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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, 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. IKE-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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2 considered state revenue examines whether the legislature ever has access to the revenue.  
3 When the money goes from the local borough to the local school district, it is clearly not  
4 available to the legislature to spend. More importantly, even if the money is not delivered  
5 to the local school district, it is not in the legislature’s control—it remains with the  
6 borough. Thus, the local contribution to a local school district does not violate the  
7 dedicated fund prohibition because even if the money was *not* pledged to local school  
8 districts, it would not be available for legislative appropriation; it does not create a  
9 “source of public revenue.” Because the local contribution is not state revenue it is also  
10 not subject to appropriation by the legislature or line item veto. As neither Ketchikan  
11 Gateway Borough nor Amicus Curiae Fairbanks North Star Borough (“Amicus”)  
12 identifies any legal authority compelling the conclusion that local contributions are state  
13 revenue, the Court should reject their attempts to invalidate the constitutional, equitable,  
14 and predominantly state-financed system of public education in Alaska.  
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17 Ketchikan Gateway Borough concedes that it is not arguing that the State is  
18 responsible for fully funding education in Alaska. [Reply Br. 10] This acknowledgement  
19 is fatal to the borough’s contention that the local contribution is a source of state revenue  
20 subject to appropriation by the legislature, line-item veto by the governor, and the reach  
21 of Alaska’s dedicated funds provision. Absent a requirement that all money spent on  
22 education come from the state treasury, the borough’s annual transfer of a portion of its  
23 own funds to its own school district does not convert the local money into state revenue.  
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25 In its reply brief Ketchikan Gateway Borough ignores the purpose of the dedicated  
26 funds clause and argues that all that is required to trigger the constitutional prohibition is

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2 a “state-compelled exaction dedicated to a particular source.”<sup>1</sup> [Reply at 4] This novel  
3 interpretation of the dedicated funds clause is so expansive that it would prohibit all sorts  
4 of state-mandated requirements that entities spend money in particular ways including  
5 minimum wage laws, workers compensation insurance requirements, and mandatory car  
6 insurance requirements, to name a few. The Court should reject the borough’s invitation  
7 to stray from the well-established purpose of the dedicated fund prohibition, which is to  
8 prevent to the earmarking of *state* revenue.  
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10 The constitutional convention proceedings also make clear that school funding  
11 was not targeted by the dedicated funds provision. Indeed, the delegates never intended  
12 for money from local governments for joint state–local cooperative programs to come  
13 within the scope of the dedicated funds provision, even in situations where the money is  
14 routed through the state treasury. Joint state and local education funding has existed since  
15 before statehood and is an arrangement that the Alaska Supreme Court has repeatedly  
16 endorsed as a means for the State to fulfill its constitutional obligation to establish and  
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23 <sup>1</sup> Ketchikan Gateway Borough repeatedly uses the term “exaction,” which Black’s  
24 Law Dictionary defines as “[t]he act of demanding more money than is due; extortion.”  
25 9th ed. 2009. The borough’s use of this term belies its claim that its grievance is with the  
26 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.”)]]

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2 maintain a system of public schools.<sup>2</sup> The Court should confirm the continuing ability of  
3 local and state governments to collaboratively fund schools and other projects.

4 **I. Because the local contribution is not a source of state revenue, it is not subject**  
5 **to the dedicated funds, appropriation, or gubernatorial veto clauses of the**  
6 **Alaska Constitution.**

7 **A. The dedicated fund prohibition applies *only* to the pledging of specific**  
8 **sources of state revenue.**

9 The State has argued that the local contribution cannot be a “source of public  
10 revenue” because if the statute is invalidated, the money that the borough now pays to the  
11 school district will not then be available to the legislature to spend in some other way. In  
12 response, the Borough contends that it is “*irrelevant* to an Anti-Dedication analysis” that  
13 “the money ‘will not be available to the legislature for expenditure’” if the portion of the  
14 statute pledging the money to the local school district is eliminated, suggesting that “[n]o  
15 Anti-Dedication Clause cases have inquired into whether, if invalidated, funding would  
16 be available to the legislature for expenditure.”<sup>3</sup> [Reply Br. 7 (emphasis added)] But this  
17 is plainly incorrect. The central purpose of the provision is to maximize the revenue  
18 available to the legislature to appropriate; if the invalidation of a statute has no effect on

