MEMORANDUM

State of Alaska
Department of Law

To: Catherine A. Reardon, Director
Division of Occupational Licensing
Dept. of Community & Econ. Dev.

Date: November 12, 2002

File No: 663-98-0264

Tel. No.: (907) 465-3600

Fax: (907) 465-2417

From: Gayle A. Horetski
Assistant Attorney General
Commercial Section

Subject: Interpreting State Laws Regarding Electrical and Mechanical Administrators

You have asked this office for advice interpreting the state laws regarding electrical and mechanical administrators (AS 08.40). Specifically, you have asked if these laws apply to employees of the State of Alaska or other governmental agencies. In your memorandum, you wrote:

> The current Electrical Administrator (EA) and Mechanical Administrator (MA) laws do not specifically exempt the State of Alaska or its employees. Therefore, the Department of [Community] and Economic Development has taken the position that state and governmental agencies that install or repair electrical or mechanical systems must employ licensed EAs and MAs to supervise and inspect the work. Agencies such as the Department of Transportation, Department of Corrections, Department of Fish & Game, and the Alaska Railroad have not traditionally required their employees to hold EA or MA licenses and will be substantially affected if they are required to comply with the law. Municipalities may also be impacted.

Since your request was received, you have asked that our response also address the applicability of these laws to school districts. Although your request refers jointly to electrical and mechanical administrators, some of the statutory language governing the two professions differs, so each is discussed separately below.

1. Electrical Administrators[1]

A. History of the early statutes

Electricity is inherently dangerous. Recognizing this, the state legislature over the years has enacted many laws dealing with the installation of electrical wiring and the generation and transmission of electrical current. These include: AS 18.60 (electrical standards and safety); AS 18.62.010 (certificates of fitness); AS 08.18.026 (electrical contractors); and AS 08.40 (electrical administrators).

A law regulating electrical contractors was adopted by the state legislature in 1960. (Ch. 158, SLA 1960.) That law created a Board of Electrical Examiners to regulate the examination and licensure of electrical contractors. The law also provided that "[n]o person, firm, partnership or corporation shall act as an electrical contractor in Alaska without first being licensed by the board." An "[e]lectrical contractor" was defined as "any person, firm, partnership or corporation engaged in the business of, or purporting to be engaged in the business of, installing or repairing, or contracting to install or repair, any electrical wiring, conduits, devices, fixtures, equipment or other electrical materials for transmitting, using or consuming electrical energy." A license applicant (other than an individual) was required to designate a supervisory employee or member of the firm to take the required examination. That person was designated as "administrator" under the license. (Secs. 1, 3(a)(c)&(e), ch. 158, SLA 1960.) Thus, the original concept of an electrical administrator was the person on the contractor's staff responsible for overseeing the electrical work by that contractor, but the administrator's duties were not set out in the law.

There were four exclusions from the law's coverage in 1960: electrical work connected to the generation and distribution of electrical current by a public utility or municipality, the operation, maintenance, or repair of telephone or telegraph systems or television or radio broadcasting stations, the manufacture or repair of electrical apparatus or equipment, and electrical work on the installer's own residential property not intended for sale. (Secs. 8 and 9, ch. 158, SLA 1960.) Another exclusion was added in 1967, for electrical work costing under $5,000 involving residences or small commercial establishments in small communities or remote locations within the state. (Sec. 1, ch. 79, SLA 1967.)

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[1] The current statutes regarding electrical administrators in Alaska are found at AS 08.40.005-08.40.200. The purpose of these laws is "to protect the safety of people and property in the state from the danger of improperly installed electrical wiring and equipment by providing a procedure to assure (1) the public that persons responsible for making electrical installations in this state are qualified; and (2) a sufficient number of persons are so qualified." AS 08.40.005.

In 1963 this office issued an opinion interpreting the electrical contractor law. The opinion concluded that a person who responded to invitations to bid on electrical work was "engaged in . . . the business" of electrical contracting. 1963 Op. Att'y Gen. No. 14 (July 16). The attorney general noted that AS 08.40 was "designed to assure that no one installs wiring unless qualified by an examination designed to prove his personal skill and ability . . . . The licensing provision is designed only to protect those desiring electrical work to be done and those who visit the improved premises from the results, particularly fire hazard, of shoddy workmanship." 1963 Op. No. 14 at 2.

Another opinion interpreting AS 08.40 was issued in 1967. That opinion concluded that a person who does not hold a license as an electrical contractor could not wire a commercial building, even if the person owned the premises. 1967 Op. Att'y Gen. No. 3 (Feb. 24). The attorney general again noted that the purpose of the law was the "protection of the public against fire, injury, and unsatisfactory craftsmanship." 1967 Op. No. 3 at 4. The opinion discusses the dangers to the public if commercial buildings were incorrectly wired. The opinion also states "[s]ince there are specific exclusions provided in the Act, it cannot be inferred that there are other exclusions of similar nature which were merely not enumerated. It is reasonably clear that the legislature intended the licensing act to regulate all electrical wiring where there might be a substantial potential hazard to the general public." *Id.*

In 1968 the legislature substantially revised the state laws regarding construction contractors. Revised AS 08.18 set out the registration, bonding, and other requirements for construction contractors, but did not specifically include electrical contractors. Alaska Statute 08.18.161(1) provided that AS 08.18 does not apply to "an authorized representative of the United States government, the State of Alaska, or a political subdivision or agency of the state."

