

May 7, 1991

The Honorable John B. "Jack" Coghill
Lieutenant Governor
State of Alaska
P.O. Box AA
Juneau, Alaska 99811

Re: Distribution of national
forest income under AS 41.15.180
Our file: 663-91-0324

Dear Lieutenant Governor Coghill:

You have asked us for an opinion regarding the validity of AS 41.15.180, which provides for the distribution of national forest income received by the State of Alaska under federal law, 16 U.S.C. 500.

16 U.S.C. 500 provides the following guidelines to the state in distributing national forest income within the state:

On or after May 23, 1908, twenty-five percentum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated. [Emphasis added.] Provided, that when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. . . .

16 U.S.C.S. (1978).

To implement the federal law, the Alaska Legislature prescribed the following distribution method:

AS 41.15.180. NATIONAL FOREST INCOME. (a) When the commissioner of administration receives national forest income under 16 U.S.C. 500, the commissioner shall immediately pay to every organized borough in which national forest land is located a share of the income from that forest. A borough's share of income from a national forest shall be proportional to the area of the national forest located within its boundaries. The payments shall be made under an appropriation made for that purpose.

(b) The national forest income paid to an organized borough under this section shall be expended for public schools and roads.

(c) The commissioner shall deposit income from national forest land outside of organized boroughs in the general fund of the state, 25 percent to be used for public schools and 75 percent for roads.

AS 41.15.180(a) and (b) treat organized boroughs as the equivalent of counties under 16 U.S.C. 500. Treating organized boroughs as "counties" is consistent with the Alaska Supreme Court's interpretation of a "borough." See Walters v. Cease, 388 P.2d 263, 264 n.1 (Alaska 1963) (the borough in Alaska is a political subdivision of the state and corresponds generally to a "county" in other states). AS 41.15.180(c) treats areas of the state that are not included in an organized borough (the unorganized borough --AS 29.03.010) as one "county," per se, for purposes of accounting for the income received from the national forests located in areas not located in organized boroughs. However, AS 41.15.180(c) does not require that national forest income received from forest lands in the unorganized borough be distributed to the communities (e.g., cities or Regional Educational Attendance Areas) located in the unorganized borough from which the income was generated. Instead, the money is deposited in the state's general fund to be used for public schools (25 percent) and roads (75 percent) and is allowed to be disbursed throughout the state (in the unorganized borough as well as organized boroughs).

You ask whether AS 41.15.180(a) can be read to allow for direct distribution of national forest income to communities in the unorganized borough. And, you ask if the term "county," as used in 16 U.S.C. 500, precludes distribution of national forest income to communities in the unorganized borough.

With respect to your first question, we believe that AS 41.15.180(c) "allows" for distribution of national forest income to communities in the unorganized borough and that the

legislature may, in its discretion, distribute such money in shares proportional to the amount of forest land located in a community. However, AS 41.15.180(c) does not mandate such a distribution. The legislature is given broad, discretionary authority in 16 U.S.C. 500 and AS 41.15.180(c) to distribute the forest income from the unorganized borough in any manner it considers appropriate so long as 25 percent is used for schools and 75 percent is used for roads. 16 U.S.C. 500 grants the state legislature the authority to establish a distribution plan. See Goodin v. Bd. of Educ., 601 P.2d 88 (Okla. 1979) (citing King County v. Seattle School Dist. No. 1, 263 U.S. 361, 44 S. Ct. 127 (1923) (the question of beneficial use of the national forest money is left to the discretion of the state legislature)). The one restriction placed upon the state's distribution plan under 16 U.S.C. 500 is when a national forest is located in more than one county (borough), in which case the distributive share must be proportional to the amount of forest located in each borough.

In conclusion, simply because AS 41.15.180(c) does not require a distribution of national forest income to communities in the unorganized borough does not preclude the legislature from appropriating money from the general fund to provide for such a distribution. On the other hand, we are also of the opinion that 16 U.S.C. 500 does not specifically require the legislature to make a proportionate distribution of national forest income to communities in the unorganized borough.

With respect to a definition of "county," 16 U.S.C. 500 does not provide a definition. But the Alaska legislature has determined that county means "organized borough" for the purposes of the national forest income program. AS 41.15.180. Therefore, until the Alaska legislature amends AS 41.15.180(c) to require direct distribution of the income from forests in an unorganized borough to communities located only in that unorganized borough, the legislature may distribute the money throughout the state.

While it our opinion that the current state method of distribution of forest reserve money is consistent with legislative prerogative and within the scope of the federal law, we cannot state with certainty that the federal government is in agreement because, to our knowledge, no opinion has been requested of or rendered by the U.S. Department of Justice with respect to Alaska's distribution plan. Therefore, if you desire an opinion on this issue from the U.S. Department of Justice, we will solicit one.

As you know, two bills have been introduced this session, House Bill 54 and Senate Bill 121, that propose to amend the state's plan under AS 41.15.180 to allow for direct distribution of national forest income to certain entities in the unorganized borough. The two bills propose different manners for distributing the national forest income. We do not, however, take

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a position as to either bill in rendering this opinion.

If you have additional concerns regarding this matter,
please contact the undersigned.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

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