

September 3, 1999

Governor Bill Sheffield, President  
Alaska Railroad Corporation  
P.O. Box 107500  
Anchorage, Alaska 99510-7500

Re: Authority of the Alaska Railroad  
Corporation to Enter into  
Conditional Sales Contract  
A.G. file no: 663-00-0036

Dear Governor Sheffield:

You asked our opinion whether the Alaska Railroad Corporation (ARRC) is authorized to finance the acquisition of property (specifically locomotives) by entering into a conditional sales contract or a lease/purchase agreement constituting an unconditional general obligation secured by a security interest in the financed property. You are asking this question because the lender who is proposing to finance the purchase has made it a condition of the financing that the attorney general render an opinion on the authority of the ARRC to enter into the agreement in the absence of specific legislative approval of the transaction. The enabling statute of the ARRC states:

Unless the legislature approves the action by law, the corporation may not

. . . .

(2) issue bonds;

AS 42.40.285(2). The term “bonds” is defined to mean “bonds, bond anticipation notes, notes, refunding bonds, or other obligations . . . .” AS 42.40.980(2). The bonding provisions are located in Article 7 of the Alaska Railroad Corporation Act (the Act).

The general provisions section of Article 7 (bonds) specifically refers to the legislative approval required in AS 42.40.285 and implies that it is limited to a

transaction covered by Article 7 of the Act. AS 42.40.600(a). From the context, it appears that, while broadly defined to include "other obligations," the term "bonds" defined in AS 42.40.980(2) refers to the borrowing of money through the issuance of debt securities in registered or coupon form. *See* AS 42.40.600(b)(4)(requirements for bonds issued by ARRC).

The ARRC has interpreted AS 42.40.250(26) and (30) as providing express authority for it to borrow money separately from its authority to issue bonds. While we acknowledge that these provisions appear to provide express authority to finance the acquisition of equipment, we believe there is another possible source for this authority. Other public agencies are authorized under their general procurement authority to enter into installment sales agreements so long as the agency has available sufficient money to cover the first period of the contract. Subsequent installments are binding on the agency only to the extent that money is available and appropriated for the period. This authority is provided in AS 36.30.390. While the procurement code is not directly applicable to the ARRC, it is authorized to implement a procurement process that is "substantially equivalent." AS 36.30.015(e). It would be reasonable to assume that the ARRC at least has the substantially equivalent power to procure equipment in the same manner as other executive branch agencies which are constrained by the constitutional debt limitation. The non-appropriation risk would not be present for the ARRC so long as the legislature has exempted it from the budget process, and without the power to impair valid existing contracts. In other words, there would be no risk that a separate branch of government, not a party to the agreement, could intervene to eliminate the ability to repay the installment sales obligation.

In addition, we think that it would not be consistent with Alaska's separation of powers doctrine to extend the legislative approval process to a secured installment sale agreement. There may be a legitimate legislative concern that a bond issuance by a public corporation of the state may reflect negatively on the state's credit rating. This interest is present when a public corporation issues debt certificates marketed as securities eligible for investment by fiduciaries and other persons. This interest does not appear to be present in a conditional sale transaction between a lender and the ARRC to be secured by the equipment purchased. A reservation of approval power by the legislature would be considered a supervisory act which is an executive, not law-making function. *See, e.g., Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976)(legislature's ability to exercise executive power will not be extended beyond express delegations of powers made in the state constitution).

Since the ARRC has acted consistent with an earlier opinion of this office on this matter and nothing has occurred in the interim that would give us cause to change our opinion, we reaffirm the opinion expressed on this matter in an Informal Opinion of

the Attorney General dated March 7, 1985 (no file number).<sup>1</sup> Based on that opinion and for the reasons set out in this letter, we conclude that the ARRC has sufficient authority to finance the acquisition of locomotives without the approval of the legislature.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:

James L. Baldwin  
Assistant Attorney General

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<sup>1</sup> Any perceived ambiguity in the definition of "bond" set out in AS 45.40.980(2) could be clarified by amendment. This office will provide testimony in support of the ARRC if it determines to request such an amendment from the legislature.