May 30, 2000

The Honorable Tony Knowles
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: Necessary vote to override veto of HCSCSSB 7(FIN) am H (University land entitlement)
2000 Op. Att'y Gen. No. 1

Dear Governor Knowles:

You have requested our advice whether the vote to override your veto of HCSCSSB 7(FIN) am H was valid because the motion to override was not sustained by three-fourths of the membership of the legislature.[1] For the reasons set forth below, we believe that it is likely that the Alaska Supreme Court would conclude that your veto was sustained. Accordingly, SB 7 should be treated as not having become law and, unless a court finds otherwise, no state agency should attempt to implement its provisions.

Under the Alaska Constitution:

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[1] The motion to override the governor's veto was passed by a vote of 41 yeas and 19 nays. 2000 Senate Journal at 3396. With a membership of 60, the vote was more than required for a two-thirds but less than the number required for a three-fourths super-majority.

> Bills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the membership of the legislature.

Alaska Const. art. II, § 16. The question you ask requires us to determine whether SB 7 makes an appropriation or is a "bill to raise revenue."

Senate Bill 7, among other things, entitles the University of Alaska to select and receive additional land from Statehood Act lands.[2] Land selected by the university is removed from the public domain with the express intent that

> the university take ownership of a significant and substantial portfolio of income producing land in order to provide income for the support of public higher education in the state. . . .

Sec. 1(9), SB 7. The title of SB 7 does not describe its contents to include appropriations. However, description of the right to select and receive state land as an "entitlement" conveys the meaning that the university would have an enforceable right to receive a conveyance under the terms of the bill. Dickerson, *The Fundamentals of Legal Drafting* (1965) at 130. In our view, SB 7 makes an appropriation or it may be considered to be a bill to raise public revenues.

**SB 7 Is the Equivalent of an Appropriation Measure**

A line of cases concerning the validity of initiative measures supports the contention that a land transfer bill enacted by the legislature is effectively an appropriation. The cases hold that the restriction against the making of an appropriation

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[2] According to the bill, the entitlement permits the conveyance of between 250,000 and 260,000 acres to the university. Sec. 5, SB 7.

by initiative is not limited to a fiscal measure authorizing the expenditure of public money.[3] In the context of a challenge to an initiative authorizing the conveyance of state land for homesteads, the Alaska Supreme Court

declared that:

> the term "appropriations," . . . prohibits an initiative whose primary object is to require the outflow of state assets in the form of land as well as money.

*Thomas v. Bailey*, 595 P.2d 1, 7 (Alaska 1979). In *Thomas*, the court likened an initiative requiring the conveyance of state land to persons outside the control of the state to a "give away program" that was the equivalent of an appropriation.

Senate Bill 7 requires that state land be conveyed to a state public corporation. The land would not leave public ownership but would be available to the university for disposal in the course of its operations. If the cases involving initiatives apply here, they provide authority for a determination that interagency transfers of land or property would be considered an appropriation as well. This authority stems from a challenge to an initiative recreating a community college system after it was merged into the state university. *McAlpine v. University,* 762 P.2d 81 (Alaska 1988).[4] In *McAlpine,*

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[3] Article XI, section 7, specifically precludes use of the initiative process "to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation."

[4] In *McAlpine*, the initiative provided:

> There shall be established a separate independent Community College System in the State of Alaska. The University of Alaska shall transfer to the Community

the court concluded that the establishment of community colleges out of property of the existing university system was not a reorganization of state assets but in fact amounted to an appropriation. The court defined an appropriation to include a setting aside of funds or other property for a stated purpose. 762 P.2d at 88.

The court focused on the part of the initiative that specified the amount of property required to be transferred. This provision would have required the university to turn over a specific amount of property to the community college system. In determining that this was an appropriation, the court expressly rejected the argument that a mere redistribution of assets between state entities was something other than an appropriation.