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20 <sup>2</sup> See, e.g., *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391, 399  
21 (Alaska 1997) (“By enacting a law [including a local contribution from organized  
22 municipalities] to ensure equitable educational opportunities across the state, the  
23 legislature acted in furtherance of [its] constitutional mandate.”); *Hootch v. Alaska State-*  
24 *Operated School Systems* 536 P.2d 793, 798 (Alaska 1975) (noting legislature enacted  
25 education statutes pursuant to constitutional mandate); *Macauley v. Hildebrand*, 491 P.2d  
26 120, 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).

<sup>3</sup> See also, Amicus Brief at 6-7, dismissing this claim as a “naked assertion...bereft  
of any legal support.”

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2 the amount of money at the legislature’s disposal, then the clause is not implicated by the  
3 statute.

4 Moreover, the Alaska Supreme Court’s dedicated fund cases have expressly relied  
5 on analyses of the impact of challenged statutes on the legislature’s ability to appropriate  
6 state revenue among competing needs. In *Sonneman v. Hickel*, the Supreme Court upheld  
7 most of the act creating the Alaska Marine Highway System Fund based on its conclusion  
8 that the act “does not restrict the authority of the legislature to appropriate money from  
9 the fund” and the court struck the passage that limited the ability of one state agency to  
10 request funding from the revenues.<sup>4</sup> Likewise in *State v. Alex*, the court held that the  
11 salmon assessments presented a dedicated fund violation precisely because it rejected the  
12 State’s contention that the money could still be freely appropriated.<sup>5</sup> The borough  
13 mistakenly imagines that the availability of a source of revenue to the legislature is not  
14 the central issue, because the decision in *Alex* suggested that the assessments should be  
15 refunded to the fishermen who paid them. [Reply Br. 7] But the refund was appropriate  
16 because the statute also unconstitutionally delegated the taxing power rendering the  
17 assessment itself invalid.<sup>6</sup> Notably, following *Alex* the legislature created a comparable  
18 royalty assessment, the revenues from which are deposited in the state treasury for  
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23 <sup>4</sup> 836 P.2d 936, 940 (Alaska 1992).

24 <sup>5</sup> 646 P.2d 203, 207 (Alaska 1982) (rejecting State’s argument that “current  
25 administration and future legislatures would be free to do as they please with the  
26 assessment funds, subject only to a moral obligation to carry out the policy of the  
originating legislature”).

<sup>6</sup> *Id.* at 213.

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2 appropriation by the legislature.<sup>7</sup> What the borough fails to understand is that a dedicated  
3 funds clause violation invalidates *the pledging of state revenue to the specific purpose*; it  
4 does not somehow extinguish the source of public revenue, because the whole point of  
5 the provision is to preserve that incoming state revenue for appropriation by the  
6 legislature.

7  
8 But the borough apparently wants to apply the dedicated fund prohibition to funds  
9 that are not now, and would not conceivably be, within the state treasury or subject to  
10 appropriation by the legislature. The borough does not explain how funds so divorced  
11 from the legislative appropriation process can possibly be state revenue that needs to be  
12 protected from dedication. Nor does the borough explain how application of the clause to  
13 the local contribution reduces earmarks or serves the purpose of the clause: to avoid  
14 having state money tied up for special purposes such that “neither the governor nor the  
15 legislature has any real control over the finances of the state.”<sup>8</sup> The borough’s attempt to  
16 sever the analysis of the dedicated funds clause from a determination of whether the  
17 money, absent the pledge to a specific purpose, would be subject to appropriation by the  
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21 <sup>7</sup> See AS 43.76.025 (salmon enhancement tax deposited into the general fund and  
22 may be appropriated by the legislature to qualified regional associations); AS  
23 43.76.190(d)–AS 43.76.200 (dive fishery management assessment deposited into state  
24 treasury and may be appropriated by the legislature to qualified regional diver fishery  
25 development associations); AS 43.76.380(d) (seafood development tax deposited into  
26 general fund and may be appropriated by legislature to qualified regional seafood  
development associations).

