, move for summary judgment as set forth below.

I. INTRODUCTION

The State of Alaska ("State") has a constitutional duty to "establish and maintain a system of public schools open to all children of the State . . ."[1] "This constitutional

[1] Alaska Const. art. VII, § 1.

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mandate for pervasive state authority in the field of education could not be more clear."[2] The State, however, has abdicated this duty by unconstitutionally requiring the Borough to fund the Ketchikan Gateway Borough School District ("KGB School District") with an annual required local contribution ("RLC"). The Court should therefore grant Plaintiffs' motion for summary judgment and enter a declaratory judgment that the RLC violates three provisions of the Alaska Constitution. Longstanding Alaska Supreme Court ("Supreme Court") case law clearly establishes that the RLC violates Article IX, Section 7 of the Alaska Constitution (the "Anti-Dedication Clause") because the RLC is a source of public revenue that the State compels the Borough to provide to the KGB School District, thus dedicating it to a particular purpose. Furthermore, because the RLC operates in a manner that is never subject to legislative appropriation or the Governor's veto, it also violates Article IX, Section 13 (the "Legislative Appropriation Clause") and Article II, Section 15 (the "Governor's Veto Clause") of the Alaska Constitution. Additionally, because the RLC is unconstitutional, the Court should enjoin Defendants from assessing the RLC and punishing the Borough for refusing to pay the RLC, and require Defendants to fund the Basic Need provided for in AS 14.17.410 of the Ketchikan Gateway Borough School District notwithstanding the absence of future RLCs. Finally, the Court should order a refund of the 2014 RLC paid under protest in accordance with the doctrines of assumpsit and/or restitution.

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[2] *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971); *Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391 (Alaska 1997); *Municipality of Anchorage v. Repasky*, 34 P.3d 302 (Alaska 2001);

II. FACTUAL BACKGROUND

A. The parties

The Borough is a second-class borough and general-law municipality. The individual plaintiffs are residents of the Borough. They pay property and sales taxes to the Borough. One individual plaintiff is currently a student at Schoenbar Middle School which is operated by the KGB School District. Another individual plaintiff is an elected Borough assembly member and the mother of the student.

Defendants are the State and Michael Hanley, the Commissioner of the Department of Education and Early Development ("DEED"). DEED is responsible for enforcing the statutory scheme at issue in this litigation.[3]

B. The statutory scheme for school district funding

The basic unit of school administration in Alaska is the school district.[4] State funding for operation of school districts depends on whether the schools within the school district are located within an organized borough, a home-rule or first-class city that is outside an organized borough, or a regional educational attendance area ("REAA").[5] The REAAs are educational service areas established for the sole purpose of administering schools within an area of the unorganized borough.[6]

---

[3] *See* AS 14.07.020(1) (DEED exercises general supervision over the public schools of the State); AS 14.07.070 (withholding of state funds from school districts that fail to comply with school laws of the State and regulations of DEED); AS 14.17.410(d) (state aid may not be provided to a city or borough school district if RLC has not been made).

[4] AS 14.12.010.

[5] AS 14.12.010(1) - (3).

[6] AS 14.08.031(a).

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Alaska currently has fifty-three school districts.[7] Each of Alaska's nineteen organized boroughs constitutes a borough school district ("Borough District").[8] Each of Alaska's fifteen home-rule and first-class cities within the unorganized borough constitutes a city school district ("City District").[9] Borough and City Districts are referred to collectively herein as "Municipal Districts." The remaining nineteen school districts are within the portion of the unorganized borough exclusive of City Districts.[10] These school districts are divided into State-created REAAs.[11]

The current State scheme for providing operating funds for education uses a specified education fund which consists of those funds appropriated by the Alaska State Legislature ("Legislature") for distribution to school districts, the State boarding school, centralized correspondence study, and pupil transportation.[12] Whether a Municipal District or an REAA, each school district is entitled to be funded adequately according to its "Basic Need."[13] Basic Need is the level of educational funding at which "all districts are considered equal" and that "provides all districts with needed resources."[14] Basic

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[7] The location and nature of school districts in the state are generally known within the state, and are easily capable of accurate and ready notice to this Court. *See* Alaska R. Evid. 201.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *See id.*, *see also* AS 14.08.031(a) (providing for creation of REAAs by Department of Commerce, Community, and Economic Development in consultation with DEED and local communities).

[12] AS 14.17.300.

[13] *See* AS 14.17.410(b).

[14] *Alaska's Public School Funding Formula: A Report to the Alaska State Legislature*, Tab 2 -- Comparison of Old to New Funding Formula, DEED, p. 8, January 15, 2001. Affidavit of Scott Brandt-Erichsen ("Brandt-Erichsen Aff."), ¶ 2 & Ex. A.

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Need is determined using a weighting formula which takes into account the relative costs of providing services in various school districts, the number of students with special needs, enrollment in each school and associated economies of scale, the costs of vocational and technical instruction, and the number of correspondence students.[15] The formula multiplies some of these adjustment factors by the number of students in average daily attendance during a student count period and adds weighted amounts to arrive at an adjusted average daily membership.[16] This number is then multiplied by the base student allocation in AS 14.17.470 to arrive at an amount identified as the Basic Need.[17]

The three sources of funding that fulfill Basic Need are "state aid, a required local contribution, and eligible federal impact aid."[18] However, the State requires different combinations of this funding depending on whether the district is a Municipal District, on the one hand, or an REAA, on the other hand.[19]

Each school district is eligible for "State aid" under AS 14.17.410 ("State Aid") in an amount determined by a formula, but if the appropriations in a given year are insufficient to pay the amounts authorized, then the amount provided by the State to each district is reduced on a pro-rata basis.[20] State Aid is provided from the funds

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[15] AS 14.17.410(b).

[16] *Id.*

[17] AS 14.17.410(b); AS 14.17.470.

[18] AS 14.17.410(b). The KGB School District does not currently receive eligible federal impact aid because it does not meet the eligibility requirements. Brandt-Erichsen Aff., ¶ 12 & Ex. I.

[19] AS 14.17.410(b)(1) (public school funding is State Aid, RLC, and Federal Impact Aid funding); AS 14.17.410(b)(2) (RLC required only for City Districts and Borough Districts).

[20] AS 14.17.400.

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appropriated to the Public Education Fund by the Legislature.[21] These funds are subject to veto by the Governor of the State of Alaska ("Governor") in accordance with Article II, Section 15 of the Alaska Constitution.[22]

Not only is the RLC "required,"[23] the penalty for a municipality and its residents if an RLC is not provided to a Municipal District is that the State will not provide *any* State Aid to the Municipal District[24] and the Municipal District will be disqualified from receiving supplemental funding.[25] The RLC payments reduce (by a 1:1 ratio) – or offset – the amount of State Aid provided from the Public Education Fund to school districts.[26] RLC payments do not, however, change the amount of Basic Need required to fund education.[27] RLC payments are made directly from each municipality to its Municipal District.[28] The RLC payments are therefore not available to the Legislature for appropriation to the Public Education Fund or any other purpose. Correspondingly, the Governor is not given the opportunity to veto appropriations of RLC payments by the Legislature.[29]

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[21] *See* AS 14.17.300(a)(1).

[22] *See* Alaska Const. art. II, § 15.

[23] AS 14.17.410(b); AS 14.12.020(c).

[24] AS 14.17.410(d).

[25] AS 14.17.490(b).

[26] *See* AS 14.17.410(b).

[27] *Id.*

[28] *See* AS 14.17.410(b) and AS 14.12.020(c).

[29] *See generally* AS 14.17.410(b) (requiring local contribution to come directly from Borough or City); *see also* Brandt-Erichsen Aff., ¶ 10 & Ex. G (showing payment directly from Borough to KGB School District).

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The RLC is 2.65 mills of the full and true value of the taxable real and personal property in the Municipal District in the second prior fiscal year (as of two preceding fiscal years ago).[30] Taxable real and personal property in the "district" means taxable real and personal property within the City or Borough, because the City or Borough constitutes the district.[31] The RLC is capped at 45% of a Municipal District's Basic Need in the preceding fiscal year.[32]

C. The impact of the RLC on provision of services in the Borough

Based upon the October 2013 student count period as reported by the KGB School District to DEED, expected FY 2014 Basic Need for the KGB School District is $25,947,546.[33] DCCED reported the population estimate of the Borough at 13,856 as of January 15, 2014.[34] This represents a Basic Need amount of approximately $1,873 per person residing in the Borough.[35]

The Borough's FY 2014 RLC is $4,198,727.[36] This is based upon a property tax equivalent to 2.65 mills on the full and true value of $1,584,425,200 (October 1, 2012 value) as determined by the Alaska Department of Commerce, Community, and Economic Development (DCCED).[37] Because of certain optional property tax

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[30] AS 14.17.410(b).

[31] AS 14.17.410(b); *see also* AS 14.12.010(1) - (3).

[32] AS 14.17.410(b)(2).

[33] Brandt-Erichsen Aff., ¶ 3 & Ex. B.

[34] Brandt-Erichsen Aff., ¶ 4 & Ex. C.

[35] Brandt-Erichsen Aff., ¶ 4.

[36] Brandt-Erichsen Aff., ¶ 5.

[37] Brandt-Erichsen Aff., ¶ 5 & Ex. D.

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exemptions, the actual taxable value in the Borough in FY 2014 is $1,314,675,800.[38] Therefore, the RLC equates to an actual mill levy of 3.19 on the FY 2014 taxable property within the Borough.[39]

The per student amount for the Borough RLC payment in FY 2014 is approximately $1,900. This number equals the FY 2014 RLC divided by the actual number of students in average daily membership reflected in the October 2013 student count period as reported by the KGB School District to DEED.[40] In FY 2014, the Borough and its residents provided $4,198,727 in these compulsory payments, and an additional $3,851,273 in optional local contributions and in-kind contributions allowed by AS 14.17.410(c), for a total property tax mill equivalent of 6.12 mills based on the FY 2014 assessed value in community resources allocated to operation of KGB School District schools.[41]

The Borough raised revenues to meet these and other areawide Borough expenditures for FY 2014 through an areawide property tax levy of 5 mills and an areawide sales tax levy of 2.5%.[42] There are additional taxes levied and fees charged for Borough service area and nonareawide functions, and additional sales and property taxes are levied by cities within the Borough for city services.[43]

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[38] Brandt-Erichsen Aff., ¶ 5 & Ex. E at 10.

[39] Brandt-Erichsen Aff., ¶ 5.

[40] Brandt-Erichsen Aff., ¶ 6.

[41] Brandt-Erichsen Aff., ¶ 7 & Ex. F.

[42] Brandt-Erichsen Aff., ¶ 8.

[43] Brandt-Erichsen Aff., ¶ 8.

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As a result of the RLC, the KGB Borough School District has been substantially underfunded by the State, with the Plaintiffs being forced to make up the difference. The KGB School District receives less than 84 cents of every dollar from the State needed to adequately fund Basic Need.[44] The shortfall in this funding depletes the resources of the Borough and the taxpayer Plaintiffs. The RLC consumes just under two-thirds of the Borough's areawide property tax levy, and the remainder of the levy (as well as additional sales tax revenue) is devoted to other education-related operations funding by the Borough.[45]

D. The Borough's payment of the 2014 RLC under protest

On October 9, 2013, the Borough paid $4,198,727 to the KGB School District to satisfy the FY 2014 RLC.[46] The Borough notified Defendant Hanley that the $4,198,727 payment "was made under protest" because it is unconstitutional and illegal, in part because it violated the Anti-Dedication Clause.[47] The Borough notified Defendant Hanley that it intended to take legal action to invalidate the RLC and seek repayment from the State of the entire $4,198,727 that it paid under protest.[48]

E. Procedural history

Plaintiffs filed their complaint in this matter on January 13, 2014, and now request that the Court resolve their claims as a matter of law.

III. LEGAL ARGUMENT

[44] Brandt-Erichsen Aff., ¶ 9.

[45] Brandt-Erichsen Aff., ¶ 9.

[46] Brandt-Erichsen Aff., ¶ 10 & Ex. G

[47] Brandt-Erichsen Aff., ¶ 11 & Ex. H.

[48] Brandt-Erichsen Aff., ¶ 11 & Ex. H.

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A. Standard

Plaintiffs seek summary judgment and the entry of a declaratory judgment and injunction on their constitutional claims, as well as entry of judgment on the Borough's request for a refund of the 2014 RLC. Under Alaska R. Civ. P. 56, "[a] party seeking to recover upon a claim . . . or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for a summary judgment in the party's favor upon all or any part thereof."[49] Summary judgment must be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that (i) there is no genuine issue as to any material fact and (ii) that any party is entitled to a judgment as a matter of law.[50]

The entry of a declaratory judgment is governed by AS 22.10.020(g) and Alaska R. Civ. P. 57(a). AS 22.10.020(g) provides that in the case of an actual controversy, the Superior Court "may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought." The declaration has the force and effect of a final judgment or decree.[51] Rule 57(a) permits a declaratory judgment to be obtained in the same manner as any other judgment under the civil rules.[52] While entry of a declaratory judgment is discretionary, the discretion allowed under the

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[49] Alaska R. Civ. P. 56(a).

[50] *Id.* 56(c).

[51] AS 22.10.020(g). The Court may also grant further necessary or proper relief based upon a declaratory judgment. *See id.*

[52] *See* Alaska R. Civ. P. 57(a); *Jefferson v. Asplund*, 458 P.2d 995, 998 (Alaska 1969) (noting that intent of this rule is "to establish that general rules of pleading and of civil procedure [a]re to be made applicable to actions for declaratory relief").

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Act "should be liberally exercised to effectuate the purposes of the Declaratory Judgment Act and thereby afford relief from uncertainty and insecurity with respect to rights, status and other legal relations."[53] Finally, a permanent injunction is appropriately issued to insure compliance with a court's declaratory judgment and such injunctions are frequently issued to prevent enforcement of unconstitutional statutes as explained further below.

B. No genuine issues of material fact preclude the Court's resolution of Plaintiffs' claims as a matter of law.

Summary judgment is an efficient means of disposing of purely legal claims for which no factual disputes need be resolved.[54] The constitutionality of a statute is a pure question of law.[55] While the *legal* effect of the RLC is disputed, the facts material to resolution of the issues are not disputed. Therefore, the Court may resolve these issues at this stage of the proceedings.

The following are the only *material* facts necessary to the resolution of Plaintiffs' claims in this matter, none of which are subject to genuine dispute:

(1) The State compels the payment of the RLC by boroughs and cities to the Municipal Districts.

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[53] *Jefferson*, 458 P.2d at 998 (quoting *Lehigh Coal & Navigation Co. v. Central R.R.*, 33 F. Supp. 362, 365 (E.D. Pa. 1940)).

[54] *See In re Estate of Evans*, 901 P.2d 1138, 1140 (Alaska 1995) (whether undisputed documentary evidence constituted a legally sufficient notice of disallowance was question of law for which summary judgment is appropriate). "A genuine issue of material fact exists where reasonable jurors could disagree on the resolution of a factual issue." *Burnett v. Covell*, 191 P.3d 985, 989 (Alaska 2008) (citations omitted).

[55] *Hickel v. Cowper*, 874 P.2d 922, 926 (Alaska 1994) (quoting *Sun v. State*, 830 P.2d 772, 775 n. 4 (Alaska 1992) ("'Questions concerning the constitutionality of a statute are questions of law and are reviewed de novo.'")).

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(2) The Borough is subject to the RLC and thereby compelled to provide the RLC to the KGB School District.

(3) The Borough is required by the State to transmit its RLC payment directly to the KGB School District.

(4) The RLC is designed in a manner in which it is not subject to annual appropriation by the Legislature or to the Governor's veto.

(5) The Borough paid the 2014 RLC in the amount of $4,198,727.00 under express protest, and along with notification that it intended to seek a refund of the unconstitutional payment.

For the reasons set forth below, these established facts entitle Plaintiffs to judgment as a matter of law that (1) the RLC violates the Alaska Constitution; (2) the Borough is entitled to a refund of the 2014 RLC payment; and (3) an injunction should be entered preventing the State from assessing the RLC or otherwise denying full funding of basic need to the KGB School District.

C. Plaintiffs are entitled to judgment as a matter of law on their claims for declaratory judgment that the RLC violates the Alaska Constitution.

1. As a matter of law, the RLC violates the Anti-Dedication Clause in Article IX, Section 7 of the Alaska Constitution.

The Anti-Dedication Clause found in Article IX, Section 7 of the Alaska Constitution "prohibits the earmarking of state funds for predetermined purposes."[56] The provision states that:

> 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.

[56] *Se. Alaska Conservation Council v. State*, 202 P.3d 1162, 1167 (Alaska 2009).

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Since the seminal case of *State v. Alex*,[57] the Supreme Court has interpreted the Anti-Dedication Clause to prohibit "any and all dedications."[58] In reaching this conclusion, the Court defined the phrase "the proceeds of any state tax or license" to include "the sources of any public revenues," including a "tax, license, rental, sale, bonus-royalty, royalty, or whatever . . ."[59]

Alex applied this definition of "the proceeds of any tax or license" to a statute requiring an assessment on commercial salmon fishing that was collected by commercial fish buyers and provided directly to private aquaculture associations.[60] The statute at issue (AS 16.10.530 (1982)) required that commercial fishermen pay a "royalty assessment" on certain species of salmon "for the purpose of providing revenue" to the private aquaculture association[61] in which the royalty assessment was made.[62] The assessments were collected by the commercial buyers to whom the salmon were sold, and the funds forwarded directly to the aquaculture association's trust account.[63] A group of commercial fishermen brought a class action claim against two of the aquaculture associations and the State, seeking a declaratory judgment holding unconstitutional the

[57] 646 P.2d 203 (Alaska 1982).

[58] *Id.* at 210.

[59] *Id.* at 210 (quoting 1975 Alaska Op. Att'y Gen. No. 9 at 24 (May 2)).

[60] *Id.* at 204.

[61] The aquaculture associations were formed for the purpose of enhancing salmon production, at least in part by constructing salmon hatcheries. *Id.* at 205-06 (citations omitted).

[62] *Id.* at 205.

[63] *Id.* (citing 3 AAC 88.020(b)(1)(H), 88.040(b), (c),88.900(2) (1982)).

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statute, a refund of all assessments that had been paid by the fishermen, and a permanent injunction to restrain future collection of the assessments.[64]

The Supreme Court affirmed the trial court's order granting partial summary judgment to the plaintiffs, which had held the assessment statute unconstitutional because it created a dedicated tax.[65] After examining the history of the Anti-Dedication Clause and concluding that it prohibited the dedication of any source of public revenue, the Court concluded that the assessments imposed upon the salmon fishermen were "'proceeds of a state tax or license,' within the meaning of article IX, section 7 . . ."[66] In the thirty plus years since it was decided, *Alex*'s holding has been reaffirmed numerous times and applied to dedications of revenues derived from the sale, lease, or management of public lands,[67] income from tobacco companies as a result of litigation settlements,[68] and restrictions on an agency's ability to access general funds.[69]

The same constitutional infirmities present in *Alex* and its progeny are present with the RLC. Like the special assessments imposed on the commercial fishermen in *Alex*, the

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[64] *Id.* at 204.

[65] *Id.* at 205, 215.

[66] *Id.* at 210.

[67] *Se. Alaska Conservation Council*, 202 P.3d at 1165-66.

[68] In *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 391 (Alaska 2003), the Alaska Supreme Court held that the one-time sale of the right to future payments from the master tobacco settlement agreement did not violate the Anti-Dedication Clause, in the same way that the one-time sale of any state asset such as a building would similarly not be violative of the Anti-Dedication Clause. The Court recognized, however, that the Anti-Dedication Clause "would prohibit the legislature from appropriating the tobacco settlement revenue stream for more than the immediately forthcoming fiscal year" for a specific purpose. *Id.*

[69] *Sonneman v. Hickel*, 836 P.2d 936, 939 (Alaska 1992) (limitation on ability of DOTPF to ask for funds from the Marine Highway Transportation System Fund to be used to fund capital projects violates the Anti-Dedication Clause).

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RLC imposed on the Borough is a "source[] of any public revenue[],"[70] namely a payment compelled by the State to be collected by the Borough and paid to the KGB School District.[71] That public revenue in the form of the RLC is then dedicated for a particular purpose to a particular source, the KGB School District, in a manner that is materially indistinguishable from the compelled payment to the commercial buyers in *Alex* for the purpose of funding regional aquaculture associations. Like the compelled special assessments on the sale of salmon in *Alex*, the compelled RLC creates an impermissible dedication of public revenue, thereby violating the Anti-Dedication Clause.

In 2009, the Supreme Court held in *Southeast Alaska Conservation Council* that it was "reaffirm[ing] the reasoning and language of *Alex*... "[72] The Supreme Court then provided another rationale for its holding:

> [A]rticle IX, section 7 creating an exception for the Permanent Fund indicates that the prohibition [on dedicated funds] is meant to apply broadly. If only revenue collected as taxes or license fees were included there would have been no need to expressly exempt "all mineral lease rentals, royalties, 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.[73]

Thus, just five years ago, the Supreme Court again broadly interpreted "proceeds of any tax or license" to mean all "revenues."[74]

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[70] *Alex*, 646 P.2d at 210.

[71] *See* AS 14.17.410(b), (c).

[72] 202 P.3d at 1169 (net proceeds of sales of land conveyed to the University could not be dedicated to a University endowment fund).

[73] *Id.* at 1170.

[74] In discussing an unrelated statutory term, in *Alaskans For Efficient Government, Inc. v. Knowles*, 91 P.3d 273, 276 n.11 (Alaska 2004), the Supreme Court described *Alex* as "concluding that the meaning of "tax" must be determined from its context in the text of

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That the RLC is not paid into the State treasury has no bearing on whether it constitutes a dedicated source of public revenue. In *Alex*, the special assessments were never deposited into the State general fund. They were collected by buyers of salmon and forwarded directly to the particular regional aquaculture association trust account without deposit into the State treasury.[75] The compelled transfer in *Alex* is indistinguishable from the compelled transfer of funds from thirty four municipalities to their respective municipal school districts without deposit into the State treasury.

In its anti-dedication/appropriation clause case law, the Supreme Court has looked to see whether the dedication at issue is mandatory in addition to whether or not the revenue at issue enters the State (or local) treasury. For example, in *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153 (Alaska 1991), the Court held that a local initiative that broadened the use of bed tax funds to uses other than tourism did not make or repeal an appropriation or dedicate revenues in violation of Art. IX, sec. 7 (initiatives cannot appropriate money or dedicate revenues). The initiative allowed any organization to apply for funds from a discretionary fund containing bed tax receipts instead of a more limited list of organizations provided for in the city ordinance that the initiative had amended. The Court first held that the initiative did not make or repeal appropriations because it did not "set aside a certain specified amount of money or property for a specific purpose or object in such a manner that is executable, mandatory and reasonably definite with no further legislative action."[76] In fact, the initiative gave

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the Alaska constitution and in discussions at the constitutional convention." The Court added this canon: "Where a word of common usage has more than one meaning, the meaning which will best attain the purpose of the legislature should be adopted in construing the statute. 2A Singer. supra note 4, § 47.28." *Id.*

[75] *Alex*, 646 P.2d at 207.

[76] *Fairbanks Convention*, 818 P.2d at 1157.

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the Council more discretion rather than less with respect to which organizations could receive funds from the fund. [77]

The Court then adopted the *Alex* analysis for whether the initiative dedicated funds.[78] It stated that the salmon assessment in *Alex* was problematic because "the allocation of revenues to the regional associations was mandatory, leaving no discretion to the legislature to spend the money in any other way." In contrast, "the questioned initiative would not create any similar 'right' for any person or group. It would not earmark any funds for any particular organizations. Nor does it create any mandatory expenditures."[79] "The initiative might be better described as an 'undedication' [rather] than a dedication."[80]

The payment of the RLC is mandatory, leaving the legislature without discretion to collect these revenues and use them in some other way. Instead, the RLC is earmarked for use by school districts. Therefore, *Fairbanks Convention* also supports a conclusion that the RLC violates the Anti-Dedication Clause as well as the Legislature's power to appropriate and the Governor's power to veto appropriations.

2. As a matter of law, the RLC violates the appropriation requirement of Article IX, Section 13 of the Alaska Constitution and the Governor's veto requirement of Article II, Section 15 of the Alaska Constitution.

The Alaska Constitution "defines with specificity the mechanics of legislation. Each provision has a purpose 'designed to engender a responsible legislative process

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[77] *Id.*

[78] *Id.* at 1158.

[79] *Id.* The Court pointed out that "... the two main motivations behind the ban on dedicated revenues were to maintain the potential of flexibility in budgeting and to ensure that the legislature did not abdicate responsibility for the budget." *Id.*

[80] *Id.* at 1159.

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worthy of the public trust.'"[81] The Legislature cannot exercise its legislative power without following the enactment provisions of the Alaska Constitution; otherwise, these provisions "would serve no purpose."[82] The RLC violates two of these enactment provisions by being designed in a manner to evade the Legislature's appropriations power and the Governor's veto power.

The Legislative Appropriation Clause found in Article IX, Section 13 of the Alaska Constitution provides: "No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void." The purpose of the appropriations power is to require annual appropriations of funds, and "to strictly limit the practice of long- lived appropriations."[83]

The Governor's Veto Clause found in Article II, Section 15 of the Alaska Constitution provides that the Governor "may, by veto, strike or reduce items in appropriation bills" (the "Governor's Veto Clause"). The item veto "'gives the governor the power to influence the state's budget by requiring him or her to submit a proposed budget and general appropriation bill to the Legislature and by striking or reducing items appropriated by the Legislature.'"[84] The constitutional history underlying this provision "indicates a desire by the delegates to create a strong executive branch with a strong

[81] *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 772 (Alaska 1980) (quoting *Plumley v. Hale*, 594 P.2d 497, 500 (Alaska 1979)).

[82] *Id.* at 772.

[83] 1991 Alaska Op. Att'y Gen. (Inf.) 337 (June 27).

[84] *Simpson v. Murkowski*, 129 P.3d 435, 446 (Alaska 2006) (quoting *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001)).

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control on the purse strings of the state."[85] Combined, the Legislative Appropriation and Governor's Veto Clauses reflect a policy that "under the Alaska Constitution 'it is the joint responsibility of the governor and the Legislature to determine the State's spending priorities on an annual basis.'"[86]

By compelling a direct transfer of public funds from a municipality to a Municipal District, the RLC violates both of these constitutional requirements as well as the Anti-Dedication Clause. RLC payments must be provided directly to Municipal Districts instead of being paid into the State treasury for possible appropriation by the Legislature to school districts, or for some other purpose to be determined by the Legislature. In stark contrast to State Aid from the Public Education Fund, the RLC is not appropriated by the Legislature.[87] In this way, the RLC circumvents the Legislature's authority to appropriate the funds by compelling a direct transfer from a municipality to its respective Municipal District. Similarly, the Governor has no opportunity to exercise his item veto power.

In cases involving dedicated funds, the Supreme Court has suggested that constitutional issues associated with the legislative process are implicated, because a dedicated fund frequently operates in a manner that evades the requirements of appropriations and the Governor's veto power. In *Sonneman*,[88] the Supreme Court held:

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[85] *Id.* (quoting *Thomas v. Rosen*, 569 P.2d 793, 795 (Alaska 1977) (internal quotation marks omitted)).

[86] *Id.* (quoting with approval the superior court's reasoning in opinion below).

[87] *See* AS 14.17.300(a)(1).

[88] 836 P.2d at 939 (limitation on ability of DOTPF to ask for funds from the Marine Highway Transportation System Fund to be used to fund capital projects violates the anti-dedication clause),

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> The principle on which the act is based, that the administrators of the Alaska Marine Highway System and the legislature will treat the fund as if the Marine Highway System had a right to its proceeds, is inconsistent with the model contemplated by the anti-dedication clause, under which the disposition of all revenues will be decided anew on an annual basis. Nevertheless, the expectations created by the act are a mere 'talking point' because they impose no legal restraint on the appropriation power of the legislature. The 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.

In contrast, the RLC is a dedication because it is not available annually for appropriation as the Legislature sees fit each year. Additionally, the Court in *Sonneman* held that the portion of the statute that restricted executive authority to seek appropriations from the fund for other purposes also violated the anti-dedication clause because it not only bound the Legislature but also restricted the executive branch from asking for appropriations from all sources of funds.[89] The RLC suffers from the same flaw, and therefore, is also unconstitutional under the Legislative Appropriation and Governor's Veto Clauses. Similarly, in *Myers* (an Anti-Dedication Clause case that permitted the sale of the present value of tobacco settlement money to a third party), the dissenting justices suggested that an automatic payment flowing to a private entity upon receipt by the State was vulnerable to an attack under the Legislative Appropriation Clause because it operated without requiring an appropriation.[90] The same infirmity is present with the RLC, which exists in perpetuity and is never subject to appropriation or the Governor's veto. It therefore violates the Legislative Appropriation and Governor's Veto Clauses.

D. The Borough is entitled to judgment as a matter of law on its claim for return of the 2013 RLC in assumpsit and restitution.

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[89] *Id.* at 940.

[90] *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 399 & 399 n.9 (Alaska 2003) (Bryner, J., dissenting) (citing with approval memorandum opinion of Director of Legislative Services for the Legislative Affairs Agency).

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The United States Supreme Court has described assumpsit as a cause of action that "has been gradually expanded as a medium for recovery upon every form of quasi-contractual obligation in which the duty to pay money is imposed by law, independently of contract, express or implied in fact."[91] In *Alex*, 646 P.2d at 215, the Court stated that the plaintiffs had brought a "general assumpsit common-law cause of action for the refund of taxes wrongly paid." In *Era Aviation, Inc. v. Campbell*,[92] the Court treated a claim for refund of illegally collected landing fees as one in "assumpsit" and required that a refund claim could only be brought in assumpsit if the plaintiffs protested the payments at the time they were made. Like the plaintiffs in *Alex* and in *Era Aviation*, the Borough is entitled to a refund of the RLC in accordance with the assumpsit doctrine.