In *McAlpine*, it was also argued that the law involved was in fact not an appropriation but the precursor of an appropriation. The argument was made that a law establishing a governmental function was not necessarily an appropriation because further legislative action was necessary to authorize the expenditure of money or transfer property. That argument was rejected when the court stated:

> We hold that, since the inclusion of the third sentence causes the community college's initiative to designate the use of state assets in a manner that is *executable, mandatory, and reasonably definite with no further legislative action*, the initiative would make an appropriation.

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> College System of Alaska such real and personal property as is necessary to the independent operation and maintenance of the Community College System. The amount of property transferred shall be commensurate with that occupied and operated by the Community Colleges on November 1, 1986. Properties created for the purpose of joint use by the University and Community College System shall continue to be jointly used.

*Id*. at 83.

*McAlpine*, 762 P.2d at 91 (emphasis added). The precursor argument may be applicable to SB 7 in that there can be no conveyance of land until the legislature has notice of the specific parcels and does nothing to stop it.[5] However, we believe it is more likely that a court would find the conveyance authorized in SB 7 to be executable, mandatory, and reasonably definite without further legislative action. The legislature is not required to act on a conveyance to make it effective. If the legislature does nothing, the conveyance is complete and the land is removed from the public domain.

The framers of the Alaska Constitution believed that appropriation by direct legislation posed a danger of "rash, discriminatory, and irresponsible acts." *Thomas*, 595 P.2d at 7. In a similar vein, the governor's veto power was granted

> [f]irst to preserve the integrity of that branch of government in which the vetoing power is vested, and thus maintain an equilibrium of governmental powers; second, to act as a check upon corrupt or hasty and ill-considered legislation.

*Thomas v. Rosen*, 569 P.2d 793, 795, n.5 (Alaska 1977)(citation and quotation marks omitted).

Certain principles stand out to guide the court in resolving whether SB 7 is an appropriation for the purpose of the governor's veto power. The court recognizes two basic purposes for the restriction on making appropriations by initiative. First, public institutions can be irrevocably harmed by an initiated appropriation that gives away

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[5] Alaska Statute 14.40.365(a) set out in section 5 of SB 7 requires that land selections be submitted to the legislature within 30 days of the beginning of the regular session. A

public assets from the state treasury. Second, it was believed by the framers of the Alaska Constitution that such an appropriation posed a threat of "rash, discriminatory, and irresponsible acts."

The veto power was intended to protect the powers of the executive branch of government and to act as a check on "corrupt or hasty and ill-considered legislation." The purpose for each of these limits on law-making powers are similar. This similarity supports a consistent meaning for the term "appropriation" as used in articles II and XI of the Alaska Constitution. If SB 7 were proposed in the form of an initiative, we believe a court would conclude that it contains subject matter that could not be certified to the voters.

**SB 7 Is Possibly a Bill to Directly Raise Revenue for the University**

There are no Alaska Supreme Court cases interpreting the phrase "bills to raise revenue" used in article II, section 16. There was some discussion during the constitutional convention of what kind of legislation would include a "bill to raise revenue." According to Delegate McCutcheon:

> [We] in the Committee felt that there was a necessity to require a greater number (of legislators voting to override) if the proposition of the house meeting in joint session were to stand, a greater number required to override the veto on money matters.

*3 Proceedings of the Alaska Constitutional Convention* at 40 (January 11, 1956). Victor Rivers also made the following comments:

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conveyance is considered approved unless the legislature takes action to disapprove it. We presume that the disapproval would take the form of a bill enacted by law.

> I favor this procedure and I favor also the three-fourths majority to override a veto in the matter of appropriations because we have now diluted the veto power on one hand and are trying to stiffen it in regard to moneys on the other. I want to point out here there is a great deal of difference between the power to tax and appropriate and spend money, and the power to legislate as our founding fathers found when they rebelled against the taxation procedures of the mother country which was at that time England, and they would permit and allow the legislation but they did fight and oppose the taxation, and so here again we have the distinction between the power to tax and spend, as against the power to legislate, and I think the Committee has rightly adopted a provision in regard to the appropriation and spending of money which would allow somewhat more power to lie in the strong executive.

*Id*. at 1740-41. From this it could be argued that the framers intended bills raising revenue to include only "money bills," or those levying taxes. However, it is far from clear that bills to raise revenue should be strictly interpreted.

