

ARTICLE X

Local Government

Section 1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Cross References - For statutory provisions relating to liberal construction and extent of local powers, see AS 29.35.400 - 29.35.420.

Decisions -

Home rule is constitutionally recognized in Alaska. - *State v. Jennings*, 555 P.2d 248 (Alaska 1976).

Section encourages creation of borough governments. - Aside from the standards for incorporation in former AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. The Alaska Constitution encourages their creation. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

The supreme court reads this section to favor upholding organization of boroughs by the local boundary commission whenever the requirements for incorporation have been minimally met. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Boroughs are not restricted to the form and function of municipalities. - They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Intent of rule in second sentence. - The constitutional rule of liberal construction found in the second sentence was intended to make explicit the framers' intention to overrule a common-law rule of interpretation which required a narrow reading of local government powers. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

Taxing authority under former AS 29.48.010(7) consistent with second sentence. - The broad grant of taxing authority to municipalities under AS 29.48.010(7) (see now AS 29.35.010(6)), limited only by other provisions of law, was consistent with the second sentence of this section, which requires that "a liberal construction shall be given to the powers of local government." *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

There is no general prohibition against like municipal and state taxes. - *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

Power to impose civil penalty for failure to timely pay sales taxes. - The power of a municipality to impose a civil penalty for failure to timely file or pay sales taxes is granted primarily because this section requires that a liberal construction be given to the powers of municipalities, a rule of interpretation that is echoed by statute see now AS 29.35.400 - 29.35.420. *Bookey v. Kenai Peninsula Borough*, 618 P.2d 567 (Alaska 1980).

Discussion of state preemption of taxation by general-law municipalities. - See *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

The Public Employment Relations Act, AS 23.40.070 et seq., - is expressly made applicable to home-rule municipalities, and thus municipalities are impliedly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Applying a liberal construction to the powers of local government cannot override the express declaration of policy made a part of the Public Employment Relations Act - when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, ch. 113, Sec. 4, SLA 1972. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Purpose of statutes authorizing state land selection by borough or city. - The enactment of former AS 29.18.190 and 29.18.200, authorizing state land selection by a borough or city, was designed to further the goal of maximum local self-government reflected in this section. *North Slope Borough v. LeResche*, 581 P.2d 1112 (Alaska 1978).

Applied in *Jefferson v. State*, 527 P.2d 37 (Alaska 1974); *City of Kodiak v. Jackson*, 584 P.2d 1130 (Alaska 1978); *City of Homer v. Gangl*, 650 P.2d 396 (Alaska 1982).

Quoted in *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115 (Alaska 1970); *City of*

Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971); State, Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981); Simpson v. Municipality of Anchorage, 635 P.2d 1197 (Alaska Ct. App. 1981); State v. Alex, 646 P.2d 203 (Alaska 1982); City of Anchorage v. Richards, 654 P.2d 797 (Alaska Ct. App. 1982); Municipality of Anchorage v. Afualo, 657 P.2d 407 (Alaska Ct. App. 1983).

Cited in Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962); Gilman v. Martin, 662 P.2d 120 (Alaska 1983); Kenai Peninsula Borough v. State, Dep't of Community & Regional Affairs, 751 P.2d 14 (Alaska 1988).

Section 5. Service Areas. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

AG Opinions - The legislature could establish school service areas in an unorganized borough by general law subject to the restrictive limitations of this section. 1961 Op. Att'y Gen. No. 24.

A home rule city does not have unreined authority to create service areas and impose a tax rate on that service area without complying with statutory law. December 8, 1986 Op. Att'y Gen.

Decisions -

Applied in Falke v. Fairbanks N. Star Borough, 648 P.2d 597 (Alaska 1982).

Quoted in Concerned Citizens v. Kenai Peninsula Borough, 527 P.2d 447 (Alaska 1974); State v. Alex, 646 P.2d 203 (Alaska 1982); Fairbanks N. Star Borough v. College Utils. Corp., 689 P.2d 460 (Alaska 1984).

Section 12. Boundaries. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Cross References -

For provisions concerning the local boundary commission, see AS 44.47.565 - 44.47.583.

Decisions -

The intention of this section - and its implementing statute, AS 44.47.567, was to provide an objective administrative body to make state-level decisions regarding local boundary changes, thus avoiding the chance that a small, self-interested group could stand in the way of boundary changes which were in the public interest. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

The advantage of the method proposed, - in the words of the committee on local government, "** * * lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively." Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962).

