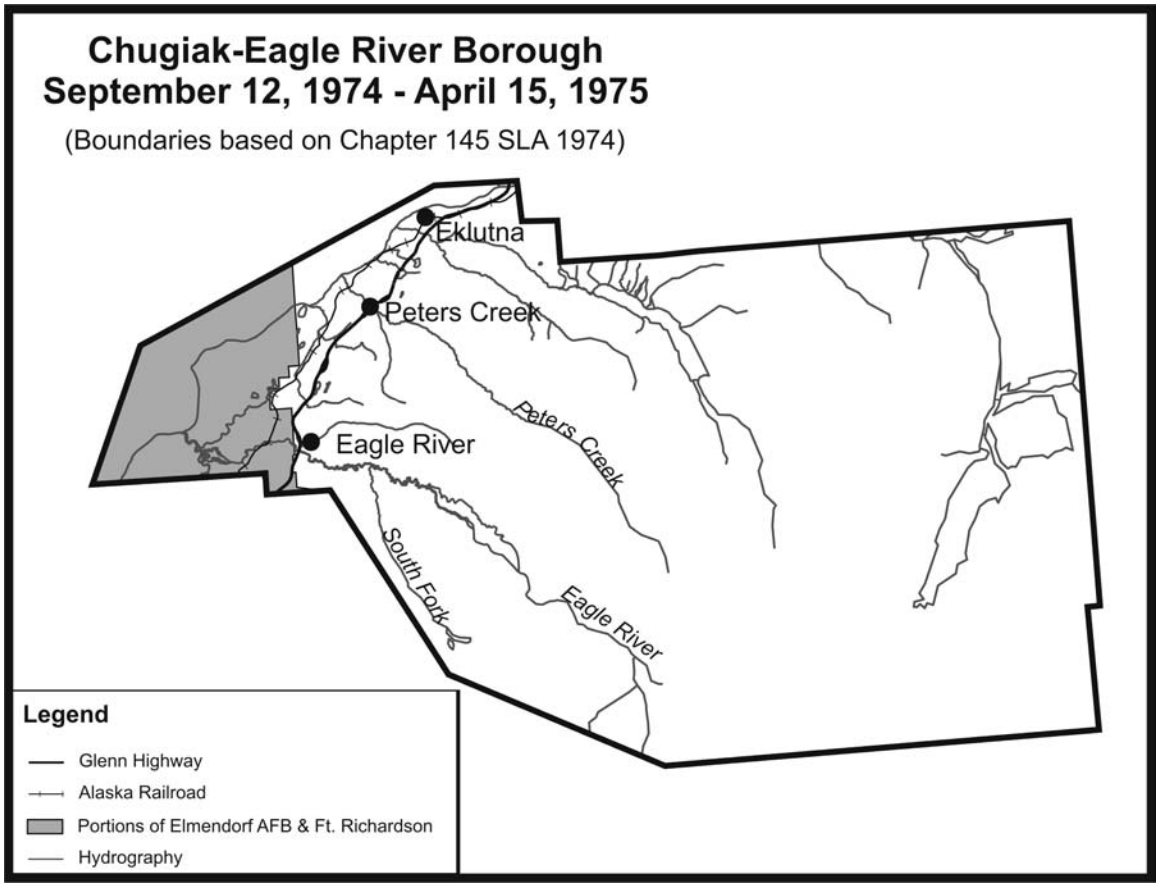
REVIEW OF
1974 – 1977 EFFORTS TO FORM
THE CHUGIAK-EAGLE RIVER BOROUGH

Prepared by Local Boundary Commission Staff
Alaska Department of Community and Economic Development
March 20, 2004



The 1974 Legislature authorized creation of a borough in the "Eagle River-Chugiak area" subject to voter approval.

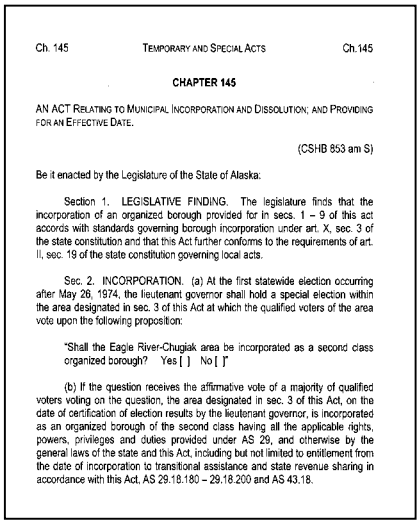
05/26/74 *CSHB 853 am S,* enacted by the 1974 Legislature, became State law (Chapter 145 SLA 1974) without the signature of Governor Egan. Chapter 145 SLA 1974:

- made legislative findings that (1) an "Eagle River-Chugiak area" borough conformed to the borough standards in Article X, Section 3 of Alaska's Constitution, and (2) Chapter 145 SLA 1974 did not exceed the limitations on local and special legislation in Article II, Section 19 of Alaska's Constitution.

