

MEMORANDUM

State of Alaska Department of Law

TO: Lamar Cotten, Deputy Commissioner
Department of Community and
Regional Affairs

DATE: June 13, 1997

FILE NO: 663-97-0417

TEL. NO: 465-3600

SUBJECT: Payment In Lieu of Taxes;
31 U.S.C. 6901--31 U.S.C. 6902

FROM: Marjorie L. Vandor
Assistant Attorney General
Governmental Affairs Section - Juneau

You have requested our opinion whether a separate appropriation or substantive law¹ is necessary in order for the Department of Community and Regional Affairs (department) to have authority to disburse to cities in the unorganized borough money received from the federal government under 31 U.S.C. 6901--31 U.S.C. 6902, the payment in lieu of taxes program (PILT).² In short, we do not believe a separate appropriation passed by the Alaska Legislature is necessary, as there is authority under section 8 of CCS HB 75 (state operating budget bill) for the state to receive and expend federal funds. PILT is clearly federal funds. Also, under AS 37.07.080(h), the department, through the governor's office, may receive and expend the PILT funds after submitting the decision to the Legislative Budget and Audit Committee for review. Finally, we believe the appropriation to receive and expend federal funds, together with existing law, is sufficient authority for the department to disburse the PILT funds and that a substantive bill is unnecessary.

We base our opinion on several grounds. One, the federal law authorizing the state to disburse the money appropriated under PILT provides the state with the necessary criteria and guidelines for the department to comply with the federal program. For example, 31 U.S.C. 6901 (2)(A)(ii) describes the unit of local government in Alaska that is entitled to a payment from PILT. Then, 31 U.S.C. 6902(a) directs that the State of Alaska "shall" distribute the payments to home rule and general law cities (as such cities are defined by the State, i.e., Title 29 of the Alaska Statutes) located within the boundaries of the unit of general local government for which the

¹ HB 86 and SB 62 were introduced in the First Session of the Alaska Legislature, dealing with the federal payment in lieu of taxes program that is the subject of this opinion request; however, neither bill passed the legislature before adjournment.

² PILT was passed as part of the Omnibus Parks and Public Lands Management Act of 1996 (P.L. 104-333, sec. 1033).

payment was received. In this instance, that would be home rule and general law cities located in the unorganized borough. And, the federal law states that the cities may use the money received under the program for any governmental purpose. 31 U.S.C. 6902(a)(2). In sum, the federal law provides sufficient directive to the department to effectuate the distribution.³

Another reason we do not believe a substantive law is necessary here is due to the existence of the department's broad powers under AS 44.47.050(a), including the power to

(14) administer state and, as appropriate, federal programs for revenue sharing, grants, and other forms of financial assistance to community and regional governments; [and]

...

(16) apply for, receive, and use funds from federal and other sources, public or private, for use in carrying out the powers and duties of the department.

Further, AS 44.47.020 states, "the purpose of the department is to render maximum state assistance to government at the community and regional level." In this instance, the department would be acting as a conduit between the federal government and the cities that are intended to benefit from the money provided by the federal government under PILT. Therefore, it is our opinion that the department's role in distributing PILT money is consistent with the department's broad statutory powers and that the federal law provides the necessary structure and authorization for the department to distribute the PILT funds received under 31 U.S.C. 6901--31 U.S.C. 6902.

³ The governor may consider signing an Administrative Order to specifically authorize the Department of Community and Regional Affairs to distribute the PILT money in a manner consistent with the federal law and provide for a method of distribution consistent with the department's statutory powers.

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We hope this addresses your concerns. Please do not hesitate to call me if you have further questions.

MLV:clh

cc: Annalee McConnell
Director
Office of Management and Budget

Honorable Ivan Ivan
Representative, House of Representatives
State of Alaska