In 1974 the legislature adopted AS 18.62.010, which provides that "a person may not be employed" on work subject to national electrical codes "without a certificate of fitness to perform the work" issued by the Department of Labor. This requirement does not apply to employees of electric utilities in small communities.

The electrical contractor laws were extensively revised in 1977 (ch. 53, SLA 1977). The registration, bonding, and other requirements for electrical contractors were moved into the construction contractor chapter, AS 08.18. The requirement that a electrical contractor hold, or employ a person who held, a license as an "electrical administrator" was retained; AS 08.18.026.

The provisions regarding electrical administrators remained in AS 08.40. A person could not "act as an electrical administrator in the state without a license." AS 08.40.090. An "electrical administrator" was defined in AS 08.40.200(2) as "any

person engaged in the business of, or purporting to be engaged in the business of, installing or repairing, or contracting to install or repair, electrical wiring, conduits, devices, fixtures, equipment, or other electrical materials for transmitting, using or consuming electrical energy." This definition is essentially the same as the former definition of electrical contractor except the reference to firms, partnerships, and corporations was deleted. (Secs. 1, 6, and 12, ch. 53, SLA 1977.) Although AS 08.18.171 contains a definition of the term "contractor," and of several types of specialty contractors, there is no separate definition of electrical contractor anywhere in AS 08.

There were several exclusions to the coverage of revised AS 08.40. The law did not apply to electrical work performed by a utility or municipality engaged in the generation or distribution of electrical current if the work was on an integral part of a system owned and operated by the utility or municipality, or to the installation or maintenance of telephone or telegraph systems when performed by utility employees. AS 08.40.190(a). The law also did not apply to "any person" manufacturing or repairing electrical equipment, performing electrical work costing less than $5,000 in small communities or remote locations, electrical installation on the person's own residential property, operation and maintenance of television or radio broadcasting systems, work on elevators, or the maintenance or repair of telephone systems. AS 08.40.190(b). The 1977 amendments also specified that electrical work excluded from the requirements of AS 08.40 still had to be inspected and had to meet regulations regarding workmanship. AS 08.40.190(c) (sec. 10, ch. 53, SLA 1977).

In 1979 this office issued an informal attorney general's opinion interpreting the electrical administrator laws as amended in 1977. 1979 Inf. Op. Att'y Gen. (June 27). That informal opinion concluded that AS 08.40.090(a), providing that no person could act as an electrical administrator unless licensed, did not apply to state employees. This conclusion was based on three factors. First, the term "person" as defined in AS 01.10.060 did not specifically include the state. Second, an electrical administrator was defined as a person "engaged in the business of" installing or repairing electrical wiring or fixtures. The informal opinion reasoned that state employees were not performing "electrical work for monetary reasons" and therefore, were not engaged in business. 1979 Inf. Op. Att'y Gen. (June 27) at 2. Third, the opinion recognized that work by state employees was not specifically listed among the exclusions to the law in AS 08.40.190, unlike the express provisions of some other occupational licensing laws in AS 08. It concluded that AS 08.40 was "ambiguous," but should be interpreted to exclude state employees because of a general rule of construction that a statute does not apply to a sovereign governmental entity unless it specifically so provides. *Id.*

An informal opinion issued in 1982 reached a contrary conclusion regarding the application of AS 18.62, however. 1982 Inf. Op. Att'y Gen. (September 23). That

opinion concluded that employees of the state were not exempt from the requirement that those who actually perform the electrical work must possess a certificate of fitness under AS 18.62.010.

Alaska Statute 18.62.010 does not specifically exempt state employees. The 1982 informal attorney general's opinion that interpreted that statute discussed the 1979 informal opinion that had concluded that state employees were exempt from electrical administrator requirements. The 1982 opinion noted that the 1979 opinion was based in large part on the definition of electrical administrator as one "engaged in the business" of installing or repairing electrical wiring, fixtures or equipment. 1982 Inf. Op. Att'y Gen. (Sept. 23) at 2. As state employees were not considered to be "engaged in business," AS 08.40 did not apply to them. Alaska Statute 18.62, however, did not limit its coverage to those engaged in business. Thus, state employees could be exempt from its coverage only if "the State is not a person, and its employees are likewise not persons." *Id.* at 3.