The relevant minutes of the meetings of the committee on local government show clearly the concept that was in mind when this section was being considered: That local political decisions do not usually create proper boundaries and that boundaries

should be established at the state level. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962).

The concept that was in mind when this section was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. Oesau v. City of Dillingham, 439 P.2d 180 (Alaska 1968).

The framers of the Alaska Constitution thought that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

When method became operative. - The method for making boundary changes contemplated by this section was operative upon the enactment of the 1959 statutes creating a local boundary commission (SLA 1959, ch. 64, Sec. 7) and conferring powers upon it (SLA 1960, ch. 45). Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962).

This section established two methods by which local boundaries might be changed: - (1) by direct action of the local boundary commission subject to legislative disapproval, and (2) by establishment by the commission of procedures for the adjustment of boundaries by local action. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

The local action provision of this section has been implemented - by legislation (AS 29.68.010) and by administrative action (19 AAC Sec. 15.010 et seq.). Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

Section implemented by AS 44.47.567. - See Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

Provisions of AS 44.47.567 and 44.47.583. - By AS 44.47.567 and 44.47.583, it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves; legislative silence permits the change. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

This section empowers the legislature to veto commission actions. - United States Smelting,

Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Legislative review for compliance. - This section does nothing to compel the legislature to review for compliance with its own requirements. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

This section and AS 44.47.583 do not make the decision as to whether the commission has complied with the law exclusively legislative. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Veto power defined. - The legislative veto power granted in Alaska Const., art. III, Sec. 23 and this section, is the power to change statutes, not rule-making power, which is the power to interpret and implement statutes. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980).

Legislature handicapped in absence of known standards governing change of boundary lines. - Under Alaska's constitution, the supreme court has the duty of insuring that administrative action complies with the laws of Alaska. Absent known standards governing the changing of local boundary lines, the legislature's ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the commission is seriously handicapped. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Annexation of community without consent of residents. - Residents of a community have no constitutionally protected interest in its existence as a separate governmental unit. Hence, the legislature may provide for the annexation of a community without its residents' consent. City of Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971).

Standing to contest annexation. - An aggrieved property owner in an area to be annexed has standing to contest the annexation. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Administratively-selected method of annexation is controlling. - The selection of annexation method made by the commission and approved by the legislature is controlling. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

The policy decision as to the mode of annexation is an exercise of lawfully vested administrative discretion which the supreme court will review only to determine if administrative, legislative or constitutional mandates were disobeyed or if the action constituted an abuse of discretion. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

Dissolution of utility district upon annexation. - The provision of former AS 42.35.370 providing for dissolution of a utility district with the consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city" had application only where annexation took place under the petition-election procedure of former AS 29.70.010 to 29.70.240, and had no application where annexation takes place under a different method established by this section. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

Submission of an accepted incorporation petition to the legislature is not required - by the state constitution. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

The convention debating adoption of this article simply did not address the question of whether incorporation petitions must be submitted to the legislature. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Extension of city services. - All annexations will have the purpose and effect, in part, of extending city services. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The basic purpose for creating the boundary commission - and conferring upon it the powers that it possesses was to obviate the type of situation where there was a controversy over municipal boundaries which apparently could not be settled at the local level. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

This policy does not reach creation of an organized borough - from the nonfunctioning unorganized borough. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Carving a new unit of government from the unorganized borough generates no controversy between governments with competing economic and political interests. The conflicts accompanying boundary adjustments between two functioning governments which must be submitted to the legislature under this section do not afflict mere incorporation. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Wood River made part of city of Dillingham. - When the legislature failed to disapprove of the commission's proposal, the commission's local boundary change, which consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the city of Dillingham, had the effect of making Wood River a part of the city of Dillingham. When the boundary commission's proposal for boundary change become effective, the city of Wood River was dissolved, even though the statutory procedures for dissolution of cities were not followed. *Oesau v. City of Dillingham*, 439 P.2d 180 (Alaska 1968).

Quoted in *Graham v. City of Anchorage*, 364 P.2d 57 (Alaska 1961).

Stated in *Walters v. Cease*, 394 P.2d 670 (Alaska 1964).

Cited in *Pavlik v. State, Dep't of Community & Regional Affairs*, 637 P.2d 1045 (Alaska 1981).