<sup>8</sup> *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 389 (Alaska 2003) (internal quotation marks omitted).

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legislature or veto by the governor contravenes the fundamental purpose of the clause.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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 . . . .”<sup>12</sup> 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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<sup>9</sup> 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.

<sup>10</sup> 1991 Op. Att’y Gen., 1991 WL 916843, at \*3-4 (April 2, 1991).

<sup>11</sup> *Id.* at \*2.

<sup>12</sup> *Id.* at \*4.

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2 The borough argues that *State v. Alex*<sup>13</sup> establishes that even funds not deposited in  
3 the state treasury can violate the dedicated funds provision because the aquaculture  
4 regional associations required salmon buyers to collect a tax and pay it directly to the  
5 regional association's trust account and not to the state treasury.<sup>14</sup> [Reply at 3] But *Alex* is  
6 readily distinguishable. The State did not argue in *Alex* that the assessment consisted of  
7 local rather than state funds that would not otherwise be available to the legislature for  
8 appropriation.<sup>15</sup> To the contrary, the State argued that the statute should be construed to  
9 allow the funds to be deposited in the general fund, and made available for the legislature  
10 to appropriate.<sup>16</sup> As a result, the Alaska Supreme Court simply did not analyze whether  
11 local funds, not deposited in the state treasury and that would not otherwise be available  
12 for appropriation by the legislature, fall within the purview of the dedicated funds clause.  
13

14 The fact that a local contribution consists of local money that is never deposited  
15 into the state treasury and would not be otherwise available for the legislature to spend  
16 with or without the pledge to the local school district removes the local contribution from  
17 the purview of the dedicated funds clause. Such money is not "a source of public  
18 revenue" subject to the clause; and the local contribution does not restrict the legislature's  
19 ability to appropriate state revenue.  
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24 <sup>13</sup> 646 P.2d 203 (Alaska 1982)

25 <sup>14</sup> *Id.* at 207.

26 <sup>15</sup> *Id.*

<sup>16</sup> *Id.*

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2           **B.     The local contribution for joint state–local education is exempted from**  
3           **the reach of the dedicated funds prohibition because the constitutional**  
4           **delegates intended it to be exempt.**

5           Even if the local contribution were deposited in the state treasury (which it is not),  
6           it still would be exempted from the dedicated funds prohibition because the plain  
7           language of the constitutional debate excludes its inclusion.<sup>17</sup> As described in detail in a  
8           1975 Attorney General Opinion, one of the preliminary draft versions of the dedicated  
9           funds provision considered by the Committee on Finance and Taxation applied the  
10          prohibition to “all public revenue” deposited in the state treasury.<sup>18</sup> The delegates,  
11          however, during debate on this provision and with the recommendation of the Finance  
12          and Taxation Committee amended the provision’s final language from “all public  
13          revenues” to “the proceeds of any state tax or license” in direct response to a

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15          <sup>17</sup>       The borough does not argue that a local contribution fits within the plain meaning  
16          of the text: “proceeds from a state tax or license.” [Reply Br. 4] Instead, it argues that the  
17          court should look to the plain meaning of the constitutional debate based on the *Alex*  
18          holding that “the dedication of any source of public revenue: tax, license, rental, sale,  
19          bonus-royalty, royalty, or whatever is limited by the state Constitution . . . .” *Id.* at 210  
20          (quoting 1975 Op. Att’y Gen. No. 9 at 19-20). The borough placed emphasis on the “or  
21          whatever” item on the list, presumably out of recognition that local contributions are not  
22          a tax, a license, a rental, a sale, a bonus-royalty, or a royalty. [Reply Br. 4] But the  
23          doctrine of ejusdem generis does not allow the expansive view of public revenue that the  
24          borough advocates, because under the doctrine, “when a general word follows a list of  
25          specific persons or things, the general word will be construed to apply only to persons or  
26          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.

