

# MEMORANDUM

## State of Alaska Department of Law

**TO:** Dan Bockhorst  
LBC Staff Supervisor  
Local Boundary Commission  
Department of Community &  
Economic Development

**DATE:** March 15, 2001

**FILE NO:** 663-01-0082

**TEL. NO:** (907) 465-3600

**SUBJECT:** Proposition to be Placed before  
Voters Regarding Fairbanks  
Consolidation Petition;  
AS 29.06.090-29.06.170

**FROM:** Marjorie L. Vandor  
Assistant Attorney General  
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On behalf of the Local Boundary Commission, you have asked our opinion regarding which consolidation propositions must be placed before voters in the event the Local Boundary Commission (LBC) approves the pending petition for consolidation of the City of Fairbanks and the Fairbanks North Star Borough (FNSB).<sup>1</sup> The petition for consolidation at issue proposes to consolidate the existing home rule City of Fairbanks with the second class FNSB to create a newly incorporated second class borough.<sup>2</sup> The petition provides for the City of Fairbanks to become an urban service area of the new borough. The city's home rule status and charter will dissolve.<sup>3</sup>

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<sup>1</sup> Alaska Statute 29.71.800(6) reads: "'consolidation' means dissolution of two or more municipalities and their incorporation as a new municipality."

<sup>2</sup> See *Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough* (Dec. 2000), pp. 1 - 2.

<sup>3</sup> Alaska Statute 29.06.170 provides that the provisions for merger and consolidation of municipalities apply to home rule and general law municipalities. Therefore, the charter of the city no longer would be viable if the City of Fairbanks were consolidated with FNSB to form the new second-class borough, Municipality of Fairbanks.

Under AS 29.06.150(b), assuming the petition for consolidation is approved by the LBC under AS 29.06.130 and the voters under AS 29.06.140, the newly incorporated municipality will succeed to the rights, powers, duties, assets, and liabilities of the consolidated municipalities. Further, under AS 29.05.160, after consolidation, the ordinances, resolutions, regulations, procedures, and orders of the former municipalities remain in force in their respective territories until superseded by the action of the new municipality.

The answers to your questions are governed by the provisions of AS 29.06.090-29.06.170. We will address each of your questions below.

**Question No. 1:** Must voters in the existing home rule City of Fairbanks (which is proposed to be reconstituted as the Urban Service Area of a new general law second class borough) also vote on propositions to authorize the new consolidated general law borough to

- levy in the Urban Service Area a 5 percent sales tax on liquor;
- levy in the Urban Service Area an 8 percent sales tax on tobacco; and
- exercise in the Urban Service Area the powers of fire protection, law enforcement, environmental services, building department, engineering department, and public works department?

**Answer:** With respect to the levy of the 5 percent sales tax on liquor and the 8 percent sales tax on tobacco, the answer is no. Under AS 29.06.160, current ordinances of each municipality involved in the consolidation that are in effect at the time of consolidation are to remain in force “in their respective territories” until superseded by the action of the new municipality. There is no distinction as to which municipality’s ordinances stay in force during transition; both clearly do.

With respect to the city’s tax ordinances, you ask is it relevant that the city enacted those tax ordinances by vote of the council rather than by vote of the citizens.<sup>4</sup> Alaska Statute 29.06.160 makes no exception or distinction as to which ordinances remain in force during transition and none should be inferred. The statute is clear on its face. See *U.S. v. Hanousek* (C.A. 9 Alaska), 176 F.3d 1116, *cert. denied* 120 S.Ct. 860 (statutory interpretation begins with the plain language of the statute; if the language of the statute is

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<sup>4</sup> You point out that under AS 29.45.670 if sales tax ordinances are proposed in the future by the new municipality (assuming consolidation occurs), voter approval must be obtained to become effective.

clear, court need look no further than that language for determining the statute's meaning); *Gerber v. Juneau Bartlett Mem. Hosp*, 2 P.3d 74 (Alaska 1999) (where a statute's meaning appears clear and unambiguous, the party asserting a different meaning bears a corresponding heavy burden of demonstrating contrary legislative intent).

