

March 14, 1996

Arthur H. Snowden II
Administrative Director
Alaska Court System
303 K Street
Anchorage, Alaska 99501

Re: Applicability of AS 23.05.140(b) to Court
System Employees
A.G. file no: 663-96-0174

Dear Mr. Snowden:

You have asked for our opinion as to whether AS 23.05.140(b) applies to court system employees. That statute provides:

(b) If the employment is terminated, regardless of the cause of termination, all wages, salaries, or other compensation for labor or services become due immediately and shall be paid within three working days after the termination at the place where the employee is usually paid or at a location agreed upon by the employer and employee.

As you note in your letter, the statute on its face appears to apply to state employees (including court system employees), because the state obviously employs people, and there is no definition of "employer" in or applicable to AS 23.05 that excludes the state. It is nevertheless our opinion that AS 23.05.140(b) is not applicable to court system or other state employees.

We reach this conclusion by following the rule of law that a statute creating a duty does not apply to the state unless the statute explicitly provides that it so applies. We have relied upon this rule in two previous opinions: 1974 Inf. Op. Att'y Gen. (Feb. 22; Douglas) (state-owned nursing homes and hospitals are exempt from pharmacy licensing requirements); 1981 Inf. Op. Att'y Gen. (Sept. 15; J-66-190-81) (statute in AS 23 requiring that employer pay return transportation out of Alaska for certain employees furnished transportation to Alaska). In our 1981 opinion we cited several cases from other jurisdictions in support of this rule. More recent authority following the rule includes *State ex rel. Dep't of Health Serv. v. Cochise Co.*, 800 P.2d

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578 (Ariz. 1990), and *Krasney v. Curators of University of Missouri*, 765 S.W.2d 646 (Mo. App. 1989) (construing a statute that, like AS 23.05.140(b), used the term “employer”). Although there is no reported Alaska case addressing the applicability of this rule in the state, we see no reason now, as we saw none then, to believe that the Alaska courts would choose not to follow it here.¹

Especially significant, in our opinion, is the fact that AS 23.05.140(b) was enacted in 1945 and has not been amended in any substantial manner since then. A statute should of course be interpreted consistently with the intent of the legislature that enacted it. Because the doctrine of sovereign immunity was virtually unquestioned in 1945, we think it is almost certain that the 1945 legislature would have intended that the rule of law discussed above be followed and that AS 23.05.140(b) not be applied to the state as an employer.

Please feel free to contact us if you have any questions about this letter.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:

John B. Gaguine
Assistant Attorney General

JBG:jn

¹ In our 1974 opinion we cited a pre-statehood federal case in Alaska which followed the rule. *Alaska Rural Rehabilitation Corp. v. Ubert*, 10 Alaska Reports 508, 517 (D. Alaska 1945). Such cases, however, are not binding precedent for the state courts.