The 1982 opinion acknowledged that statutes applicable to "persons" have sometimes been held inapplicable to the state on the theory that the sovereign has traditionally been immune from laws of general application, which would be onerous when applied to the government. The opinion, at 3-4, quoted 3 *Sutherland Statutory Construction*, sec. 62.01 "Statutes in Derogation of Sovereignty":

> The stringency of the rule should be liberally relaxed where the demands of a contrary policy include the government within the purpose and intendment of a statute. Such a policy may be reflected from one or both of two sources: First, where the objective of a statute could not be accomplished without including the government. On this ground interstate commerce regulations have been applied to state-owned railroad cars, and an oil conservation statute has been interpreted to include state-owned lands. Second, a contrary policy is indicated where the inclusion of a particular activity would not vitally interfere with the process of government. This is illustrated in the distinction that is commonly made between cases where the government is pursuing a "proprietary" function, and those where it is operating in its "governmental" capacity, the former being held subject to general legislative regulations. Similarly, government corporations engaged in private enterprise or business are not permitted to claim sovereign immunity. Public officers are subject to the provisions of general statutes only while acting in a "ministerial," as distinguished from a "discretionary" or "judicial" capacity.

The informal opinion went on to conclude that an electrician would clearly be acting in a "ministerial" rather than a "discretionary" or "judicial" capacity when performing electrical work, and that requiring state employees to comply with AS 18.60 and AS 18.62 "would not vitally interfere with the processes of government." 1982 Inf. Op. Att'y Gen. (Sept. 23) at 4. The opinion also noted that the safety objective of the statutes would likely not be achieved if state employees were to be exempted from the law "solely because of their capacity as such, since the public intended to be protected by the statute is likely to enter State owned buildings." *Id.*

The 1982 informal opinion cited the Alaska Supreme Court decision in *Allison v. State*, 583 P.2d 813 (Alaska 1978). The court there held that AS 18.62.010 and AS 08.40 were intended to protect the public safety and therefore any exemptions should be "narrowly construed." Applying the same principles, the 1982 informal opinion concluded that, "although the State is not a person and obviously is not itself required to have a certificate, a State employee is a 'person' and is covered by the statute to the same extent as employees of a private electrical contractor." 1982 Inf. Op. Att'y Gen. (Sept. 23) at 4.

The electrical administrator laws were the subject of another informal attorney general's opinion issued in 1983. 1983 Inf. Op. Att'y Gen. (Dec. 20). Construing the exemptions in AS 08.40.190(a), this office concluded that a municipality was required to obtain the services of an electrical administrator when engaged in electrical work not involving "wiring for generation and distribution of electric current." This opinion was based on the express language of AS 08.40.190(a), which did not exclude a municipality generally, but only a utility or municipality engaged in certain types of electrical construction and maintenance. 1983 Inf. Op. Att'y Gen. (Dec. 20) at 2.[2]

The 1983 informal opinion also cited the Alaska Supreme Court decision in *Allison v. State*, 583 P.2d 813 (Alaska 1978), holding that exemptions to AS 08.40 should be narrowly construed. The opinion concluded that excluding a municipality when it did not meet the legislative requirements for exclusion would be contrary to the legislative purpose of protecting the safety of people and property. The 1983 opinion distinguished

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[2] As defined in AS 08.40.200(5), "utility" means "every corporation (whether public, cooperative or otherwise), company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant or system for (A) furnishing, by generation, transmission or distribution, electrical service to the public for compensation; (B) furnishing telecommunications service to the public for compensation."

As defined in both AS 01.10.060(4) and AS 29.71.800, "municipality" means "a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality."

the 1979 informal opinion by pointing out that municipalities were specifically included in the exclusions established in AS 08.40.190(a), for certain types of work, whereas the state was not mentioned at all. The opinion acknowledged that municipalities, like the state, were not included within the definition of "person" under AS 01.01.060.

New exclusions for work on fire or security alarms and diesel electric engines were added to the electrical administrator laws in 1980 (sec. 8, ch. 71, SLA 1980). Other exclusions for electrical work on water wells were added in 1986 (sec. 1, ch. 49, SLA 1986). The exemption of public utilities from the requirements of AS 08.18 (construction contractor registration) and AS 08.40 (electrical administrator licensing) was reaffirmed in 1984 Inf. Op. Att'y Gen. (June 6).

Laws regulating mechanical administrators were added in 1988; ch. 132, SLA 1988. These statutes are discussed below in section 2.

B. Adoption of 1994 statutory revisions

Responsibility for the administration and enforcement of the electrical contractor and electrical administrator license requirements was assigned to the Department of Commerce [now: Department of Community and Economic Development]. At times these duties were carried out directly by department staff; at other times by a licensing board.[3] Because the statutory termination date of the Board of Electrical Examiners was not extended by the legislature, the board "sunsetted" on June 30, 1992. (The Board of Mechanical Examiners was likewise due to sunset on June 30, 1993.) Representative Gary Davis introduced HB 249; its purpose was to reinstate licensure requirements for and enforcement authority over electrical and mechanical contractors and administrators.[4]

As originally drafted, HB 249 would have placed responsibility for the regulation and licensing of electrical and mechanical administrators with the Department of Labor. During legislative consideration, however, the bill was amended to retain these duties within the Department of Commerce [now: Community] and Economic Development; SCS CSSSHB 249 (RLS).

