

May 2, 1991

The Honorable Pat Pourchot
Co-Chairman
Senate Finance Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: Calculation of permanent fund
dividend (our file 663-91-
0440)

Dear Senator Pourchot:

You have asked our advice with respect to the impact of the recent supreme court ruling in State v. Anthony, Op. No. 3685 (Alaska Apr. 26, 1991), on the 1991 permanent fund dividend program. Your first question is whether appropriations of money that otherwise would have gone to felons will be disclosed on each Alaskan's dividend check. We believe it will. Second, you have asked what the Department of Revenue will do with the money that has been held in trust pending outcome of this litigation. We have advised the department that the encumbrance or restriction on this money is now released due to the supreme court decision, making those funds now available for distribution in the 1991 program. A more complete analysis of these issues follows.

1. If dividend payments that would otherwise have gone to felons are appropriated by the Legislature to fund certain state programs, will this use of the dividend fund be recorded on each Alaskan's dividend check?

AS 43.23.025 sets out the process that the Commissioner of Revenue must follow each year in determining the amount of a permanent fund dividend. The commissioner starts with the amount of income of the Alaska Permanent Fund transferred to the dividend fund during the current year (AS 43.23.025)(a)(1)(A)), adds to that amount any money that lapses to the dividend fund (subparagraph (B)), and subtracts certain payments from the fund, including any appropriations from it. Subparagraph (E). Appropriations from the dividend fund have traditionally included

Department of Revenue expenses for administering the program and amounts necessary to implement the hold harmless provisions of AS 43.23.075. In addition, since the passage of ch. 54, SLA 1988, making incarcerated felons ineligible for dividends, the legislature has also appropriated money from the dividend fund to the Departments of Public Safety, for the Violent Crimes Compensation Board (see the current budget bill, CSHB 75(FIN) at 46), and Corrections, for the gate money and sex offender treatment programs (see CSHB 75(FIN) at 64-65).

Under AS 43.23.025, once the department calculates the amount available for distribution and dividends, it then divides that number by the total of all individuals eligible to receive a dividend plus those made ineligible as a result of the disqualification of felons under AS 43.23.005(d). AS 43.23.025(a)(2) and (3), and (b).

The amount that otherwise would have gone to felons is not separately accounted for under the calculation formula, and thus it is never identified as a separate appropriation source. Although the legislature may have intended that any appropriations to the Departments of Corrections and Public Safety be taken out of the amount that otherwise would be paid to felons but for the disqualification under AS 43.23.005(d), the clear wording of AS 43.23.025(a) requires that all appropriations from the dividend fund, including those to Public Safety and Corrections, be paid out of the total amount transferred to the fund, before the actual calculation of the amount of the dividend is made.

Under AS 43.23.028, the Commissioner of Revenue must disclose on each dividend check stub the amount "(3) by which each dividend has been reduced due to each appropriation from the dividend fund" This disclosure requirement would apply to all appropriations, including those to the Departments of Corrections and Public Safety. Quite simply, were these appropriations from the dividend fund not made, each individual's permanent fund dividend would, in fact, be greater than it will be with the appropriation.

2. What will be the fate of the escrow account established by order of the superior court?

Pursuant to the advice of the Department of Law and, after the lower court decision, the order of Judge Cutler, the amount of money that otherwise would have been distributed to felons but for ch. 54, SLA 1988, has been held in trust in the dividend fund pending a decision from the supreme court in State

Hon. Pat Pourchot, Co-Chair
Senate Finance Committee
663-91-0440

May 2, 1991
Page 3

v. Anthony. Because the supreme court reversed the superior court decision and upheld the validity of AS 43.23.005(d), there is no reason to hold this money in trust any longer, and we have advised the Department of Revenue to release the encumbrance on the funds, thereby making them available for distribution with the 1991 program.

I hope this answers your questions. Please feel free to contact me if I can be of any more assistance in this matter.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:
Jeffrey W. Bush
Assistant Attorney General

JWB:cl

cc: Rep. Ramona Barnes
Alaska State Legislature

Tom Williams, Director
Permanent Fund Dividend Division
Department of Revenue

Marilyn May
Assistant Attorney General
Anchorage