The Borough effectively protested the payment of the RLC, and the RLC itself, at the time of payment of the 2014 RLC. In order to effectively protest, the payer must "not only notify the State that the payer believes the levy to be illegal, but must also signal that the payer intends to seek a refund of the monies illegally levied."[93] In other words, the payer "must specifically notify the State, whether by the words "paid under protest" or otherwise, that it intends to seek reimbursement."[94] The Borough's October 9, 2013 notification plainly satisfies these requirements: it notified Defendant Hanley that the $4,198,727 payment "was made under protest," it stated that the Borough would seek a

[91] *State Commercial Fisheries Entry Comm'n v. Carlson*, 270 P.3d 755, 765 n.65 (Alaska 2012) (quoting *Stone v. White*, 301 U.S. 532, 534 (1937)).

[92] 915 P.2d 606, 608-611 (Alaska 1996).

[93] *Id.* at 611.

[94] *Id.* at 612.

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refund of the amount, and it stated that the amount was paid to satisfy an unconstitutional dedication.

Alternatively, Section 19 of the Restatement (Third) of Restitution and Unjust Enrichment recognizes that "[e]xcept to the extent that a different rule is imposed by statute, the payment of a tax by mistake, or the payment of a tax that is erroneously or illegally assessed or collected, gives the taxpayer a claim in restitution against the taxing authority as necessary to prevent unjust enrichment." "Tax" is also defined broadly as "every form of imposition or assessment collected under color of public authority."[95] The State was enriched by the Borough's payment of the RLC to the KGB School District even though it did not directly receive the RLC because the RLC reduced the amount of money that the State itself provided to the KGB School District. Moreover, the October 9, 2013 letter to Defendant Hanley put the State on notice that its decision to fund Basic Need in this way would be affected by this suit.

In sum, under either theory, the Borough is entitled to a refund of the unconstitutional RLC paid to the KGB School District for 2014.

E. In addition to a declaratory judgment, the Court should enter a permanent injunction prohibiting Defendants from requiring the RLC, and from depriving the Borough of full funding of basic need without the RLC.

Because the RLC violates the Anti-Dedication Clause, the Legislative Appropriation Clause, and the Governor's Veto Clause, the Court should enter a declaratory judgment under AS 22.10.020(g) stating that the RLC is unconstitutional under these provisions.

The Court should additionally grant a permanent injunction (a) prohibiting Defendants from requiring the Borough to pay the RLC in accordance with AS 14.12.020

[95] Restatement (Third) of Restitution and Unjust Enrichment § 19(1) (2011).

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and AS 14.17.410(b); (b) prohibiting Defendants from denying State Aid in accordance with AS 14.17.410 and State supplemental aid in accordance with AS 14.17.490(c) to the KGB School District as a result of enjoining the State from requiring the Borough to pay the RLC; and (c) requiring Defendants to fund the Basic Need of the KGB School District notwithstanding the absence of an RLC. A permanent injunction is appropriate when "the plaintiff . . . prevail[s] on the merits of his or her claim and establish[es] that equitable relief is appropriate in all other respects."[96] An injunction "shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."[97]

An injunction is appropriate here to both ensure compliance with the Court's declaratory judgment and to ensure that the Borough is not adversely affected by refusing to pay the unconstitutional RLC. First, courts in Alaska have frequently issued permanent injunctions to prevent enforcement of an unconstitutional statute or regulation.[98] Second, an injunction will serve to clarify that the Borough may not be

[96] 42 Am. Jur. 2d Injunctions, § 11 (2d ed., updated Nov. 2013).

[97] Alaska R. Civ. P. 65(d).

[98] *See, e.g., Valley Hosp. Ass'n v. Mat-Su Coalition*, 948 P. 2d 963, 965 (Alaska 1997) (affirming summary judgment and entry of permanent injunction preventing hospital from enforcing policy to restrict access to abortion, where policy violated Alaska constitutional right to abortion); *Alex*, 646 P.2d at 214-215 (affirming superior court's judgment in all respects following Supreme Court's conclusion that fisheries assessments violated Anti-Dedication Clause, including by affirming superior court's entry of permanent injunction to restrain future collection of assessments); *see also Municipality of Anchorage v. Gentile*, 922 P. 2d 248, 260 (Alaska 1996) (affirming superior court's permanent injunction against any reduction of retiree benefits after determining that

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punished for future failure to pay the unconstitutional RLC. In addition to a declaration stating the RLC is unconstitutional, the Court should order that the potential collateral effects of nonpayment of the RLC – a complete loss of State aid for schools under AS 14.17.410 and AS 14.17.490(c), and underfunding of Basic Need without the payment of the RLC – may not be visited upon the Borough as a result of this suit.

IV. CONCLUSION

For the reasons stated in this motion and memorandum, plaintiffs respectfully request summary judgment, a declaratory judgment and injunction in their favor, and an order to refund the 2014 RLC.

Dated this 6th day of February, 2014.

KETCHIKAN GATEWAY BOROUGH

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retirement benefits had become contractually vested, and not addressing superior court's alternate basis for injunction that reduction in benefits was also unconstitutional).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

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

Plaintiffs,

v.

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

Defendants.

Case No. 1KE-14-00016CI

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

FEB 06 2014

Clerk of the Trial Courts

By _____ Deputy

PLAINTIFFS' NOTICE TO DEFENDANTS REQUIRED UNDER AK. R. CIV. PROC. 77(b)(4)

Plaintiffs Ketchikan Gateway Borough ("Borough"), Agnes Moran, John Coss, John Harrington, and David Spokely (collectively "Plaintiffs"), by and through their counsel of record, hereby provide notice to the Defendants State of Alaska and Michael Hanley (collectively "Defendants") as follows:

Defendants have the right to file a written opposition to Plaintiffs' Motion and Memorandum for Summary Judgment, Declaratory Judgment and Permanent Injunction

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("Motion") in accordance with the time limits provided for in Ak. R. Civ. Proc. 77(c)(2).

The opposition must be filed in Ketchikan, Alaska.

Dated this 6th day of February, 2014.

KETCHIKAN GATEWAY BOROUGH

By: _____
Scott A. Brandt-Erichsen
Ketchikan Gateway Borough Attorney
Alaska Bar No. 8811175

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

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

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Defendants.

Case No. 1KE-14-00016CI

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State of Alaska First District
at Ketchikan

FEB 06 2014

Clerk of the Trial Courts

By _____ Deputy

AFFIDAVIT OF SCOTT BRANDT-ERICHSEN IN SUPPORT OF PLAINTIFFS' MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF ALASKA)
)ss:
FIRST JUDICIAL DISTRICT)

Scott Brandt-Erichsen, being duly sworn, states:

1. I am the Borough Attorney for the Ketchikan Gateway Borough (the "Borough") and have personal knowledge of the facts stated herein.

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2. A true copy of *Alaska's Public School Funding Formula: A Report to the Alaska State Legislature*, executive summary and Tab 2, prepared by the State of Alaska, Department of Education and Early Development ("DEED"), is attached as Exhibit A.

3. Based upon the October 2013 student count period as reported by the KGB School District to DEED (a true copy of which is attached as Exhibit B), expected FY 2014 Basic Need for the Ketchikan Gateway Borough School District ("KGB School District") is $25,947,546.

4. The Alaska Department of Labor and Workforce Development reported the population estimate of the Borough at 13,938 as of July 2012 and therefore, this estimate was included in the Borough's Complaint in this case. However, on January 15, 2014, the Alaska Department of Commerce, Community and Economic Development ("DCCED") provided the Borough with a new estimate of 13,856 for 2013. A true copy of DCCED's letter with the new estimate is attached as Exhibit C. This represents a Basic Need amount of approximately $1,873 per person residing in the Borough.

5. The Borough's FY 2014 RLC is $4,198,727. This is based upon a property tax equivalent to 2.65 mills on the full and true value of $1,584,425,200 (October 1, 2012 value) as determined by DCCED. A true copy of DCCED's determination is attached as Exhibit D. Because of certain optional property tax exemptions, the actual taxable value in the Borough in FY 2014 is $1,314,675,800. Borough's Annual Report on Assessment and Taxation provided to DCCED (Borough Assessment Report) at p. 5. A true copy of

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the Borough Assessment Report is attached as Exhibit E. Therefore, the RLC equates to an actual mill levy of 3.19 on the FY 2014 taxable property within the Borough.

6. The per student amount for the Borough RLC payment in FY 2014 is approximately $1,900. This number equals the FY 2014 RLC divided by the actual number of students in average daily membership reflected in the October 2013 student count period as reported by the KGB School District to DEED (Ex. B).

7. In FY 2014, the Borough and its residents provided $4,198,727 in these compulsory payments, and an additional $3,851,273 in optional local contributions and in-kind contributions allowed by AS 14.17.410(c), for a total property tax mill equivalent of 6.12 mills based on the FY 2014 assessed value in community resources allocated to operation of KGB School District schools. *See* Exhibit F (true copy of a May 22, 2013 letter from the Borough Manager to the KGB School Board President summarizing these payments) at 2.

8. The Borough raised revenues to meet these and other areawide Borough expenditures for FY 2014 through an areawide property tax levy of 5 mills and an areawide sales tax levy of 2.5%. There are additional taxes levied and fees charged for Borough service area and nonareawide functions, and additional sales and property taxes are levied by cities within the Borough for city services.

9. The KGB School District receives less than 84 cents of every dollar from the State needed to adequately fund Basic Need. The RLC consumes just under two-thirds of the Borough's areawide property tax levy, and the remainder of the levy (as well

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as additional sales tax revenue) is devoted to other education-related operations funding by the Borough.

10. On October 9, 2013, the Borough paid $4,198,727 to the KGB School District to satisfy the FY 2014 RLC. A true copy of the payment check is attached as Exhibit G.

11. Simultaneously with this payment, the Borough notified DEED Commissioner Michael Hanley that the $4,198,727 payment "was made under protest ..." because it is unconstitutional and illegal. A true copy of this correspondence is attached as Exhibit H.

12. The KGB School District applied for federal Impact Aid Program funding for FY 2013. The United States Department of Education denied the application in a letter dated December 4, 2013, from Cara Aboona (Program Analyst) to Robert Boyle (KGB School District Superintendent). A true copy of this letter is attached as Exhibit I.

DATED at Ketchikan, Alaska, this 6th day of February, 2014.

Scott Brandt-Erichsen

SUBSCRIBED and SWORN TO before me this 6th day of February, 2014.

OFFICIAL SEAL
CINDY M. MONTGOMERY
NOTARY PUBLIC-STATE OF ALASKA
My Comm. Expires 5-7-15

Notary Public in and for the State of Alaska
My commission expires: 5-7-15

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Alaska's Public School Funding Formula:

A Report to the Alaska State Legislature

January 15, 2001

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Alaska's Public School Funding Formula:

A Report to the Alaska State Legislature

January 15, 2001

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Shirley J. Holloway, Ph.D.
Commissioner, Department of Education & Early Development

Public School Funding Formula
Executive Summary

The passage of Senate Bill 36, Ch. 83, SLA 1998, carried with it certain reporting requirements for the Department of Education & Early Development to the 22nd legislature by January 15, 2001. Following is a brief summary of each of the three required reports.

Tab 1 District Cost Factors

Background

This report addresses the requirement of: SB 36 section 41. TRANSITION: PROPOSED DISTRICT COST FACTORS. The Department of Education shall submit the initial proposed district cost factors, required under AS 14.17.460(b), enacted in sec. 2 of this Act, to the Alaska State Legislature by January 15, 2001.

Legislation requires the department to monitor district cost factors and submit a report to the legislature every other year beginning January 15, 2001. Cost factors are specific to each district and adjust funding to account for regional cost differences between districts. The lowest factor is 1.000 and the highest is 1.736.

Current district cost factors were adopted by the legislature and became effective July 1, 1998. These factors were based on the best data available at the time as provided by the McDowell 1998 Alaska Cost Study. To recalculate current district cost factors the department again utilized the 1998 McDowell Alaska School Operating Cost Study methodology.

Findings

The department utilized the 1998 McDowell Alaska Cost Study methodology to calculate updated district cost factors that created results that were not defensible or supported by underlying data. The department contracted with the McDowell group to verify the accuracy of the calculation.

The McDowell Group reviewed the department's calculations and found that the results were not meaningful. The McDowell Group determined that the 1998 methodology is not usable to update district cost factors for a number of reasons as outlined in their report included under Tab 1.

Recommendation

The department recommends that district cost factors remain at their current levels as designated in statute under AS 14.17.460 because there is not any empirical data to support changing the district cost factors at this time. The

department also recommends that a new district cost model be developed to properly account for cost differences between districts on an ongoing basis.

Tab 2 Comparison of Old to New Funding Formula

Background

This report addresses the requirement of: SB 36 Sec. 47. REQUIRED REPORT. The Department of Education shall compare the use of per school funding required under this Act to the use of funding communities required in AS 14.17 before the effective date of the Act and submit a report to the Alaska State Legislature by January 15, 2001.

This required report compares the per school funding under SB 36 to the previous funding formula. The old formula uses student enrollment grouped by community and the new formula uses enrollment grouped by school to determine basic need. This report compares adjustments between the old and new funding formulas such as size, special needs and supplemental funding floor.

The 1998 McDowell Alaska Cost Study review panel did not suggest that any school districts were over funded under the previous funding formula, rather that some districts appeared to be under funded under the new school funding model. The McDowell group report suggested that no district lose money. The legislature adopted as a component of SB36 the supplemental funding floor that erodes over time.

Findings

The supplemental funding floor is subject to erosion as school district enrollments increase. As district enrollments increase these additional students are only funded at 60% of entitlement. In the department's analysis of the district cost factors and comparing the old and new funding formula, there is no data to support the erosion of the supplemental funding floor that penalizes districts that have increased enrollment.

The previous funding formula had a hold harmless provision for school districts that experienced a substantial decrease in student enrollment from one year to the next. The current funding formula has no such provision and school districts immediately absorb the reduction in revenue due to decreased enrollment.

Recommendations
The department recommends the repeal of AS 14.17.490(d), erosion of the supplemental funding floor.

The department recommends that AS 14.17 be amended to include a hold harmless provision for school districts that experience a decrease in student enrollment of 10% or more from one year to the next.

Tab 3 Educational Adequacy

Background
This report addresses the requirement of: SB 36 Letter of Intent. "It is the intent of the Legislature to direct the Department of Education to include in the required report of Section 47 a thorough review of educational adequacy in the schools of Alaska, paying particular attention to differences in costs of school operations between communities, differences in costs of school operations depending on their size, and the particular effects and impacts described in AS 14.17.490 section (d), and to report to the Legislature no later than January 15, 2001."

The department brought together a broad based group of Alaskan's to define educational adequacy and the underlying factors. The group focused primarily on the impact of inflation on education funding.

Based on direction from the adequacy group, the department examined the changes that have occurred in education funding over the past ten years and the impacts of those changes on school districts. The effects of inflation over the past ten years are identified in the report. The department found that a significant effect of inflation is that school districts are limited in their ability to recruit and retain teachers.

Findings
From FY90 to FY00 inflation has increased approximately 30% but the public school funding program was increased only 5% during this time.

From FY90 to FY00 enrollment increased 25% and the legislature fully funded the increase.

School districts in Alaska are having a difficult time recruiting and retaining teachers due to the competitiveness of teacher salaries in other states and the vast number of incentives being afforded to new hires in other states.

Recommendations

Based on the adequacy group's work and the department's analysis, the department recommends that changes be made to the public school funding formula to recoup losses due to inflation and to provide for future inflationary adjustments. These recommendations and others included in Tab 1 and 2 will be forwarded to the governor's education funding task force. The task force recommendations are due to the governor and the State Board of Education & Early Development on February 1, 2001.

TAB 2

Comparison of Old to New Funding Formula

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Public School Funding Formula
Comparison of Old to New Funding Formula

Introduction

The passage of Senate Bill 36, Ch. 83, SLA 1998, carried with it certain reporting requirements for the Department of Education & Early Development to the 22nd Alaska State Legislature by January 15, 2001. This report responds to the requirement under Section 47 that the department review *Funding Communities* versus *School* adjustments in the public school funding formula. In addition, a letter of intent adopted by the legislature provided further direction to the department in completing the required reports. This report will highlight key components and adjustments within Alaska's public school funding formula and illustrate the application of these components and adjustments from the previous funding *community* based formula to the current *school* based funding formula.

For the past 20 years, Alaska's public school funding formula has historically contained four major adjustments to the formula. These same adjustments can be found in most public school funding formulas in the nation. These adjustments include:

1. sparseness and size of student population;
2. special needs or categorical funding;
3. regional cost differences;
4. equalization; and
5. supplemental funding floor.

Fiscal year 1999 was the first year of implementation of Senate Bill 36 and distribution of public school funding based on the new school based funding formula. Table 1 provides a comparison of the prior community based funding formula and the current school based funding formula using the same fiscal year 1999 data set. This comparison required the conversion from instructional units under the old community formula to per student units under the newly adopted school formula. Fiscal year 1999 is the only year school district state aid was calculated using the old and new formula. This comparison was required for the first year of implementation to determine the supplemental funding floor for the school districts that needed additional funding to help transition to the new formula.

The department has analyzed each of these adjustments and compared their use with the prior funding community formula and under the new school funding formula.

Sparseness and size of student population

Senate Bill 36 changed the method that the State of Alaska used to determine adjustments for sparseness and size of student population. The previous funding formula utilized a concept known as *funding communities.* The average daily membership of schools within a school district were grouped into funding communities and a formula was applied to determine the number of instructional units for the purpose of calculating each school district's basic need.

The McDowell Group assembled a panel of Alaskans with many years of experience in the field of education to review and make recommendations to improve the adjustment mechanism in the public school funding formula. The group reviewed the funding community concept and its application under the instructional unit funding formula. The group determined that although the definition of funding communities was not being applied consistently across school districts, that even a consistent application would not result in an equitable distribution system of resources. The group determined that the school, not the community, is the fundamental cost center for delivering instructional services. The panel determined that adopting the school as the basis for funding would result in a more equitable allocation of instructional resources by providing comparable levels of instructional staffing in all schools regardless of district size and location. The group determined that schools of similar size should receive similar resources for staffing regardless of location.

Table 2 shows the change in the distribution of resources from the *funding community* concept model to the *school* model that was adopted by the legislature under Senate Bill 36. This comparison does not include other adjustments due to changes in district cost factor or special needs funding. As shown in Table 1, the range of change is an increase of 15.8% for the Alyeska Central School to -36.8% for the Aleutian Region School District by the elimination of the funding community concept and basing the allocations on the number of students at each school. The school district with the largest increase was Petersburg at 11.2%.

It should be noted that the McDowell Group review panel did not suggest that any school districts were over funded under the previous funding community model rather some districts appeared to be under funded under the school funding model. Table 3 shows the change in dollars per student under the new formula as compared to the old formula. This table shows that under the old formula for the first 10 to 20 students, the allocation remains the same at $12,200 per student. This flat level of funding for the first group of 20 students was to provide funding for fixed cost associated with operating a school facility. The change in funding on a per student basis gradually decreases after the first 20 students to accommodate for economies of scale, while the new formula provides a larger allocation initially for the fist 10 students, it decreases to below $8,000 per student by the time you reach 20 students. Table 4 demonstrates the reduction in resources being allocated to small schools serving less than 100 students.

Another issue that contributes to the change in funding is the number of items that receive adjustment. For example in FY 99, using the funding community model there were 267 funding communities that received the adjustment for size while with the per school model there were 499 adjustments for size. Of the 499 adjustments for schools there were 143 schools serving less than 100 students. Table 5 shows the number of funding communities compared to the number of schools by district and the number of schools serving less than 100 students by school district.

The funding community formula had a hold harmless provision for school districts that experienced a 10% drop in K-12 instructional units from one year to the next. The year before the school district experienced a decrease in K-12 instructional units

by 10% or more became the base year. In addition to its current K-12 instructional units a school district was awarded in the first year of decline, 75% of the difference from the base year, in the second year 50% of the difference between the current year and the base year, and in the third year 25% of the difference between the current year and the base year.

Special needs or categorical funding

Categorical funding for special education, gifted and talented education, vocational education and bilingual/bicultural educational programs changed from the funding community model to the school funding model. The funding community model provided resource allocations to school districts based on the numbers of students and the types of special need services provided to each student. The program adjustments were based on the average cost of providing various levels of service within each of the program areas. For example, special education provided four adjustments ranging from $1,525 for each student identified as gifted and talented to $20,300 for each student identified as requiring special education intensive services. Bilingual/bicultural educational programs had three levels of adjustments for the various types of services that students were identified as needing and vocational education had one adjustment for each student identified as enrolled in a vocational program course.

With the passage of Senate Bill 36, and the implementation of the school based funding formula, the legislature approved a block funding approach for allocating resources for special need programs. The school funding model provides an increased adjustment of 20% to the districts' average daily membership after it has

been adjusted for school size and district cost factor. The 20% increase is intended to allocate resources for special education, gifted and talented education, vocational education and bilingual/bicultural educational programs. This change has resulted in an increased allocation for categorical programs of approximately $13 million dollars under the school funding model over the funding community model. It is important to understand that although there are additional resources allocated for special needs programs under both funding models, school districts are not required to expend these funds on special needs programs. In other words, the funds are discretionary and local school boards have the responsibility to determine the appropriate expenditures for these funds.

Regional cost differences

Senate Bill 36 continues to provide an adjustment for regional cost differences. The McDowell Group report defined these costs as "District Cost Factors." The District Cost Factors differ from the previous Area Cost Differentials in how they were derived. There is also a slight change in the way they are applied in the two funding formulas. The previous Area Cost Differentials were applied to all instructional units which included the K-12 and categorical units. The current District Cost Factors are applied to the student counts at the point they have been adjusted for school size and carry through to the 20% special needs adjustment. The District Cost Factors are not applied to the adjustments for students requiring intensive services or correspondence program counts.

The previous Area Cost Differentials were calculated using a market basket approach measuring the differences in items such as fuel and utilities between districts. The current District Cost Factors were calculated using school district audited financial data and reflect the per student district operating cost, compared to per student statewide operating costs, as well as other adjustments. The District Cost Factors represent the cost of goods, numbers of students, dispersion of schools, cost of travel, and other factors that affect district operational costs. Because the District Cost Factors reflect factors other than the price of goods, neighboring districts will not necessarily have similar cost factors.

Senate Bill 36 requires the department to review the District Cost Factors and recommend changes to the legislature every other year beginning January 2001. The department intends to employ the McDowell Group methodology in order to update the current District Cost Factors. The first report on the District Cost Factors and the results of the department's review are presented to the legislature under a separate report.

Equalization

The funding community and the school models both make adjustments for instructional units or average daily membership then apply dollars to the base to arrive at Basic Need. Basic Need is the starting point of the equalization formula and provides all districts with needed resources based on the various formula adjustments. Funding components of Basic Need include required local effort, federal impact aid, and state aid. These three components determine the shares of local, federal, and state resources that make up Basic Need.

The State of Alaska must meet a federal equalization test known as the "disparity test" in order to consider federal impact aid dollars in the public school funding formula. The disparity test measures the amount of revenue per student among the 53 school districts. The federal law limits the per student wealth between districts to 25%. The wealthiest district in the state is not allowed to have more than a 25% increased per pupil revenue over the poorest district in the state. The state maintains this standard by placing a cap on local contributions that exceed the required local effort. The state imposed cap on excess local contributions is equal to 23% of the districts' basic need. Again, all districts are considered equal at basic need so by placing a cap on excess local revenues equal to 23% of the districts' basic need, the state will continue to meet the federal equalization standard of 25%.

Supplemental funding floor

The supplemental funding floor is a mechanism to assist school districts in the transition from the funding community based formula to the school formula. In the first year of the new formula, districts that qualified for more state aid under the funding community formula than they did under the new school formula were allocated transition funding called the "Supplemental Funding Floor."

For example, under the funding community formula a district may have qualified for $10,000 per student but under the new school formula calculation, will qualify for $9,000 per student. Using the supplemental funding floor, under the school formula the district was allocated $9,000 per student plus an addition $1,000 per student as a supplemental funding floor to ease the transition to the new funding level. As the school districts' student population changes, the $1,000 per student of supplemental funding floor will erode. The erosion of the supplemental funding floor will eventually bring the school districts' per student allocation down to a total of $9,000 per student as determined by the new school funding formula.

This transitional provision differs substantially from other transitional or hold harmless clauses previously used when the funding formula was modified. Previous transition language required a school district to adjust to its new funding level in a three-year period. The supplemental funding floor only erodes due to changes in the district student population providing a much more gradual change to the new funding level.

School districts qualified for a total of $17.4 million dollars in supplemental funding floor in fiscal year 1999. As the supplemental funding floor erodes, the money is lost from the funding formula. This means the public school funding formula will have $17.4 million less in state support once the supplemental funding floor is completely eroded.

Recommendations

The department recommends the repeal of AS 14.17.490(d), erosion of the supplemental funding floor.

The department recommends that AS 14.17 be amended to include a hold harmless provision for school districts that experience a decrease in student enrollment of 10% or more from one year to the next.

District Foundation Summary

Fall 2013 OASIS Collection from State Report Manager

School Year 2013-2014

Ketchikan Gateway Borough School District	Certified/Submitted SRM Data as of 11/8/2013				Reconciled OASIS Data as of January 2014				Change in ADM
	Elementary (PK-6)	Secondary (7-12)	Total (PK-12)	Intensive	Elementary (PK-6)	Secondary (7-12)	Total (PK-12)	Intensive	
Fast Track (258010)	37.70	46.02	83.7250	0	39.20	46.03	85.23		1.51
Fawn Mountain Elementary (250050)	266.10	0.00	266.1000	11	266.10		266.10	11.00	-
Houghtaling Elementary (250010)	313.10	0.00	313.1000	18	313.10		313.10	15.00	-
Ketchikan Charter School (259010)	127.95	32.40	160.3500	2	127.95	32.40	160.35	2.00	-
Ketchikan High School (250020)	0.00	578.08	578.0750	15		578.95	578.95	15.00	(0.13)
Ketchikan Regional Youth Facility (257050)	0.00	1.00	1.0000	0		1.00	1.00		-
Point Higgins School (250100)	217.60	0.00	217.6000	7	217.60		217.60	7.00	-
Revilla Jr/Sr High School (257010)	0.00	126.98	126.9750	0		126.98	126.98		0.01
Schoenbar Middle School (250040)	0.00	284.15	284.1500	4		284.15	284.15	4.00	-
Tongass School of Arts and Sciences Charter School (25	188.55	0.00	188.5500	3	187.05		187.05	3.00	(1.50)
Sub Total	1131.00	1068.62	2200.6250	56	1,131.00	1,069.51	2,200.51	57.00	(0.11)
Difference in Youth Facility bed count.							9.00		
TOTAL							2,209.51	57.00	

Exc. 062

EXHIBIT B
Page 1 of 1

THE STATE of ALASKA
GOVERNOR SEAN PARNELL

Department of Commerce, Community, and Economic Development

DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

550 West Seventh Avenue, Suite 1640
Anchorage, Alaska 99501
Main: 907.269.4501/907.269.4581
Programs fax: 907.269.4539

RECEIVED
JAN 17 2014
BY:
RECEIVED
KETCHIKAN GATEWAY BOROUGH
JAN 20 2014
CLERK'S OFFICE

January 15, 2014

Ketchikan Gateway Borough
1900 First Avenue, Suite 210
Ketchikan, AK 99901

RE: FY 15 POPULATION DETERMINATION

Dear Mayor:

The Department of Commerce, Community, and Economic Development annually certifies the population of each municipality for use in various financial assistance programs based upon population estimates prepared by the State Demographer at the Department of Labor and Workforce Development.

The 2013 population of the Ketchikan Gateway Borough has been determined to be 13,856.

If you do not agree with this figure, you may request an adjustment to your population by using two approved methods – Head Count Census and Housing Unit. Municipalities with a population of less than 1,000 must conduct a "head count census". Municipalities with a population of 1,000 or more may conduct a "head count census" or use the "housing unit" method, to estimate the population. The department requires that the population adjustment process be completed and postmarked by April 1, 2014 and that the request include:

1. Comprehensive documentation of the proposed population figure using either of the approved methods, and
2. A resolution of the governing body (assembly or council) adopting the new population.

If you choose to request a population adjustment, please review the Head Count Census and Housing Unit Method manuals that the department has published to assist you with this process. These manuals are available at http://commerce.alaska.gov/dnn/dcra/Home.aspx. You may also contact the department for a copy of the manuals. Call (907) 269-7959 or send an email to DCRAResearchAndAnalysis@alaska.gov for additional information.

Sincerely,

Scott Ruby

Scott Ruby,
Division of Community and Regional Affairs, Director

Cc: Division of Community and Regional Affairs, Research and Analysis Section
Division of Community and Regional Affairs, Community Aid and Accountability Section

EXHIBIT C
Page 1 of 1000226

STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Division of Community and Regional Affairs

Sean Parnell, Governor
Susan K. Bell, Commissioner
Scott Ruby, Director

October 1, 2012

CERTIFIED/RETURN RECEIPT REQUESTED
7010-2780-0000-5223-2106

Mayor Dave Kiffer
Ketchikan Gateway Borough
1900 First Avenue, Suite 115
Ketchikan, AK 99901

RE: 2012 FULL VALUE DETERMINATION

Dear Mayor Kiffer:

As required by AS 14.17.510 (Public Schools Foundation Program), the Department of Commerce, Community, and Economic Development has determined that, as of January 1, 2012, the full and true value of taxable real and personal property within your municipality is as follows:

Real Property:	$ 1,386,571,100
Personal Property	$ 197,854,100
State Assessed Property (AS 43.56):	$0
TOTAL:	$ 1,584,425,200

This full value determination may be appealed administratively by you within fifteen (15) days of receipt of this notice. In addition, AS 14.17.510 also allows for judicial review of the determination. If you have any questions concerning this full value determination for 2012, please contact our office at 269-4565 or 269-4605.