HB 249 became law as ch. 101, SLA 1994. Alaska Statute 08.40.090(a), requiring licensure as an electrical administrator, was amended to cross-reference the exclusions in AS 08.40.190. An additional exclusion was added: electrical work performed by an employee of an owner or tenant of commercial property as part of the employee's work duties. AS 08.40.190(b)(11).

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[3] *See, e.g.,* sec. 7, ch. 158, SLA 1960; sec. 1, ch. 39, SLA 1972; secs. 22, 26, 31, ch. 94, SLA 1987; secs. 1 - 11, ch. 98, SLA 1988; and ch. 101, SLA 1994.

[4] *See* Sponsor Statement for SSHB 249.

Most significantly, the definition of electrical administrator in AS 08.40.200(3) was revised to read: "a person who is responsible for (A) installing or repairing electrical wiring, conduits, devices, fixtures, equipment, or other electrical materials for transmitting, using or consuming electrical energy; or (B) certifying that an installation or repair described in (A) of this paragraph complies with applicable electrical codes." This change deleted the requirement that an electrical administrator be a person "engaged in the business" of electrical work and makes it clear that a person responsible for certifying compliance with electrical codes is an electrical administrator. Thus, the definitional language that formed one of the main bases of the 1979 informal opinion interpreting the law to exclude state employees has since been removed by the state legislature.

The addition of the new exclusion and the change in the definition of electrical administrator occurred during consideration by the Senate Rules Committee, just days before passage of the measure. At a Senate Rules Committee meeting on HB 249 held on April 30, 1994, Representative Davis described the purpose of the bill. Senator Rieger asked about the change in the definition to add "or who is responsible for certifying that the installation or repair complies with applicable building codes." He asked "What does that do, in practice, putting this into statute? Is this sweeping in someone who is presently not required to be under these boards?"[5]

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[5] An except from Senate Rules Committee Meeting re: HB 249, April 30, 1994, 10:15 a.m.:

> SEN. RIEGER: Just to get the whole bill in context. This bill refers to electrical and mechanical administrators. Are there . . . is there a different occupational license for people who actually do mechanical work and electrical work?
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> REP. DAVIS: Right. Under the certificate of fitness for Department of Labor, the journeyman electrical and journeyman plumbers and mechanical installers is the next lower level. This is somewhat of a "master tradesman" section.
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> SEN. REIGER: OK. Now when it's . . . in the new language, which says, it appears several places, "or who is responsible for certifying that the installation or repair complies with applicable electrical codes." Who is . . . what does that do, in practice, putting this into statute? Is this sweeping in someone who is presently not required to be under these boards?
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> REP. DAVIS: What I like to re . . . to consider is an extension of the inspection arm of the state. It's certifying . . . it's a privatization of . . . it's a certifying that what was installed has been installed to code. And is being certfied and stamped by the administrator that a project has been installed to code.

(continued . . .)

(. . . continued)

SEN. REIGER: All right, but . . . on point, though, before this bill was around . . . Let's say this passes. Who's doing this now who is not required to be licensed, who would be subsequently have to be licensed? An example of who this applies . . .

REP. DAVIS: The Board of Electrical Administrators had been handling the functions. And that board sunsetted. And of course, then on the mechanical end . . . So there have been electrical administrators and mechanical administrators in existence. The electrical board sunsetted, and now all the licenses have expired. The mechanical administrators board sunsetted last year, but their licensing . . . most of those licenses will not expire until August 31 of this year. So, it has been in existence. And there hasn't been any electrical administrators for the past year. So, and when electrical and mechanical administrators were established, I don't know when, but they have been doing this function.

SEN. REIGER: They had been?

REP. DAVIS: Did I miss the point again?

SEN. REIGER: Well, maybe. Because I say . . . why don't we just take out that language? Tell me why it's in there. If its not making a difference, why is it in there?

REP. DAVIS: The certifying . . . .?

SEN. REIGER: The one that says . . . yes, "responsible for certifying that an installation or repair complies with applicable electrical codes". It seems like new language, because it's in boldface and underlined. So it wasn't in the statues before. It seems like . . . if it's the same people, why is it in there?

REP. DAVIS: I was . . . I was . . . actually, that's just giving them more authority. The word "certifying" to me, relates more to an inspection, from my standpoint. It's just more clearly clarifying what the function of the administrators are. I don't have a real problem, I just thought it would be . . . .

SEN. RIEGER: Is someone out there certifying this, perhaps a municipal inspector, who now has to become licensed under the board?

REP DAVIS: There are several . . . within municipalities that have building inspectors, they are doing it. There are areas that do not have those. Right? Municipalities that have building inspectors, they will do the jobs. Projects that are designed and engineered, and have a contract . . . inspection

Representative Davis replied by describing an administrator's role in certifying that projects have been installed in compliance with applicable codes, and describing administrators as "an extension of the inspection arm of the state." He reiterated that the bill's purpose was to restore the regulatory functions formerly performed by the sunsetted boards.