- provided for an election within the Eagle River-Chugiak area on the question of whether that area should be detached from the Greater Anchorage Area Borough and incorporated as a second-class borough;

- provided that if a majority voted 'no' in the first election, a subsequent election would be held in which the voters would decide whether the same area should remain within the Greater Anchorage Area Borough and be incorporated as a second-class city;

- required the Local Boundary Commission to hold at least one public hearing "for informational purposes" prior to the borough and/or city election(s); the Commission was also permitted to "make studies relating to the incorporation it considers appropriate;"



Ch. 145 TEMPORARY AND SPECIAL ACTS Ch. 145

CHAPTER 145

AN ACT RELATING TO MUNICIPAL INCORPORATION AND DISSOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

(CSHB 853 am S)

Be it enacted by the Legislature of the State of Alaska:

Section 1. LEGISLATIVE FINDING. The legislature finds that the incorporation of an organized borough provided for in secs. 1 – 9 of this act accords with standards governing borough incorporation under art. X, sec. 3 of the state constitution and that this Act further conforms to the requirements of art. II, sec. 19 of the state constitution governing local acts.

Sec. 2. INCORPORATION. (a) At the first statewide election occurring after May 26, 1974, the lieutenant governor shall hold a special election within the area designated in sec. 3 of this Act at which the qualified voters of the area vote upon the following proposition:

"Shall the Eagle River-Chugiak area be incorporated as a second class organized borough? Yes [ ] No [ ]"

(b) If the question receives the affirmative vote of a majority of qualified voters voting on the question, the area designated in sec. 3 of this Act, on the date of certification of election results by the lieutenant governor, is incorporated as an organized borough of the second class having all the applicable rights, powers, privileges and duties provided under AS 29, and otherwise by the general laws of the state and this Act, including but not limited to entitlement from the date of incorporation to transitional assistance and state revenue sharing in accordance with this Act, AS 29.18.180 – 29.18.200 and AS 43.18.

- defined the boundaries of the prospective Eagle River-Chugiak area borough or prospective Eagle River-Chugiak city to extend from the northeast limits of the then City of Anchorage to the Knik River Bridge, comprising approximately 738 square miles;

- provided that within six months of incorporation of an Eagle River-Chugiak area borough or Eagle River-Chugiak city, the Commission must hold public hearings within the area to "determine the necessity for boundary adjustments and shall submit any recommendations to the Legislature;"

- provided for election of initial officials if voters approved incorporation of a borough or city government; if voters approved incorporation of a borough, the Commission was required to promulgate a plan of assembly apportionment;
- provided that the initial governing body would select the name and seat of the government;
- granted specific powers to the borough if one were formed;
- upon incorporation of a borough or city, provided for succession and transition to rights, powers, privileges, duties and functions being exercised by the Greater Anchorage Area Borough; required the Commission to "prepare an order providing for an equitable allocation between the Greater Anchorage Area Borough and the municipality incorporated of assets and liabilities, whether real or intangible, and including but not limited to bonded or other indebtedness, respecting the area incorporated as to a power or function succeeded to by the municipality."

Voters approved formation of Eagle River-Chugiak Borough. [1]

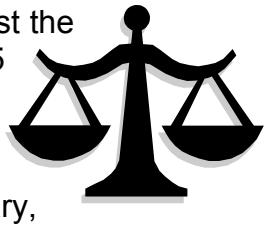
08/27/74 Voters approved formation of a borough in the Eagle River-Chugiak area by a margin of 11.4 percentage points (1,233 or 55.7% 'yes' votes to 979 or 44.3% 'no' votes). A separate election of initial borough officials was subsequently scheduled for December 3, 1974.

