

Alaska Dispatch News

Commentary

Forced local contribution for school funding flies in face of Alaska Constitution

Gary Wilken | September 13, 2015



OPINION: Required local contribution for schools punishes borough residents while giving a pass to those who refuse to organize. Pictured: Delegates gather at the Alaska Constitutional Convention during the the winter of 1955-56 in Fairbanks.

Nearly 60 years ago, Alaskans convened a constitutional convention to craft the framework to shape our forthcoming state government. The framers of our Constitution were blessed with the important advantage of learning from the mistakes that had been made in the Lower 48, and they strived hard to avoid those errors.

Convention delegates believed there should be open competition for all public funding and dedicated funds curtailed the exercise of budgetary controls and amounted to an abdication of legislative responsibility as the keepers of the public's purse. Thus the architects of Alaska's Constitution provided for a strict prohibition against dedicated funds or earmarked taxes.

Last year, the Ketchikan Superior Court held that the so-called "required local contribution" for schools, imposed by the state of Alaska only on organized boroughs, is a \$220 million annual state tax violating this constitutional prohibition on the dedication of revenues. The Ketchikan Gateway Borough, with strong support from our Fairbanks North Star Borough, has challenged that tax. The Alaska Supreme Court will hear this case at 1:30 p.m. on Wednesday in Anchorage.

Aside from the unconstitutionality of the dedicated tax issue, I see other critically important public policy issues at stake in the Ketchikan case. Because the state levies the dedicated tax only on organized boroughs and a few city governments, it creates a huge inducement to avoid borough formation. There are 19 school districts in Alaska's unorganized borough encompassing 323,000 square miles, an area 20 percent larger than Texas. Those 19 school districts are exempt from the tax at issue simply because their residents have chosen not to incorporate into boroughs even if they have the resources to do so. In fact, a handful have per capita wealth greater than some boroughs yet are required to make no local contribution toward local K-12 education.

The framers of our Constitution clearly intended the state would either provide incentives for Alaskans to form boroughs, or alternatively, compel areas to organize. They preferred voluntary incorporation over forced creation of boroughs. However, during the first four years of statehood, it became evident voluntary incorporation had no general appeal. As the late Gov. Jay Hammond observed, "After all, why should they tax themselves to pay for services received from the state, gratis?"

In 1963, the Alaska Legislature passed legislation that forced eight regions of Alaska to form boroughs. It is critical to note that, at that time, both the Legislature and the governor formally expressed their intent in the very first section of the new 1963 law that boroughs would not be penalized because of incorporation.

Yet, with full disregard of Section 1, the state does impose severe penalties on boroughs. Those penalties amount to hundreds of millions of dollars annually, mostly due to this dedicated tax being challenged by Ketchikan and Fairbanks.

It is important to also keep in mind the leading clause of Alaska's Constitution guarantees that "all persons are equal and ... all persons have corresponding obligations to the people and to the State." Those crucial constitutional principles cannot be reconciled with an unconstitutionally dedicated tax imposed only on selected areas and bearing no rational basis for such disparity.

If the Supreme Court strikes down the state tax at issue, it creates opportunities for the Alaska Legislature to put in its place the means of funding our schools that are both fair and encourage good local government. And contrary to those who would speak against such a move, it can be a phased move done over time.

However, if the court upholds the existing dedicated tax, we can expect the Legislature to quickly add to the penalties already imposed on boroughs. For example, it is conceivable -- even likely -- the state tax imposed on boroughs for schools would immediately increase to the rate in place before moderate 2001 legislative reform of the penalties reduced the tax.

Keep in mind in January of last year, the state House Task Force on Sustainable Education concluded in its final report that state spending for education is not sustainable and that increased "contributions" from boroughs "may" be necessary. When that report was issued, the price of oil was \$107 per barrel. Today, the price of oil hovers near \$50 per barrel.

The unconstitutional tax only on boroughs is terrible public policy and should be eliminated. All Alaskans have a stake in resolving the fiscal challenges of the state of Alaska, not just those who live in boroughs.

Gary Wilken, a 60-year resident of Fairbanks, served in the Alaska Senate from 1997 to 2008. He will be a panelist at Saturday's forum on the state's fiscal future sponsored by Alaska Common Ground and UAA's Institute of Social and Economic Research.