When pressed by Senator Rieger as to the reason for the new language in the definition ("If it's the same people, why is it in there?"), Representative Davis replied: "I was . . . I was . . . actually, that's just giving them more authority. The word 'certifying' to me, relates more to an inspection, from my standpoint. It's just more clearly clarifying what the function of the administrators are."

Senator Rieger asked if there was "someone out there certifying this, perhaps a municipal inspector, who now has to become licensed under the board?" Representative Davis explained that municipal building inspectors were "exempted" from the law. Representative Davis went on to describe the problem of licenses expiring, and those sections of HB 249 that "grandfather" persons who held a license under the previous law.

Senator Rieger asked if the bill would allow inspectors to order property owners to bring older structure up to current codes. Representative Davis indicated that the bill did not address that issue, as it "relates to construction." He stated: "Mr. Chairman, Senator Rieger, these positions work for contractors. So if a contractor is contracted to do a project, then these are the people on their staff that certify the installation being done to code." He emphasized that the point of the bill was "to relicense those who are not currently able to operate under the functions of a EA or MA."

Karl Luck, at that time the director of the Division of Occupational Licensing, also testified before the Senate Rules Committee. When asked about the reason for the change in the definition of electrical administrator, Mr. Luck explained that in the past there had been some confusion about the categories electrical contractor and electrical

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(. . . continued)

> contract, which a lot of them do, most public building contracts do. So they already have, they have a built in inspection and certifying process.
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> SEN. REIGER: So does the municipal building inspector who does this today, does that person have to be under the board?
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> REP. DAVIS: He's . . . they're exempted.

administrator. He noted that the references to "contracted to install" and "engaged in the business of" did not really describe the administrator's actual role.[6]

Through a letter read by its lobbyist, Joe Hayes, the Sisters of Providence asked the committee to consider an additional exemption for in-house electrical repair work performed by its own employees. While discussing the requested new exemption, Senator Zharoff asked if there were "other entities out there" in the same situation as Providence Hospital. "You know, school districts? I don't know. Or canneries? A lot of them employ their own, you know. And, are we putting on additional costs right now that, you know, they don't need to be . . . ?"

The exemption requested by the Sisters of Providence was included in SCS CSSSHB 249 (RLS), and became new paragraph 11 of AS 08.40.190(b).

The sponsor of HB 249 testified before the Senate Rules Committee that the change in the definition of electrical administrator was intended to better describe the role of the persons to whom the law had applied before the board sunsetted, rather than to expand the scope of the law. Also, adoption of the additional exemption requested by the Sisters of Providence indicates an intent to expand the exemptions to avoid imposing additional costs on businesses or other entities that employ their own electricians.

C. Interpretation of the 1994 statutory revisions

"Interpretation of a statute begins with an examination of its language construed in light of its purpose." *Beck v. State, Department of Transportation and Public Facilities*, 837 P.2d 105, 116-117 (Alaska 1992); *Vail v. Coffman Engineers, Inc.*, 778 P.2d 211 (Alaska 1989). In interpreting a statute, the objective is to determine the intent of the legislature, with due regard for the meaning that the language employed in the statute conveys to others. *Marlow v. Municipality of Anchorage*, 889 P.2d 599, 602 (Alaska 1995). The Alaska Supreme Court will give unambiguous statutory language its ordinary and common meaning, but has "rejected a mechanical application of the plain meaning rule in favor of a sliding scale approach." *Peninsula Marketing Association v. State*, 817 P.2d 917, 922 (Alaska 1991). Under that approach, the court will look to legislative history as a guide to construing a statute's words; the plainer the language of the statute, the more convincing contrary legislative history must be. *Marlow*, 889 P.2d at 602; *Smith v. Ingersoll-Rand Company*, 14 P.3d 990, 992 (Alaska 2000).

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[6] This misdescription of an administrator is understandable, as the former definition of "electrical contractor," with minor changes, was retained in AS 08.40 as the new definition of "electrical administrator" when the electrical contractor provisions were moved to AS 08.18 in ch. 53, SLA 1977. As noted earlier, there is no separate definition of the term "electrical contractor" in AS 08.

Statements made by a bill's sponsor during legislative deliberations are relevant evidence when a court is trying to determine legislative intent. *Alaska Public Employees Association v. State*, 525 P.2d 12, 16 (Alaska 1974); *Madison v. State, Department of Fish and Game*, 696 P.2d 168, 176 (Alaska 1985); *Beck*, 837 P.2d at 117.

While opinions of the attorney general are not controlling as to the meaning of a statute, the fact that the opinions have not been challenged and that the attorney general is the officer authorized by law to advise state officials responsible for enforcement of the law entitles these opinions to "great weight." *Allison v. State*, 583 P.2d 813, 816 n. 15 (Alaska 1978); *Carney v. State, Board of Fisheries*, 785 P.2d 544, 547 (Alaska 1990).