RECEIVED
KETCHIKAN GATEWAY BOROUGH
OCT 4 2012
CLERK'S OFFICE

Sincerely,

Steve Van Sant
State Assessor

Ketchikan Gateway Borough
Received
OCT - 3 2012
Finance Department

550 W. 7th Avenue, Suite 1640, Anchorage, Alaska 99501-3510
Telephone: (907) 269-4580 Fax: (907) 269-4539 Text Telephone: (907) 465-5437
Email: questions@alaska.gov Website: http://www.commerce.alaska.gov/dca/

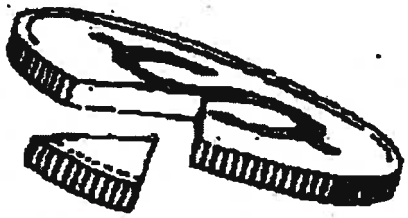
EXHIBIT D
Page 1 of 1

Annual Report on Assessment and Taxation

AS 29.20.640

Report due by August 2, 2013

EXHIBIT E
Page 1 of 20000228



OFFICE OF THE
STATE ASSESSOR

PLEASE MAIL, OR FAX, ON OR BEFORE AUGUST 2, 2013 TO:

DCCED/DCRA
Office of the State Assessor
550 W. 7th Avenue, Suite 1640
Anchorage, AK 99501-3510
FAX: (907) 269-4539

MUNICIPAL CONTACT INFORMATION		
Reporting Municipality:	Ketchikan Gateway Borough	
Report Prepared By:	Ronald E. Brown	
Job Title:	Director of Assessment	Ph #: (907) 228-6653

If you have any questions or problems with any part of this questionnaire, please contact the *Office of the State Assessor* in Anchorage at 907-269-4565 or 907-269-4605.

EXHIBIT E
Page 2 of 20000229

2013
ANNUAL REPORT
ON
ASSESSMENT AND TAXATION

The information published in Alaska Taxable is based on the annual reporting of assessments and taxation information from each municipality. Your cooperation in completing this report is essential to the accuracy of the publication and information distributed by the Department of Community and Economic Development. This report is also a requirement under AS 29.20.640(a)(3) as prerequisite for receipt of state shared revenue under AS 29.60 and other state programs, including education funding under AS 14.17.510.

It is required that a report be certified both by the Assessor, who has chief responsibility for values, and the Chief Administrator, who has a large degree of responsibility of rates and overall administration.

Document Certification

I, Ronald E. Brown (type or print name), Director of Assessment (type or print title)

for the Ketchikan Gateway Borough (municipality), hereby certify

the information contained in the attached report is complete and correct to the best of my knowledge.

Ronald E. Brown
Signature

7/18/2013
Date

I, Dan Bockhorst (type or print name), Borough Manager (type or print title)

for the Ketchikan Gateway Borough (municipality), hereby certify

the information contained in the attached report is complete and correct to the best of my knowledge.

Dan Bockhorst
Signature

7/18/2013
Date

ASSESSING DEPARTMENT

BUDGET

Total FY14 (TY13) budget or contract amount for your assessing dept. $695,829

(If the assessment portion of your budget overlaps with other functions, please provide your best estimate of the cost for the assessing department only.) If the Assessment function is contracted, please provide contract amount. Please indicate which of the following the contract covers:

- ☑ Reappraisal
- ☑ Maintenance
- ☑ Real Property
- ☑ Personal Property

PERSONNEL

MUNICIPAL ASSESSOR

NAME: Ronald E. Brown (please print)

- ☑ Full-Time
- ☐ Part-Time
- ☐ Contract* (Please Provide name and address below)

NUMBER OF APPRAISERS

Real Property Appraisers: 3.00
Personal Property Appraisers: 1.00
Support Staff:

(*If assessment office duties are performed by a contractor, please attach a copy of the most recent contract.)

ASSESSMENT CYCLE

1. Over what period of time are all the parcels in your taxing district measured and inspected? (e.g., one year, two years, four years, etc...)

   Number of years: 4

2. Date of most recently completed evaluation (inspection) cycle? 2013

SCHEDULED CALENDAR OF EVENTS

(Deadlines, due dates, etc...)

1. Mailing date of assessment notices (Real Property):	07-Feb-13	6. No. Inquiries	101
1a. Mailing date of assessment notices (Personal Property):	28-Mar-13	7. No. Appeals Filed	16
2. Meeting date of Board of Equalization:	18-Mar-13		
3. Mailing date of tax statements:	28-Jun-13	8. No. Appeals Heard at BOE	2
4. Date first half of tax payment due:	30-Sep-13	9. Date Personal Property Filing Due	
5. Date second half of tax payment due	N/A		15-Jan-13

MUNICIPAL MILL RATE SHEET

Directions
Please complete the following chart with the appropriate mill rates for Areawide Administration (Admin.) and Education (Educ.) for each Service Area/Zone No. Extra columns are provided for additional services provided by your municipality. Add mill rates across for "Total Mills". Also, remember to answer the Property Tax Cap and Residential Propety Tax Exemption questions at the bottom of this page

If spacing below is inadequate, please attach your own summary or use the PG 3EX sheet for more lines..

Service Area or Zone #	Service Area or Zone Name	Areawide Admin.	Areawide Educ.	Additional Services (Please specify)				Total Mills
See Page 3B								

Local Property Tax Legislation

Does your municipality have a LOCAL tax or revenue cap for property taxes? If so, please describe, in detail, how it is calculated?
(Please include an example. Attach additional pages if needed.)

KGBC 45.11.120(c) ....the assembly shall not levy a general property tax in excess of eight (8) mills. For the purposes of this section, general property tax means an areawide levy only and does not include any special assessments or service area levies.

Residential Property Tax Exemption

Has your municipality adopted the residential homeowner's exemption AS 29.45.050(a)? Yes _____ No __X__

Is the exemption limited to owner-occupied properties? Yes _____ No _____

Has your municipality changed the maximum limit or percentage factor for the residential homeowner's exemption AS 29.45.050(a)? Yes, new limit _____ No __X__
Yes, new percentage _____ No _____

How is this exemption applied? For example, 25% of value up to the maximum of $50,000.

SUPPLEMENTAL

MUNICIPAL MILL RATE SHEET

				Additional Services (Please specify)				
Service Area or Zone #	Service Area or Zone Name	Areawide Admin.	Areawide Educ.	City	Non-Area Wide	Service Area 1	Service Area 2	Total Mills
1	City of Ketchikan	5.00		6.70				11.70
30	Borough	5.00			0.70			5.70
31	N. Tongass Fire/EMS	5.00			0.70	1.70		7.40
33	Waterfall	5.00			0.70	1.70		7.40
36	Mud Bight	5.00			0.70	1.70		7.40
56	Vallenar Bay	5.00			0.70			5.70
65	Loring	5.00			0.70		3.00	8.70
67	Deep Bay	5.00			0.70			5.70
68	Long Arm	5.00			0.70			5.70
70	S. Tongass	5.00			0.70	2.60		8.30
71	Forest Park	5.00			0.70	2.60	2.20	10.50
73	Gold Nugget	5.00			0.70	2.60		8.30
74	Gold Nugget / Homestead	5.00			0.70	2.60		8.30
75	Homestead	5.00			0.70	2.60		8.30
77	Nichols View	5.00			0.70	2.60		8.30
85	Saxman	5.00						5.00

EXAMPLE

MUNICIPAL MILL RATE SHEET

Service Area or Zone #	Service Area or Zone Name	Areawide Admin.	Areawide Educ.	Additional Services (Please specify)				Total Mills
				Fire	Library	Roads		
1	University SA	2.50	6.20	0.50	0.20	0.31	0.00	9.71
2	Gold Creek SA	2.50	6.20	0.00	0.00	0.00	0.00	8.70
3	Smith City SA	2.50	6.20	0.70	2.00	0.00	0.00	11.40

OPTIONAL EXEMPTIONS AS 29.45.050

Please list property that has been exempted from property tax by local ordinance. The estimated value of this exempted property is added to your local Full Value Determination. Please identify the exemption and list your estimated value for the property exempted.

OPTIONALLY EXEMPTED:

☐ Up to the first $50,000 of assessed value of residential property AS 29.45.050(a)
Your estimate of value of exempt property

☐ Senior Citizen/Disabled Veteran over the $150,000 mandated exemption AS 29.45.050(l)
Your estimate of value of exempt property

☑ Community Purpose Exemption
Exemption Explanation Southern S.E. Reg. Aquaculture, N. Tongass Comm Club, Historic Ketchikan
Your estimate of value of exempt property $2,808,300

☑ Machinery ☐ Exempt ☑ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation No estimate of value available.
Your estimate of value of exempt property

☑ Furniture/Fixtures ☐ Exempt ☑ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation No estimate of value available.
Your estimate of value of exempt property

☑ Inventory ☐ Exempt ☑ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation No estimate of value available.
Your estimate of value of exempt property

☑ Aircraft ☐ Exempt ☑ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation No estimate of value available.
Your estimate of value of exempt property

☑ Boats & Vessels ☐ Exempt ☑ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation No estimate of value available.
Your estimate of value of exempt property

☑ Recr. Equipment ☐ Exempt ☑ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation No estimate of value available.
Your estimate of value of exempt property

☐ Total Other Exemptions from Page 4B
Your estimate of value of exempt property $63,058,300

TOTAL OPTIONAL EXEMPTIONS $65,866,600

OPTIONAL EXEMPTIONS CONTINUED, AS 29.45.050 (CONT.)

Please list property that has been exempted from property tax by local ordinance. This page is provided for any exemptions that were not included on the previous page. Please attach any documentation. The sum of these exemptions is automatically presented on Page 4A.

OPTIONALLY EXEMPTED (CONT.):

☑ **Optional Exemption Description:** Business Personal Property
☐ Exempt ☑ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation: Businesss Personal Property is Exempt in the Borough. City of Ketchikan has exempted the first $25,000 of value. COK Ord. 12-1698
Your estimate of value of exempt property: OSA VALUE

☐ **Optional Exemption Description:** KETCHIKAN SHIPYARD (AIDEA Lease)
☑ Exempt ☐ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation: KGB 45.11.025 (g) AIDEA lease to VIGOR Industries. New Constr. in 2012 was only 50% complete, 100% finished for 2013.
Your estimate of value of exempt property: $61,536,200

☐ **Optional Exemption Description:** THRHA/KIC HOUSING
☑ Exempt ☐ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation: KGB 45.11.030 - Possessory Interest in NRHA Housing
Your estimate of value of exempt property: $1,522,100

☐ **Optional Exemption Description:**
☐ Exempt ☐ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation:
Your estimate of value of exempt property:

☐ **Optional Exemption Description:**
☐ Exempt ☐ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation:
Your estimate of value of exempt property:

☐ **Optional Exemption Description:**
☐ Exempt ☐ Partially Exempt ☐ Flat Tax ☐ Other
Exemption Explanation:
Your estimate of value of exempt property:

Total Optional Exemptions (Page 4B) $63,058,300

Include only that property which is taxable under state law. If property is exempt by local ordinance (Optional Exemption), please estimate value that was exempted. Do not include the exempt value of any property that falls under a mandatory exemption contained in AS 29.45.030 and AS 29.45.050. For example, exclude the senior citizen and disabled veteran exemption which is mandatory. For Boroughs, please complete one form for each incorporated city within your Borough and one other sheet that provides the sum value of all areas outside of incorporated cities. For Cities, simply provide one sheet for your community. The sum of all the sheets provided should encompass the entire tax roll.

City/Borough Name: **Ketchikan Gateway Borough**

REAL PROPERTY CLASSIFICATION

REAL PROPERTY TYPE	VALUE OF ORDINANCE EXEMPT REAL PROPERTY	ACTUAL TAXABLE REAL PROPERTY $
RESIDENTIAL (1-4 family)	$1,522,100	$858,831,600
VACANT		$108,833,000
FARM		$0
COMMERCIAL	$84,344,500	$390,871,100
INDUSTRIAL		$0
APARTMENT		$217,656,000
CONDOMINIUM		$32,767,400
MOBILE HOME PARKS		$3,553,000
MOBILE HOMES (REAL)		$1,686,600
OTHER ( )		$377,100
TOTAL REAL PROPERTY:	$85,866,600	$1,314,675,800

PERSONAL PROPERTY CLASSIFICATION

PERSONAL PROPERTY TYPE	VALUE OF ORDINANCE EXEMPT PERSONAL PROPERTY	ACTUAL TAXABLE PERSONAL PROPERTY $
INVENTORY	EXEMPT	EXEMPT
MACHINERY/FIXTURES/EQUIP	EXEMPT	EXEMPT
MOTOR VEHICLES	EXEMPT	EXEMPT
AIRCRAFT	EXEMPT	EXEMPT
BOATS AND VESSELS	EXEMPT	EXEMPT
OTHER (RECR. EQUIP, MBHM'S)	EXEMPT	EXEMPT
TOTAL PERSONAL PROPERTY:	EXEMPT	EXEMPT

REAL & PERSONAL TOTALS	$85,866,600	$1,314,675,800

Include only that property which is taxable under state law. If property is exempt by local ordinance (Optional Exemption), please estimate value that was exempted. Do not include the exempt value of any property that falls under a mandatory exemption contained in AS 29.45.030 and AS 29.45.050. For example, exclude the senior citizen and disabled veteran exemption which is mandatory. For Boroughs, please complete one form for each incorporated city within your Borough and one other sheet that provides the sum value of all areas outside of incorporated cities. For Cities, simply provide one sheet for your community. The sum of all the sheets provided should encompass the entire tax roll.

City/Borough Name: **City of Ketchikan**

REAL PROPERTY CLASSIFICATION

REAL PROPERTY TYPE	VALUE OF OPTIONALLY EXEMPT REAL PROPERTY	ACTUAL TAXABLE REAL PROPERTY $
RESIDENTIAL (1-4 family)	$5,500	$201,372,900
VACANT		$40,812,100
FARM		$0
COMMERCIAL	$61,841,900	$326,506,900
INDUSTRIAL		$0
APARTMENT		$133,682,200
CONDOMINIUM		$32,767,400
MOBILE HOME PARKS		$1,852,900
MOBILE HOMES (REAL)		$1,051,100
OTHER ( )		$377,100
TOTAL REAL PROPERTY:	$61,847,400	$737,422,600

PERSONAL PROPERTY CLASSIFICATION

PERSONAL PROPERTY TYPE	VALUE OF OPTIONALLY EXEMPT PERSONAL PROPERTY	ACTUAL TAXABLE PERSONAL PROPERTY $
INVENTORY	OSA VALUE	EXEMPT
MACHINERY/FIXTURES/EQUIP	$4,796,180	$39,072,000
MOTOR VEHICLES	OSA VALUE	EXEMPT
AIRCRAFT	$1,804,700	$12,267,300
BOATS AND VESSELS	OSA VALUE	EXEMPT
OTHER (RECR. EQUIP, MBHM'S)	$1,093,700	$8,908,700
TOTAL PERSONAL PROPERTY:	$7,394,580	$60,238,000

REAL & PERSONAL TOTALS	$69,241,980	$797,660,600

Include only that property which is taxable under state law. If property is exempt by local ordinance (Optional Exemption), please estimate value that was exempted. Do not include the exempt value of any property that falls under a mandatory exemption contained in AS 29.45.030 and AS 29.45.050. For example, exclude the senior citizen and disabled veteran exemption which is mandatory. For Boroughs, please complete one form for each incorporated city within your Borough and one other sheet that provides the sum value of all areas outside of incorporated cities. For Cities, simply provide one sheet for your community. The sum of all the sheets provided should encompass the entire tax roll.

City/Borough Name: **City of Saxman**

REAL PROPERTY CLASSIFICATION

REAL PROPERTY TYPE	VALUE OF OPTIONALLY EXEMPT REAL PROPERTY $	ACTUAL TAXABLE REAL PROPERTY $
RESIDENTIAL (1-4 family)	$1,516,800	$9,218,800
VACANT		$2,929,900
FARM		
COMMERCIAL		$5,529,900
INDUSTRIAL		
APARTMENT		$1,334,200
CONDOMINIUM		
MOBILE HOME PARKS		
MOBILE HOMES (REAL)		
OTHER ( )		
TOTAL REAL PROPERTY:	$1,516,800	$18,012,800

PERSONAL PROPERTY CLASSIFICATION

PERSONAL PROPERTY TYPE	VALUE OF OPTIONALLY EXEMPT PERSONAL PROPERTY	ACTUAL TAXABLE PERSONAL PROPERTY $
INVENTORY	OSA VALUE	$0
MACHINERY/FIXTURES/EQUIP	OSA VALUE	$0
MOTOR VEHICLES	OSA VALUE	$0
AIRCRAFT	OSA VALUE	$0
BOATS AND VESSELS	OSA VALUE	$0
OTHER (RECR. EQUIP, MBHM'S)	OSA VALUE	$0
TOTAL PERSONAL PROPERTY:		

REAL & PERSONAL TOTALS:	$1,516,800	$18,012,800

This page is simply a compilation of the data sheets created for the cities or areas on the previous page. It is used to insure that the totals for each city and area sum up to the total valuation provided on page 7. If you have any supplemental roll items, be sure that they are included in the particular city/area sheets. Note that a total for the overall Borough or City will not be entered here unless your community only has a single tax district or area. The sum of the parts should equal the whole.

SUMMARY OF TAX ROLL BY CITY/AREA

CITY OR AREA IDENTIFICATION	OPTIONAL EXEMPT REAL PROPERTY	TAXABLE REAL PROPERTY	OPTIONAL EXEMPT PERSONAL PROPERTY	TAXABLE PERSONAL PROPERTY
Non-Area Wide	$2,502,800	$559,240,400	N/A	N/A
City of Ketchikan	$61,847,400	$737,422,800	$7,394,580	$60,238,000
City of Saxman	$1,618,600	$18,012,800	N/A	N/A
ALL AREAS	$65,968,800	$1,314,676,800	$7,394,580	$60,238,000

TOTAL OPTIONAL EXEMPTIONS	$73,291,180
TOTAL REAL & PERSONAL PROPERTY	$1,374,913,800

LOCALLY TAXED PROPERTY

This page should summarize the combined total taxable value of all service areas or tax zones. Do not include values for optional or mandatory exemptions (i.e., senior citizens), or, state assessed oil and gas production property (AS 43.56.) Values for AS 43.56 property are obtained directly from the Department of Revenue. Be sure to include any supplemental roll values. If your supplemental rolls are not certified at the time you complete this report, please indicate when they will be available and we will contact you for that information at a later date.

REAL PROPERTY	LOCALLY TAXABLE VALUE (AS 29.45)
TOTAL LAND VALUE	$492,561,400
TOTAL IMPROVEMENT VALUE	$822,114,400
TOTAL REAL PROPERTY:	$1,314,675,800

PERSONAL PROPERTY	LOCALLY TAXABLE VALUE (AS 29.45)
TOTAL BUSINESS	$60,238,000
TOTAL GENERAL	$0
TOTAL PERSONAL PROPERTY:	$60,238,000

SUPPLEMENTAL ROLLS	LOCALLY TAXABLE VALUE (AS 29.45)
REAL PROPERTY	$0
PERSONAL PROPERTY	$0
TOTAL SUPPLEMENTAL ROLL VALUE:	

Number of Supplemental Rolls	Real Property	0
	Personal Property	0

TOTAL PROPERTY VALUE	$1,374,913,800
TOTAL PROPERTY TAXES LEVIED/BILLED	$13,387,396

Possessory Interest Assessments and Property Parcel Count

Possessory Interest Assessed Value on Tax Exempt Property, Article IX,	$5,784,200

Explain method of possessory interest valuation below:

Method: 39 PI's with a taxable value. Leasehold interest valuation with 0.65% / Month Rate.

Total Municipal Real Property Parcel Count (see instructions)

REAL PROPERTY TYPE	NUMBER OF PARCELS
RESIDENTIAL (FOUR FAMLIES OR LESS)	3,684
VACANT	1,908
FARM	0
COMMERCIAL	613
INDUSTRIAL	0
APARTMENT	65
CONDOMINIUMS	521
MOBILE HOME PARKS	5
MOBILE HOMES	170
OTHER	4
TOTAL REAL PROPERTY COUNT	6,970

PERSONAL PROPERTY TYPE	NUMBER OF ACCOUNTS
BUSINESS	681
GENERAL	
TOTAL PERSONAL PROPERTY COUNT	681

TOTAL PERSONAL AND REAL COUNT	7,651

PERSONAL PROPERTY TYPE	ESTIMATED VALUE OF IF LOCALLY EXEMPT(S)*	ACTUAL TAXABLE VALUE ($)	BASED UPON:
BUSINESS INVENTORY & CONSIGNED GOODS	$0	$0	☑ Exempt ☐ Full and True Value
BUSINESS MACHINERY, FIXTURES & EQUIPMENT	$4,796,180	$38,072,000	☐ Exempt ☑ PARTIAL EXEMPT
MOBILE HOMES	REAL PROPERTY	REAL PROPERTY	☐ Exempt ☐ Full and True Value ☐ Flat rate of $
MOTOR VEHICLES	MVRT	MVRT	☐ Exempt ☐ Full and True Value ☐ Flat rate of $
AIRCRAFT PRIVATE	EXEMPT	EXEMPT	☐ Exempt ☐ Full and True Value ☐ Number of Landings
AIRCRAFT COMMERCIAL	$1,504,700	$12,257,300	☐ Full and True Value ☑ PARTIAL EXEMPT
BOATS & VESSELS	EXEMPT	EXEMPT	☑ Exempt ☐ Full and True Value ☐ Tonnage or Length
PRIVATE EQUIPMENT	EXEMPT	EXEMPT	☑ Exempt ☐ Full and True Value
PRIVATE RECREATIONAL EQUIPMENT	EXEMPT	EXEMPT	☑ Exempt ☐ Full and True Value ☐ Other
OTHER	$1,087,300	$8,857,000	☐ Exempt ☐ Full and True Value ☑ PARTIAL EXEMPT
LEASEHOLD	$6,400	$81,700	☐ Exempt ☐ Full and True Value ☑ PARTIAL EXEMPT
			☐ Exempt ☐ Full and True Value ☐ Other
			☐ Exempt ☐ Full and True Value ☐ Other
Totals	$7,394,580	$60,238,000	
	Note: The total values provided above, should match the numbers that were provided for personal property on pages six and seven.		

* Please provide estimated value exempted from levy or subject to a flat rate tax

The "Sales Ratio Report" should be self-explanatory. Remember older sales should be trended to January 1st. The weighted mean is the key figure we are looking for and it is helpful if you have ample market data to develop a weighted mean for both vacant and improved property. Please report ALL SALES DATA, not just those sales between 70% and 130% of value. Report which sales, if any, were excluded as non-market transactions. ALSO PLEASE PROVIDE A SEPERATE SHEET FOR EACH MUNICIPALITY WITHIN YOUR JURISDICTION. Any statistical sales data you can include would be appreciated, including the COD.

The weighted mean is used to adjust locally assessed values into full and true values. Call the Office of the State Assessor at 269-4805 if you have questions concerning this page.

If you have enough sales or the capacity to develop sale ratios for each municipality within your jurisdiction, the end product would be a more accurate full value determination. However, if this is not possible, simply provide an overall rate for your jurisdiction.

City/Borough Name → **KETCHIKAN GATEWAY BOROUGH**

REAL PROPERTY SALES RATIO	VACANT	IMPROVED
Total number of sales occurring in area	26	224
Total number of sales not utilized.	4	8
COD with Median	7.011	8.274
PRD (Price Related Differential)	1.01	1.008
COD with Weighted Mean	7.375	8.496
Weighted Mean	1.001%	94.800%
Mean	1.012	95.40%
Median	1.027	96.20%
Overall Weighted Mean for all Real Property *		95.000%

* The Overall Weighted Mean will be used to calculate your municipality's Real Property Full Value Determination.

The "Sales Ratio Report" should be self-explanatory. Remember older sales should be trended to January 1st. The weighted mean is the key figure we are looking for and it is helpful if you have ample market data to develop a weighted mean for both vacant and improved property. Please report ALL SALES DATA, not just those sales between 70% and 130% of value. Report which sales, if any, were excluded as non-market transactions. ALSO PLEASE PROVIDE A SEPERATE SHEET FOR EACH MUNICIPALITY WITHIN YOUR JURISDICTION. Any statistical sales data you can include would be appreciated, including the COD.

The weighted mean is used to adjust locally assessed values into full and true values. Call the Office of the State Assessor at 269-4605 if you have questions concerning this page.

If you have enough sales or the capacity to develop sale ratios for each municipality within your jurisdiction, the end product would be a more accurate full value determination. However, if this is not possible, simply provide an overall rate for your jurisdiction.

City/Borough Name → CITY OF KETCHIKAN

REAL PROPERTY SALES RATIO	VACANT	IMPROVED
Total number of sales occurring in area	8	145
Total number of sales not utilized.	1	4
COD with Median	3.047	8.419
PRD (Price Related Differential)	1.011	1.001
COD with Weighted Mean	3.065	8.513
Weighted Mean	99.300%	95.400%
Mean	100.4%	96.50%
Median	99.4%	96.10%
Overall Weighted Mean for all Real Property *		95.528%

* The Overall Weighted Mean will be used to calculate your municipality's Real Property Full Value Determination.

The "Sales Ratio Report" should be self-explanatory. Remember older sales should be trended to January 1st. The weighted mean is the key figure we are looking for and it is helpful if you have ample market data to develop a weighted mean for both vacant and improved property. Please report ALL SALES DATA, not just those sales between 70% and 130% of value. Report which sales, if any, were excluded as non-market transactions. ALSO PLEASE PROVIDE A SEPERATE SHEET FOR EACH MUNICIPALITY WITHIN YOUR JURISDICTION. Any statistical sales data you can include would be appreciated, including the COD.

The weighted mean is used to adjust locally assessed values into full and true values. Call the Office of the State Assessor at 268-4605 if you have questions concerning this page.

If you have enough sales or the capacity to develop sale ratios for each municipality within your jurisdiction, the end product would be a more accurate full value determination. However, if this is not possible, simply provide an overall rate for your jurisdiction.

City/Borough Name → CITY OF SAXMAN

REAL PROPERTY SALES RATIO	VACANT	IMPROVED
Total number of sales occurring in area	0	2
Total number of sales not utilized.	0	2
COD with Median	N/A	N/A
PRD (Price Related Differential)	N/A	N/A
COD with Weighted Mean	N/A	N/A
Weighted Mean	N/A	N/A
Mean	N/A	N/A
Median	N/A	N/A
Overall Weighted Mean for all Real Property *		N/A

* The Overall Weighted Mean will be used to calculate your municipality's Real Property Full Value Determination.

Personal Property is taxable within the City of Ketchian ONLY! Personal Property has been exempted by the Ketchikan Gateway Borough. Comments have been added to Page 7 to reflect the addition of the BP Assessed Value for the City of Ketchikan as well as the total amount of COK BP taxes.

KETCHIKAN GATEWAY BOROUGH

1900 First Avenue, Suite 210, Ketchikan, Alaska 99901
• telephone: (907) 228-6625 • fax (907) 228-6684
Office of the Borough Manager

May 22, 2013

Ms. Ginny Clay
School Board President
Ketchikan Gateway Borough School District
333 Schoenbar Road
Ketchikan, Alaska 99901

RE: Notice of FY 2014 Expenditure Authority and Funds to be Made Available from Local Sources for School Purposes During FY 2014

Dear Board President Clay:

On behalf of the Borough Assembly and in accordance with AS 14.14.060(c)[1] and KGBC 2.35.050,[2] this letter provides notice of the total expenditures authorized by the Borough Assembly for the School District during FY 2014. Additionally, this letter provides notice of the amount of money to be made available from local sources for school purposes during FY 2014. The spending limit and local funding determinations were made by the Borough Assembly through the adoption of Ordinance No. 1669-Amended on May 20, 2013 (unsigned copy enclosed).

The total expenditures authorized for the District *Operating Budget* during FY 2014 are $42,097,709 based on the following anticipated revenues:

a) State Aid, estimated at 82.8% of adequate funding where "adequate funding" is represented by Basic Need	$20,783,958
b) State "Quality School" funding per AS 14.17.480	70,374
c) Borough appropriation: local contribution required by AS 14.17.410(b)(2) to pay 17.2% of adequate funding (portion of Basic Need not paid by the State of Alaska)	4,198,727
d) Borough appropriation: discretionary funding per AS 14.17.410(c)(2) (undesignated by the Assembly)	3,077,270
e) Borough appropriation: discretionary funding per AS 14.17.410(c)(2) (designated by the Assembly for payment of contractual services)	533,600
f) Borough appropriation: discretionary funding per AS 14.17.410(c)(2) (designated by the Assembly for payment of "building insurance")	220,000

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Page 1 of 4000248

g) Borough appropriation: discretionary funding per AS 14.17.410(c)(2) (designated by the Assembly for payment of "Homestead Road Maintenance")	20,403
h) State Funding Outside Formula	450,000
i) Other Operating Revenues	98,000
j) Carryover Funds	1,033,221
k) Charter School Carryover Funds	0
l) Medicaid	150,000
m) TRS On-behalf Payments	$5,353,723
n) PERS On-behalf Payments	743,933
o) Grants and Other Revenues	5,364,500
TOTAL	$42,097,709

The Assembly has determined that the sum of $8,050,000 will be made available from local sources for school purposes, exclusive of debt service and funding for school construction and major maintenance projects, subject to the terms of Section 2 of Ordinance No. 1669-Amended (enclosed). Of that amount, $4,198,727 is the Borough contribution required by AS 14.17.410(b)(2) to pay the 17.2% State underfunding of the amount needed to provide adequate funding for education (Basic Need). Additionally, $533,600 represents local contributions of cash to pay for contractual services to be provided pursuant to Attachment A of Ordinance No. 1669-Amended; $220,000 represents local contributions of cash for "building insurance;" $20,403 represents funds designated for the District's share of the cost of maintaining Homestead Road; and the remaining $3,077,270 in local contributions is undesignated by the Assembly.