<sup>18</sup>       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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2 memorandum stating the need to create exceptions from the dedication clause for seven  
3 categories of moneys including: “contributions from local government units for state-  
4 local cooperative programs, and tax receipts which the state might collect on behalf of  
5 local government units.”<sup>19</sup> The provision of public schools under Title 14 is a  
6 paradigmatic “state-local cooperative program.” The 1975 Attorney General Opinion  
7 analyzing the minutes stated that “it is clear that . . . the committee proposed its change  
8 for no other purpose than meeting the problems raised by the memorandum: ‘By going  
9 to the tax itself and saying that the tax shall not be earmarked, we eliminated all seven of  
10 those exceptions.’”<sup>20</sup> Thus, even if this Court held that local contributions ought to be  
11 deposited in the state treasury they still would not be subject to the dedication prohibition  
12 because the plain language of the convention intended their exclusion.  
13

14  
15 The borough does not address this specific exemption for state-local cooperative  
16 programs, nor does it cite to a single portion of the constitutional convention debate that  
17 discussed the dedicated funds clause as though it would remotely disturb the existing and  
18 mandatory provision of local funds directly to local schools.<sup>21</sup> The delegates never  
19 discussed the radical interpretation that the borough proposes because it was outside the  
20 reach of the dedicated funds clause. “Under the ‘dog that didn’t bark’ canon of statutory  
21

22 <sup>19</sup> *Id.* at 7 (quoting Public Administrative Service Memorandum (Jan. 4, 1956)). The  
23 Public Administrative Service Memorandum is attached at Ex. 4.

24 <sup>20</sup> 1975 Op. Att’y Gen. Op. No. 9 at 8 (quoting 4 Proceedings of Alaska  
25 Constitutional Convention 2363 (Jan. 17, 1956)).

26 <sup>21</sup> 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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2 construction, the absence of greater discussion is a meaningful indication that the  
3 convention was *not* charting a radical course” in the area of local funding for schools.<sup>22</sup>

4 **C. Payment of money to the local school district does not make it state**  
5 **money.**

6 Amicus appears to argue local funds are state controlled once appropriated by the  
7 borough assembly. [Amicus 4-5] This argument ignores both the fact that the required  
8 local contribution transfers directly from the unit of municipal government to the local  
9 school district without any state involvement, as well as the long-standing and statutorily  
10 protected model of local control that defines Alaska’s school system. Subject to the  
11 general supervisory authority of the Department of Education and Early Development,  
12 the legislature has vested each school district and regional education attendance area with  
13 the power and responsibility to operate the public schools within its borders.<sup>23</sup> Local  
14 districts and boards have wide latitude to determine their own fiscal procedures. They  
15 have the authority to appoint and control school employees, contract for services,  
16 implement curricula, and select chief school administrators, etc.<sup>24</sup> Additionally, while the  
17 local contribution provides a floor on municipal spending, local communities also have  
18 the option to provide additional money under the voluntary local contribution.<sup>25</sup> Given  
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22 <sup>22</sup> *Glover v. State, Dep’t of Transp., Alaska Marine Highway Sys.*, 175 P.3d 1240,  
23 1248-49 (Alaska 2008) (internal footnote omitted) (applying cannon to constitutional  
24 provision on sovereign immunity and noting that name of cannon derives from Sir Arthur  
25 Conan Doyle’s ‘dog that didn’t bark’).

24 <sup>23</sup> AS 14.08.021; AS 14.12.020.

25 <sup>24</sup> AS 14.03.083; AS 14.14.090; AS 14.14.130.

26 <sup>25</sup> AS 14.17.410(c).

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2 this broad authority to determine the manner in which district resources are managed and  
3 expended, it is not reasonable to assert that a municipality's local contribution is  
4 controlled by the State.

5 **D. The local contribution does not violate the dedicated funds clause**  
6 **because the clause does not prohibit dedications that are independent**  
7 **of specific, earmarked, state revenue.**

