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Assignment of PFDs;
constitutionality of HB

234

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You have asked whether enactment of HB 234, a statute forbidding the assignment of a permanent fund dividend (PFD) to entities other than government agencies or courts, would constitute interference with an individual's constitutional right to contract. We conclude that it would not.

Alaska's Permanent Fund Dividend program is unique. All state residents who are eligible have the right to receive a dividend. **Anthony v. State**, 810 P.2d 155 (Alaska 1991). There is presently no statutory impediment to the assignment of dividends, and individuals are not restricted in making assignments. We understand the Division is seeking legislation that would change this by prohibiting any assignment of a PFD to other than a governmental agency or a court.

Restrictions on the right to make various types of assignments may be found in other existing laws. Federal statutes prohibit the assignment of claims against the United States, and the federal government and several states bar the assignment of public contracts. Statutes in practically every state, including Alaska, restrict wage assignments, 1/ some barring them entirely, some restricting to whom or in what amount assignments can legally be made. See *Restatement (Second) of Contracts* ch. 15 (Introductory and Statutory Notes) (1981). Alaska also prohibits any attempted assignment of unemployment benefits, 2/ workers' compensation benefits, 3/ benefits payable from the state pension fund, 4/ or rights to maintenance

1/ AS 06.20.290

2/ AS 23.20.405

3/ AS 23.30.160

4/ AS 39.35.500

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for handicapped persons. 5/ 6/ The *Restatement* also states, "A contractual right can be assigned unless . . . the assignment is forbidden by statute or is otherwise inoperative on grounds of public policy" *Restatement (Second) of Contracts* • 317(2) (1981) (emphasis added). Thus, it becomes clear that, as a general rule, placing statutory restrictions or impediments on or otherwise regulating assignments is not improper and does not violate individual rights to contract.

You raised concerns about article I, section 15, of the Alaska Constitution. 7/ This section, virtually identical in pertinent part to the contracts clause of the U.S. Constitution, 8/ prohibits the impairment of the obligation of contracts, which the U.S. Supreme Court explained "was to be understood as the legal duties imposed upon the contracting parties by the operation of law on the contract." *Eckles v. State*, 760 P.2d 846, 859 (Oregon 1988) (citing *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213 (1827)).

In a recent leading case in which the subject statute was found to violate the contracts clause, the United States Supreme Court stated:

First of all, it is to be accepted as a commonplace that the Contract Clause [of the United States Constitution] does not operate to obliterate the police power of the States. "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its

5/ AS 23.15.170

6/ Several other statutes regulate the subject matter of assignments and the manner in which they may be made.

7/ Article I, section 15, states in pertinent part: "No law impairing the obligation of contracts . . . shall be passed."

8/ U. S. Const. art. I, • 10.

various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people and is paramount to any rights under contracts between individuals."

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 241 (1978), *reh'g denied*, 439 U.S. 886 (quoting **Manigault v. Springs**, 199 U.S. 473, 480 (1905)) (emphasis added).

Even though a statute impairs contract rights, it will still be judged on the severity of the impairment, and "[m]inimal alteration of contractual obligations may end the inquiry at its first stage." **Allied Structural Steel** at 245. "[It] is customary in reviewing economic and social regulation, however, [for] courts [to] properly defer to legislative judgment as to the necessity and reasonableness of a particular matter." **United States Trust Co. v. New Jersey**, 431 U.S. 1, 22 (1977), *reh'g denied*, 431 U.S. 975. See also **Allied Structural Steel; Diamond Glue Co. v. United States**, 187 U.S. 611 (1903). If the legislature enacts HB 234, it is presumed that, since the bill contains a statement of public policy, it will have been found to be necessary and reasonable and would survive any challenge on those grounds.

One additional hurdle a statute must clear to avoid violation of the contracts clause is the requirement that its purpose be reasonably connected to a public rather than private interest. **Veix v. Sixth Ward Building & Loan Assoc.**, 310 U.S. 32 (1940); **Treigle v. Acme Homestead Assoc.**, 297 U.S. 189 (1936). The bill would apply to all individuals who apply for a PFD and is, therefore, directed to the public at large, not to any individual interest. Thus, the bill does not run afoul of the contracts clause on this ground.

All that being said, however, the most salient point is that the contracts clause can only be violated when it impacts contracts already in effect on the date of a legislative enactment; there can be no violation of the clause where it only affects contracts that might be made in the future. A long line of cases expressly supports this well-settled principle, from **Ogden v. Saunders**, 25 U.S. 213 (1827), through **Exxon Corp. v. Eagerton**, 462 U.S. 176 (1983), *on remand*, 440 So. 2d 1031 (Ala. 1983); and it is found by implication in all cases cited herein.

See Annot., 57 L. Ed. 2d 1279, • 5[b] (1979). As a practical matter, the contracts of concern - assignments of future PFDs - will not likely be formed if the bill is enacted prior to March 31, 1992. It is highly doubtful anyone would pay for an assignment unless the dividend had been applied for, and applications cannot be made prior to March 31 of a given year. 9/ It is possible that some contracts may have already been formed; however, we feel the bill would still be found constitutional even were it to affect those contracts.

As to other constitutional challenges, we do not believe the bill would run afoul of the equal protection provisions of either the U.S. or Alaska Constitutions, as the bill applies uni-versally to PFD recipients; no class of any sort is excluded. An argument could be advanced that the provision permitting assignment of PFDs to governmental or judicial entities may require equal protection scrutiny, but we believe the provision would pass constitutional muster. The Alaska Supreme Court already has decided that individual rights to a permanent fund dividend are entitled only to minimum protection.

It is the law in Alaska that "[a permanent fund] dividend is merely an economic interest and therefore is entitled only to minimum protection under our equal protection analysis." **State v. Anthony**, 810 P.2d 155, 158 (Alaska 1991). The court has adopted a flexible, sliding scale approach to the analysis of equal protection issues. **State v. Erickson**, 574 P.2d 1 (Alaska 1978). Under this approach, the first step is to determine where on the scale to locate the issue. As the right to receive a permanent fund dividend is at the lowest end of the scale, **Anthony**, the Division need only show that the distinction complained of has a fair and legitimate purpose. *Id.* at 12. As articulated by the division, the purpose is to ensure that the courts have a means of affirmatively pursuing restitution and payment of fines and other court-ordered obligations, such as child support. An additional purpose is that the public have a means of meeting legitimate obligations to government by use of the dividend. The state has a legitimate interest in having those obligations met and the public benefits as well. 10/ The

9/ 15 AAC 23.145(a)

10/ Many Alaska citizens make voluntary use of the PFD to repay student loans and other obligations to the state. Since it became possible to do so, repayments have increased the amounts available for further lending from these revolving fund programs.

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purpose is reasonable, and the assignability of PFDs to governments and the courts bears a rational relationship to the state's objectives. Thus, the proposed statute does not offend the equal protection clauses contained in either constitution and should be upheld if challenged on those grounds.

We conclude, therefore, that there is no legal or constitutional impediment to a statute restricting assignments of Permanent Fund Dividends.

VLU/ps