

Redated for printing Jan.1,1991
September 22, 1986

Honorable Jalmar Kerttula, Chairman
Legislative Budget and Audit Committee
Alaska State Senate
P. O. Box Z
Palmer, AK 99645

Re: Liability of grantee under
municipal pass-through grant
Our file: 663-87-0114

Dear Senator Kerttula:

In May of this year you inquired whether a municipality which received a municipal grant for a private, nonprofit hospital was liable if the subgrantee failed to apply the grant money for a public purpose. Under AS 37.05.315 each municipal grantee must covenant with the state that it will oversee the operation and maintenance of public facilities constructed with state grant money. This means that the city must assure that the grant money and the resulting improvements are dedicated for use for public purposes. Our 1982 opinion on this subject continues to state the correct interpretation of AS 37.05.315. See 1982 Inf. Op. Att'y Gen. (Apr. 8, 1982; 663-82-0459).

Generally, state agencies assure public use by taking a form of a security interest in facilities constructed with grant money. As the facility ages, the value of the security interest is amortized to a point where the facility is released from any encumbrance. Absent a similar provision in the grant agreements, the city may seek to enjoin any transfer or sale of a facility financed with grant money until either the public use is assured or the grant money is returned to the city. The state may have a cause of action against the city if it allows the facility to be converted to a private use. It is also probable that a court would consider the state to be a beneficiary of the agreement between the city and the hospital corporation. This would allow the state to assert that the hospital must protect the public use of the facility or be in breach of a public trust.

We hope that the parties negotiating concerning the fate of the Valley Hospital facility recognize that the city's covenant

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with the state as provided in AS 37.05.315 must be honored by all beneficiaries of state grant money.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

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JLB/pjg