If a statute has received a contemporaneous and practical interpretation, and the statute as interpreted is reenacted, the prior interpretation is accorded great weight and is regarded as presumptively the correct interpretation of the law. *Kott v. State*, 678 P.2d 386, 395 (Alaska 1984). But a reviewing court will not defer to an agency interpretation that conflicts with the plain meaning of a statute. *Fairbanks North Star Borough School District v. NEA-Alaska*, 817 P.2d 923, 926 (Alaska 1991).

Interpretation of AS 08.40.200(3), as amended by ch. 101, SLA 1994, presents a conflict between the meaning the enacting body intended and the meaning the statute conveys to others. *State v. Alex*, 646 P.2d 203, 209 n. 4 (Alaska 1982). The question is the continued existence of an implied exemption after the language on which the exemption was based is removed, when the legislature may not have been aware of the ramifications of its removal.

In a somewhat similar case, *Chokwak v. Worley*, 912 P.2d 1248 (Alaska 1996), the Alaska Supreme Court examined the role of legislative intent when interpreting a "civil immunity" statute. Alaska Statute 04.21.020 provided:

> A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080-04.11.220, or is an agent or employee of such a licensee and
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> (1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, liquor identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030.

Parents of a teenage boy who became intoxicated and was paralyzed in an auto accident brought a civil action against two other teenagers who had supplied the alcoholic beverages. The defendants argued that they were immune from damages under AS 04.21.020, because the phrase "a person who provides alcoholic beverages" was not limited to those who were licensed to provide alcoholic beverages. Plaintiff Chokwak argued that the legislative history of the statute indicated that the legislature intended to grant immunity from civil liability only to licensees who had lawfully sold the alcoholic beverages, not to private citizens who were "social hosts."

The court noted that some of the legislative history supported Chokwak's argument about the legislature's intent when AS 04.21.020 was adopted. A section-by-section analysis of the bill prepared during its consideration by the legislature described the immunity provision as applying to licensees who lawfully furnish alcohol to others. The court stated that this would have presented a "close question" regarding the proper scope of the immunity provision. The court went on, however, to consider other legislative history, including proposed amendments to and the Governor's veto message of a similar bill. The court decided that the statement of legislative intent in the section-by-section analysis was "not fully inclusive." The legislative history therefore was not "sufficiently strong" to require "that the literal language of section .020 be narrowed by interpretation to apply only to licensees." *Chokwak,* 912 P.2d at 1253. Thus, the immunity provision was given a literal interpretation.

The situation here differs somewhat from that presented in *Chokwak*. Here, a statute that a 1979 informal attorney general's opinion concluded was ambiguous has been interpreted not to apply to state employees. That interpretation was not challenged in court or changed by the legislature, and the statute continued in effect until the Board of Electrical Examiner sunsetted in 1992. When HB 249 was adopted, the definition of electrical administrator was changed to remove language that was central to the interpretation reached in the 1979 informal opinion, but the legislature apparently was not aware of this consequence. The rather scant legislative history on this issue indicates that the legislature probably did not intend to narrow the exemptions that had existed under the prior law. In fact, the legislature accepted a suggestion from Providence Hospital that in-house repairs by employees be specifically exempted. This additional exemption arguably further narrowed the application of the electrical administrator requirements.

When analyzing the issue presented here, it should be noted that two circumstances have changed since the 1979 informal opinion was issued. First, at the time of the 1979 informal opinion the definition of "person" in AS 01.10.060 had not been interpreted by the state appellate courts. In 1994, however, the Alaska Court of

Appeals issued its decision in *Mustafoski v. State*, 867 P.2d 824 (Alaska App. 1994). The court was reviewing the trial court's application of AS 22.20.020(a)(6), which allowed a party to challenge a judge who has represented "a person" against "a party" within the preceding two years. The judge assigned to the *Mustafoski* case had formerly worked as a district attorney and had prosecuted Mustafoski within the preceding two years. The issue, thus, was whether the state was a "person" whom the judge has formerly represented against Mustafoski. The term person was not defined in AS 22, so the court looked to the general definition contained in AS 01.10.060. The court noted that the definition in AS 01 did not include a specific reference to the state or its political subdivisions. The state contended that this omission evidenced a legislative intent to exclude these political entities from coverage. The court rejected this interpretation.

The court of appeals noted that the definition of person in AS 01.10.060 "includes" corporations, companies, partnerships, etc., as well as natural persons. The word "includes," when used in state law, is construed as though followed by the phrase, "but not limited to." AS 01.10.040(b). "Under standard rules of statutory drafting and interpretation, the term 'includes' is used preceding a partial listing or illustrative list in a definition, while the term 'means' is used to provide a complete meaning for the term defined." *Mustafoski v. State*, 867 P.2d at 833. The court concluded that AS 01.10.060 would not require an explicit reference to political entities because the statute uses the word includes, which indicates that what follows is a partial, illustrative list. The court, therefore, rejected the state's argument that the definition of person in AS 01.10.060 necessarily excludes political entities. *Id.* The court construed the word person in AS 22.20.020(a)(6) to include the State of Alaska, and thus the judge was disqualified from presiding over Mustafoski's trial. 867 P.2d at 835-836. Thus, at least in the interpretation of AS 22.20.020(a)(6), the conclusion that the definition of person in AS 01.10.060 does not include the state has been rejected by the court of appeals.

