

March 31, 1998

The Honorable Tony Knowles  
Governor  
P.O. Box 110001  
Juneau, Alaska 99811

Re: SCS CSHB 461 (FIN) -- Making  
Supplemental and Special Appropriations  
and Amending Appropriations  
A.G. file no: 883-98-0011

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed SCS CSHB 461(FIN), a bill commonly known as the •fast track• appropriations bill. The supplemental, special, and capital appropriations made in this bill are those that allegedly are needed to be enacted quickly.<sup>1</sup>

Among the appropriations contained in the bill is section 1(k) that provides that the purpose of an appropriation of \$1.6 million is to cover •costs associated with state compliance with the orders of the Superior Court for the State of Alaska in Cleary, et al. v. Smith, et al. (3AN-81-5274 CI).• This appropriation is not intended by the legislature to be available to pay fines ordered by the Superior Court. We understand that the court's fines assessed against the Department of Corrections total approximately \$2.5 million. The question of the validity of the court's power to assess and collect fines is the subject of an appeal pending in the Alaska Supreme Court.<sup>2</sup> A decision on this issue is not expected for some time. The appropriation made in this bill would cover the cost of providing alternate confinement facilities so that the Department of Corrections can meet occupancy levels set by the Superior Court.

Section 4 of the bill reappropriates a municipal grant made to the City and Borough

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<sup>1</sup> The title to the bill does not mention that the bill contains capital appropriations. See sec. 6 of the bill. The title gives notice that the bill contains supplemental and special appropriations. The category of •special• appropriations is probably broad enough to satisfy the descriptive subject rule set out in art. II, sec. 13 of the Alaska Constitution.

<sup>2</sup> Smith v. Cleary, Supreme Court No. S-8289/8449.

of Juneau for repairs to the Perseverance Trail. This grant appropriation is currently under litigation in Legislative Council v. Knowles, 1JU-97-2063 CI, in which a rider to a budget bill concerning transfer of the trail right-of-way was vetoed and the veto is being contested. The Legislative Council challenged the veto alleging the money cannot be spent unless the terms of the rider in the bill are followed. This case is anticipated to be resolved on summary judgment motions now being briefed in the Superior Court. It is expected that the Superior Court will rule on the motions before the end of the fiscal year.

It may be possible to interpret section 4(a) of the bill to contain two items, the first being the repeal of the existing grant appropriation and the second being the appropriation of an amount equal to the outstanding balance of the Perseverance Trail appropriation. This approach is untested in the courts. When presented with a similar issue, Judge Rowland did not adopt this rationale in Legislative Council v. Cowper, 3AN 91-551 CI.<sup>3</sup> If the section is left intact, the Legislative Council's claims concerning validity of the veto of the rider are probably moot. In fact, subsequent action by the legislature on the grant appropriation reinforces the legal position of the governor taken in court. The ability to reappropriate this item shows that the legislature has an adequate remedy at law to respond to a veto, short of a court challenge. It also provides some evidence that a dispute of this nature between coordinate branches of state government presents a political question rather than a justiciable legal question.

Other than as noted above, we found no significant legal issues with the bill.

Sincerely,

Bruce M. Botelho  
Attorney General

BMB:JLB:jn:pch

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<sup>3</sup> In Cowper, the court considered the partial veto of a repeal and reenact appropriation to be the equivalent of the exercise of a reduction veto. The legislature did not appeal from the court's decision in Cowper. Therefore, if exercised by the governor, a veto striking the reappropriation clause in this section of the bill but leaving the repeal of the Perseverance Trail appropriation would probably be held as valid by the court.