There are similar, although not identical, provisions in the constitutions of other states. Oklahoma has a provision that requires that "revenue bills" or "bills for raising revenue" be passed by a super-majority of each house of the legislature. Oklahoma Const. art. 5, sec. 33.[6] This provision was derived from a similar provision that appears in the United States Constitution.[7] The Oklahoma Supreme Court determined that revenue bills have a principal object of raising revenue and levy taxes in

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[6] Alabama has a provision prohibiting the passage of a "revenue bill" during the last five days of a legislative session. Alabama Const. sec. 70.

[7] Under article 1, section 7 of the Constitution of the United States,

> All bills for raising revenue shall originate in the House of Representatives but the Senate may propose or concur with amendments as on other bills.

the strict sense of the word and that laws under which revenue may *incidentally* arise are not "revenue bills" or "bills raising revenue" within the meaning of the Oklahoma Constitution. *Calvey v. Daxon*, 997 P.2d 164, 167 (Okla. 2000) (emphasis added).

In *Calvey* the court relied principally on *Anderson v. Ritterbusch*, 98 P. 1002 (Okla. 1908), which traced the history of the meaning "revenue bills" back to the creation of the British House of Commons. The *Anderson* court relied on the opinions of Justice Story who was primarily concerned with the related provision in the United States Constitution. Justice Story was critical of the opinion of another commentator who believed that a bill indirectly or consequently raising revenue by authorizing the sale of public land was not a bill to raise revenue. *Anderson*, 98 P. at 1006. From the available legislative history it would be difficult to contend that the raising of revenue is the indirect or consequential effect of SB 7. Rather, it appears to be the direct purpose of the bill.

The Supreme Court of Alabama took a somewhat different path in interpreting the term when it said:

> Whether a bill is one merely to raise revenue by a specific tax or is so extensive in scope as properly to be classed as a general revenue bill must depend upon the inherent qualities of each without hard and fast formula. . . .

*Harris v. State*, 151 So. 858, 860 (Ala. 1934). We believe that the Alaska Supreme Court, similar to the Alabama court, is likely to apply a practical and not overly technical interpretation to the term "bills to raise revenue." Unless the context suggests otherwise, words are to be given their natural, obvious, and ordinary meaning. *Hammond v.*

*Hoffbeck*, 627 P.2d 1052, 1056 n.7 (Alaska 1981). Specifically as to constitutional interpretation, the Alaska Supreme Court has stated:

> Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe abstrusely any constitutional term that has a plain ordinary meaning. Rather, absent some signs that the term has acquired a peculiar meaning by statutory definition or judicial construction, we defer to the meaning the people themselves probably placed on the provision. Normally, such deference to the intent of the people requires "[a]dherence to the common understanding of words."

*Citizens Coalition for Tort Reform, Inc. v. McAlpine*, 810 P.2d 162, 169 (Alaska 1991) (citations omitted) (quoting *Division of Elections v. Johnstone*, 669 P.2d 537 at 539 (Alaska 1983)).

The term will probably be interpreted consistent with the purpose of article II, section 16 to provide for a strong executive who can protect the public from the imposition of legislation that requires them to contribute to the public treasury.

**Conclusion**

The substance of SB 7, not its form, will dictate whether it is considered to be legislation requiring a greater vote to sustain a motion to override an executive veto. It is possible that a court would conclude that SB 7 is a bill for the direct purpose of raising public revenue and therefore needs a three-fourths vote to be enacted over an executive veto. However, we believe there is clear authority emanating from the Alaska Supreme Court that SB 7 contains the equivalent of an appropriation in the form of an enforceable right to receive a conveyance of state land. Thus, there are persuasive legal arguments that the legislature's purported override of the veto of SB 7 by a vote of less

than three-fourths of the membership of the legislature was not enough to enact the bill into law.

On the strength of the foregoing authority and legal analysis, we believe the veto of SB 7 was sustained. For that reason we recommend that you refrain from implementing SB 7.

Sincerely,

Bruce M. Botelho
Attorney General

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