Second, as noted above, the definition of electrical administrator was amended by the state legislature in 1994 to remove the requirement that an administrator be engaged in the business of electrical work, and adding certification of code compliance as a recognized duty of an electrical administrator (sec. 18, ch.101, SLA 1994). It appears that the bill's sponsor (and probably the other members of the legislature) did not understand that the deletion of this language might broaden the scope of persons to whom the law would apply, however. It would be contrary to legislative intent to more narrowly interpret exemptions which the legislative history indicates the legislature intended to retain as they were, or even broaden.

If a statute has been interpreted by a court, it may be presumed that the legislature was aware of and accepted that interpretation. *Kott v. State*, 678 P.2d 386 (Alaska 1984). This general rule of construction also applies to interpretations issued by an attorney general in official opinions, which are accorded great weight in the absence of any other

controlling authority. *Carney v. State Board of Fisheries*, 785 P.2d 544 (Alaska 1990); 2B *Sutherland Statutory Construction*, sec. 49:05 (6th ed. 2000). A contemporaneous interpretation that "has stood unchallenged for a considerable length of time . . . will be regarded as very important" when construing a statute. 2B *Sutherland Statutory Construction*, sec. 49:07 (6th ed. 2000).

In this instance, elimination of the implied exemption for state employees found in the 1979 AG's opinion would likely impose some additional costs upon the state, although the extent of those costs is difficult to predict. Because of the legislative history and possibility of additional costs, we believe that any change in this exemption should be made by the legislature, not this office.

In summary, we conclude that the legislative history does not support a change in the interpretation given in the 1979 informal AG's opinion. For the reasons discussed in that opinion, we believe that employees of the state are exempted from the requirements of AS 08.40.090 regarding electrical administrators.

Your memorandum notes that municipalities might also be affected by a change in interpretation regarding the scope of the exemptions to the EA requirements. This issue has already been addressed, however. As discussed in section 1.A above, this office issued an informal opinion in 1993 concluding that a municipality is required to obtain the services of an electrical administrator when engaged in electrical work that was not specifically excluded under AS 08.40.190(a). This was based on the express language of the statute, which does not exclude a municipality generally, but only while engaged in certain types of electrical construction and maintenance. 1983 Inf. Op. Att'y Gen. (Dec. 20).

2. Mechanical Administrators

A. History of the early statutes

Statutes regarding mechanical administrators are found at AS 08.40.210-08.40.490. Mechanical administrators and a new Board of Mechanical Examiners were created by law in 1988. (Ch. 132, SLA 1988.) Similar to the electrical administrator laws, the purpose of AS 08.40.210-08.40.490 is "to protect the safety of people and property in the state from the danger of improperly installed or modified mechanical systems by providing a procedure to assure (1) the public that persons responsible for making mechanical installations in this state are qualified; and (2) that a sufficient number of persons are so qualified." AS 08.40.210.

Under AS 08.18.028(a), a mechanical contractor may not receive a certificate of registration unless the contractor holds, or employs a person who holds, a license as a

mechanical administrator.[7] Alaska Statute 08.40.260(a) provides that "[a] person may not act as a mechanical administrator without a license." "[M]echanical administrator" was defined in AS 08.40.490(3) as: "a person engaged in the business of, or purporting to be engaged in the business of, installing or modifying, or contracting to install or modify, mechanical piping and systems, devices, fixtures, equipment, or other mechanical materials subject to the Uniform Plumbing Code, Uniform Swimming Pool, Spa, and Hot Tub Code, Uniform Solar Energy Code, and the Uniform Mechanical Code as published by the International Association of Plumbing and Mechanical Officials and the International Conference of Building Officials." (Secs. 1, 2, 3, 7, 9, ch. 132, SLA 1988.)

Exclusions from the mechanical administrator laws are set out in AS 08.40.390. The law does not apply to "a utility, municipality, or local governing body whose employees are engaged in mechanical work on an integral part of a system owned and operated by the utility, municipality, or local governing body." AS 08.40.390(a). It also does not apply to "a person" engaged in the manufacture or repair of mechanical apparatus or equipment, mechanical work costing less than $50,000 on residences or small commercial establishments in small communities or remote areas of the state, mechanical installations in single or two-family residences not intended for sale, or the installation of water lines or sanitary, storm, or sewer lines more than five feet from a building. AS 08.40.390(b).

B. 1994 statutory revisions

The mechanical administrator laws were amended in 1994 by HB 249 (ch. 101, SLA 1994), the same bill that revised the electrical administrator laws. The bill continued regulation of mechanical administrators in the face of the impending demise (through "sunsetting") of the Board of Mechanical Examiners.[8] Alaska Statute 08.40.260(a) was amended to include a cross-reference to the exclusions in AS 08.40.390. Additional exclusions were added for mechanical maintenance or repair work performed by a person as an employee of an owner or tenant of commercial property as part of the employee's work duties and for work on fire extinguishing systems. AS 08.40.390(b)(5) and (6).[9]

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[7] Alaska Statute 08.18 sets out the requirements for construction contractors, including mechanical contractors. Alaska Statute 08.18.161(1) provides that AS 08.18 does not apply to "an authorized representative of the United States government, the State of Alaska, or a political subdivision or agency of the state."