8 The statutory provision providing for the required local contribution only  
9 identifies the governmental unit responsible for providing aid, but does not actually  
10 pledge the proceeds of any tax, or license, let alone any *state* tax or license. Under the  
11 terms of the constitutional provision, a generalized statutory obligation to fund a specific  
12 program/purpose by itself is not problematic.<sup>26</sup> Within the public school funding statute,  
13 in addition to setting out the formula for the local contribution, the statute sets out a  
14 formula for state aid.<sup>27</sup> This statutory provision is not tied to a statutory pledge of a  
15 specific funding source—it merely identifies a formula through which responsibility for  
16 education is allocated, with modest local and federal contributions alongside significant  
17 state aid that constitutes the vast majority of support for schools. Whether the legislature  
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20 <sup>26</sup> Indeed, Alaska statutes are filled with such funding obligations unmoored from  
21 any specific sources of revenue and lacking independent appropriation effect. *See, e.g.*,  
22 AS 47.25.455(a) (“The department shall pay at least \$280 a month to a person eligible for  
23 assistance under this chapter . . . .”); AS 39.20.110 – 39.20.130 (state employees entitled  
24 to per diem and/or a mileage allowance when traveling for official business);  
25 AS 39.20.360 (unpaid state employee compensation owed to named beneficiary of  
26 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).

<sup>27</sup> 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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2 fulfills the statutory funding formula through an appropriation of state revenue or  
3 provides for some or all of the education funding through an appropriation outside the  
4 formula is an *annual* decision that each legislature must make consistent with the  
5 legislature’s plenary power over appropriations.<sup>28</sup> Logically, the local contribution is not  
6 any less constitutional than the identical provisions identifying other entities responsible  
7 for funding or the countless other statutory provisions that indicate an intent or obligation  
8 to provide funding without pledging a specific tax or funding source.  
9

10 Fairbanks North Star Borough argues that the local contribution is taxation by  
11 proxy, but its argument depends on its unsupported assumption that the local contribution  
12 requirement is an exercise of the State’s taxing authority. [Amicus Br. 3 (“One of the  
13 hallmarks of a tax, as opposed to a grant, fee, or a formula, is ‘that it is not a voluntary  
14 payment or donation, but an enforced contribution, *exacted pursuant to legislative*  
15 *authority in the exercise of the taxing power.*”<sup>29</sup>)] The local contribution requirement is  
16 not an exercise of the taxing power, but rather stems from the State’s pervasive authority  
17 over education, requiring municipalities to become school districts and provide some  
18 support for their local schools.<sup>30</sup> The financial element of that requirement is  
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22 <sup>28</sup> Under article IX, section 13 of the Alaska Constitution “no money shall be  
23 withdrawn from the treasury except in accordance with appropriations made by law.”  
24 This year, for example, the legislature provided for some of the education funding outside  
25 of the Base Student Allocation. *See* 2014 FCCS HB 278 § 55, p. 39, lines 17-26.

25 <sup>29</sup> Amicus Br. 3 (quoting Eugene McQuillin, *The Law of Municipal Corporations*  
26 §44.2 at 16 (3d ed. 2013).

26 <sup>30</sup> *See* AS 14.12.020.

1  
2 implemented through a matching grant structure, and not taxation.<sup>31</sup>

3 Nor does the fact that municipalities must use their taxing power to raise the  
4 money to make the contribution transform that contribution into a “state tax.” Every local  
5 government function is supported by taxation—that fact does not turn local taxes into  
6 state taxes whenever they are collected to finance a function delegated to local  
7 governments by the legislature. Nor does it transform an obligation to make a  
8 contribution into a *specific* tax so as to create a potential dedicated fund violation. At  
9 most, it identifies the *taxpayers* who must provide the money to support local education.  
10 The dedicated funds clause simply does not prohibit this.  
11

12 **E. The appropriation clause and gubernatorial veto clause do not apply to**  
13 **the local contribution because they apply only to state revenue.**

14 The borough rests its opposition to the State’s straightforward contention that the  
15 appropriation and gubernatorial veto clauses apply only to money that is in the state  
16 treasury on the theory that the local contribution ought to be in the state treasury. [See  
17 State’s Opposition Br. at 15-16, Reply Br. 15-16] But this theory relies on the  
18 argument—expressly disavowed by the borough and Amicus—that any money that funds  
19 schools is really state money because the obligation to finance education lies solely with  
20 the State. Because the local contribution is not state revenue, the borough’s argument  
21 fails.  
22

23  
24 <sup>31</sup> The local contribution is distinguishable from a tax because the State does not  
25 receive the money, the State does not specify how the borough should raise the money,  
26 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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2 **II. The Court should reject the borough’s proposed expansion of the dedicated**  
3 **funds prohibition because it leads to an untenable constitutional provision.**