Please note that the District's share of the cost of maintaining Homestead Road is listed incorrectly in the District's budget as $38,740. Moreover, I believe that the District's allocation of $220,000 for "building insurance" is in error since it is more than 2.6 times the cost last year ($84,000). For that reason, Section 2(b)(2) of Ordinance No. 1669 expressly provides that any portion of the $220,000 remaining after the payment of "building insurance" may be used for other purposes lawfully authorized by the School Board.

Additionally, I note that, yesterday, Governor Parnell signed *HCS CSSB 18(FIN) am H* into law as Chapter 16 SLA 2013. As approved by the Governor, the bill appropriated $21 million for student safety and security enhancement and for fixed costs and energy relief. The allocation of those funds will result in an additional estimated $370,000 to the Ketchikan Gateway Borough School District in FY 2014. Those funds were not included in the District's FY 2014 budget.

On behalf of the Assembly, I request that you provide (for informational purposes) an updated budget reflecting Ordinance No. 1669-Amended and Chapter 16 SLA 2013. Specifically, this would entail changes to the District budget to provide for the payment of contractual services, building insurance; and the District's share of the cost of maintaining Homestead Road. The revisions would also reflect local funding of $8,050,000 and an additional $370,000 from Chapter 16 SLA 2013. If you provide the revised budget by June 6, the information can be considered at the June 11 Assembly/School Board Liaison Committee meeting.

Sincerely,

Dan Bockhorst
Borough Manager

Enclosure: Ordinance No. 1669-Amended (adopted but unsigned)

cc: Mayor and Assembly Members
School Board Members
Robert Boyle, Superintendent
Kacie Paxton, Borough Clerk
Scott Brandt-Erichsen, Borough Attorney
Mike Houts, Finance Director

---

[1] AS 14.14.060(c) reads as follows:

> **Sec. 14.14.060. Relationship between borough school district and borough; finances and buildings.**
>
> . . . .
>
> (c) Except as otherwise provided by municipal ordinance, the borough school board shall submit the school budget for the following school year to the borough assembly by May 1 for approval of the total amount. Within 30 days after receipt of the budget the assembly shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available. If the assembly does not, within 30 days, furnish the school board with a statement of the sum to be made available, the amount requested in the budget is automatically approved. Except as otherwise provided by municipal ordinance, by June 30, the assembly shall appropriate the amount to be made available from local sources from money available for the purpose.

Section 2.35.050 of the Ketchikan Gateway Borough Code reads as follows:

> **2.35.050. School budget.** The borough school board shall submit the school budget for the following school year to the borough assembly by May 1 for approval of the total amount. Within thirty (30) days after the receipt of the budget, the assembly shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available. If the assembly does not, within thirty (30) days, furnish the school board with a statement of the sum to be made available, the amount requested in the budget is automatically approved. By June 30, the assembly shall appropriate the amount to be made available from local sources from money available for the purpose.

KETCHIKAN GATEWAY BOROUGH • (907) 228-6630

Check Date 9/30/2013
Check Number 39153

To: KGB SCHOOL DISTRICT
333 SCHOENBAR ROAD
KETCHIKAN, AK 99901

Invoice Number	Date	Description	Amount	Discount	Net Amount
UNDER PROTEST	9/30/2013	FY14 required local contribution AS 14.17.410(b)	$4,198,727.00	$0.00	$4,198,727.00
		Totals:	$4,198,727.00	$0.00	$4,198,727.00

DEDICATED TAX PAID UNDER PROTEST- FY 2014 REQUIRED LOCAL CONTRIBUTION UNDER AS 14.17.410(b)(2)

KETCHIKAN GATEWAY BOROUGH
ACCOUNTS PAYABLE ACCOUNT
1900 FIRST AVENUE, SUITE 118
KETCHIKAN, ALASKA 99901

WELLS FARGO
KETCHIKAN, ALASKA 99901
88-5
1252

CHECK DATE	CHECK NO.
9/30/2013	39153
CHECK AMOUNT	

DEDICATED TAX PAID UNDER PROTEST- FY 2014 REQUIRED LOCAL CONTRIBUTION AS 14.17.410(b)(2)

PAY **Four million one hundred ninety eight thousand seven hundred twenty seven and 00/100 DOLLARS $** 4,198,727.00

VOID AFTER 120 DAYS

TO THE ORDER OF
KGB SCHOOL DISTRICT
333 SCHOENBAR ROAD
KETCHIKAN, AK 99901

COPY

Michael J. Renfro
AUTHORIZED SIGNATURE

⑈039153⑈ ⑆125200057⑆663251610 7⑈

EXHIBIT G
Page 1 of 1000252

KETCHIKAN GATEWAY BOROUGH

1900 First Avenue, Suite 210, Ketchikan, Alaska 99901
• Telephone: (907) 228-6625 • Fax (907) 228-6684
Office of the Borough Manager

October 9, 2013

Michael Hanley, Commissioner
Alaska Department of Education and Early Development
PO Box 110500
Juneau, AK 99811-0500

Dear Commissioner Hanley:

Today, the Ketchikan Gateway Borough paid $4,198,727 to the Ketchikan Gateway Borough School District by Check # 39153. A copy of that check is enclosed. Check # 39153 was issued as payment of the FY 2014 "required local contribution" of the Ketchikan Gateway Borough to the Ketchikan Gateway Borough School District mandated by AS 14.12.020(c) and AS 14.17.410(b).

As reflected on the check, the $4,198,727 payment was made under protest because the required local contribution mandated by AS 14.12.020(c) and AS 14.17.410(b) is a dedicated State tax that is prohibited by Art. IX, § 7 of the Constitution of the State of Alaska. The Borough reserves the right to seek return of the amount of these funds from the State of Alaska as a refund of the illegal tax. This tax is paid in lieu of a payment of equal amount from the State treasury.

Despite the Borough's recognition that the required local contribution is an illegal tax, the Ketchikan Gateway Borough was forced to make the payment because AS 14.17.410(d) provides that State aid for education may not be provided to a borough school district if the local contribution required under AS 14.17.410(b)(2) has not been made. The required local contribution suffers from numerous other legal infirmities, including several that render the required local contribution an illegal obligation.

On October 6, 2013, the Ketchikan Gateway Borough Assembly directed that steps be taken to initiate a complaint against the State of Alaska on the claims described in the enclosed memorandum dated October 3, 2013. The memorandum is labeled as "confidential;" however, that privilege as it pertains to the memorandum was waived by the Assembly Monday evening.

As part of its suit, the Borough intends to seek repayment from the State of Alaska of the entire unconstitutional dedicated tax of $4,198,727 paid under protest through Check # 39153.

Cordially,

Dan Bockhorst
Borough Manager

cc: Mayor and Assembly, Ketchikan Gateway Borough
Scott Brandt-Erichsen, Borough Attorney
Robert Boyle, Superintendent, Ketchikan Gateway Borough School District
Angela Rodell, Acting Commissioner, Alaska Department of Revenue

EXHIBIT H
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TRANSMISSION VERIFICATION REPORT

TIME : 12/06/2013 15:00
NAME :
FAX : 2022050000
TEL : 2022050000
SER.# : BROL8J003177

DATE,TIME	12/06 14:59
FAX NO./NAME	9198724738823
DURATION	00:00:56
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

December 4, 2013

Mr. Robert Boyle
Superintendent
Ketchikan Gateway Borough School District
333 Schoenbar Road
Ketchikan, AK 99901
ATTN: Matthew C. Groves

VIA FAX (907) 247-3823

Impact Aid Application No.: 11-AK-2014-1606

Dear Mr. Boyle:

This letter is in reference to your district's fiscal year (FY) 2014 application for financial assistance under Section 8003 of the Impact Aid Program law. We have determined that your school district is ineligible for section 8003 funds for FY 2014 because your school district does not meet the basic eligibility threshold.

In order to qualify for funding under Section 8003, a district's federally connected children must number at least 400 in average daily attendance (ADA) or must be equal to at least three percent of the district's total ADA. Your districts' ADA percentage of federally connected students is only 1.40% and, therefore, does not meet the eligibility

EXHIBIT I
Page 1 of 3 000254

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

December 4, 2013

Mr. Robert Boyle
Superintendent
Ketchikan Gateway Borough School District
333 Schoenbar Road
Ketchikan, AK 99901
ATTN: Matthew C. Groves

VIA FAX (907) 247-3823

Impact Aid Application No.: 11-AK-2014-1606

Dear Mr. Boyle:

This letter is in reference to your district's fiscal year (FY) 2014 application for financial assistance under Section 8003 of the Impact Aid Program law. We have determined that your school district is ineligible for section 8003 funds for FY 2014 because your school district does not meet the basic eligibility threshold.

In order to qualify for funding under Section 8003, a district's federally connected children must number at least 400 in average daily attendance (ADA) or must be equal to at least three percent of the district's total ADA. Your districts' ADA percentage of federally connected students is only 1.40% and, therefore, does not meet the eligibility requirements for Impact Aid Program funds.

In addition, the legislation imposes a further limitation on eligibility and payments associated with children that either reside on federal property (other than low-rent housing property) or have a parent employed on federal property, but not both. To be eligible for a payment, these children must number at least 1,000 in ADA or constitute at least 10 percent of the district's total ADA. Your districts' ADA percentage of federally connected students whose parent is a civilian working on federal property on Table 5 is only 3.93% and, therefore, does not meet the civilian eligibility requirements for Impact Aid Program funds.

Please note that this finding of your district's ineligibility is for FY 2014 only. It is possible that your district could qualify for funding in a future fiscal year. If you have any questions about this determination, please contact me at (202) 453-5539.

Sincerely,

Cara Aboona

Cara Aboona
Program Analyst
Impact Aid Program

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

FILED in the Trial Courts
State of Alaska First District
at Ketchikan
MAR 28 2014
Clerk of the Trial Courts
By _____ Deputy

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

Plaintiffs,

v.

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

Defendants.

Case No. 1KE-14-00016 CI

STATE OF ALASKA'S OPPOSITION TO KETCHIKAN GATEWAY BOROUGH'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT

I. Introduction

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

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

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

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II. Factual background

In Alaska, the State is the primary source for financing schools, and, as a result, district wealth is not determinative of school funding.[1] A formula spelled out in statute determines the minimum funding that a district will receive from state and local sources.[2] This minimum funding level is called "Basic Need."[3] The funding due 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.[4] The figure that results from these adjustments represents a weighted student count called the "adjusted average daily membership."[5] Basic need for a district is a product of the adjusted average daily membership of the district multiplied

---

1 Exhibit 1. Exhibit 1 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.

2 AS 14.17.400.

3 *Id.*

4 AS 14.17.410.

5 *Id.*

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by the "base student allocation," an amount of money defined in statute.[6] The base student allocation may go up or down depending on the availability of state revenue.[7]

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 contributes to school funding through impact aid.[8] The State factors in 90 percent of a school district's eligible federal impact aid when computing a school district's state aid entitlement.[9] Additionally, the statutory scheme contemplates that school districts

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6 AS 14.17.470.

7 *Id.*

8 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% of eligible impact aid to be reflected in the funding formula. *See* AS 14.17.410(b)(1). Alaska is one of only three states to be so certified. *See Getting a Grip on the Basics of Impact Aid*, National Association of Federally Impacted Schools 16 (March 2013), *available at* http://www.ruraledu.org/user_uploads/file/ImpactAidTheBasics.pdf.

9 AS 14.17.410(b)(1).

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within boroughs and cities with taxing authority[10] 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.[11]

This local funding is consists of a required local contribution ("local contribution"), as laid out in AS 14.17.410(b)(2), and a voluntary contribution as provided for in AS 14.17.410(c).[12] 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.

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[10] All boroughs and home rule or first-class cities are school districts. AS 14.12.010. Not all school districts, however, are municipalities. Some districts, called Regional Educational Attendance Areas, 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.").

[11] AS 14.12.020(c).

[12] 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."

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OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
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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 local contribution, the statute does not mandate the method that a city or borough must use to obtain the funds.

Finally, the statute contains a 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 financial stake to access state and federal funds seeks to ensure prudent expenditure of state and federal education dollars. The requirement is also not new. Pre-statehood, Alaska cities and independent school districts had taxing power and were required to fund local public schools.[13] The territory then "refunded" a percentage of the school expenses to the local entities.[14] Following statehood the statutory expectation of local contributions continued in school districts with taxing authority, including the newly formed boroughs.[15]

Ketchikan Gateway Borough paid its 2014 local contribution "under protest" by sending to the Commissioner for Education a copy of its check to the borough with the

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[13] Alaska Compiled Laws, ch. 3, art. 4 § 37-3-32, 37-3-35, 37-3-53 (1949), *attached as* Ex. 2.

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

[15] *See* Sec. 1.03, ch. 164, SLA 1962.

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words "dedicated tax paid under protest" written on it.[16] The Commissioner for Education otherwise would not have seen the check; it was made out to the "KGB School District" and the money went directly to Ketchikan Gateway Borough schools.[17] 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.[18]

On January 13, 2014, Ketchikan Gateway Borough filed this lawsuit challenging the State's statutory scheme for school funding. On February 6, 2014, the borough moved for summary judgment, arguing that the local contribution violates the constitutional prohibition against dedicated funds, Art. IX, section 7, and also that it unconstitutionally impinges on the legislature's role in appropriating money to be withdrawn from the State treasury and the governor's opportunity to strike or reduce items in an appropriation bill. But these claims are without merit because they rely on a mischaracterization of the local contribution and also on an unspoken and erroneous assumption about the meaning of Article VII, section 1 of the Alaska Constitution—the education clause.

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16 Brandt-Erichsen Aff. In Support of Ketchikan Gateway Borough's Motion to Dismiss Ex. G.

17 *Id.*

18 *Id.* Ex. F.

III. Standard for granting summary judgment

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

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

Courts "presume statutes to be constitutional, and the party challenging the statute bears the burden of showing otherwise."[21] Doubts are resolved in favor of constitutionality.[22] 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."[23] It is also "a well-established rule of statutory construction that courts should if possible

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[19] Alaska R. Civ. P. 56(c).

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

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

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

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

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

IV. Argument

The required local contribution does not run afoul of the Alaska Constitution's provisions regarding dedicated funds, appropriation power, or gubernatorial veto authority because the contribution is not a state tax or a source of public revenue. The local contribution statute does not impose a particular method or source of fund collection, it does not result in the deposit of funds to the state treasury, and it does not create a pot of money that the state legislature would otherwise be able to appropriate but for its designation to the local school district. Instead, it is akin to countless other matching fund programs in which the legislature appropriates money for a project conditioned on a local government (or nongovernment recipient) appropriating some of its funds as well. Ketchikan Gateway Borough's strained interpretation rests on the unspoken and wholly unsupported premise that the state is constitutionally required to fully finance public education, and thus any local funds required for its support must be state funds in hiding. But this stealth argument for a new constitutional interpretation of

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[24] *Andrade*, 23 P.3d at 72 (quoting *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978)).

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the education clause is contrary to the historical reality that Alaskan education has always been funded with a combination of state (or territory), local, and federal dollars, and the discussion at the Constitutional Convention contemplated a continuation of that practice. Alaska has one of the most equitable education funding schemes in the nation, a fact it can be proud of. And to date, the State has picked up the lion's share of the costs of educating Alaska's children. This Court should resist the borough's invitation to invalidate this funding methodology.

A. The required local contribution does not violate the Alaska Constitutional provisions regarding dedicated funds, appropriation power, or gubernatorial veto because the contribution is not a state tax or a source of public revenue.

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

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

> 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 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.

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

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

Analysis of the dedicated fund clause has focused primarily on the first part of the clause—the meaning of the phrase "proceeds of any state tax or license"—and the Alaska Supreme Court has interpreted this phrase broadly to encompass "any source of public revenue,"[25] including the grant of state land,[26] receipts from the marine highway system,[27] and the sale of the right to future proceeds from a tobacco settlement.[28] But despite this broad reading, the local contribution is not a "source of public revenue," and plaintiffs' mere assertion that it is cannot make it so. [Mot. at 15] Because the statutory scheme does not create a pot of money that is available for the legislature to appropriate if it is not provided directly to school districts, there is no source of public revenue here. The local contribution is neither a tax nor a state asset of any kind. The money is not collected by the State; it is not deposited into the State treasury; and, most importantly, if the local contribution is invalidated by this Court based on it being "dedicated", the money will not be available to the legislature for expenditure.

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25 *State v. Alex*, 646 P.2d 203, 210 (Alaska 1982).

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

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

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

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

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[29] Former AS 16.10.530(a).

[30] 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. [Mot. at 8]

[31] *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 dedication 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.

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

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

Indeed, Ketchikan Gateway Borough complains that the impact of the local contribution is that its school district "has been substantially underfunded by the State,

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with the Plaintiffs being forced to make up the difference. ... The shortfall in this funding depletes the resources of the Borough and the taxpayer Plaintiffs." [Mot. at 9] But if the local contribution is a source of public revenue, then it belongs to the State, not the borough and the taxpayer plaintiffs. The same internal contradiction is apparent in the borough's argument that "[t]he State was enriched by the Borough's payment of the [local contribution] to the KGB School District even though it did not directly receive the [local contribution] because the [local contribution] reduced the amount of money that the State itself provided to the KGB School District." [Mot. at 22] The notion that the State has been somehow unjustly enriched by the local contribution is flatly inconsistent with the idea that the local contribution is actually "a source of public revenue."

Although Ketchikan Gateway Borough analogizes the local contribution to the royalty assessment in *Alex*, because the education funding statutes do not create or impose a tax, 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 in the state.[32] A municipality is then able to draw on the funds in that account if it also makes a local contribution to the capital project.[33] Under Ketchikan Gateway Borough's theory of the local contribution, this sort of matching requirement somehow transforms local money

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[32] *See* AS 37.06.010.

[33] AS 37.06.030.

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

Finally, the purpose of the dedicated fund clause is not served by application of the clause to the local contribution requirement. As the Alaska Supreme Court noted in *Alex*, the dedicated tax prohibition was prompted by a concern among delegates at the Alaska Constitutional Convention that "earmarking curtailed the exercise of budgetary controls and simply amounted to an abdication of legislative responsibility."[34] But these concerns are not present with a local contribution; the local contribution is not an earmark any more than the privately or locally or federally controlled portion of any other jointly funded endeavor.[35] Local contribution to education likewise does not curtail the legislature's budgetary control; on the contrary it leaves more money in state coffers because schools receive part of their funding from local sources. Finally, even were this Court to entertain the borough's view—which the State rejects—that a statutory provision requiring a local contribution to education creates a dedicated fund, statutory provisions doing just that have been in effect since Territorial days, and thus

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[34] *State v. Alex*, 646 P.2d 203, 210 (Alaska 1982).

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

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

The local contribution is not a "source of public revenue," because without the requirement that it be paid to school districts, there is no statutorily-created source of money that the State could collect and deposit in the state treasury. Instead, the local contribution represents a commonplace—and constitutional—measure to incorporate local funding into the State's system for financing public schools. Because the local contribution does not violate the anti-dedication clause, the State asks the Court to grant summary judgment in its favor on Count I of Ketchikan Gateway Borough's complaint.

ii. The required local contribution does not circumvent the appropriation power of the legislature or the veto power of the Governor.

The fact that the local contribution is not a source of public revenue is fatal also to Ketchikan Gateway Borough's claims that the statute violates both the appropriation clause of article IX, section 13 of the Alaska Constitution and the governor's line item veto requirement of article II, section 15. As logic dictates, the constitutional power to

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[36] The dedicated fund clause's exemption for dedications of state funds already in law at the time of statehood reads: "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. 9 § 7. If, and to the extent, that this Court determines that a mere statutory requirement of local contribution is a dedicated fund, the local contribution would be covered by that exemption because the Territory was already requiring local contributions to school maintenance. *See* Alaska Compiled Laws, ch. 3, art. 3§§ 37-3-32, 37-3-35, art. 4§ 37-3-53, art. 5 § 37-3-62 (1949), *attached as* Ex. 2 (requiring local funding of education and providing for refund of only a percentage of school costs).

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

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

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

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

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

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

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

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the sole source of funding for education in the state. In other words, Ketchikan Gateway Borough assumes that the State is constitutionally required to provide full funding for public schools. It claims, for example, in the introduction to its motion for summary judgment that the State has "abdicated" its "constitutional duty to 'establish and maintain a system of public schools'"[41] "by unconstitutionally requiring the Borough to fund the Ketchikan Gateway Borough School District ... with an annual required local contribution." [Mot. at 2] Notably, however, Ketchikan Gateway Borough has not expressly asked this Court to interpret the Alaska Constitution's education clause[42]—either in its complaint or in its motion for summary judgment.

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

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

42 The education clause reads in full: "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. VII, § 1.

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boroughs[43]—rather than allowing school and other service districts to tax—because "[i]t was felt that the borough assembly would be best able to say that so much, on the basis of presentation, say by these districts or boards, that so much can be afforded out of this tax dollar for education, so much for health, so much for police enforcement, etc."[44] And Victor Rivers clearly expected that boroughs would have a significant role in paying for education, noting with respect to the city of Kenai:

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

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

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

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

45 *Id.* at 2645-46.

46 *Id.* at 2646.

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

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

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

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

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

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

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

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

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

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

52 AS 14.17.410(d).

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

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

IV. Conclusion

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

DATED March 28, 2014.

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Public School Funding Program
FY2014 Foundation CLOSEOUT
Prepared 3/14/2014

School District	$5,680 Basic Need	Required Local Effort	Eligible Federal Impact AID	Impact AID Percent	Deductible Impact AID 90.0%	State AID	FY2014 Adjusted Floor	Quality Schools	FY14 Total State Entitlement
Alaska Gateway	7,840,899	0	314,780	100.00%	283,302	7,557,597	0	22,087	7,579,684
Aleutian Region	1,283,907	0	27,538	100.00%	24,784	1,259,123	12,924	3,617	1,275,664
Aleutians East	5,578,271	615,516	697,008	36.36%	228,089	4,734,666	0	15,713	4,750,379
Anchorage	421,828,040	95,445,433	20,220,105	48.73%	8,867,931	317,514,676	0	1,188,248	318,702,924
Annette Island	4,394,843	0	1,557,224	100.00%	1,401,502	2,993,341	0	12,380	3,005,721
Bering Strait	38,564,871	0	10,781,828	100.00%	9,703,645	28,861,226	0	108,633	28,969,859
Bristol Bay	2,492,782	715,872	104,567	58.12%	54,697	1,722,213	0	7,022	1,729,235
Chatham	3,119,570	0	200,093	100.00%	180,084	2,939,486	0	8,788	2,948,274
Chugach	2,544,413	0	81,068	100.00%	72,961	2,471,452	5,345	7,167	2,483,964
Copper River	6,518,652	0	328,179	100.00%	295,361	6,223,291	0	18,362	6,241,653
Cordova	4,243,301	709,139	25,495	41.77%	9,584	3,524,578	0	11,953	3,536,531
Craig	5,220,090	338,704	549,217	43.95%	217,243	4,664,143	0	14,704	4,678,847
Delta/Greely	9,829,467	0	425,005	100.00%	382,505	9,446,962	0	27,689	9,474,651
Denali	6,836,562	658,294	6,904	29.87%	1,856	6,176,412	0	19,258	6,195,670
Dillingham	7,245,067	526,870	645,901	39.94%	232,176	6,486,021	0	20,409	6,506,430
Fairbanks	150,773,101	26,940,883	13,670,315	55.28%	6,801,255	117,030,963	0	424,713	117,455,676
Galena	20,756,310	80,489	154,777	7.07%	9,848	20,665,973	0	58,468	20,724,441
Haines	3,873,362	907,376	0	58.19%	0	2,965,986	0	10,911	2,976,897
Hoonah	2,408,831	195,429	166,661	27.08%	40,619	2,172,783	0	6,785	2,179,568
Hydaburg	1,509,460	40,849	102,253	30.75%	28,299	1,440,312	0	4,252	1,444,564
Iditarod Area	5,656,258	0	272,896	100.00%	245,606	5,410,652	0	15,933	5,426,585
Juneau	50,131,226	12,464,402	0	51.63%	0	37,666,824	0	141,215	37,808,039
Kake	1,935,914	75,414	358,343	51.53%	166,189	1,694,311	0	5,453	1,699,764
Kashunamiut	5,338,746	0	2,039,069	100.00%	1,835,162	3,503,584	0	15,039	3,518,623
Kenai Peninsula	97,611,766	22,720,017	0	51.78%	0	74,891,749	0	274,963	75,166,712
Ketchikan Gateway	25,947,546	4,198,727	0	52.06%	0	21,748,819	0	73,092	21,821,911
Klawock	2,620,752	147,806	496,121	55.67%	248,572	2,224,374	0	7,382	2,231,756
Kodiak Island	30,205,104	3,806,666	1,863,753	31.01%	520,155	25,878,283	0	85,085	25,963,368
Kuspuk	7,368,778	0	1,892,597	100.00%	1,703,337	5,665,441	0	20,757	5,686,198
Lake & Peninsula	9,134,406	391,926	1,589,851	29.06%	415,810	8,326,670	0	25,731	8,352,401
Lower Kuskokwim	73,423,770	0	17,622,665	100.00%	15,860,399	57,563,371	0	206,828	57,770,199
Lower Yukon	39,568,073	0	10,970,729	100.00%	9,873,656	29,694,417	0	111,459	29,805,876
Mat-Su	169,151,309	25,355,209	0	49.24%	0	143,796,100	0	476,483	144,272,583
Nenana	6,296,791	75,994	4,460	66.37%	2,664	6,218,133	0	17,737	6,235,870
Nome	9,443,114	834,289	74,899	39.67%	26,741	8,582,084	0	26,600	8,608,684
North Slope	29,804,664	12,884,157	3,584,282	36.21%	1,168,082	15,752,425	0	83,957	15,836,382
Northwest Arctic	37,799,321	1,972,985	4,990,139	26.87%	1,206,765	34,619,571	0	106,477	34,726,048
Pelican	404,643	39,553	0	76.29%	0	365,090	78,322	1,140	444,552
Petersburg	6,678,771	901,121	0	48.17%	0	5,777,650	0	18,813	5,796,463
Pribilof	2,002,541	0	489,987	100.00%	440,988	1,561,553	0	5,641	1,567,194
Saint Mary's	3,736,077	36,034	0	31.97%	0	3,700,043	0	10,524	3,710,567
Sitka	16,471,602	3,051,149	12,822	59.55%	6,872	13,413,581	0	46,399	13,459,980
Skagway	1,167,581	460,310	0	41.33%	0	707,271	0	3,289	710,560
Southeast Island	5,146,137	0	171	100.00%	154	5,145,983	0	14,496	5,160,479
Southwest Region	12,711,386	0	3,924,646	100.00%	3,532,181	9,179,205	0	35,807	9,215,012
Tanana	1,141,510	24,863	162,913	100.00%	146,622	970,025	0	3,216	973,241
Unalaska	5,798,712	1,462,492	26,281	51.25%	12,122	4,324,098	0	16,334	4,340,432
Valdez	7,686,744	3,383,888	4,972	42.60%	1,906	4,300,950	0	21,653	4,322,603
Wrangell	4,074,434	470,852	693	69.65%	434	3,603,148	0	11,477	3,614,625
Yakutat	1,666,285	181,364	148,818	50.72%	67,932	1,416,989	0	4,694	1,421,683
Yukon Flats	7,792,846	0	568,366	100.00%	511,529	7,281,317	0	21,952	7,303,269
Yukon/Koyukuk	13,475,800	0	1,075,034	100.00%	967,531	12,508,269	0	37,960	12,546,229
Yupiit	8,947,704	0	2,970,269	100.00%	2,673,242	6,274,462	0	25,205	6,299,667
Mt. Edgecumbe	3,903,864	0	0	100.00%	0	3,903,864	0	10,997	3,914,861
									26,027,300
TOTALS:	1,411,105,974	222,114,072	105,203,694		70,470,392	1,118,521,510	96,591	3,974,947	1,148,620,348

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Exhibit 1
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000145

ALASKA COMPILED LAWS
ANNOTATED

2

TITLES 37-54

COMPILED LAWS OF ALASKA

1949

Containing the General Laws of the Territory of Alaska

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

Published under Authority of Ch 28, SLA, 1947

▼

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

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

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

Article 3

City Schools and School Districts

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

§ 37-3-36. Report of expenditures to council.
§ 37-3-37. Record and minutes of school board: Account of receipts and expenditures: Inspection of records.

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

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

CROSS REFERENCES

Time when term of school officers begins: § 16-1-56.
Vacancies in school board, see also: § 16-1-57.
Removal of school board members: § 16-1-61.

COLLATERAL REFERENCES

47 Am Jur 299, 340.

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

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

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

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

Article 4

Independent School Districts

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

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

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

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

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

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

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

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

Article 5

Maintenance of City Schools and Incorporated District Schools

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

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

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

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

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

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

(a) Levying and collecting taxes.

(b) Conducting regular or special school elections.

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

Sec. 4. The term of each commissioner is four years. A commissioner holds office until his successor is appointed and qualified, but such successor's term expires four years from the legal date of expiration of the term of his predecessor. Any commissioner may be removed from office by the governor upon charges and after a hearing. The term of any commissioner who ceases to hold the qualifications required terminates and a successor may be appointed. Vacancies occurring in the office of a commissioner from any reason or cause shall be filled for the unexpired term in the same manner as for a full term appointment.