[8] *See* sponsor statement for SS HB 249.

[9] The exemption contained in AS 08.40.390(b)(5) is the one requested by Providence Hospital through its lobbyist. It mirrors the new exemption 11 added to AS 08.40.190(b) for electrical administrators.

Most important, the definition of "mechanical administrator" in AS 08.40.490(3) was amended to read: "a person who is responsible for (A) installing or modifying mechanical piping and systems, devices, fixtures, equipment, or other mechanical materials subject to the [codes] . . . or (B) certifying that an installation or modification described in (A) of this paragraph complies with the applicable codes." Thus, former language requiring that a mechanical administrator be "in the business" of installing or modifying mechanical systems was deleted in 1994.

The purpose of these changes, and the discussion that occurred at the Senate Rules Committee meeting where they were made, is summarized above in section 1. B. Again, it does not appear that the legislature intended to broaden the application of the mechanical administrator laws that existed under the Board of Mechanical Examiners, which was due to sunset on June 30, 1993. For the reasons discussed above, in connection with the electrical administrator statutes, we conclude that the implied exemption for state employees recognized in the 1979 informal opinion should continue unless altered by the legislature.

The exclusions in AS 08.40.390 are broader than those in AS 08.40.190, as they include "a utility, municipality, or *local governing body*" (emphasis added). The term "local governing body" is not defined in AS 08.40, and you have asked whether this term includes a school district. We conclude that it does not.

Chapter 132, SLA 1988 began as HB 472. The House Finance Committee made some changes to the bill in CSHB 472(FIN), including the addition of "local governing bodies" to the exclusions from the law. This change was explained: "[t]his will enable entities which function in much the same way as a utility or municipality, but do not meet the definition of either - such as village councils - to operate without an administrator."[10]

The term "local governing body," while not defined in AS 08.40, appear in various places within state statutes. In these instances, the reference clearly is to the governing body of a community, such as a municipality or an established village.[11] In Title 4, dealing with the regulation of alcoholic beverages and "local option" elections, "local governing body" is defined as "a city council, a borough assembly, or a traditional village council, but does not include a corporation established under the Alaska Native Claims

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[10] *See* Memorandum from subcommittee chair Representative Mark Boyer to House Finance Committee regarding CSHB 472 (FIN) dated April 22, 1988.

[11] *See, e.g.*: AS 04.11.100(f); AS 04.11.115(b)(1); AS 04.11.505(b); AS 04.11.507(b); AS 04.21.080(b)(16); AS 05.15.625; AS 18.55.520(11); AS 18.55.670; AS 18.55.932; AS 28.10.431(a); AS 41.21.616; AS 47.37.045.

Settlement Act." AS 4.21.080(b)(16). There is no suggestion in these definitions that a school district would be considered the governing body of a community.

Article X, section 2 of the Alaska Constitution vests "all local government powers" in boroughs and cities. *Municipality of Anchorage v. Repasky, et al.*, 34 P.3d 302, 305 (Alaska 2001). Alaska Statute 14.12.010 establishes a school district in each organized borough, in each home rule and first class city in an unorganized borough, and in rural educational attendance areas in the rest of the state. The legislature has delegated the authority to manage the operations of the schools to the school districts. AS 14.12.020(b); AS 29.35.160(a). The Alaska Supreme Court has recognized that the Anchorage School District is "part of" the Municipality of Anchorage. The school district budget is thus subject to the mayor's veto authority set out in the municipal charter. *Repasky*, 34 P.3d at 306, 309-310.

In Title 14, dealing with schools and educational matters, the term "governing body" means "the school board of a borough or city school district or a regional educational attendance area." AS 14.60.010(5). This definition makes sense, as school boards oversee the operation of the schools. This definition, considered in context, does not support a contention that a school board is a "local governing body" as that term is used in AS 08.40.390.

Thus, we conclude that an entity such as a village council in an established community performing work described in AS 08.40.390 would be exempt from mechanical administrator requirements, but a school district would not be.

3. Conclusion

After considering the present language of the statutes, their legislative history, and underlying policies, this office concludes that the implied exemption recognized in the 1979 informal opinion continues, and employees of the state are exempt from the requirements of AS 08.40.090 regarding electrical administrators or of AS 08.40.260 regarding mechanical administrators. We believe this interpretation to be the most persuasive in light of precedent, reason, and policy. *Guin v. Ha*, 591 P.2d 1281, 1284 n.6 (Alaska 1979). Policy changes in this area should be made by the legislature, not this office.

We hope this answers your questions regarding the scope and interpretation of AS 08.40.

GAH/mi