4 In order to apply the dedicated funds prohibition and appropriation and veto  
5 powers to a pool of money outside the clauses’ intended reach, the borough has created a  
6 novel test to determine if a particular statute is subject to the dedicated funds prohibition  
7 and other clauses. Aimed, as it is, at money that is not public revenue, the borough’s  
8 proposed test would enormously expand the constitutional prohibition on dedication at  
9 the expense of the legislature’s ability to govern.<sup>32</sup>

10 Specifically the borough claims the local contribution’s “status as a State-  
11 compelled exaction dedicated to a particular source” is all that is necessary to violate the  
12 dedicated funds, appropriation, and veto clauses. [Reply Br. 4] Such a broad prohibition  
13 would also encompass a state minimum wage law: certainly such a law mandatorily  
14 “exacts” money and requires it to be spent on a dedicated source—employees. It would  
15 cover mandatory car insurance requirements: such laws require all drivers to pay money  
16 to car insurance companies. It would cover worker’s compensation insurance  
17 requirements that mandate employers pay for insurance for their workers. And, it would  
18 cover a variety of state grant programs all of which *require* a contribution by the grantee

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25 <sup>32</sup> See *Myers*, 68 P.3d at 394 (limiting reach of clause out of recognition that the  
26 dedicated funds clashes with the legislature’s power).

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2 as a pre-condition to accessing state funds.<sup>33</sup> According to the borough’s analysis, the fact  
3 that the money is not collected by the state and deposited in the state treasury, which  
4 would make the funds available for appropriation by the legislature, is irrelevant. All that  
5 matters is that the State has a statute requiring some entity to make a mandatory  
6 contribution to some other entity for a specific purpose. This is simply too expansive a  
7 definition of state revenue subject to the reach of the dedicated fund, appropriation, and  
8 veto clauses and is wholly unsupported.  
9

10 The borough also argues that allowing required local contributions in support of  
11 local education, a requirement that has existed since before statehood, will lead to a  
12 “slippery slope” of mandatory contributions for state functions. [Ketchikan Br. at 9] This  
13 ignores the fundamental purpose behind local contributions and its relationship to local  
14 control. The requirement of a local financial stake to access state funds seeks to ensure  
15 prudent expenditure of state and federal education dollars by giving local communities a  
16 stake in the financial management of their schools. Schools are both state-supervised and  
17 locally run. As such, hypotheticals involving entirely state functions such as state  
18

19  
20 <sup>33</sup> In addition to the municipal capital project matching grant program discussed in  
21 the State’s opening brief, the following state grant programs also *mandate* a local  
22 contribution: (1) library construction and major expansion matching grant program under  
23 AS 14.56.355–14.56.356; (2) harbor facility grant program under AS 29.60.800–  
24 29.60.830; and (3) human services community match program under AS 29.60.600–  
25 29.60.650. Finally, appropriations by the legislature to a third-party through a grant  
26 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.

1  
2 courthouses, state troopers, and state jails simply do not match the model.

3 **III. The Court should reject the borough's assumpsit and restitution claims**  
4 **because the borough cannot receive a refund from the state treasury for**  
5 **funds that it never paid to the State.**

6 The borough concedes that the State is not responsible for fully funding education,  
7 which means the borough acknowledges that it can be asked to pay a portion of the cost  
8 of educating students that reside in its district. Nothing in the borough's lawsuit  
9 challenges the *amount* of the local contribution required—in Ketchikan Gateway  
10 Borough's case less than 18 percent of basic need. [Reply Br. 14] And, the borough also  
11 concedes that the local contribution was paid to its school district and *was not paid to the*  
12 *State* or deposited into the state treasury. The borough's claim for a refund from the State  
13 for funds it paid to a third-party not named in this action plainly fails as a matter of law.

14 **CONCLUSION**

15 Based on the foregoing, this Court should deny summary judgment to Ketchikan  
16 Gateway Borough and grant it to the State on all claims.

17  
18 DATED May 23, 2014.

19 MICHAEL C. GERAGHTY  
20 ATTORNEY GENERAL

21 By:



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Certificate of Service

This is to certify that on this date,  
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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 Delaware 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."