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

Approved May 4, 1962

CHAPTER 163

AN ACT

Requiring an applicant for a commercial fishing license to file a signed statement of filing of the Alaska net income tax return; amending Sec. 8, Art. III, Ch. 94, SLA 1959; and providing for an effective date.

(C.S.H.B. 396)

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

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

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

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

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

Approved May 4, 1962

CHAPTER 164

AN ACT

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

(C.S.H.B. 420)

Exhibit 3
Page 1 of 3
000154

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

Article I

State Aid to Local School Districts

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

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

(1) the teachers' salary allotment (Sec. 1.04);

(2) the average daily membership allotment (Sec. 1.05); and

(3) the attendance center allotment (Sec. 1.06).

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

Sec. 1.04. Teachers' Salary Allotment. a. The teachers' salary allotment for each district shall be the product of the "teacher salary average" times the "allowable number of teacher units."

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

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

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

Schedule of Allowable Number of Teacher Units

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

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

(3) If a school district has an average

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

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

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

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

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

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

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

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

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

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

Sec. 1.06. **Attendance Center Allotment.** The attendance center allotment for each district shall be the product of the number of attendance centers in the school district times $1,000. For the purposes of this section, "attendance center" means each elementary or secondary school which functions as a distinct administrative unit and is allocated a principal by the district school board; provided, that the State Board of Education may designate as attendance centers, in addition to those which qualify under this definition, those schools which it determines should be considered as attendance centers because of remote location or other special circumstances.

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

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

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

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

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

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

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

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

Plaintiffs,

v.

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

Defendants.

Case No. 1KE-14-00016CI

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

APR 28 2014

Clerk of the Trial Courts

By _____ Deputy

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

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

[1] Defendants, State of Alaska and Commissioner Hanley, are collectively referred to as the "State."

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

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

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

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

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

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

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

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

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

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

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

[2] The 1975 Attorney General Opinion, which the Court characterized as "well researched," was expressly adopted by *Alex*. 646 P.2d at 210.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Constitutional avoidance does not apply.

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

[6] Alaska Const. Art. VII, § 1.

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

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

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

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

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

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

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

[8] The State's Exhibit 3 is not a complete copy of the 1962 statute, so Plaintiffs have provided a complete copy in Ex. B.

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

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

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

> [T]he intent of the drafters ... was to permit the continuance of existing dedications at the then existing rates until the Legislature saw fit to exercise the only power retained in relation to them: that is, the power to repeal.
> ...
> Also note that *any repeal or repeal and re-enactment* of a dedication during that session takes the dedication from under the protection of the grandfather clause and a re-enactment either in 1957 or later is a nullity unless the dedication is required by the Federal Government for participation in Federal programs.

Id. at 5, 6 (emphasis supplied).[11]

[10] Excerpts from the audiotapes that were not transcribed are included in the Opinion at 4.

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

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

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

II. The RLC also violates the Legislative Appropriation Clause and the Governor's Veto Clause.

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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favor, and an order to refund the 2014 RLC.

Dated this 28th day of April, 2014.

KETCHIKAN GATEWAY BOROUGH

By: _____
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I certify that a true and correct copy of the foregoing was delivered this 28 day of April, 2014, via U.S. Mail to:

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OPINION NO 9

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH A - STATE CAPITOL JUNEAU 99811

May 2, 1975

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

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

Dear Governor Hammond:

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

The short answer is yes.

DISCUSSION

The constitutional prohibition against dedicated funds is as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> At the request of the Committee on Finance and Taxation, finance specialists on the Public Administration Service staff in Chicago prepared comments on the Finance Committee proposal. These comments, supplemented as a result of Mr. Sady's discussions with these specialists, follow:
>
> Section 8: The intended purpose of this section to prohibit the earmarking of certain revenues for special purposes is certainly laudable. It is doubtful, however, that a strict interpretation of this provision could be applied. Legal and contractual provisions will require the segregation of certain moneys, e.g., pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The proposed amendment was moved by Delegate Buckalew.

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

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

* * * *

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

* * * *

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

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

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

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

> STEWART: How would royalties, for instance, on the production of oil be regarded under this provision? Would they be considered taxes or licenses?
>
> PRESIDENT EGAN: Does the Chairman . . . have the answer . . . or anyone on the committee? Mr. Nolan? [member of the committee]
>
> NOLAN: Mr. President, I would imagine that they would just go into the general fund.
>
> STEWART: I was thinking if they were earmarked . . . [before the prohibition took effect] we can see the very, very large revenues deriving from oil lands. If they were earmarking them, for instance, for schools even, it might be that the revenue from those lands would amount to millions and millions a year, far beyond even our requirements for schools.
>
> * * * *
>
> NOLAN: They wouldn't be earmarked because they are not under any existing law now, the earmarking of them, so this section [exceptions] would not apply to it. It would go into the general fund. Ibid., 2381-2382 (emphasis added).

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

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

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

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

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

Convention's debates compels the conclusion that it did:

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

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

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

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

* * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

Avrum M. Gross
Attorney General

AMG:pg:JLH

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

Sec. 4. The term of each commissioner is four years. A commissioner holds office until his successor is appointed and qualified, but such successor's term expires four years from the legal date of expiration of the term of his predecessor. Any commissioner may be removed from office by the governor upon charges and after a hearing. The term of any commissioner who ceases to hold the qualifications required terminates and a successor may be appointed. Vacancies occurring in the office of a commissioner from any reason or cause shall be filled for the unexpired term in the same manner as for a full term appointment.

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

Approved May 4, 1962

CHAPTER 163

AN ACT

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

(C.S.H.B. 396)

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

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

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

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

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

Approved May 4, 1962

CHAPTER 164

AN ACT

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

(C.S.H.B. 420)

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

Article I

State Aid to Local School Districts

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

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

(1) the teachers' salary allotment (Sec. 1.04);

(2) the average daily membership allotment (Sec. 1.05); and

(3) the attendance center allotment (Sec. 1.06).

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

Sec. 1.04. Teachers' Salary Allotment. a. The teachers' salary allotment for each district shall be the product of the "teacher salary average" times the "allowable number of teacher units."

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

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

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

Schedule of Allowable Number of Teacher Units

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

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

(3) If a school district has an average

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

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

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

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

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

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

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

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

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

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

Sec. 1.06. Attendance Center Allotment. The attendance center allotment for each district shall be the product of the number of attendance centers in the school district times $1,000. For the purposes of this section, "attendance center" means each elementary or secondary school which functions as a distinct administrative unit and is allocated a principal by the district school board; provided, that the State Board of Education may designate as attendance centers, in addition to those which qualify under this definition, those schools which it determines should be considered as attendance centers because of remote location or other special circumstances.

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

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

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

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

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

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

Article II

Preparation of Public School Foundation Budget

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

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

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

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

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

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

Sec. 2.04. Computation of Average Daily Membership Allotment. The average daily membership allotment of each district shall be computed as required by Sec. 1.05, except that the "estimated average daily membership" as defined by Sec. 2.02 shall be used in place of "average daily membership."

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

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

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

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

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

Sec. 2.03. Duty of Commissioner to Examine and Tabulate Computations. a. The commissioner shall examine the allotment computations submitted by each district to determine that they are correctly computed. If the allotments are incorrectly computed, the commissioner shall either obtain a correct computation from the district, or make a correct computation based on information available to him, with notice of the corrected computation being given to the district.

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

Article III

Procedure for Payment of Public School Foundation Funds to Districts

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

Sec. 3.02. Payment under Adjusted Computations. Each district shall make a report at the end of the first nine weeks of school, which shall contain a new estimate of its average daily membership for the fiscal year and any other information which will aid the commissioner in making a more accurate determination of the amount of state aid to which the district is entitled. The commissioner shall, on the basis of this new estimate and information, make a recomputation of the total amount of state aid to which each district is entitled. On or before December 1, the commissioner shall notify each district of any changes made in its entitlement to state aid. The commissioner shall also determine at that time whether or not the money in the public school foundation account is sufficient to meet the obligations for the fiscal year, and, if such money is not sufficient, he shall immediately inform the governor of the amount of additional appropriation he estimates will be necessary to carry out the public school foundation program for the rest of the fiscal year. Beginning January 15 and on the fifteenth of each month thereafter, each district's recomputed entitlement shall be distributed in five equal installments, provided that one-half of the June payment shall be withheld pending a final determination of the district's state aid entitlement.

Sec. 3.03. Payment under Final Computation. On or before June 15, each district shall transmit to the commissioner a final computation of the state aid to which the district is entitled. The commissioner shall process each district's computation in the manner provided by Sec. 2.03a. Any money owing to a district shall be obligated by the commissioner prior to June 30. If the district received more money than its state aid entitlement, it shall immediately, after notice from the commissioner of such overpayment, remit the amount of overpayment to the commissioner to be returned to the public school foundation account.

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

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

Article IV

General Provisions

Sec. 4.01. Regulations. The commis-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article V

Formal Provisions

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

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

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

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

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

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

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

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

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

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

titled under the public school foundation program.

(c) For the purposes of this section:

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

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

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

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

(1) for the fiscal year 1962-63, budgets shall be prepared, state aid computed, and appropriations disbursed in accordance with existing law;

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

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

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

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

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

Approved May 4, 1962

CHAPTER 165

AN ACT

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

(S.S.S.B. 147)

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

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

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

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

(b) To qualify as a candidate for election to the district or state central committee, national committeeman, or committeewoman, a person must have registered a party preference in the preceding primary election.

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

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

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

Exhibit B
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MEMORANDUM

State of Alaska
Department of Law

To: Scott Nordstrand
Deputy Attorney General

Date: April 25, 2005
File No:

Tel. No.: (907) 465-3600
Fax: (907) 465-2520

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

Subject: Interpretation of AS 14.17.510(c)

I. Introduction and Short Answers

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

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

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

II. Discussion

A. AS 14.17.510(c) and Annexation

AS 14.17.510(c) provides:

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

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

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

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

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

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

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

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

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

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[2] The subsection was briefly addressed at an April 24, 2001, Senate Finance Committee hearing, when the word "annual" was added to the subsection, but little was added to the discussion of April 20.

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

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

B. The Base Year for Newly Organized Municipal Districts

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

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

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

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

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

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

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

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

III. Conclusion

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

SCS/nfp

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

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

Plaintiffs,

vs.

SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, et al.,

Defendants.

1JU-78-191 CIV

PRELIMINARY INJUNCTION

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

FINDINGS OF FACT

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

2. The Southern Southeast Regional Aquaculture Association and the Northern Southeast Aquaculture Association have in place for the current season, assessment programs pursuant to AS 16.10.530, and absent a further order of this court, the assessments will be collected and paid over to the associations. The bulk of the assessment funds would be collected between the present date and the end of the 1979 fishing season. In the normal course and without further

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

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

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

Based upon the foregoing findings of fact the court makes the following:

CONCLUSIONS OF LAW

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

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

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

IT IS ORDERED:

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

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

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

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

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

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

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

DATED this 16 day of August, 1979.

[signature]
Superior Court Judge

CERTIFICATION

The undersigned certifies that on the 16 day of August 79, a true copy of this document was [illegible] following attorneys: Ellis; Sand; Fowden; Pope; Ruddy; Morra; Horton; Rozell; Koester; [illegible]; Thomas

By: [illegible]

-4-

01001

Exc. 186

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

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

Plaintiffs,

vs.

SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, et al.,

Defendants.

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JR

1JU-78-191-Civ.

ORDER

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

IT IS ORDERED that this court's order of August 16, 1978 in the above-captioned case is amended to provide that no further royalty assessments are to be collected under AS 16.10.530 after April 1, 1981 in either the Southern Southeast Region or the Northern Southeast Region.

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

Superior Court Judge

May 81

The following image(s) may be or are of Poor Quality.

All efforts to maintain the best quality image have been attempted.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, NORTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION; and SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, Appellants, v. WAYNE ALEX, WILLIAM A. THOMAS, JR., ED MAKI, JOHN C. MARTIN, WARREN S. WESTROM, DICK WORKMAN, MARK W. WHITE, CARL SIMS, BRUCE R. GILBERT, FRED CHAMBERS, DOUGLAS D. KARNS, HAROLD D. BIELESKI, and LEO R. ALBECKER, JR., Appellees.	File No. 5065, 5096 and 5142 MANDATE

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

The State of Alaska, Northern Southeast Regional Aquaculture Association and Southern Southeast Regional Aquaculture Association filed appeals from a judgment of the Superior Court, First Judicial District at Juneau in Civil Action No. 1[illegible]-78-191 entitled, "WAYNE ALEX, WILLIAM A. THOMAS, JR., ED MAKI, JOHN C. MARTIN, WARREN S. WESTROM, DICK WORKMAN, MARK W. WHITE, CARL SIMS, BRUCE R. GILBERT, FRED CHAMBERS, DOUGLAS D. KARNS, HAROLD D. BIELESKI and LEO R. ALBECKER, JR., Plaintiffs vs. SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, et al., Defendants". The case was heard by this court on January 7, 1981. On April 21, 1982, the court [illegible] its written opinion.

IT IS ORDERED:

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

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

Costs and Attorney's Fees	
Duplicating Appellee's Brief	$ 309.99
Attorney's Fees	$ 750.00
Total	$ 1,[illegible].99

Exhibit D
Page 6 of 8

000062

Exc. 189

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

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

CLERK OF THE SUPREME COURT

Robert D. Bacon

Robert D. Bacon

Form and Entered ... Clerk
APPELLATE COURTS of the
STATE of ALASKA
... 1982
By ... CLERK
Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

WAYNE ALEX, et al.,

Plaintiff,

vs.

SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, et al.,

Defendant.

No. 1JU-78-191 Civil

CORRECTED

PARTIAL SUMMARY JUDGMENT

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

Judgment in favor of the plaintiff class is hereby entered against the State of Alaska and the Southern Southeast Regional Aquaculture Association in the sum of $3,080,226.22, plus prejudgment interest at 8 percent to August 1, 1982 of $912,141.87, for a total judgment of $3,992,368.09.

Judgment is hereby entered authorizing the transfer of all funds in the trust accounts established pursuant to this court's August 16, 1979 order to the State of Alaska, to be added to the amount appropriated by § 6 at 139 SLA 1982, for the purpose of satisfying this judgment and any additional orders entered in this action.

Judgment is hereby entered directing the State of Alaska to transfer $227,381.13 to the Northern Southeast Regional Aquaculture Association.

Judgment is hereby entered directing the State of Alaska to transfer $236,986.75 to the Southern Southeast Regional Aquaculture Association.

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

ATTORNEY GENERAL, STATE OF ALASKA

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Exc. 191

extent those amounts may be satisfied by funds from the appropriation in § 6 ch. 139 SLA 1982 and funds remaining after the transmittal of the indicated sums to the aquaculture associations. The aquaculture associations shall be liable on a proportionate basis for any amounts which the State of Alaska is unable to satisfy from those funds.

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

All matters relating to the assignment of any remaining causes of action will be determined at a future date and are not encompassed in this partial summary judgment.

All matters relating to additional amounts to be transferred to the Northern Southeast Regional Aquaculture Association and the Southern Southeast Regional Aquaculture Association will be determined at a future date and are not encompassed in this partial summary judgment.

All matters relating to interest accruing to the Northern Southeast Regional Aquaculture Association and the Southern Southeast Regional Aquaculture Association will be determined at a future date and are not encompassed in this partial summary judgment.

All matters relating to the sharing of costs among defendants, and to costs and attorneys fees incurred by the Northern Southeast Regional Aquaculture Association and the Southern Southeast Regional Aquaculture Association, will be determined at a future date and are not encompassed in this partial summary judgment.

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

Superior Court Judge

- 2 -

Exhibit
Page 9 of 9

COMPILED LAWS OF ALASKA

1949

Containing the General Laws of the Territory of Alaska

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

Published under Authority of Ch 26, SLA, 1947

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

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

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

Article 3

City Schools and School Districts

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

§ 37-3-36. Report of expenditures to council.
§ 37-3-37. Record and minutes of school board: Account of receipts and expenditures: Inspection of records.

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

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

CROSS REFERENCES

Time when term of school officers begins: § 16-1-56.
Vacancies in school board, see also: § 16-1-57.
Removal of school board members: § 16-1-61.

COLLATERAL REFERENCES

47 Am Jur 299, 340.
Notes: 19 ALR 545 (schoolhouse as a "public building"), 20 ALR 940 (schoolhouse as an "outhouse" or "outbuilding"), 161 ALR 1308 (constitutionality, construction, and application of statutes declaring that school buildings are civic centers or otherwise providing for use of such buildings for other than school purposes).

NOTES OF DECISIONS

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

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

"Supervision" means having general oversight of, especially as an officer vested with authority; oversight; inspection; the act of supervising; superintendence. Bruce v Selner (1901) 1 A 361.

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

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

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

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

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

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

Tax levy. As soon as a city school board shall leave [be] organized after the annual election they shall estimate the amount of money necessary for school purposes for the ensuing school year and submit such budget to the city council. The city council shall then determine the amount of money to be made available for school purposes, and shall furnish the school board of the city a statement of such sum, and shall require the treasurer to pay the sum available for school purposes to the treasurer of the school board. The amount of money to be made available by the municipality for school purposes shall be determined by resolution of the council before the tax levy is made, and such amount may be levied as a separate tax or as a part of the municipal tax. [L 1923, ch 97, § 33, p 207; CLA 1933, § 1307.]

§ 37-3-38. Report of expenditures to council. The school board shall whenever required by the city council, but not oftener than once each month transmit to the council a detailed report and statement of the moneys expended and for what and to whom paid. [L 1923, ch 97, § 38, p 207; CLA 1933, § 1308.]

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

Article 4

Independent School Districts

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

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

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

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

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

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

Exhibit
Page 6 of 1

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

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

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

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

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

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[L 1935, ch 77, § 5, p 1

§ 37-3-46. Order of
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§ 37-3-47. Qualifica
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[L 1935, ch 77, § 7,]

§ 37-3-48. Qualific
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[L 1935, ch 77, § 8,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 5

Maintenance of City Schools and Incorporated District Schools

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

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

ation or improvement of buildings or for the purchase of building sites or for interest on bonded or other indebtedness shall be considered expenses for maintenance within the meaning of this article. [L 1929, ch 97, § 58, p 217; CLA 1933, § 1331; am L Ex Sess 1946, ch 12, § 1, p 98, effective July 1, 1946.]

§ 37-3-63. Amount of refund. Where the total resident school enrollment by school year is less than 150 pupils, eighty-five per centum and where it is 150 pupils or over and less than 300, eighty per centum and where it is 300 pupils or over, seventy-five per centum of the total amount expended for maintenance of public elementary schools and high schools within the limits of incorporated cities or incorporated school districts or independent school districts shall be refunded to such city or school district from the moneys of the Territory appropriated for such purposes. [L 1931, ch 119, § 1, p 284; CLA 1933, § 1332; am L Ex Sess 1946, ch 12, § 1, p 98, effective July 1, 1946.]

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

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

(a) Levying and collecting taxes.

(b) Conducting regular or special school elections.

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

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

Control over money paid to board.—When once city money has been appropriated for the maintenance of schools, and paid over to the treasurer of the school board, the city no longer has control over it, or right to it, except, perhaps, as an ultimate reversioner. Such money passes into the custody of the treasurer of the school board, to be expended under the direction of the board for the maintenance of schools. Ketchikan v. Strong, 6 Alaska 114.

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

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

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

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

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

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

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

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

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

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

Article 4. Independent School Districts.

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

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

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

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

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

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

Board may provide for discharge of obligations of its predecessor. — In levying a tax for school purposes during the first year of its existence, a school district has the power to provide by taxation for the discharge of obligations incurred by its predecessor, even though such obligations antedate the organization of the school district. In re Haines Independent School District's Delinquent Taxes, 12 Alaska 662.

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

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

Sec. 14.15.390. Presentation of budget to city council. The school board shall present the budget to the city council for its approval or rejection of the city's share of the budget. The city council shall at its first meeting in May determine the amount it shall set aside for school purposes as its share of the school expenses for the school year and transmit this information to the school board. (§ 37-3-53 ACLA 1949; am § 58 ch 174 SLA 1957)

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

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

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

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

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

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

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

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

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

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

Chapter 15. School Districts and City Schools.

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

Article 1. Classes of School Districts.

Section
10. [Repealed]

Sec. 14.15.010. Classes of school districts.

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

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

Article 2. Districts Outside Incorporated Towns.

Section
20—220. [Repealed]

Secs. 14.15.020—14.15.220.

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

Editor's note.—The repealed article derived from § 37-3-1 et seq., ACLA 1949; § 1, ch. 24, SLA 1951; § 1, ch. 67, SLA 1951; §§ 1, 2, ch. 118, SLA 1960.

Article 3. City School and School Districts.

Section
230—370. [Repealed]

Secs. 14.15.230—14.15.370.

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

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

Article 4. Independent School Districts.

Section
380—590. [Repealed]

Secs. 14.15.380—14.15.590.

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

Editor's note.—The repealed article derived from § 37-3-1 et seq., ACLA 1949; § 1, ch. 96, SLA 1951; §§ 1—5, ch. 109, SLA 1953; § 1, ch. 124, SLA 1953; § 1, ch. 63, SLA 1955; §§ 59, ch. 174, SLA 1957; §§ 2, 3, ch. 66, SLA 1959; §§ 1, 2, ch. 122, SLA 1960.

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1959 Opinions of the
Attorney General, No. 7

March 11, 1959

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

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

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

Dear Governor Wade:

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

Section 7 reads as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(190?) [illegible]

The first question is whether H.B. 120, which is substantially a re-enactment of Ch. 10, SLA 1949, the Alaska Property Tax Act, violates § 7 of the Constitution by providing in § 4 of the bill that the tax levied by the State shall be turned over to the local political subdivision wherein collected.

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

Exhibit G
Page 5 of [illegible]

express intent of the constitutional framers: that each obligation of government be judged both on its own merits and in comparison with the merits of others in the computation of the budget. (See page 31 et seq. of the written transcripts from the January 24, 1956, session of the Convention for the proposition that a dedication is present when a tax proceed is earmarked from the time it is collected.). Also note that at foot 110, tape 3, it is indicated that the return of liquor license fees and business license fees to political subdivisions constituted a dedication, but since they were earmarked at the time of ratification, they would continue to be dedicated.

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

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

Very truly yours,

J. GERALD WILLIAMS
ATTORNEY GENERAL

By
Jack O'Hair Asher
Assistant Attorney General

JO'HA:bb

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

cc: Department of Finance
Alaska Office Building
Juneau, Alaska

Exhibit 2
Page 6 of 6

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

Office of the Attorney General

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

Redated January 1, 1992

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

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

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

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

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

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

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

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

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

Let me know if this answers your questions.

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

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

End of Document

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

Office of the Attorney General

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

Redated for printing January 1, 1992

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

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

Dear Governor Cowper:

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

The words of the spokesman for the committee on finance and taxation of the constitutional convention are very convincing:

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

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

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

We hope this memorandum answers your questions.

Sincerely,

Douglas B. Baily
Attorney General
James L. Baldwin

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Assistant Attorney General

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

FILED in the Trial Courts
State of Alaska First District
at Ketchikan
MAY 23 2014
Clerk of the Trial Courts
By _____ Deputy

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

Plaintiffs,

v.

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

Defendants.

Case No. 1KE-14-00016 CI

STATE OF ALASKA'S REPLY BRIEF IN FURTHER SUPPORT OF ITS CROSS MOTION FOR SUMMARY JUDGMENT

Article IX, Section 7 of the Alaska Constitution seeks to maximize the Alaska Legislature's ability to appropriate funds, on an annual basis, to the programs and projects it believes are most important. To this end, it prohibits the pledging of specific sources of *state revenue* to particular recipients or projects. A constitutionally impermissible dedicated fund problem exists only when there is both a specific source of state revenue involved *and* when that state revenue can only be spent in one way. The local contribution to a local school district does not violate the dedicated funds clause because it is not state revenue. A simple test to determine whether money can be

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considered state revenue examines whether the legislature ever has access to the revenue. When the money goes from the local borough to the local school district, it is clearly not available to the legislature to spend. More importantly, even if the money is not delivered to the local school district, it is not in the legislature's control—it remains with the borough. Thus, the local contribution to a local school district does not violate the dedicated fund prohibition because even if the money was *not* pledged to local school districts, it would not be available for legislative appropriation; it does not create a "source of public revenue." Because the local contribution is not state revenue it is also not subject to appropriation by the legislature or line item veto. As neither Ketchikan Gateway Borough nor Amicus Curiae Fairbanks North Star Borough ("Amicus") identifies any legal authority compelling the conclusion that local contributions are state revenue, the Court should reject their attempts to invalidate the constitutional, equitable, and predominantly state-financed system of public education in Alaska.

Ketchikan Gateway Borough concedes that it is not arguing that the State is responsible for fully funding education in Alaska. [Reply Br. 10] This acknowledgement is fatal to the borough's contention that the local contribution is a source of state revenue subject to appropriation by the legislature, line-item veto by the governor, and the reach of Alaska's dedicated funds provision. Absent a requirement that all money spent on education come from the state treasury, the borough's annual transfer of a portion of its own funds to its own school district does not convert the local money into state revenue.

In its reply brief Ketchikan Gateway Borough ignores the purpose of the dedicated funds clause and argues that all that is required to trigger the constitutional prohibition is

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a "state-compelled exaction dedicated to a particular source."[1] [Reply at 4] This novel interpretation of the dedicated funds clause is so expansive that it would prohibit all sorts of state-mandated requirements that entities spend money in particular ways including minimum wage laws, workers compensation insurance requirements, and mandatory car insurance requirements, to name a few, The Court should reject the borough's invitation to stray from the well-established purpose of the dedicated fund prohibition, which is to prevent to the earmarking of *state* revenue.

The constitutional convention proceedings also make clear that school funding was not targeted by the dedicated funds provision. Indeed, the delegates never intended for money from local governments for joint state–local cooperative programs to come within the scope of the dedicated funds provision, even in situations where the money is routed through the state treasury. Joint state and local education funding has existed since before statehood and is an arrangement that the Alaska Supreme Court has repeatedly endorsed as a means for the State to fulfill its constitutional obligation to establish and

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[1] Ketchikan Gateway Borough repeatedly uses the term "exaction," which Black's Law Dictionary defines as "[t]he act of demanding more money than is due; extortion." 9th ed. 2009. The borough's use of this term belies its claim that its grievance is with the dedication of the local contribution rather than with the payment of money. [*But see* Reply at 14 ("[T]he RLC . . . is a State-compelled exaction on the Borough that can only be properly assessed, if at all, by becoming subject to appropriation (rather than dedication.")]

maintain a system of public schools.[2] The Court should confirm the continuing ability of local and state governments to collaboratively fund schools and other projects.

I. Because the local contribution is not a source of state revenue, it is not subject to the dedicated funds, appropriation, or gubernatorial veto clauses of the Alaska Constitution.

A. The dedicated fund prohibition applies *only* to the pledging of specific sources of state revenue.

The State has argued that the local contribution cannot be a "source of public revenue" because if the statute is invalidated, the money that the borough now pays to the school district will not then be available to the legislature to spend in some other way. In response, the Borough contends that it is "*irrelevant* to an Anti-Dedication analysis" that "the money 'will not be available to the legislature for expenditure'" if the portion of the statute pledging the money to the local school district is eliminated, suggesting that "[n]o Anti-Dedication Clause cases have inquired into whether, if invalidated, funding would be available to the legislature for expenditure."[3] [Reply Br. 7 (emphasis added)] But this is plainly incorrect. The central purpose of the provision is to maximize the revenue available to the legislature to appropriate; if the invalidation of a statute has no effect on

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[2] *See, e.g., Matanuska-Susitna Borough School District v. State*, 931 P.2d 391, 399 (Alaska 1997) ("By enacting a law [including a local contribution from organized municipalities] to ensure equitable educational opportunities across the state, the legislature acted in furtherance of [its] constitutional mandate."); *Hootch v. Alaska State-Operated School Systems* 536 P.2d 793, 798 (Alaska 1975) (noting legislature enacted education statutes pursuant to constitutional mandate); *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971) (concurrently affirming state legislature's "pervasive state authority" over education while acknowledging that the state supplied less than 100 percent of operating funds).

[3] *See also*, Amicus Brief at 6-7, dismissing this claim as a "naked assertion...bereft of any legal support."

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the amount of money at the legislature's disposal, then the clause is not implicated by the statute.

Moreover, the Alaska Supreme Court's dedicated fund cases have expressly relied on analyses of the impact of challenged statutes on the legislature's ability to appropriate state revenue among competing needs. In *Sonneman v. Hickel*, the Supreme Court upheld most of the act creating the Alaska Marine Highway System Fund based on its conclusion that the act "does not restrict the authority of the legislature to appropriate money from the fund" and the court struck the passage that limited the ability of one state agency to request funding from the revenues.[4] Likewise in *State v. Alex*, the court held that the salmon assessments presented a dedicated fund violation precisely because it rejected the State's contention that the money could still be freely appropriated.[5] The borough mistakenly imagines that the availability of a source of revenue to the legislature is not the central issue, because the decision in *Alex* suggested that the assessments should be refunded to the fishermen who paid them. [Reply Br. 7] But the refund was appropriate because the statute also unconstitutionally delegated the taxing power rendering the assessment itself invalid.[6] Notably, following *Alex* the legislature created a comparable royalty assessment, the revenues from which are deposited in the state treasury for

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[4] 836 P.2d 936, 940 (Alaska 1992).

[5] 646 P.2d 203, 207 (Alaska 1982) (rejecting 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").

[6] *Id.* at 213.

appropriation by the legislature.[7] What the borough fails to understand is that a dedicated funds clause violation invalidates *the pledging of state revenue to the specific purpose*; it does not somehow extinguish the source of public revenue, because the whole point of the provision is to preserve that incoming state revenue for appropriation by the legislature.

