

MEMORANDUM

State of Alaska Department of Law

TO: Kevin Waring, Chairman
Local Boundary Commission

DATE: December 3, 1999

FILE NO: 663-00-0082

TELEPHONE NO: (907) 465-3600

SUBJECT: Ketchikan Annexation
Hearing – Right to Cross-
Examination of Sworn
Witnesses

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

You have asked for this office's advice with respect to several legal and procedural issues that have arisen with respect to the Local Boundary Commission's upcoming hearing on the annexation of 1.2 square miles of property to the City of Ketchikan. The hearing is scheduled for December 4, 1999, in Ketchikan. Although I will be in attendance at the hearing to provide advice to the Commission, you had asked that we address the issue of due process and cross-examination rights (if any) before the hearing. Our advice on this issue is set forth below.

Issue: Must the Commission allow for cross-examination of sworn witnesses who testify on behalf of the petitioner or respondent?

Answer: No. The hearings of the Local Boundary Commission are not adjudicatory proceedings to which trial-type procedures apply. Under 3 AAC 110.560(c), only the Commission is authorized to question a person appearing for public comment or as a sworn witness. There is no authorization for cross-examination by petitioners or respondents of sworn witnesses who testify on a petition and no such right to cross-examination is afforded to individuals in these proceedings.

The proceedings of the Local Boundary Commission are legislative in character and constitute an exercise of its policy-making function when making boundary decisions. The decisions of the Commission involve fundamental policy and broad judgments of political and social policy. *Mobil Oil Corp v. Local Boundary Commission*,

518 P.2d 92, 98 (Alaska 1974). Such decisions are based upon a statewide perspective; not individual interests. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147, 1150 n.7 (Alaska 1974). As such, due process only requires notice and an opportunity to be heard. *Property Owners Ass'n v. City of Ketchikan*, 781 P.2d 567, 571 (Alaska 1989) (decision of city council was a legislative decision because the decision affected a large development and a group of similarly situated taxpayers; thus due process requires notice and an opportunity to be heard, both of which were provided to affected owners)

In addition, where an act of an administrative body is deemed to be legislative, trial-type procedures need not be afforded to affected members of the public. *Id.*, citing 2 K. Davis, *Administrative Law Treatise* sec. 12:1 at 406-09 (2d ed. 1979).

In conclusion, it is our advice that there is no right of petitioners or respondents to cross-examine sworn witnesses who testify during Commission hearings. The current notice and hearing procedures established in the Commission's regulations provide all the process that is due the public and interested parties.

I apologize for the brevity of this response, but due to time constraints, I am not able to provide a more detailed analysis at this time. I will, however, be available to address questions regarding this matter tomorrow if clarification is desired. Also, I will address and advise on procedural issues for which you or other Commission members may want guidance.

cc: Local Boundary Commission
Dan Bockhorst, LBC Staff