Therefore, according to AS 29.06.160, all ordinances of the City of Fairbanks, regardless of how those ordinances were initially passed (i.e., by council or vote of the citizens), remain in force in the area that is the City of Fairbanks through the transition period. *See Vol. 6 McQuillin Mun. Corp.* §21.27(3rd Ed) (where a consolidation of two or more municipal corporations is effected, each having its peculiar ordinance provisions, it is sometimes provided in the act of consolidation that the ordinances then in force shall remain in force within the limits of the territory for which they were enacted, until repealed by the consolidated entity). That is the process under Alaska law. AS 29.06.160.

With respect to your question as to whether voters in the existing home rule city (to become the Urban Service Area) must vote on propositions on the continued exercise of powers noted above, the answer is no. All of those powers listed were exercised by the City of Fairbanks prior to consolidation and, assuming consolidation is accomplished, the newly incorporated municipality will succeed to all of these listed powers by operation of law. *See AS 29.06.150(b)*. No additional proposition duplicating these powers need to be placed before the voters in order for the new municipality to have authority to exercise these powers.

**Question No. 2:** Must areawide voters authorize the borough to exercise the new areawide power of cemeteries?

**Answer:** The need for an answer to this question may be moot since we understand that you expect a proposal to amend the petition for consolidation to provide for the areawide power of cemeteries to be exercised by the new municipality, the Municipality of Fairbanks, to be forthcoming.<sup>5</sup> If the consolidation petition is so amended, then any issue as to whether this power is subject to a vote under AS 29.35.300 (b) and AS 29.35.330(c) as acquiring an "additional" areawide power by a second-class borough becomes moot because the question will have already been placed before the voters (areawide) at the consolidation election.

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<sup>5</sup> We understand the City of Fairbanks currently exercises cemetery powers. Such power would transfer to the new municipality by virtue of AS 29.06.150(b).

**Question No. 3:** Must areawide voters authorize the borough to levy an areawide 8 percent bed tax?

**Answer:** No. This question need not be presented separately to the voters at the consolidation election in order for the current tax to continue in force. Similar to our answer to question No. 1 above, the areawide bed tax ordinance currently levied by the FNSB will remain in force in its current form until superseded by action of the new municipality. AS 29.06.160. We understand that under the current FNSB ordinance, the FNSB grants an exemption for hotel operators who pay a similar tax to the City of Fairbanks (which has its own 8 percent bed tax ordinance). With both taxes remaining in effect through transition by operation of law under AS 29.06.160, it will become an administrative function of the new municipality to work out the continued effect of both ordinances until they are superseded.

We also wish to point out that because a consolidation petition must be found to meet the standards of incorporation (AS 29.06.130(a)) and the LBC may amend the petition and may impose conditions on the consolidation as appropriate, it may be an option for the LBC to impose a condition to have the areawide bed tax question on the ballot as a condition of incorporation and effectively supersede the current tax ordinances (both FNSB and the City of Fairbanks) if it passes. Such an action would presumably eliminate the administrative burden for collection of the two taxes by the new municipality under AS 29.06.160 and having to continue to give effect to the exemption noted in the FNSB ordinance. However, we note that placing the areawide tax question on the ballot and conditioning the consolidation on its passage is unnecessary for the financial viability of the new municipality. The current taxes imposed by FNSB and the city would continue during transition without such a question on the consolidation ballot.

Finally, we stress that it is not legally required that the LBC condition the consolidation to eliminate an administrative burden for the new municipality or that a proposition to deal with an areawide bed tax (separate from the existing bed tax ordinances of the FNSB and the City of Fairbanks) be placed before the voters on the election ballot to effectuate the consolidation.

We hope this addresses your concerns. Please let us know if you need further clarification.

MLV:jn