But the borough apparently wants to apply the dedicated fund prohibition to funds that are not now, and would not conceivably be, within the state treasury or subject to appropriation by the legislature. The borough does not explain how funds so divorced from the legislative appropriation process can possibly be state revenue that needs to be protected from dedication. Nor does the borough explain how application of the clause to the local contribution reduces earmarks or serves the purpose of the clause: to avoid having state money tied up for special purposes such that "neither the governor nor the legislature has any real control over the finances of the state."[8] The borough's attempt to sever the analysis of the dedicated funds clause from a determination of whether the money, absent the pledge to a specific purpose, would be subject to appropriation by the

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[7] *See* AS 43.76.025 (salmon enhancement tax deposited into the general fund and may be appropriated by the legislature to qualified regional associations); AS 43.76.190(d)–AS 43.76.200 (dive fishery management assessment deposited into state treasury and may be appropriated by the legislature to qualified regional diver fishery development associations); AS 43.76.380(d) (seafood development tax deposited into general fund and may be appropriated by legislature to qualified regional seafood development associations).

[8] *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 389 (Alaska 2003) (internal quotation marks omitted).

legislature or veto by the governor contravenes the fundamental purpose of the clause.[9]

As a 1991 Attorney General Opinion regarding the validity of the Exxon Valdez settlement agreement between the State, Exxon, and the federal government concluded: funds not received by the state are not state revenue and thus do not run afoul of the dedicated funds or appropriation clauses.[10] Under the agreement, some settlement funds were deposited into a trust fund to be jointly administered by the state and federal governments through their assigned trustees to identify and remediate future impacts of the oil spill.[11] The opinion determined that although "the legislature, and only the legislature, retains control over the allocation of *state assets* among competing needs . . . that power obviously does not extend to monies that are not assets belonging to the State . . . ."[12] The analysis in that opinion, although not binding on this Court, provides persuasive support for the State's position that a local contribution which is not received by the State is not subject to appropriation by the legislature, line-item veto by the governor, or within the reach of the dedicated funds provision.

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[9] Fairbanks North Star Borough attempts an even more strained interpretation of the inquiry, by stating that the question is whether the funds, "if collected and *paid to the State* rather than to the third party as directed by law, would be available to the legislature to appropriate." [Amicus Br. at 7 (emphasis added)] Stipulating a hypothetical in which money is paid into the state treasury in order to examine whether the money is "public" merely begs the question, and ignores the fact that the local contribution will not be paid to the State if this Court invalidates AS 14.17.410(b)(2). Under Fairbanks North Star Borough's approach *all money* counts as state revenue—because all money "if collected and paid to the State" would be available to the legislature to appropriate.

[10] 1991 Op. Att'y Gen., 1991 WL 916843, at *3-4 (April 2, 1991).

[11] *Id.* at *2.

[12] *Id.*at *4.

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The borough argues that *State v. Alex*[13] establishes that even funds not deposited in the state treasury can violate the dedicated funds provision because the aquaculture regional associations required salmon buyers to collect a tax and pay it directly to the regional association's trust account and not to the state treasury.[14] [Reply at 3] But *Alex* is readily distinguishable. The State did not argue in *Alex* that the assessment consisted of local rather than state funds that would not otherwise be available to the legislature for appropriation.[15] To the contrary, the State argued that the statute should be construed to allow the funds to be deposited in the general fund, and made available for the legislature to appropriate.[16] As a result, the Alaska Supreme Court simply did not analyze whether local funds, not deposited in the state treasury and that would not otherwise be available for appropriation by the legislature, fall within the purview of the dedicated funds clause.

The fact that a local contribution consists of local money that is never deposited into the state treasury and would not be otherwise available for the legislature to spend with or without the pledge to the local school district removes the local contribution from the purview of the dedicated funds clause. Such money is not "a source of public revenue" subject to the clause; and the local contribution does not restrict the legislature's ability to appropriate state revenue.

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13 646 P.2d 203 (Alaska 1982)

14 *Id.* at 207.

15 *Id.*

16 *Id.*

B. The local contribution for joint state–local education is exempted from the reach of the dedicated funds prohibition because the constitutional delegates intended it to be exempt.

Even if the local contribution were deposited in the state treasury (which it is not), it still would be exempted from the dedicated funds prohibition because the plain language of the constitutional debate excludes its inclusion.[17] As described in detail in a 1975 Attorney General Opinion, one of the preliminary draft versions of the dedicated funds provision considered by the Committee on Finance and Taxation applied the prohibition to "all public revenue" deposited in the state treasury.[18] The delegates, however, during debate on this provision and with the recommendation of the Finance and Taxation Committee amended the provision's final language from "all public revenues" to "the proceeds of any state tax or license" in direct response to a

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[17] The borough does not argue that a local contribution fits within the plain meaning of the text: "proceeds from a state tax or license." [Reply Br. 4] Instead, it argues that the court should look to the plain meaning of the constitutional debate based on the *Alex* holding that "the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution . . . ." *Id.* at 210 (quoting 1975 Op. Att'y Gen. No. 9 at 19-20). The borough placed emphasis on the "or whatever" item on the list, presumably out of recognition that local contributions are not a tax, a license, a rental, a sale, a bonus-royalty, or a royalty. [Reply Br. 4] But the doctrine of ejusdem generis does not allow the expansive view of public revenue that the borough advocates, because under the doctrine, "when a general word follows a list of specific persons or things, the general word will be construed to apply only to persons or things of the same type as those specifically listed." *Northern Alaska Environmental Center v. State, Dep't of Natural Resources*, 2 P.3d 629, 636 (Alaska 2000). A local contribution is different in kind from the above listed items. All of the above are pecuniary burdens laid upon individuals or property to support the government, and are unlike local contributions which require a municipal entity to contribute some of its own revenue, in essence to itself, as a condition of receiving state pecuniary support for a jointly funded project/service being managed by the municipal entity.

[18] 1975 Op. Att'y Gen. No. 9 at 4 (May 2) (quoting 6 Proceedings of Alaska Constitutional Convention, App. V, 106-07 (Dec. 19, 1955)).

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memorandum stating the need to create exceptions from the dedication clause for seven categories of moneys including: "contributions from local government units for state–local cooperative programs, and tax receipts which the state might collect on behalf of local government units."[19] The provision of public schools under Title 14 is a paradigmatic "state–local cooperative program." The 1975 Attorney General Opinion analyzing the minutes stated that "it is clear that . . . the committee proposed its change for no other purpose than meeting the problems raised by the memorandum: 'By going to the tax itself and saying that the tax shall not be earmarked, we eliminated all seven of those exceptions.'"[20] Thus, even if this Court held that local contributions ought to be deposited in the state treasury they still would not be subject to the dedication prohibition because the plain language of the convention intended their exclusion.

The borough does not address this specific exemption for state-local cooperative programs, nor does it cite to a single portion of the constitutional convention debate that discussed the dedicated funds clause as though it would remotely disturb the existing and mandatory provision of local funds directly to local schools.[21] The delegates never discussed the radical interpretation that the borough proposes because it was outside the reach of the dedicated funds clause. "Under the 'dog that didn't bark' canon of statutory

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[19] *Id.* at 7 (quoting Public Administrative Service Memorandum (Jan. 4, 1956)). The Public Administrative Service Memorandum is attached at Ex. 4.

[20] 1975 Op. Att'y Gen. Op. No. 9 at 8 (quoting 4 Proceedings of Alaska Constitutional Convention 2363 (Jan. 17, 1956)).

[21] Alaska Compiled Laws, ch. 3, art. 3 §§ 37-3-32, art. 4 § 37-3-53, art. 5 § 37-3-62 (1949), *attached as* Ex. 2 to State's Opposition and Cross Motion for Summary Judgment.

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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.[22]

C. Payment of money to the local school district does not make it state money.

Amicus appears to argue local funds are state controlled once appropriated by the borough assembly. [Amicus 4-5] This argument ignores both the fact that the required local contribution transfers directly from the unit of municipal government to the local school district without any state involvement, as well as the long-standing and statutorily protected model of local control that defines Alaska's school system. Subject to the general supervisory authority of the Department of Education and Early Development, the legislature has vested each school district and regional education attendance area with the power and responsibility to operate the public schools within its borders.[23] Local districts and boards have wide latitude to determine their own fiscal procedures. They have the authority to appoint and control school employees, contract for services, implement curricula, and select chief school administrators, etc.[24] Additionally, while the local contribution provides a floor on municipal spending, local communities also have the option to provide additional money under the voluntary local contribution.[25] Given

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22 *Glover v. State, Dep't of Transp., Alaska Marine Highway Sys.*, 175 P.3d 1240, 1248-49 (Alaska 2008) (internal footnote omitted) (applying cannon to constitutional provision on sovereign immunity and noting that name of cannon derives from Sir Arthur Conan Doyle's 'dog that didn't bark').

23 AS 14.08.021; AS 14.12.020.

24 AS 14.03.083; AS 14.14.090; AS 14.14.130.

25 AS 14.17.410(c).

this broad authority to determine the manner in which district resources are managed and expended, it is not reasonable to assert that a municipality's local contribution is controlled by the State.

D. The local contribution does not violate the dedicated funds clause because the clause does not prohibit dedications that are independent of specific, earmarked, state revenue.

The statutory provision providing for the required local contribution only identifies the governmental unit responsible for providing aid, but does not actually pledge the proceeds of any tax, or license, let alone any *state* tax or license. Under the terms of the constitutional provision, a generalized statutory obligation to fund a specific program/purpose by itself is not problematic.[26] Within the public school funding statute, in addition to setting out the formula for the local contribution, the statute sets out a formula for state aid.[27] This statutory provision is not tied to a statutory pledge of a specific funding source—it merely identifies a formula through which responsibility for education is allocated, with modest local and federal contributions alongside significant state aid that constitutes the vast majority of support for schools. Whether the legislature

[26] Indeed, Alaska statutes are filled with such funding obligations unmoored from any specific sources of revenue and lacking independent appropriation effect. *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 scheduled under (a)(1) of this section).

[27] AS 14.17.410(b)(1) (providing that state aid is equal to basic need minus the required local contribution and 90 percent of eligible federal impact aid for that fiscal year).

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fulfills the statutory funding formula through an appropriation of state revenue or provides for some or all of the education funding through an appropriation outside the formula is an *annual* decision that each legislature must make consistent with the legislature's plenary power over appropriations.[28] Logically, the local contribution is not any less constitutional than the identical provisions identifying other entities responsible for funding or the countless other statutory provisions that indicate an intent or obligation to provide funding without pledging a specific tax or funding source.

Fairbanks North Star Borough argues that the local contribution is taxation by proxy, but its argument depends on its unsupported assumption that the local contribution requirement is an exercise of the State's taxing authority. [Amicus Br. 3 ("One of the hallmarks of a tax, as opposed to a grant, fee, or a formula, is 'that it is not a voluntary payment or donation, but an enforced contribution, *exacted pursuant to legislative authority in the exercise of the taxing power.*'"[29])] The local contribution requirement is not an exercise of the taxing power, but rather stems from the State's pervasive authority over education, requiring municipalities to become school districts and provide some support for their local schools.[30] The financial element of that requirement is

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[28] Under article IX, section 13 of the Alaska Constitution "no money shall be withdrawn from the treasury except in accordance with appropriations made by law." This year, for example, the legislature provided for some of the education funding outside of the Base Student Allocation. *See* 2014 FCCS HB 278 § 55, p. 39, lines 17-26.

[29] Amicus Br. 3 (quoting Eugene McQuillin, *The Law of Municipal Corporations* §44.2 at 16 (3d ed. 2013).

[30] *See* AS 14.12.020.

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implemented through a matching grant structure, and not taxation.[31]

Nor does the fact that municipalities must use their taxing power to raise the money to make the contribution transform that contribution into a "state tax." Every local government function is supported by taxation—that fact does not turn local taxes into state taxes whenever they are collected to finance a function delegated to local governments by the legislature. Nor does it transform an obligation to make a contribution into a *specific* tax so as to create a potential dedicated fund violation. At most, it identifies the tax*payers* who must provide the money to support local education. The dedicated funds clause simply does not prohibit this.

E. The appropriation clause and gubernatorial veto clause do not apply to the local contribution because they apply only to state revenue.

The borough rests its opposition to the State's straightforward contention that the appropriation and gubernatorial veto clauses apply only to money that is in the state treasury on the theory that the local contribution ought to be in the state treasury. [*See* State's Opposition Br. at 15-16, Reply Br. 15-16] But this theory relies on the argument—expressly disavowed by the borough and Amicus—that any money that funds schools is really state money because the obligation to finance education lies solely with the State. Because the local contribution is not state revenue, the borough's argument fails.

[31] The local contribution is distinguishable from a tax because the State does not receive the money, the State does not specify how the borough should raise the money, the payment of the money triggers an even greater state payment, and lack of payment results in the State withholding state aid.

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II. The Court should reject the borough's proposed expansion of the dedicated funds prohibition because it leads to an untenable constitutional provision.

In order to apply the dedicated funds prohibition and appropriation and veto powers to a pool of money outside the clauses' intended reach, the borough has created a novel test to determine if a particular statute is subject to the dedicated funds prohibition and other clauses. Aimed, as it is, at money that is not public revenue, the borough's proposed test would enormously expand the constitutional prohibition on dedication at the expense of the legislature's ability to govern.[32]

Specifically the borough claims the local contribution's "status as a State-compelled exaction dedicated to a particular source" is all that is necessary to violate the dedicated funds, appropriation, and veto clauses. [Reply Br. 4] Such a broad prohibition would also encompass a state minimum wage law: certainly such a law mandatorily "exacts" money and requires it to be spent on a dedicated source—employees. It would cover mandatory car insurance requirements: such laws require all drivers to pay money to car insurance companies. It would cover worker's compensation insurance requirements that mandate employers pay for insurance for their workers. And, it would cover a variety of state grant programs all of which *require* a contribution by the grantee

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[32] *See Myers*, 68 P.3d at 394 (limiting reach of clause out of recognition that the dedicated funds clashes with the legislature's power).

as a pre-condition to accessing state funds.[33] According to the borough's analysis, the fact that the money is not collected by the state and deposited in the state treasury, which would make the funds available for appropriation by the legislature, is irrelevant. All that matters is that the State has a statute requiring some entity to make a mandatory contribution to some other entity for a specific purpose. This is simply too expansive a definition of state revenue subject to the reach of the dedicated fund, appropriation, and veto clauses and is wholly unsupported.

The borough also argues that allowing required local contributions in support of local education, a requirement that has existed since before statehood, will lead to a "slippery slope" of mandatory contributions for state functions. [Ketchikan Br. at 9] This ignores the fundamental purpose behind local contributions and its relationship to local control. The requirement of a local financial stake to access state funds seeks to ensure prudent expenditure of state and federal education dollars by giving local communities a stake in the financial management of their schools. Schools are both state-supervised and locally run. As such, hypotheticals involving entirely state functions such as state

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[33] In addition to the municipal capital project matching grant program discussed in the State's opening brief, the following state grant programs also *mandate* a local contribution: (1) library construction and major expansion matching grant program under AS 14.56.355–14.56.356; (2) harbor facility grant program under AS 29.60.800–29.60.830; and (3) human services community match program under AS 29.60.600–29.60.650. Finally, appropriations by the legislature to a third-party through a grant frequently mandate a match as a condition of receiving state funds. The borough contends the mandatory nature of the local contribution renders it distinguishable from these grant programs. But, all of these programs *require* a local contribution as a precondition to accessing state assistance. The only real distinction is that education is annual operating expense and these grant programs provide funding for capital projects, which are often one time expenditures.

courthouses, state troopers, and state jails simply do not match the model.

III. The Court should reject the borough's assumpsit and restitution claims because the borough cannot receive a refund from the state treasury for funds that it never paid to the State.

The borough concedes that the State is not responsible for fully funding education, which means the borough acknowledges that it can be asked to pay a portion of the cost of educating students that reside in its district. Nothing in the borough's lawsuit challenges the *amount* of the local contribution required—in Ketchikan Gateway Borough's case less than 18 percent of basic need. [Reply Br. 14] And, the borough also concedes that the local contribution was paid to its school district and *was not paid to the State* or deposited into the state treasury. The borough's claim for a refund from the State for funds it paid to a third-party not named in this action plainly fails as a matter of law.

CONCLUSION

Based on the foregoing, this Court should deny summary judgment to Ketchikan Gateway Borough and grant it to the State on all claims.

DATED May 23, 2014.

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Constitutional Convention
XI/Finance/27
January 4, 1955

MEMORANDUM

Subject: Comments from Public Administration Service on Finance Committee Proposal

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

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

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

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

local government equity therein, or to maintain duly established revolving funds."

Section 10: It is believed that the intent of this section is to require payment of tax anticipation loans from revenues of the fiscal period in which the loan was made. As the section is worded, ("shall be paid within one year.")it.could be interpreted as requiring payment within one year from the date of borrowing, which would make it conflict with Section 9.

Section 9 and Section 11. The prohibition against incurring debt except by referendum in Section 9 and the exceptions in Section 11 as pertains to revenue bonds of public corporations would appear to be an open invitation to create "authorities," in the Pennsylvania pattern, for the financing of public improvements. A very good argument can be made that permitting the legislature to create debt, perhaps requiring a 2/3 vote, within prescribed limits is preferable to the creation of debt through use of authorities. (See recent publication by the Pennsylvania State Chamber of Commerce on the "hidden" debt of that state.) An alternative might be to allow the legislature to create debt up to a certain percentage of the assessed value of property and then to require a referendum for contraction of debt in excess of that amount.

Section 12: To make the concept of an executive budget complete, something on the order of the following (based on the Deleware Financial Reorganization Act) might be added at the end of this section:

"The legislature may increase, decrease, or eliminate items in the general appropriation bill in any way that is not contrary to law, but

no further or special appropriation bills, except in case of an emergency, which fact shall be clearly stated in the appropriation bill therefor, shall be considered until the general appropriation bill shall have been finally acted upon by the legislature. The total appropriation items may not be increased in the aggregate, nor may supplementary appropriation bills be passed, to the point that they would exceed the state revenues from all sources as estimated in the budget."

Section 13: Consideration should be given to deleting this section. Although provisions generally similar to this may be found in other constitutions, strict compliance is pretty much a practical impossibility. States, where such provisions exist, either achieve token observation by ingenious wording of expenditure authorizations or ignore the restrictions in certain cases. Many types of disbursements from a state treasury are not properly subject to specific appropriation, e.g., refunds of current receipts, purchase of investments, pension payments, payments from working capital funds subject to reimbursement from appropriations, and release of trust or agency moneys.

The last sentence of the section refers to "appropriated funds unexpended." There is some question whether this would be interpreted as prohibiting the carrying forward of unexpended but encumbered appropriations, and, if so, if such is the intent of the section.

Also in this sentence, the reference "returned to the state treasury" is technically incorrect since the "unexpended appropriated funds" will have ordinarily never left the treasury. There will be many types of appropriations which should not lapse at the end of the

fiscal period, e.g., for capital improvements, to provide working capital, and to pay certain fixed charges. A sentence such as follows, if any reference at all is required, would serve the intent in a more practical fashion:

"Except as specifically provided for in appropriation bills, all appropriated funds remaining unexpended or unencumbered at the end of the fiscal year shall lapse."

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

KETCHIKAN GATEWAY BOROUGH, AGNES MORAN, JOHN CROSS, JOHN HARRINGTON, AND DAVID SPOKELY

Plaintiffs,

v.

STATE OF ALASKA AND MICHAEL HANLEY; COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT

Defendants.

FILED in the Trial Courts
State of Alaska First District
at Ketchikan
NOV 21 2014
Clerk of the Trial Courts
By _____ Deputy

Case No. 1KE-14-16CI

ORDER ON MOTION AND CROSS MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The Ketchikan Gateway Borough, et. al. (the Borough) challenges one facet of Alaska's education funding law – the required local contribution (RLC). The Borough argues that the RLC is unconstitutional because it violates three provisions of the Alaska Constitution: Article XI, Section 7, the dedicated funds clause; Article IX, Section 13, the appropriations clause; and Article II, Section 15, the governor's veto clause. The Borough moves for summary judgment on these claims. The State of Alaska and Michael Hanley (the State) oppose the Borough's motion and has filed its own motion for summary judgment on the claims. For the following reasons, the Borough's motion is partially granted and the State's motion is partially granted.

ISSUES

1) Is the RLC a dedicated fund in violation of the dedicated funds clause of the Alaska Constitution[1] when it requires some localities to make payments to their local school districts for the purpose of meeting that district's Basic Need for education funding?
2) If the RLC is in violation of the dedicated funds clause, does it qualify for the exemption that clause allows for pre-Statehood dedicated funds?
3) Does the RLC violate the appropriations clause[2] and governor's veto clause[3] of the Alaska Constitution because the RLC payments flow directly from a locality to its school district and thus takes place outside of the legislative appropriation process?
4) If the RLC is unconstitutional, should the court order a refund of the Borough's 2014 RLC payment under theories of assumpsit or restitution?

STATEMENT OF FACTS

The State of Alaska is constitutionally mandated to "establish and maintain a system of public schools."[4] Title 14 of the Alaska Statutes governs school administration.[5] Alaska manages its public schools through a system of school districts.[6] Alaska has 53 school districts. Each of Alaska's 19 organized boroughs constitutes a borough school district. Likewise, each of Alaska's 15 home-rule and first-class cities within an unorganized borough constitutes a city school district. The court will use the term "municipal district" to refer to a school district located in one of the previous two areas, i.e., a school district located within an organized borough or a home-rule or first-class city. Finally, the remaining 19 school districts are within

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[1] Alaska Const. art. XI, § 7.
[2] Alaska Const. art. IX, § 13.
[3] Alaska Const. art. II, § 15.
[4] Alaska Const. art. VII, § 1.
[5] *See* AS 14.03.010 (establishing a system of public schools within the state).
[6] *See* AS 14.12.010.

the areas of unorganized boroughs that are exclusive of home-rule or first-class city districts. Those final school districts are divided into State created regional educational attendance areas (REAA).[7] The Ketchikan Gateway Borough School District (KGB School District) is located within a municipal district.

Alaska Statute Title 14, Chapter 17 outlines the State aid for which a public school is eligible.[8] Each public school district is funded through three primary sources: state aid, a required local contribution, and eligible federal impact aid.[9] The composition of this funding depends on whether the schools within the district are located within a municipal district or a REAA.[10] The calculation of necessary education funding for a given fiscal year always starts with a computation of a school district's "Basic Need." This occurs regardless of where the school district is located (whether it is in a municipal district or REAA).

The Basic Need formula is set by statute.[11] To calculate a district's Basic Need, the district starts by calculating the adjusted daily membership (ADM) of each school in the district.[12] The ADM is then multiplied by the district cost factor, a factor set by statute.[13] Then the ADMs of each school in the district, as adjusted based on the prior calculations, are then added together. The sum is then multiplied by several factors, which look at the special needs funding the district as a whole requires. These factors take into account things that make the cost of education more or less expensive in a district. Among the factors are: the cost of any vocational or technical instruction provided by the district, the number of correspondence

[7] REAAs are established under AS 14.08.031(a).
[8] The court recognizes that although the State is constitutionally mandated to "establish and maintain a system of public schools," it is not mandated to fully fund public schools. *See* AS 14.17, noting several times that public school districts are "eligible" for, not entitled to, State aid.
[9] AS 14.17.410(b).
[10] *Id.*
[11] *See* AS 14.17.410.
[12] *See* AS 14.17.450 for the calculation used to reach a district's ADM. The calculation is based on the number of students in average daily attendance during a student count, plus other weighted factors.
[13] AS 14.17.460.

students, and other associated economies of scale.[14] Those calculations yield a school district's Basic Need.

As stated previously, there are three sources of funding that may be used to fulfill a school district's Basic Need: State aid, eligible federal impact aid, and a required local contribution.[15]

Every school district is eligible for State aid for the operation of its district.[16] State aid is paid from the Public Education Fund. This fund consists of funds appropriated for education by the Alaska State Legislature.[17] If the Public Education Fund contains insufficient funds to make full payments of the calculated State aid requirement, the Alaska Department of Education and Early Development is required to reduce each district's Basic Need on a pro-rata basis.[18]

The RLC is at the heart of this lawsuit. Municipal districts must fund a portion of their school districts' Basic Need.[19] This is accomplished through an annual RLC payment from the municipal district directly to its school district.[20] RLC payments do not change the amount of Basic Need required to fund a district's schools. Therefore, when a municipal district pays the RLC, the district's Basic Need is partially fulfilled, which in turn reduces the State's Basic Need obligation.

The amount of a municipal district's RLC payment is 2.65 mills of the full and true value of taxable real and personal property[21] in the municipal district in the second prior fiscal

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[14] AS 14.17.410(C) and AS 14.17.420.
[15] AS 14.17.410(b).
[16] AS 14.17.410.
[17] AS 14.17.300.
[18] AS 14.17.400(b).
[19] AS 14.17.410(b) and 14.12.020(c). AS 14.12.020(c) in particular highlights the mandatory nature of the RLC. It provides: "[a municipal district] shall provide the money that must be raised from local sources to maintain and operate the district."
[20] *See* Brandt-Erichsen Aff. ¶ 10 (Feb. 6, 2014).
[21] Taxable real and personal property in the district means such property within the city of Ketchikan and the Borough because the city and the Borough constitute the district. Taxable real and personal property "means all real and personal property taxable under the laws of the state." AS 14.17.990(7).

year of the fiscal year at issue.[22] The RLC is capped at 45% of a municipal district's Basic Need in the preceding fiscal year.[23] If a municipal district fails to make its RLC payment, State aid for education funding "may not be provided" to a municipal district.[24] In addition, the municipal district will be disqualified from receiving supplemental funding under AS 14.17.490.

The expected fiscal year (FY) 2014 Basic Need for the KGB School District is $25,947,546.[25] Using the statutory formula set forth above, the Borough's FY 2014 RLC is $4,198,727.[26] The Borough paid its RLC to the KGB School District on October 9, 2013.[27] On that same date, the Borough sent a letter to Commissioner Hanley and attached a copy of the check it sent to the KGB School District.[28] The letter noted that the Borough was making its RLC payment "under protest" and recited the Borough's belief that the RLC was unconstitutional.[29]

On January 13, 2014, the Borough filed suit against the State alleging that the RLC violates the Alaska constitutional prohibition against dedicated funds[30] and arguing that the RLC unconstitutionally circumvents the constitutional provisions setting forth the legislature's appropriation power[31] and the governor's veto power.[32] The Borough filed a Motion and

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[22] AS 14.17.410(b)(2).
[23] AS 14.17.410(b)(2).
[24] AS 14.17.410(d).
[25] *See* Brandt-Erichsen Aff. ¶ 3(Feb. 6, 2014).
[26] *Id.* Because of certain optional property tax exemptions, the actual taxable value of real and personal property in the Borough was lower than the full and true value of that property. Therefore, the RLC equates to an actual mill levy of 3.19 on the FY 2014 taxable property within the Borough. The Borough paid an additional $3,851,273 to the KGB School District in optional local contributions and in kind contributions allowed by AS 14.17.410(c).
[27] The Borough paid the RLC, and other expenditures, through an area wide property tax levy of 5 mills and an area wide sales tax levy of 2.5%. *Id.*
[28] *Id.*
[29] *Id.*
[30] Alaska Const. art. XI, § 7.
[31] Alaska Const. art. IX, § 13.
[32] Alaska Const. art. II, § 15.

Memorandum in Support of Motion for Summary Judgment on February 6, 2014 seeking the relief outlined in the introduction section.

The State filed an Opposition to Ketchikan Gateway Borough's Motion for Summary Judgment and Cross Motion for Summary Judgment on March 28, 2014.

The Borough filed its Reply on April 28, 2014. On that same date, the Fairbanks North Star Borough filed a Reply in Support of Plaintiffs' Motion for Summary Judgment and Opposition to Defendants' Cross Motion for Summary Judgment.

The State filed its Reply Brief in Further Support of Cross Motion for Summary Judgment on May 23, 2014.

Oral argument on the dueling motions for summary judgment was held on June 2, 2014.

DISCUSSION

Alaska Civil Rule 56(c) provides that summary judgment should be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." The moving party "must show that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. In determining whether there is a genuine issue of material fact, all reasonable inferences of fact from proffered materials must be drawn against the moving party and in favor of the non- moving party."[33] Once a moving party has met its burden, the party seeking to avoid summary judgment must "set forth specific facts showing that [it] could produce admissible evidence reasonably tending to dispute or contradict the movant's evidence, and thus demonstrate that a material issue of fact exists."[34]

[33] *Reeves v. Alyeska Pipeline Serv. Co.*, 926 P.2d 1130, 1134 (Alaska 1996) (citations and internal quotations omitted).

[34] *Still v. Cunningham*, 94 P.3d 1104, 1108 (Alaska 2004) (quoting *Philbin v. Matanuska-Susitna Borough*, 991 P.2d 1263, 1265-66 (Alaska 1999)).

In this case, the material facts are not in dispute. In their cross motions for summary judgment each party presents multiple legal arguments.

a) The RLC is a "proceed[] of any state tax or license" because it a source of public revenue.

There are two steps the court must engage in determining whether the RLC violates the dedicated funds clause. The first requires the court to determine whether the funds at issue are "proceeds of any state tax or license" so as to be subject to the dedicated funds clause. If the answer is yes, the court must then determine whether those funds are dedicated to a particular purpose.

The Borough argues that the RLC is a "proceed[] of any state tax or license" because it is a source of public revenue. The State disagrees, arguing that the RLC is not a source of revenue subject to the dedicated funds clause because the RLC consists of local, not state, money. The court finds that the RLC is a "proceed[] of any state tax or license" and is therefore subject to the constraints of the dedicated funds clause.

Article IX, section 7 of the Alaska Constitution states,

> 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.

