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Deputy Commissioner  
Department of Administration

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Residency requirements  
for admission to the  
Pioneers' Homes

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You have asked about the lengthy residency requirements for admission into the Arizona Pioneers' Home, and whether those requirements would support a lengthy residency requirement for the Alaska Pioneers' Homes. As you know, the current 15-year residency requirement under Alaska law, AS 47.55.020(a), was invalidated by the superior court in Johnston v. Keller, No. 3PA-91-487 CI (Alaska Super., July 24, 1992).<sup>1</sup> It is our opinion that the existence of an Arizona law<sup>2</sup> or some other state's law similar to the residency requirements in AS 47.55.020 would not help Alaska in sustaining another long-term residency requirement (even if substantially less than 15 years). We believe this is true because of the holding of the United States Supreme Court in Zobel v. Williams, 457 U.S. 55 (1982) (permanent fund dividend payment based upon years of residency held unconstitutional) and the holding of the Alaska Supreme Court in Schafer v. Vest, 680 P.2d 1169 (1984) (longevity bonus payment based upon pre-statehood residency held unconstitutional).

First, our research indicates that the referenced Arizona law has never been challenged, at least not at the appellate level. The mere fact that a law remains on the books does not mean that it is constitutional. Our state's residency requirement for admission to the Pioneers' Homes (which has

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<sup>1</sup> The state did not appeal this decision.

<sup>2</sup> Ariz. Rev. Stat. • 41.923. The Arizona Pioneers Home was founded in 1911 and is a state-run retirement home for miners and pioneers of Arizona. Arizona law does not require 30 years of continuous residency for admission to the home; it requires 30 total years of residency with five years' continuous residency immediately preceding application to the home. Miners are subject to less stringent residency requirements than other residents.

varied from 5 years to 25 years) has been codified in statute for over half a century.<sup>3</sup> Even after the long residency requirements at issue in Zobel and Vest were found unconstitutional, it was nearly ten years before the residency requirement for the Pioneers' Homes was challenged. In light of Zobel, we believe it probable that the Arizona courts would invalidate Ariz. Rev. Stat. • 41.923, if it were challenged.

Second, Arizona requires a resident of its Pioneers Home to pay the full cost incurred by the state as a result of the person's residency, subject to limitations based on the resident's ability to pay. Ariz. Rev. Stat. • 41.923.D. A resident who neglects or refuses to reimburse the state as required is not permitted to continue staying at the Arizona home. Given such a charge, it is arguable that no benefit is being conferred on the basis of residency in Arizona at least as to full-cost payers. Assuming that the rates charged by the State of Arizona are close to those charged by privately operated homes for seniors, a court might find no constitutional violation. By contrast, the cost charged to residents of Alaska's Pioneers' Homes is well under half of the actual expense. There is clearly a substantial monetary benefit to residents of the Alaska Pioneers' homes. The Vest case held, inter alia, that the granting of a monetary benefit to seniors cannot be conditioned on a long-term residency requirement.

Finally, even if a state program is called a "unique program," as suggested by you in your memo, the Zobel and Vest cases make clear that long-term residency requirements are not constitutional under either the state or federal constitutions.

You have also asked whether "before statehood" residents can be considered a class for the purpose of receiving benefits. We would point out that the longevity bonus program struck down in Vest was limited to exactly this group, and that this was also the group that received the maximum permanent fund dividend amount under the program struck down in Zobel. Thus, the answer to this question is no.

Finally, you have asked what would be the longest residency requirement that would be upheld by the courts against a constitutional challenge. We cannot say for sure. We believe a one-year requirement would be constitutional. A two-year requirement might be. A two-year requirement for the longevity bonus, AS 47.45.010(a) (prior to its 1991 amendment), was invalidated by the superior court, with the state not appealing. Lindley v. Malone, 3AN-90-2586 Ci. (Alaska Super., 1990).

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<sup>3</sup> The Pioneers' Home was founded under the Territorial government in 1913. Ch. 80, SLA 1913.

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However, the federal district court in Alaska has upheld a two-year residency requirement for the state student loan program. Andress v. Baxter, No. A82-307 Ci. (D. Alaska 1983).<sup>4</sup> Thus, it is possible that a two-year requirement for admission to the Pioneers' Home might pass constitutional muster.

We hope this adequately addresses your questions.

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cc: Dennis DeWitt, Director, Pioneer Benefits

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<sup>4</sup> There is a challenge to this requirement currently pending in state superior court.