This section "prohibits the earmarking of state funds for predetermined purposes."[35] The Alaska Supreme Court has held that "there is no doubt that [the clause] was intended to prohibit any and all dedications."[36]

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[35] *See Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1167 (Alaska 2009).
[36] *State v. Alex*, 646 P.2d 203, 210 (Alaska 1982).

The two primary motivations for enacting the clause were 1) to promote the "scope and flexibility" afforded by having a general fund instead of specifically earmarked funds, and 2) to prevent the abdication of legislative responsibility that earmarking creates"[37]

Most of the litigation surrounding the dedicated funds clause has focused on the meaning of the phrase "the proceeds of any state tax or license."

The section as originally drafted by the framers stated that "all revenues shall be deposited in the state treasury without allocation for special purposes."[38] This language was later changed to the current "proceeds of a state tax or license" language. But, the Alaska Supreme Court in *State v. Alex* found that "the change did not seek to exempt some sources of revenue from the prohibition" and that the consistent use of the words revenue, funds, and taxes interchangeably during the drafting process indicated that the section was intended to prohibit the dedication of any source of revenue.[39]

In *Alex*, the Alaska Supreme Court held that royalty assessments on the sale of salmon which were collected by private aquaculture associations under power granted to the associations by a state statute were "proceeds of any state tax or license."[40] The statute at issue in *Alex* provided for an assessment on the sale of salmon by commercial fishermen to processors.[41] The assessments were levied for the purpose of providing revenue for the associations.[42] The associations were private entities set up to enhance the efficiency of salmon

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[37] *Id.* at 209.
[38] *Id.*
[39] *Id.* at 210. The Attorney General's Opinion also stated, after studying the debate of the constitutional convention on the section, that the section "can be given its intended effect and serve its repeatedly expressed purpose only if the words 'proceeds of any tax or license' are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues." 1975 Formal Op. Atty. Gen. No. 9, at 24 (May 2, 1975).
[40] *Alex*, 646 P.2d at 210.
[41] *Id.* at 205.
[42] *Id.*

production and processing in a given region.[43] Commercial fishermen brought suit against two of the private aquaculture associations and the state arguing that the assessments were unconstitutional because, among other reasons, the statute violated the dedicated funds clause.[44]

In siding with the fishermen, the Alaska Supreme Court rejected the state's contention that the assessments were not "proceeds of a state tax or license."[45] In reaching that conclusion, the court examined the history of the dedicated funds clause. As stated, the court noted that the language of the clause changed from its original draft to the current "proceeds of a state tax or license" language, but the court in *Alex* found that "the change did not seek to exempt some sources of revenue from the prohibition" and that the consistent use of the words revenue, funds, and taxes interchangeably during the drafting process indicated that the section was intended to prohibit the dedication of any source of revenue.[46] The court cited the definition an Attorney General's Opinion gave to the phrase which "the proceeds of any state tax or license" to include "the sources of any public revenues" including a "tax, license, rental, sale, bonus-royalty, royalty, or whatever..."[47] Accordingly, given the court's broad interpretation of the phrase, the court held that the salmon assessments required under the statute constituted "proceeds of a state tax or license" within the meaning of article IX, section 7, and were therefore an unconstitutional dedication.[48]

The Alaska Supreme Court has had several opportunities to reexamine the dedicated funds clause over the years, and has consistently held that the explicit exceptions contained in the clause and in the amendment to the clause indicate "that the prohibition [against dedicating

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[43] *Id.* at 206.
[44] *Id.*
[45] *Id.*
[46] *Id.* at 210.
[47] *Id.*
[48] *Id.*

funds] is meant to apply broadly."[49] The court has even gone so far as to note that "the reach of the dedicated funds clause might be extended to statutes that, while not directly violating the clause by dedicating revenues, in some other way undercut the polices underlying the clause."[50]

In addition to the clause at issue in *Alex*, the Alaska Supreme Court has held that revenues from the Alaska Marine Highway System,[51] the sale of future income from a settlement claim,[52] revenue from assessments on the sale of salmon,[53] proceeds from the sale of state land,[54] and funds generated by a local bed tax[55] are all "proceeds of a state tax or license."

The Borough relies heavily on *Alex* and argues that the RLC is "materially indistinguishable" from the assessments in that case. In both cases, the Borough argues, a state statute required payments to fund a particular source. In *Alex* it was to the private aquaculture associations and in this case it is to the Borough School District. Furthermore, the Borough points out that in *Alex* the funds were never deposited into the State treasury but rather flowed directly from the fishermen to the associations. The court in *Alex*, the Borough argues, was not concerned with the fact that the funds never entered the State's coffers and this court should not be concerned over the direct payment of the RLC to the School District here either.

The State argues that the RLC does not run afoul of the dedicated funds clause because the RLC does not qualify as a "proceed[] of any state tax or license." Although the State acknowledges the broad meaning prescribed to the phrase under case law, the State argues that the RLC is not a source of public revenue. The State contends that this is the case because of what would happen if the RLC were no longer required. The State points out that the statutory

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[49] *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (2009).
[50] *Id.*
[51] *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992).
[52] *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386 (Alaska 2003).
[53] *Alex*, 646 P.2d at 210.
[54] *Southeast Alaska Conservation Council*, 202 P.3d at 1177.
[55] *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153 (Alaska 1991).

scheme setting up the RLC "does not create a pot of money that is available for the legislature to appropriate if it is not provided directly to school districts."[56] Because the funds never go to the legislature and because the funds would not otherwise be available to the legislature if the statute did not order the funds to be paid directly to the school district, the funds are not, in the State's eyes, a source of public revenue that is subject to the dedicated funds clause. The State also points to the Borough's concern and objections regarding the RLC and argues that if the RLC were a "proceed[] of any state tax or license," and not local revenue as the State contends, then the Borough would not characterize the RLC as taking local money and the Borough would not feel as though the State is wronging the Borough by requiring this contribution.

The State distinguishes the RLC from the assessments at issue in *Alex* by arguing that unlike in that case, where a set tax was established,[57] the statute here merely provides a formula for the calculation of the RLC and leaves municipalities subject to the requirement free to raise the funds as they see fit, whether through taxes or other means. The State points out that the statutes at issue in previous dedicated funds clause cases all involved a two part scheme – both the requirement of funds and the method of how to raise those funds.[58] Such a system is not present here because there is only the requirement that the Borough pay the RLC, but no constraints on how the Borough must raise the funds to fulfill that obligation.

Finally, the State contends that the purpose of the dedicated funds clause would not be served by its application to the RLC. The State cites comments made by delegates at the Alaska

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[56] State's Opp. and Cross Motion for Summary Judgment at 11.

[57] The statute in *Alex* established a set tax at "two or three per cent of the fair market value of the fish" that had to be paid to the aquaculture associations. *Alex*, 646 P.2d at 207.

[58] *See Southeast Alaska Conservation Council*, 202 P.3d at 1177 (grant of state lands to the University of Alaska and directing where those funds would go); *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992) (establishing a specific fund for revenue raised by the Alaska Marine Highway System); *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386 (Alaska 2003) (requiring the sale of future settlement revenue and the dedication of that revenue to a specific source).

Constitutional Convention reflecting delegates' concern that without the dedicated funds clause, earmarking would occur and would curtail the legislature's exercise of budgetary controls. The State argues that such a danger does not exist with the RLC. The RLC actually gives the legislature more control over its budget by leaving more money in the State's budget because without the RLC, the State would have to contribute more to the funding of State education programs.

The State's attempts to characterize a statute that requires certain municipal districts to raise a substantial amount of funds and contribute those funds to a state program as a statute that does not concern "proceeds of any state tax or license" as defined by the Alaska Supreme Court are unpersuasive. As noted, the Alaska Supreme Court has consistently given that key phrase a broad definition, even citing with approval an Attorney General's Opinion that concluded the dedicated funds clause was intended to cover "the sources of any public revenues" including a "tax, license, rental, sale, bonus-royalty, royalty, *or whatever*..."[59] (emphasis added).

The RLC plainly consists of public revenue. The State's assertion that the RLC is not a source of public revenue because the statutory scheme only requires that the funds be raised, but does not tell the municipal districts how to raise those funds, ignores reality. Notably, the RLC is only applicable to municipal districts. As stated, municipal districts consist of organized boroughs and home-rule or first-class cities.[60] Organized boroughs and cities have local taxing power.[61] It is hard to conceive of a way, and the State does not propose any, whereby a municipal district could raise the funds necessary to fulfill its RLC obligation without resorting

[59] *Alex*, 646 P.2d at 210.
[60] AS 14.12.010.
[61] Alaska Const. art. 10, § 2.

to taxes. Indeed, that is what the Borough has done in this instance.[62] Funds raised through the exercise of a municipal district's taxing power are clearly a source of public revenue as broadly defined by the Alaska Supreme Court.

Even absent the fact that most, if not all, municipal districts resort to local taxes to raise the fund necessary to meet their RLC obligation, the RLC is a source of public revenue. If one supposes that a municipal district's RLC funds come directly from the district's coffers, and are not raised by taxes, those funds are still "proceeds of any state tax or license" because the funds consist of money raised, in some way or another, by municipal districts. That is local money and that is public revenue. Under the Alaska Supreme Court's expansive definition of the phrase "proceeds of any state tax or license," this is sufficient to implicate the constraints of the dedicated funds clause.

The Alaska Supreme Court's analysis in *State v. Alex* is especially useful here. As in that case, here we are concerned with a state statute that directs that a certain amount of funds be paid from one state organization to another. In *Alex*, the payee was a private organization set up by state statute and the method of raising revenue was explicitly defined, but that only makes the case for finding the statutory scheme here as dealing with "proceeds of any state tax or license" all the more compelling. Here, rather than a private organization receiving funds raised by individuals, we have one unit of government (the municipal district) raising funds at the direction of another unit of government (the State) and paying those funds to a public institution (the municipal district's schools). These facts only further illustrate the public nature of the funds at issue. The State's attempt to distinguish *Alex* on the grounds that unlike in that

[62] *See* Brandt-Erichsen Aff. ¶10 (Feb. 6, 2014).

case, municipal districts have the choice of how to raise the funds necessary to meet the RLC is unpersuasive for the reasons discussed above.

City of Fairbanks[63] is also helpful in resolving this question. In that case, the Alaska Supreme Court held that a local initiative that expanded the permissible uses of funds derived from a bed tax to uses other than tourism was constitutional under the dedicated funds clause.[64] The bed tax funds were clearly "proceeds of any state tax or license" and thus the question before the court was whether the initiative set aside specific amounts of the funds for a specific purpose in a way that was mandatory.[65] As in that case, here we are presented with an entirely local source of money. The 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." Thus, the fact that the RLC is, essentially, a solely local matter and local source of funds, does not weigh in the court's consideration of whether the RLC consists of funds subjected to the dedicated funds clause.

Finally, the nuanced questions analyzed by the Alaska Supreme Court in past dedicated funds clause cases further illustrates the clarity of the issue here. Past cases dealing with this provision presented more complex issues such as whether the sale of future settlement income[66] or whether the proceeds of land use or sales transferred from the state to a state university[67] qualified as "proceeds of any state tax or license." Here, the court is focused on local revenue raised to fulfill a municipal district's required contribution to that district's education facilities. This is a much clearer issue than *Myers* or *Southeast Alaska Conservation Council,* for example. In contrast to those cases where there was a multilayered statute involving items that

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[63] 818 P.2d 1153 (Alaska 1991).
[64] *Id.* at 1158.
[65] *Id.*
[66] *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386 (Alaska 2003).
[67] *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (2009).

were later transformed into money (settlement revenue or land sales), here there is clear direction from a state statute requiring municipal districts to contribute money to their school districts. There is no need to parse the statute as was required by *Myers* or *Southeast Alaska Conservation Council*, for example, because the scheme here much more clearly and directly involves local money. As stated, this local money qualifies as "proceeds of any state tax or license" and is thus subject to the restrictions of the dedicated funds clause.

b) The RLC is a dedicated fund because the funds are earmarked for a specific purpose and cannot be used in any other way.

As stated, after the court determines that the RLC is a "proceed[] of any state tax or license," the court must then determine whether the RLC is dedicated to a specific purpose. This question is easier to answer than the first issue. Yes, the RLC is dedicated to a specific purpose. This is evident even from a cursory reading of the statute. The statute explicitly requires that municipal districts pay the RLC directly to their respective school districts annually.[68]

The statute clearly dedicates the RLC to municipal school districts. Like the bill in *Southeast Alaska Conservation Council* that explicitly committed land and proceeds to a specific fund, the *Myers* case which did the same but with settlement revenue, and *Sonneman v. Hickel* which established a special fund for Alaska Marine Highway Revenue,[69] the RLC is committed by statute to a specific fund – the municipal school district's budget. Neither side substantially addresses this point at all, likely in recognition that most of the debate in this case involves the definition of "proceed[] of any state tax or license."

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[68] AS 14.17.410.
[69] 836 P.2d 936 (Alaska 1992).

The fact that the RLC never passes through the State treasury is inconsequential. It actually provides further support for the dedicated nature of the RLC. For example, in *City of Fairbanks*, the Alaska Supreme Court noted that the initiative that removed restrictions for the use of the proceeds of the bed tax was best thought of as "an 'undedication' than a dedication."[70] Also relevant to the court's analysis was its finding that the initiative at issue "did not infringe on flexibility in the [city's] budget process."[71] Here, unlike in *City of Fairbanks*, the RLC funds are not available for use throughout the Borough but rather are earmarked for specific use at the Borough's schools. This setting aside of funds infringes greatly on the Borough's flexibility in budgeting and further illustrates the dedicated nature of these funds.

c) The RLC is a dedicated fund but it is not exempted from the dedicated funds clause because it was not in existence at the time the Alaska Constitution was ratified.

The dedicated funds clause provides an exemption for pre-Statehood dedications. The clause states: "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."[72] One Alaska Attorney General Opinion concluded, after analyzing the minutes from the Alaska Constitutional Convention, that any repeal or repeal and re-enactment of a dedication after ratification "takes the dedication from under the protection of the grandfather clause..."[73]

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[70] 818 P.2d 1153, 1158-59 (Alaska 1991).
[71] *Id.*
[72] Alaska Const. art. IX, § 7.
[73] 1959 Op. Atty. Gen. No. 7, at 1-2 (March 11, 1959). The Borough cites to several more recent Attorney General Opinions that likewise hold that a grandfathered dedicated fund must have existed before Statehood and that such pre-existing dedications lose their grandfather status once repealed (even if repealed and re-enacted). *See* 1992 Informal Op. Atty. Gen. vol. 1 at 33 (Jan. 12, 1990, re-dated Jan. 1, 1992); 1992 Informal Op. Atty. Gen. vol. 1 at 31 (Sept. 11, 1989, re-dated Jan. 1. 1992).

The State argues that even if the court found that the RLC were a dedicated fund, it would be exempted from the dedicated funds clause under the exemption for dedicated funds existing at the time of ratification. The State argues that similar statutory provisions requiring a local contribution to a locality's school district have been in existence since the Territorial days. Therefore, if the court found the RLC were a dedicated fund, it would qualify for the exemption from the dedicated funds clause.

The Borough argues that the RLC cannot be grandfathered in as a pre-existing dedication because 1) the RLC was enacted after Statehood (enacted in 1962) and 2) even if pre-Statehood laws were dedications (which the Borough rejects) all previous similar Territorial laws were repealed when the RLC was enacted.

The Borough then discusses the Territorial laws proposed by the State as being similar to the RLC.[74] The Borough argues that under the law analyzed by the State, municipalities were free to contribute as much as they deemed fiscally responsible and then the Territory would reimburse the municipalities. This is in contrast to the RLC, in the Borough's view, because the RLC compels a set amount and does not let municipalities use their independent judgment as to how much to contribute to local schools.

Even if the Territorial laws were dedications, the Borough argues that their grandfather status was extinguished when they were repealed and replaced by the education funding scheme (including the RLC) enacted in 1962. The Borough cites to the aforementioned Alaska Attorney General opinion for support and asks the court to reject the State's argument that the RLC is protected by the clause's exemption for pre-ratification dedicated funds.

[74] Both parties attached copies of the Territorial laws discussed.

The court agrees with the Borough on this issue and finds that the RLC does not qualify for the exemption for dedications in existence before the Alaska Constitution was ratified. For one, the Territorial laws were more permissive with regards to local contribution requirements than the RLC here. For example, the Territorial laws allowed the localities to determine how much to contribute to education and then the Territory would reimburse a percentage of those expenditures. That is contrasted here with the set, mandatory amount of the RLC. Thus, the RLC has not been in existence since Territorial days.

Second, and more importantly, those laws were repealed and replaced by the RLC and other education funding law in 1962. Alaska Attorney General Opinions conclude that pre-Statehood exemptions under the dedicated funds clause are extinguished when the law is repealed, even if it is later re-enacted.[75] There are no cases that address this exemption portion of the dedicated funds clause, and therefore the Attorney General Opinions are the most persuasive authority available to this court on this issue. The logic employed in those opinions makes sense when applied to this situation as well. Merely because localities have always been statutorily mandated to contribute to the funding of their schools should not mean that the RLC, which was enacted after Statehood, should be exempted from the dedicated funds clause. In sum, because the RLC was not in existence before Alaska's constitution was ratified and because the pre-Territorial education funding law was repealed and replaced in 1962 (which included the statue enacting the RLC), the RLC does not qualify for the exemption found in the dedicated funds clause.

d) The RLC does not violate the legislative appropriations clause or the governor's veto clause because the funds are not involved in the appropriations process

[75] 1959 Op. Atty. Gen. No. 7, at 1-2 (March 11, 1959).

The court will address the remaining two claims – that the RLC violates the appropriations clause and the governor's veto clause – together because the parties present virtually identical arguments with respect to both claims. The court finds that the RLC does not violate either of these constitutional provisions because the RLC does not enter the state treasury (and its failure to do so likewise does not violate these clauses) and because the RLC is not an appropriation.

Article IX, section 13 of the Alaska Constitution, the appropriations clause, states:

> No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

The notes of decisions concerning this clause have to do with items such as special funds[76] and the scope and manner of municipal appropriations.[77] There are no cases analogous to the situation at hand. Black's Law Dictionary gives the following meanings to the term appropriation: "A legislative body's act of setting aside a sum of money for a public purpose...The sum of money so voted."[78] Similarly, Black's includes the following definition of appropriations bill: "A bill that authorizes governmental expenditures."[79] The Alaska Supreme Court has defined an item in an appropriations bill as "a sum of money dedicated to a particular purpose."[80]

The only mention of the appropriations clause in the context of a dedicated fund that the court could find was a citation to a comment made by a state official in the dissent of *Myers*. The

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[76] *Carr-Gottstein Prop. v. State*, 899 P.2d 136 (Alaska 1995) (holding that private funds, deposited into an administrative agency's account and subject to the agency's instructions, do not constitute unrestricted "program receipts" that must be deposited in the state treasury and subject to the legislature's power of appropriation).
[77] *Municipality of Anchorage v. Frohne*, 568 P.2d 3 (Alaska 1977) (interpreting the charter of the municipality of Anchorage as allowing the municipality to make appropriations outside of the ordinance process).
[78] BLACK'S LAW DICTIONARY 123 (10th ed. 2014).
[79] BLACK'S LAW DICTIONARY 196 (10th ed. 2014).
[80] *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 373 (Alaska 2001).

dissent briefly mentioned the concern an official had raised prior to the finalizing of the settlement scheme that the payment of the revenues from the tobacco settlement directly to a private entity upon receipt by the State was potentially in violation of the appropriations clause.[81] Other than that brief mention, the Alaska Supreme Court has not addressed appropriation clause (or governor's veto clause) claims in the context of a dedicated funds challenge.

Article II, section 15 of the Alaska Constitution, the governor's veto clause, provides:

> The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return any vetoed bill, with a statement of his objections, to the house of origin.

The Alaska Supreme Court has interpreted this clause as a safeguard against "corrupt or hasty and ill-considered legislation," and as a power granted "to preserve the integrity of the executive branch of government and thus maintain an equilibrium of governmental powers."[82] The governor's veto power applies only to monetary appropriations, as defined above.[83]

The case law interpreting this clause has focused on the different meaning ascribed to the term appropriation when dealing with a citizen's initiative versus a bill originating in the legislature,[84] and whether a governor properly exercised the veto.[85] As stated, there are no analogous cases in which the Alaska Supreme Court has discussed a challenge to a funding scheme on the grounds that it violates the governor's veto clause in the context of a suit also challenging the statute or action on the grounds that it violates the dedicated funds class too. All

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[81] *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 399-400 (Alaska 2003) (Justice Bryner and Justice Fabe dissenting).
[82] *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 772 (Alaska 1980) (internal citations omitted).
[83] *Alaska Legislative Council ex rel. Alaska State Legislature v. Knowles*, 86 P.3d 891, 895 (Alaska 2004) (holding that a bill which transferred land and the income derived from that land to the University of Alaska was not an appropriation subject to the governor's enhanced veto power (requiring a three-fourths vote of the legislature to override the veto under article II, section 16) because the bill presented a non-monetary asset transfer which is not an appropriation as defined by the court).
[84] *Alaska Legislative Council ex rel. Alaska State Legislature*, 86 P.3d at 894-95 (Alaska 2004).
[85] *Simpson v. Murkowski*, 129 P.3d 435 (Alaska 2006) (holding that the governor's line item veto of a budget appropriation was authorized by the constitution); *Alaska Legislative Council*, 21 P.3d 367 (Alaska 2001) (holding that the governor sufficiently stated his objections to vetoed items in appropriations bill).

of the cases interpreting this clause concerned more direct cases of bills coming from the legislature or ballot initiatives that directly required the outlay of state funds. None of them dealt with the negative appropriation argument we have here, where the Borough argues that the fact that the RLC is never subject to the appropriations clause or governor's veto clause thereby violates those provisions.

Unlike the arguments advanced related to the dedicated funds clause, both parties present virtually no case law to support their arguments related to the appropriations clause or the governor's veto clause. The Borough argues that the RLC violates the appropriations clause and the governor's veto clause because when it compels a direct transfer of public funds from the Borough to the Borough School District, it effectively circumvents the legislature and the legislature's ability to appropriate the funds to the school district or to other means and the governor's ability to veto items in appropriations bills.

The State argues that the appropriations clause and the governor's veto clause do not apply for the same reason the dedicated funds clause does not apply – the RLC is not a source of public revenue. The State argues that the RLC is local money, over which the legislature has no authority to appropriate and thus the governor has no authority to exercise his veto over. The State contends that the legislature may only appropriate funds from the State treasury and because the RLC is comprised of Borough funds, the legislature has no power over it and therefore the appropriations clause is not violated. The State points out that the governor's authority to strike out or reduce an item in an appropriation bill is limited to appropriations that are authorized by the legislature. Because the RLC is not an appropriation from the legislature, the governor has no authority over the funds and the governor's veto clause does not apply. The State does not address the case law referenced by the Borough.

The RLC is clearly not an appropriation as defined by the Alaska Supreme Court or by Black's Law Dictionary. It is plainly not a "sum of money so voted."[86] Simply because the legislature enacted the RLC statute does not mean that the RLC is an appropriation as the term is commonly used. As stated, the appropriations clause and governor's veto clause only apply to appropriations. Because the RLC is not an appropriation, those clauses do not apply.

The Borough's argument that the RLC violates these constitutional provisions because of the lack of opportunities for the legislature to appropriate the funds another way, or for the governor to veto an appropriation of the funds, is unpersuasive. The appropriations clause and governor's veto clause clearly require an appropriation before they apply and the argument that the lack of an appropriation violates those provisions is too tenuous for the court.

The court does not adopt all of the State's arguments on these clauses, though. The RLC can still be a source of public revenue for purposes of the dedicated funds clause while also being considered a source of funds that is not an appropriation for purposes of the appropriations clause and governor's veto clause. To hold otherwise would mean that any outlay of local funds at the direction of a state statute violates these two clauses. Thus, the court's holding that the RLC is a source of public revenue for purposes of the dedicated funds clause is not incongruous with its holding here, that the RLC is not a source of funds subject to the appropriations clause or governor's veto clause.

Lastly, the RLC does not run afoul of the purposes of either of these provisions. Both strive to ensure that public funds are not spent without legislative approval or without a final check on an errant legislature. Here, while although there is a statute that directs municipal districts to spend funds, the statute was enacted through the legislative process and protected by

[86] BLACK'S LAW DICTIONARY 123 (10th ed. 2014).

all of the safeguards that provides. Thus, the RLC was not enacted without legislative oversight and the purposes of the appropriations clause or governor's veto clause have been met. To impose additional burdens on the funding scheme here by virtue of its absence from the appropriations process would be unnecessarily duplicative.

e) The Borough is not entitled to a refund under either a theory of assumpsit or restitution

This court has explained, *supra*, that the RLC is a dedicated fund. The Borough argues the RLC reduced the amount the state must pay to support the Borough schools and therefore was enriched by the RLC payment.[87] The state responds that it received no enrichment because the RLC never passed through state coffers and in fact triggered a statutory obligation of the state to additionally fund Ketchikan Gateway Borough School District.[88]

"Assumpsit will lie whenever the defendant has received money which is the property of the plaintiff, and which the defendant is obliged by natural justice and equity to refund."[89] Assumpsit is a quasi-contract cause of action to enforce a duty to repay.[90] Alaska recognizes actions in assumpsit and its common counts.[91] In order to later bring an action in assumpsit, the

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[87] Pl.'s Reply in Support of Mot. for Summary Judgment and Opp. to State's Cross Mot. for Summary Judgment at 16.

[88] State's Opp. and Cross Motion for Summary Judgment at 11.at 21-22.

[89] *Bayne v. U.S.*, 93 U.S. 642, 643 (1876) (Assumpsit is underpinned by principles of quasi-contract and unjust enrichment); *State of Alaska Commercial Fisheries Entry Comm'n v. Carlson*, 270 P.3d 755, 765 (2012).

[90] *See American Surety Co. of New York v. Multnomah Co.*, 171 Or. 287, 325 (Or. 1943); RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 70 (2011).

[91] *State v. Wakefield Fisheries, Inc.*, 495 P.2d 166, 172 (1972), "The common law has long recognized a cause of action in assumpsit to recover overpayment of taxes" (*overruled on other grounds by Principal Mut. Life Ins. v. State Div. of Ins.*, 780 P.2d 1023, 1030 (Alaska 1989)). *See also Stone v. White*, 301 U.S. 532, 534 (1937), "[I]t has been gradually expanded as a medium for recovery upon every form of quasi-contractual obligation in which the duty to pay money is imposed by law, independent of contract, express or implied in fact."

paying party must formally protest at the time of payment.[92] Similarly, restitution is a remedy that corrects unjust enrichment.[93]

Both pled theories of assumpsit and restitution rest on the doctrine of unjust enrichment. Unjust enrichment occurs when one side is benefitted at a loss to the other. Alaska case law recognizes three elements of unjust enrichment:

1. A benefit conferred upon the defendant by the plaintiff;
2. Appreciation of such benefit; and
3. Acceptance and retention by the defendant of such benefit under such circumstances that it would be inequitable for him to retain it without paying the value thereof.[94]

Classifying the RLC payment as an unjust enrichment to the state turns on the first prong. Factually, one must determine whether the state received a benefit from the Borough's RLC payment. On one hand, the Borough made the RLC payment directly to the Borough School District. The money never passed through state coffers. This would support the state's argument that there was no unjust enrichment because there was no type of enrichment at all. Further, the payment of the RLC caused the state to release the remaining funding to the school district. The Borough impliedly argues that without the RLC payment, the State of Alaska would have been forced to contribute money in the place of the RLC payment to fully fund schools, and the Borough's RLC payment lessened the state's obligations.[95]

This argument fails for two reasons, First, neither party has argued that the Alaska Constitution's education clause compels the state to fully fund all public schools in Alaska.[96]

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[92] *Principal Mutual*, 780 P.2d at 1030. *See also Era Aviation, Inc. v. Campbell*, 915 P.2d 606, 612 (1996) ("To later bring an action in assumpsit, a payer must specifically notify the State, whether by the words 'paid under protest' or otherwise, that it intends to seek reimbursement").

[93] RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 1 cmt. a (2011).

[94] *Alaska Sales and Service, Inc. v. Millet*, 735 P.2d 743, 746 (Alaska 1987).

[95] "Because the state's obligations have been lessened by the Borough's payment under protest of an unconstitutional assessment, the Borough is entitled to a refund." Pl.'s Reply in Support of Mot. for Summary Judgment and Opp. to State's Cross Mot. for Summary Judgment at 16.

[96] *See* State's Opp. and Cross Motion for Summary Judgment at 18-21; Pl.'s Reply in Support of Mot. for Summary Judgment and Opp. to State's Cross Mot. for Summary Judgment at 10.

Second, without this showing one cannot conclude the state received any benefit from KGB's payment. If on one hand the state has a duty to fully fund public schools, then perhaps the payment of the RLC to the Borough School District would indeed give the state an indirect benefit. However, if the state has no duty to fully fund public schools and requiring a local contribution violates no constitutional provision beyond the dedicated funds clause, then payment of the RLC does not provide the state a tangible benefit.

Because the Borough has failed to offer argument that the state has a duty to fully fund public schools and because the RLC payment was paid to the school district and not the state, a claim of unjust enrichment fails and the state need not pay the borough the amount of the RLC payment under an action in assumpsit or restitution.

CONCLUSION

For the reasons stated above, the Ketchikan Gateway Borough's motion for summary judgment is GRANTED in part because the court finds that the RLC is a dedicated fund in violation of the dedicated funds clause of the Alaska Constitution. The Borough is entitled to a declaratory judgment to this effect.

The Borough's motion for summary judgment is DENIED, in part, because the court finds that the Borough is not entitled to funds equivalent to the 2013 RLC payment under theories of assumpsit and restitution.

Further, the State of Alaska's cross motion for summary judgment is GRANTED, in part, because the RLC does not violate the governor's veto clause or the legislative appropriations clause of the Alaska Constitution. The State's cross motion for summary judgment insofar as it relates to the dedicated funds clause is DENIED.

IT IS SO ORDERED.

Dated at Ketchikan, Alaska this 21 day of November 2014.

William B. Carey
Superior Court Judge

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA FIRST JUDICIAL DISTRICT

CERTIFICATION
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By CP A. Broker

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

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

Plaintiffs,

v.

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

Defendants.

Case No. 1KE-14-00016CI

FILED in the Trial Courts
State of Alaska First District
at Ketchikan
DEC 01 2014
Clerk of the Trial Courts
By_____ Deputy

PLAINTIFFS' MOTION FOR PARTIAL RECONSIDERATION OF ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs respectfully request that the Court grant reconsideration of part of its November 21, 2014 Order on Cross-Motions for Summary Judgment ("Order"). Plaintiffs request that the Court reconsider the portion of its Order denying a refund of the Required Local Contribution ("RLC") that was paid under protest and order that the State refund that RLC to the Ketchikan Gateway Borough ("Borough"). Plaintiffs respectfully submit that the RLC indeed did "provide the state with a tangible benefit."[1] First, the amount of educational funding provided by the State was significantly reduced

[1] Order at 25.

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as a result of the RLC. Second, the Borough paid the School District directly, thus relieving the State of this obligation. Third, the RLC assisted the State in discharging its responsibility to "establish and maintain a system of public schools" under Article VII, Section 1 of the Alaska Constitution. Thus, the State received a tangible benefit equal to the amount of the RLC payment regardless of whether Article VII, Section 1 of the Alaska Constitution requires the State to fully fund education and regardless of whether the Borough paid the RLC to the School District or the State.[2]

The Order centers on the premise that the State did not receive a benefit from the Borough's payment of the RLC because the State is not required to fully fund education.[3] The State has no legal obligation to fully fund *any* State program other than those to which funds may be lawfully dedicated.[4] This is the fundamental purpose of the dedicated funds clause.[5] Therefore, whether the State has to fully fund education is not controlling. Instead, the State clearly receives a benefit from the RLC because for every dollar the RLC covered of education funding, one less dollar was required of the State.[6] Thus, as a simple mathematical proposition, the State did receive a benefit from the RLC

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[2] Under Alaska R. Civ. P. 77(k), the grounds for granting a motion to reconsider include that "(i) [t]he court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling," and "(ii) [t]he court has overlooked or misconceived some material fact or proposition of law . . ."

[3] *See* Order at 23-25.

[4] *See* Alaska Const. art. IX, § 7 ("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."); *cf. Zerbetz v. Alaska Energy Ctr.*, 708 P.2d 1270, 1277 (Alaska 1985) (noting that private party could not force State to pay under contract provision without an appropriation).

[5] *See Southeast. Alaska Conservation Council v. State*, 202 P.3d 1162, 1168 (Alaska 2009) (noting that purpose of dedicated funds clause is to *preserve* legislative control over public revenues); *see also Sonneman v. Hickel*, 836 P.2d 936, 938-39 (Alaska 1982) (purpose of dedicated funds clause is to "preserve control of and responsibility for state spending in the legislature and the governor").

[6] AS 14.17.410(b). *See also* Order at 4 ("[W]hen a municipal district pays the RLC, the district's Basic Need is partially fulfilled, which in turn reduces the State's Basic Need obligation."); Order at 12 ("[W]ithout the RLC, the State would have to contribute more to the funding of State education programs.")

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because, as a result of the RLC, the State paid a diminished amount to fund education at the level required by State law.

The State concedes this point. It stated in its Opposition that the RLC "leaves more money in state coffers because schools received part of their funding from local sources."[7] Thus, the State admits that it "received a benefit" from the RLC, regardless of whether the Alaska Constitution requires the State to fully fund education. Because money is fungible, there is no meaningful distinction between having "more money in state coffers" as a result of the RLC and the School District directly receiving money from the Borough.[8] Either way, the State is enriched because it has "more money" than it otherwise would have in the absence of the RLC. The State cannot be allowed to avoid an unjust enrichment claim by simply orchestrating payment from a surrogate (the Borough) to the School District for the State's benefit.

Furthermore, as the Order recognizes at 2, under Article VII, Section 1 of the Alaska Constitution, the State must "establish and *maintain* a system of public schools open to all children of the State . . ."[9] The State has the *sole* responsibility to maintain the public school system, and this duty is not shared with any other unit of government.[10] The State's authority over education is "pervasive" and "unqualified."[11] "That that the legislature has seen fit to delegate certain education functions to local school boards in order that Alaska schools might be adapted to meet the varying conditions of different

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[7] Opp. at 15; *see also* Order at 12.

[8] *See* Restatement (Third) of Restitution and Unjust Enrichment § 9 (noting that recipient of benefit may be unjustly enriched when "the recipient has been spared an otherwise necessary expense").

[9] Emphasis added; *see also* Plaintiffs' Motion and Memorandum in Support of Motion for Summary Judgment at 1-2.

[10] *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

[11] *Id.*

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localities does not diminish this constitutionally mandated state control over education."[12] Thus, the State need not fully fund education, but the State is solely responsible for it.

Because the State is solely responsible for Alaska's education system, it follows that the Borough's payment of the RLC helped to fulfill a State function, thus conferring a benefit upon the State. The State determined what level of funding was adequate to fulfill its constitutional duty, and demanded that the Borough provide a portion of that amount through a mechanism that the court has concluded was unconstitutional. Had the State built a ten-mile portion of a State highway that passes through a borough, and required the borough to pay for ten percent of the State highway, the State's benefit from being relieved of the full cost of the highway would be ten percent of the cost of the State highway that it saved by passing the cost on to the borough. The same is true here. Plaintiffs assisted in fulfilling a State obligation by making the mandatory RLC payment, and by making that payment directly to the School District. The State's role in fulfilling the obligation was correspondingly lessened. Clearly, the State received a tangible benefit.

The other two elements of an unjust enrichment claim are also met. The State undisputedly "appreciated" the benefit of the RLC, because it created the RLC, was made aware that the RLC was paid under protest, and did not decline to assess the RLC.[13] Finally, as the Court has already concluded, the RLC was the result of an unconstitutional dedication, and it is unjust that the State benefit from the unlawful RLC.[14]

Because the State was enriched by the RLC, because the amount of educational funding provided by the State was reduced, and because payment of the RLC helped the

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[12] *Id.*

[13] *See also Hill v. Cross-Country Settlements, LLC*, 936 A.2d 343, 354 (Md. App. 2007) (essence of appreciation/knowledge requirement is that the defendant had the opportunity to decline benefit).

[14] *See* Order at 7-18; *see also* Restatement (Third) of Restitution and Unjust Enrichment § 19 ("Except to the extent that a different rule is imposed by statute, the payment of a tax by mistake, or the payment of a tax that is erroneously or illegally assessed or collected, gives the taxpayer a claim in restitution against the taxing authority as necessary to prevent unjust enrichment.").

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State to fulfill a constitutional obligation for which it is solely responsible, Plaintiffs respectfully request that the Court grant their motion to reconsider and order the State to refund the RLC to the Borough.

Dated this 1st day of December, 2014.

KETCHIKAN GATEWAY BOROUGH

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CERTIFICATE OF SERVICE

This is to certify that on this 1st day of December, 2014, a copy of the foregoing document was served on the following:

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

KETCHIKAN GATEWAY BOROUGH, et al.,

Plaintiffs,

v.

STATE OF ALASKA, et al.,

Defendants.

FILED in the Trial Courts
State of Alaska First District
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DEC 18 2014
Clerk of the Trial Courts
By _____ Deputy

Case No. 1KE-14-00016 CI

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

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

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

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

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

The plaintiffs argue that the State received a "tangible benefit" from the required local contribution, because "the amount of educational funding provided by the State was significantly reduced as a result of the RLC." [Mot. at 1-2] But the Borough expressly declined to argue that the State would have to make good any shortfall created by the invalidation of the required local contribution in its reply on summary judgment: [Reply at 10][1] dismissing Article VII, Section 1 of the Alaska Constitution—the education clause—as "irrelevant" [Reply at 10] and thus, this argument and any claim relying upon it cannot properly be considered by the court on reconsideration.[2]

Indeed, the Borough—at least ostensibly—continues to deny that its refund claim relies upon an assumption that the State must make up any difference between statutory "basic need" and the level of state aid provided for in AS 14.17.410. [Mot. at 2][3]

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[1] "The Borough will not address the extent to which the State must provide school funding, and it will not speculate in a case in which it has not presented the issue."

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

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

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Yet without this assumption, the Borough's claim that "for every dollar the RLC covered of education funding, one less dollar was required of the State" [Mot. at 2] makes no sense. Moreover, this Court's order did not "overlook[] or misconceive" this point. To the contrary, the order notes the Borough's argument that the "RLC payment lessened the state's obligation" and explicitly rejects it, both because "neither party has argued that the Alaska Constitution's education clause compels the state to fully fund all public schools in Alaska;" and because "without this showing one cannot conclude the state received any benefit from KGB's payment." [Order at 24-25]

The Borough appears to believe that the statutory formula determining "basic need" represents the State's determination of "what level of funding was adequate to fulfill its constitutional duty" and infers from that a State "obligation" to pay the equivalent of the required local contribution if the Borough did not pay it. [Mot. at 4] Not only does the Borough offer no authority for this conclusion, the argument is plainly inconsistent with other elements of the statutory scheme. Indeed, the education funding statutes expressly acknowledge that the legislature might decline to appropriate sufficient money to pay the State's share of basic need in a particular year and allow that in such a circumstance, the State will reduce funding for school districts on a pro rata basis. AS 14.17.400(b). The Borough's view of basic need simply cannot be reconciled with this statute and, therefore, should be rejected.

Nor does language from the State's opposition to the motion for summary judgment—quoted out of context and misconstrued—suggest otherwise. [Mot. at 3]

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The State did not concede that the required local contribution leaves money in state coffers that would otherwise be paid for education. In fact, the full quotation is: "Local contribution to education likewise does not curtail the legislature's budgetary control; on the contrary it leaves more money in state coffers because schools receive part of their funding from local sources." [State's Opp. & MSJ at 15] Properly understood, the State's comment merely indicates that absent a statutory formula providing for *any local funding*, the State would likely devise a system in which it paid more for education. This is a far cry from the implicit concession that KGB assumes, which is that the State must make up any difference created by the invalidation of the required local contribution, therefore establishing that the State was unjustly enriched by the required local contribution. Additionally, as the State argued, under the current statute a municipality's payment of the required local contribution actually triggers a spending obligation by the state. [State's Opp. & MSJ at 21]

Finally, the Borough ignores the last step of the test for unjust enrichment: that the defendant "accepted and retained the benefit under circumstances making it inequitable for her to retain the benefit without paying [the plaintiff] the value thereof."[4] Although the Borough has "the burden of proving the value of the benefits [it] conferred upon [the State]," instead it merely asserts that because the Court has "concluded[] the RLC was the result of an unconstitutional dedication, ... it is unjust that the State benefit from the unlawful RLC." [Mot. at 4] But if this prong of the test requires only that the

[4] *Bennett v. Artus*, 20 P.3d 560, 563 (Alaska 2001).

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

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

DATED: December 18, 2014.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

KETCHIKAN GATEWAY BOROUGH, AGNES MORAN, JOHN CROSS, JOHN HARRINGTON, AND DAVID SPOKELY

Plaintiffs,

v.

STATE OF ALASKA AND MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT

Defendants.

FILED in the Trial Courts
State of Alaska First District
at Ketchikan
JAN 21 2015
Clerk of the Trial Courts
By _____ Deputy

Case No. 1KE-14-16CI

ORDER ON MOTION TO RECONSIDER

INTRODUCTION

In its November 21st Order, the court found that plaintiff Ketchikan Gateway Borough's (the Borough) assumpsit and restitution claims against the State failed because it was not established, nor argued by either party, that the State has a constitutional obligation to fund Alaska's public schools to the full statutory Basic Need amount. In the court's view, such a finding was necessary in order to find unjust enrichment such as would justify claims on these theories. The Borough moves this court to reconsider whether or not the State received a tangible benefit from the Ketchikan Gateway Borough's (the Borough) 2013 Required Local Contribution (RLC) payment. For the following reasons this motion is **DENIED.**

DISCUSSION

The Borough argues the RLC payment gave the State a tangible benefit by: (1) reducing the State's educational funding obligation, (2) helping the State "establish and maintain" the Alaskan public school system, and (3) relieving the State of additional direct payments to the KGB School District. The Borough further argues that the State conceded in its briefing that the RLC leaves more money in State coffers. The State counters that the Borough failed to argue in underlying briefs both that the RLC reduced the State's funding obligation and that the RLC helps fulfill a State constitutional function. The State argues the RLC payment benefits only the Borough and Borough residents and that it never conceded the RLC leaves more money in State coffers.

1. The State is Not Enriched by the Borough's RLC Payment

The Borough argues that for every dollar contained in a RLC payment, the State retained one corresponding dollar in its coffers.[1] This argument fails for four reasons. First, AS 14.17.410 does not obligate the State to fully fund schools to the statutory Basic Need amount. Second, the legislature created a statutory back-up plan in the event insufficient monies are appropriated for education. Third, the statutory scheme contemplates a variety of school funding sources. Fourth and finally, the KGB School District is the only party enriched by an RLC payment. For all these reasons, the State does not receive a tangible benefit from an RLC payment.

Nothing in AS 14.17.410(b) directs the State to make up the difference left by an unpaid RLC. The statute sets out a mathematical equation used to determine the amount of State aid

[1] Pl.'s Mot. for Partial Reconsideration at 2, 3 ("[A]s a result of the RLC, the State paid a diminished amount to fund education at the level required by State law").

available to school districts in Alaska.[2] It does not direct the State to fully fund a district's Basic Need calculation in the full amount in the event of an absent RLC payment.[3]

Alaska's educational funding scheme contemplates a statutory back-up plan in the event the legislature does not appropriate enough money to satisfy its calculated educational aid.[4] Under this statutory back-up plan, if the legislature fails to appropriate enough money to fulfill the State's obligations under AS 14.17.410, the Department of Education may reduce the Basic Need amount of each district on a pro-rata basis. To analogize the case at bar: If the State of Alaska found that it's 2015 budget did not account for a dearth of RLC payments, the State would be able to reduce the final Basic Need calculations of all districts to account for this deficit and would give schools less funding as a result. As a practical matter, the State would not need to fill the gap left by unpaid RLCs, but would be able to adjust its amount of school funding to fit its current appropriations, as it is allowed to do under state statute.

AS 14.17.410 explicitly names three sources of school funding: Local, State, and Federal monies. Although the State is solely "responsible" to "maintain education," in reality a variety of sources are necessary from different governmental levels.[5] These sources include State aid, local aid, federal impact aid, federal grants, private grants, and even parental support. The drafters of Alaska's school funding scheme recognized that a variety of funding sources are required to fund schools, and that the onus should not fall solely with the State.

The KGB School District was the only party enriched by the Borough's RLC payment, and therefore, the KGB School District is the sole party liable in a claim in restitution. The Borough cites Restatement (third) of Restitution and Unjust Enrichment § 19 to argue the RLC

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[2] *See* AS 14.17.410.
[3] *See id.*
[4] AS 14.17.400(b).
[5] *See Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391 (Alaska 1997).

payments were a state tax, and the Borough therefore paid in excess of the proper amount.[6] However, this same authority indicates that the RLC provides the State no tangible benefit. If the RLC payments were an illegal state tax, even in the broadest sense of the word "tax," there would be a claim in restitution for the amount of the RLC payment.[7] A tax, in its broadest sense, is "a monetary charge imposed by the government on persons, entities, or property, to yield public revenue. Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people."[8] The State demanded the RLC from the Borough under the color of public authority. In this way, the State is taking something from the municipality, despite never receiving the RLC themselves. In this broad sense, the RLC payment is a "tax" for purposes of a Restatement analysis.

This court's November 21 Order discusses the compulsory, tax-like nature of the RLC under this extremely broad definition. This court held the RLC is a proceed of a state tax or license in violation of the dedicated funds clause under an equally broad definitional framework.[9] The court found the RLC to be a "payment"; that it "consists of public revenue"; that it is an "obligation"; that it "is a source of public revenue"; that it consists of "public funds"; and, that it "compels a set amount and does not let municipalities use their independent judgment as to how much to contribute to local schools."[10] As the court wrote:

> Here, rather than a private organization receiving funds raised by individuals, we have one unity of government (the municipal district) raising funds at the direction of another unit of government (the state) and paying those funds to a public institution (the

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[6] Pl.'s Mot. for Partial Reconsideration at 4.
[7] Restatement (third) of Restitution and Unjust Enrichment § 19 (2010) ("[T]he payment of a tax by mistake, or the payment of a tax that is erroneously or illegally assessed or collected, gives the taxpayer a claim in restitution against the taxing authority as necessary to avoid unjust enrichment. 'Tax' within the meaning of this section *includes every form of imposition or assessment collected under color of public authority.*" (emphasis added)).
[8] BLACK'S LAW DICTIONARY 1469 (7th ed. 1999).
[9] Order at 25.
[10] *See id.* at 4, 12, 13, 17.

municipal district's schools). These facts only further illustrate the public nature of the funds at issue.[11]

The holding of the court and the language used throughout the order implies that the RLC is a "tax" under the broad definitional framework of the Restatement.

If the RLC is a tax for purpose of this analysis, the party who is enriched from the RLC payment is clear. The "tax" was paid to a third party—the KGB School District. The Restatement addresses illegal tax payments to third parties in the following illustration:

> 16. A municipal zoning board has the statutory duty to approve new residential subdivisions on such terms as will serve the best interests of the community. The board adopts the practice of requiring developers to make a cash contribution to the local school district as a condition of obtaining development approval. Upon a judicial determination that the board has no statutory authority to require such contributions, the developers who have made them have a claim in restitution to recover their payments from the school district.[12]

When the method of taxation is illegal and the tax is paid to a third party the restitution claim lies against the body that actually received the funds. The KGB School District is the party that received the RLC and was thereby the only party enriched. Under the Restatement analysis, the KGB School District is the sole party against whom the Borough may bring a claim in restitution. The restitution claim against the State fails for this reason.

2. The Borough's Constitutional Obligation Argument is Not Timely and was Explicitly Waived in Briefs

The Borough argues that because the RLC lessens the State's role in fulfilling its constitutional duty to "maintain" public schools, the Borough assisted the State in fulfilling a State constitutional obligation.[13] The Borough argues for the first time, without citation aside from the text of the statute itself, that the State's statutory basic student allocation and Basic

[11] *Id.* at 13.
[12] Restatement (third) at cmt. illus. 16.
[13] Pl.'s Mot. for Partial Reconsideration at 3.

Need calculation is an expression of the State's constitutional obligation under the Alaska Constitution, article VII, section 1.[14]

However, the Borough specifically waived this argument in its briefing.[15] In the Borough's April 28th Reply, it stated explicitly that: "The Borough will not address the extent to which the State must provide school funding, and it will not speculate in a case in which it has not presented that issue." In its November 21st Order, this court stated: "[N]either party has argued that the Alaska Constitution's education clause compels the state to fully fund all public schools in Alaska."[16] Therefore, this contention cannot be considered on this motion to reconsider because the Borough both explicitly waived the issue and failed to raise this issue in briefing previous to their motion for reconsideration.[17]

3. The RLC Payments Do Not Spare the State an "Otherwise Necessary Expense"

Because the State need not fill the gap left by an unpaid RLC in the State's statutory aid calculation, *supra*, there can be no claim in restitution on the basis the RLC payment spared the State an "otherwise necessary expense." In its November 21st Order, the court considered that there could be no unjust enrichment because RLC payments never passed through State coffers, stating: "[T]here was no unjust enrichment because there was no type of enrichment at all."[18] The Borough argues, "[t]he State cannot be allowed to avoid an unjust enrichment claim by simply orchestrating payment from a surrogate (the Borough) to the School District for the

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[14] *Id.* at 4.
[15] Pl.'s Reply in Support of Motion for Summary Judgment at 10.
[16] Order at 24. *See also* Amicus Curiae Fairbank's North Star Borough's Reply at 8 (the Fairbanks North Star Borough argues that the State bears *some* duty or obligation to provide an amount of school funding, but states any argument regarding full funding is a red herring); Pl.'s Reply in Support of Motion for Summary Judgment at 10.
[17] *Clemensen v. Providence Alaska Medical Center*, 203 P.3d 1148, 1155 (Alaska 2009); *Stadnicky v. Southpark Terrace Homeowner's Ass'n, Inc.*, 939 P.2d 403, 405 (Alaska 1997) ("An issue raised for the first time in a motion for reconsideration is not timely.").
[18] Order at 24.

State's benefit."[19] The Borough cites Restatement (third) of Restitution and Unjust Enrichment § 9 in support, which stands for the proposition a party who mistakenly confers a non-monetary benefit on another party has a claim in restitution to the extent "the recipient has been spared an otherwise necessary expense."

A claim in restitution for a benefit other than money is measured in to the extent "the recipient has been spared an otherwise necessary expense." It has not been shown that he gap left by an unpaid RLC payment leaves an "otherwise necessary expense" to the State because the State need not fill the gap left by an RLC payment, thereby leaving no measure by which this claim in restitution can be calculated. Therefore, this claim fails.

4. The State Did Not Concede that an RLC Payment Leaves More Money in State Coffers

The State explicitly argued in briefs that the State was never meant to be the sole source of educational funding in the State of Alaska.[20] The Borough argues the State conceded that the RLC leaves more money in State coffers.[21] The relevant language contained in State's briefing and cited by the Borough as a concession reads: "Local contribution likewise does not curtail budgetary control; on the contrary it leaves more money in state coffers because schools receive part of their funding from local sources."[22] This language is contained in a section of the State's Opposition that discusses dedicated funds in a historical context.[23] Here, the State compares a discussion about earmarking in the Alaska Constitutional Convention record to the RLC in order to further differentiate the RLC from dedicated funds. The court does not view this as a

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[19] Pl.'s Mot. for Partial Reconsideration at 3.
[20] State's Opp. to Pl.'s Mot. for Summary Judgment at 17.
[21] Pl.'s Mot. for Partial Reconsideration at 3.
[22] *Id.* (*citing* State's Opp. to Pl.'s Mot. for Summary Judgment at 15).
[23] *See* State's Opp. to Pl.'s Mot. for Summary Judgment at 14-15.

concession as to the Borough's assumpsit or restitution claims, but is rather as an illustration used to distinguish a separate point of law unrelated to the assumpsit and restitution claims.

CONCLUSION

For the foregoing reasons and because it has not been established that the State has an obligation to fill the gap left by an unpaid RLC payment, and because the Borough did not argue the RLC helped fulfill a constitutional mandate in briefs; and because the RLC payments do not spare the State an "otherwise necessary expense" and the State made no concession that they do, the Borough's motion to partially reconsider is **DENIED.**

Otherwise this order, together with the court's Order on Motion and Cross Motion for Summary Judgment shall comprise the court's decision in this matter. Counsel for plaintiff Ketchikan Gateway Borough shall prepare and file an appropriate judgment for the court's signature.

IT IS SO ORDERED

Dated at Ketchikan, Alaska this 21 day of January 2015.

William B. Carey
Superior Court Judge

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA FIRST JUDICIAL DISTRICT

CERTIFICATION
Copies Distributed
Date 1-22-15
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M. Paton-Walsh
A. Broker
Fax
By CK
R. Hattan - Mail

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

KETCHIKAN GATEWAY BOROUGH, an Alaska municipal corporation and political subdivision; AGNES MORAN, an individual, on her own behalf and on behalf of her son; JOHN COSS, a minor; JOHN HARRINGTON, an individual; and DAVID SPOKELY, and individual, Plaintiffs, v. STATE OF ALASKA; MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, in his official capacity, Defendants.	)	Case No. 1KE-14-00016 CI

FINAL JUDGMENT

IT IS ORDERED that judgment is entered as follows:

1. Plaintiffs Ketchikan Gateway Borough, Agnes Morgan, John Coss, John Harrington and David Spokely collectively shall recover from and have judgment against Defendant State of Alaska, as follows:

a. Attorney's fees $_____

Date awarded: _____

Judge William B. Carey: _____

b. Costs $_____

000375

Exc. 288

JAN 22 2015

K&L GATES LLP
420 L STREET, SUITE 400
ANCHORAGE, ALASKA 99501-1971
TELEPHONE: (907) 276-1969

Date awarded: _____

Clerk: _____

c. **TOTAL JUDGMENT** $_____

d. Post Judgment Interest Rate: 3.75%

2. As set out in the Order on Motion and Cross Motion for Summary Judgment dated November 21, 2014 ("Order"), the court rules that the required local contribution ("RLC") imposed on the Ketchikan Gateway Borough pursuant to AS 14.17.410(b) and AS 14.12.020(c) qualifies as "proceeds of any state tax or license" and is thus subject to the restrictions of the dedicated funds clause (art. IX, §7) of the Alaska Constitution. The court further finds that the RLC is a "dedicated fund" within the meaning of the Constitutional prohibition. It is therefore unconstitutional for the State of Alaska to require the payment of the RLC, or to penalize the Ketchikan Gateway Borough ("Borough") (including but not limited to reducing State funding for the Ketchikan Gateway Borough School District ("District") under AS 14.17 *et seq.* or AS 14.12 *et seq.*) based on the Borough's non-payment of an RLC in the future.

3. As of the date of the Order, the State of Alaska shall not require any further payment of the RLC by the Borough, and shall not penalize the Borough or the District for the non-payment of the RLC.

4. As set out in the Order, all other claims in Plaintiffs' Complaint are dismissed.

Dated this 23 day of January, 2015.

Hon. William B. Carey
Superior Court Judge

CERTIFICATION
Copies Distributed
Date 1-22-15
To S. Brandt-Erichsen / L. Cutler
M. Paton Walsh
A. Braker R. Hattan

SEAL OF THE TRIAL COURTS FIRST JUDICIAL DISTRICT STATE OF ALASKA

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

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

Plaintiffs,

v.

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

Defendants.

FILED in the Trial Courts
State of Alaska First District
at Ketchikan
JAN 28 2015
Clerk of the Trial Courts
By _____ Deput.

Case No. 1KE-14-00016 CI

AFFIDAVIT OF MICHAEL HANLEY

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

I, Michael Hanley, state the following under oath:

1. I am the Commissioner of the Alaska Department of Education and Early Development, and have held this position since February, 2011. The Department of Education and Early Development is responsible for the distribution of funding from the Public Education Fund to school districts in Alaska.

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

Exhibit 1
1 of 4

2. Prior to serving as Commissioner of Education and Early Development I was employed as a public school teacher at Gladys Wood Elementary School in the Anchorage School District for 15 years, from 1991-2006. From 2006-2010 I was an elementary school principal, first at Kasuun Elementary School and then at Kincaid Elementary School in Anchorage.

3. School districts are required to submit their annual budgets both to the state and to their municipal governments well in advance of each school year. Typically, school districts project basic need in the November prior to the beginning of the subsequent school year, thereby allowing at least 10 months to begin budgeting in order to provide for students entering the classroom the following September.

4. It is of paramount importance to our students that districts are able to plan for the upcoming school year, and in municipal school districts, the required local contribution is a significant part of the plan. The required local contribution pays for teachers, heating fuel, and other required elements for Alaska's education system. Required local contributions constituted over $222 million of public education funding in the last school year, and for individual municipal school districts, an average of 16 percent of basic student need funding.

5. For example, in Ketchikan, the required local contribution for FY2015 is approximately $4.4 million of approximately $31.6 million in operating expenditures, exclusive of pension funding. The Ketchikan budget plan, including the required local contribution funding, directs $25 million to the instructional budget component and $4.4

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million for fuel, custodians and other annual operations of buildings. The remaining $2.2 million is allocated for such things as district administration and student activities. In short, our school districts need the required local contribution to operate as expected.

6. This ruling comes at a time when our school districts are already pressured by budgetary constraints. State revenue projections have fallen and the high cost of health care and other challenges have significantly stressed our schools.

7. Each year, the Alaska Department of Education & Early Development reviews the 53 school district budgets and communicates with individual districts and schools. This year, districts reported budget challenges related to fluctuations in their local economies, costs of goods such as fuel and transportation, and other factors. During these times of economic uncertainty, the current year school budgets represent a careful balance of revenues and expenditures and the required local contribution is a critical source of the current year's plan.

8. Not only are required local contribution dollars a vital source of funding to our municipal schools, the required local contribution is also an essential element of the state's proven, equalized funding mechanism that maximizes Alaska's ability to include federal dollars in its funding formula. The required local contribution impacts not only municipal school districts, but schools throughout Alaska. Maintaining an equalized education funding mechanism allows Alaska to include $130 million of annual federal Impact Aid receipts in the state's funding formula. Of that amount,

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approximately $70 million dollars from the Impact Aid program funds basic need in Alaska's schools annually.

9. The funding formula provides critical stability to schools. Alaska's funding mechanism relies on a studied and considered, predictable formula not only to cover expenditures but to maintain equalized distributions. Dropping a major element mid-year is in conflict with Alaska's public education governance. When school districts are forced to plan budgets under the possibility that a significant percentage of their funding will disappear, schools have trouble retaining staff, embarking on multi-year project commitments, and planning for the future.

Further, your affiant sayeth naught.

Michael Hanley

SUBSCRIBED & SWORN to before me this 27 day of January, 2015.

Notary Public, State of Alaska
My Commission Expires: with office

STATE OF ALASKA
OFFICIAL SEAL
Richard Carter
NOTARY PUBLIC
My Commission Expires With Office

ATTORNEY GENERAL, STATE OF ALASKA
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