[1]The Chugiak-Eagle River Borough was officially incorporated on September 12, 1974. The remnant Greater Anchorage Area Borough and the new Chugiak-Eagle River Borough independently proceeded about their respective affairs in good faith. In the remnant Greater Anchorage Area Borough, such included an election held February 11, 1975, at which voters approved a proposition to create the Anchorage Charter Commission to draft a home-rule charter for the unification of all local governments within the Greater Anchorage Area Borough. Additionally, at the February 11, 1975, election, members were elected to the Anchorage Charter Commission.

The April 15, 1975, ruling by the Alaska Supreme Court that Chapter 145 SLA 1974 was unconstitutional resulted in an "automatic reincorporation of the Eagle River-Chugiak area into the Greater Anchorage Area Borough." Residents of Eagle River-Chugiak area subsequently brought a class action suit against the Anchorage Charter Commission seeking to enjoin it and declare it invalid. The Superior Court upheld the Anchorage Charter Commission. The matter was appealed to the Alaska Supreme Court. On August 11, 1975, the Supreme Court affirmed the Superior Court's entry of summary judgment in the case. The Supreme Court subsequently issued its opinion in the case, *Jordan v. Reed*, 544 P.2d 75 (Alaska 1975)).

A referendum was held September 9, 1975, to adopt the charter prepared by the commission that had been elected on February 11, 1975. Voters approved the Charter; and it became effective on September 16, 1975. It resulted in the concurrent dissolution of the Greater Anchorage Area Borough, City of Anchorage, City of Girdwood, and City of Glen Alps and the incorporation of the Municipality of Anchorage.

The 1974 legislative act was challenged.



10/30/74 Harold S. Abrams *et al*., initiated a legal action against the State of Alaska *et al*., seeking to have Chapter 145 SLA 1974 declared unconstitutional and void and seeking to have enforcement of that law enjoined. The foundation of the appeal was that, notwithstanding the legislative findings to the contrary, Chapter 145 SLA 1974 violated Article II, Section 19 of Alaska's Constitution, which provides in relevant part that, "The legislature shall pass no local or special act if a general act can be made applicable."

11/22/74 After the Lt. Governor scheduled the election of initial officials of the borough for December 3, 1974, Abrams *et al*., sought a preliminary injunction against conducting the December 3, 1974, election.

11/27/74 The superior court entered a temporary restraining order that allowed the December 3, 1974, election to proceed but prohibited certification of the results pending a further hearing.

12/20/74 Following oral argument, Superior Court Judge Eben H. Lewis entered a declaratory judgment to the effect that Chapter 145 SLA 1974 was local and special legislation, but did not violate the provisions of Article II, Section 19, of the Alaska Constitution.

12/23/74 Abrams *et al*., appealed the superior court ruling to the Alaska Supreme Court, and were granted a stay pending the decision of the appeal. "Friend of the court" (amicus curiae) briefs in support of Abrams *et al*., were filed on behalf of:

- the City and Borough of Juneau;
- the Matanuska-Susitna Borough; and
- the Greater Anchorage Area Borough.

The Alaska Supreme Court invalidated the 1974 legislative act.

ABRAMS v. STATE Alaska 91
Cite as, Alaska, 534 P.2d 91

Harold S. ABRAMS et al., Appellants,
v.
STATE of Alaska et al., Appellees.
v.
Lee B. JORDAN, Mayor of the Second Class Borough in the Eagle River-Chugiak Area, et al., Appellees.

Lee B. JORDAN, Mayor of the Second Class Borough in the Eagle River-Chugiak Area, et al., Cross-Appellants,
v.
Harold S. ABRAMS et al., Cross-Appellees.
Nos. 2407, 2410.

Supreme Court of Alaska.
April 15, 1975.

Action was instituted to determine validity of formation of the Eagle River-Chugiak Borough. The Superior Court, Third Judicial District, Anchorage District, Eben H. Lewis, J., upheld validity of the borough and appeal was taken. The Supreme Court, Connor, J., held that statute pertaining to the organization of the Eagle River-Chugiak Borough was special and local in nature; that nothing in nature of the Eagle River-Chugiak area justified departure from general law scheme of incorporating new boroughs and, therefore, the statute pertaining to creation of the borough contravened constitutional prohibition against passage of local or special acts when a general act can be made applicable; and that constitutional provision requiring division of state into boroughs did not grant power to enact special and local laws creating boroughs notwithstanding the prohibition against passage of local or special acts.

Reversed and remanded.

Erwin and Fitzgerald, JJ., did not participate.

1. Statutes ⊙77(1)
Legislative act may affect only one of a few areas and yet relate to a matter of statewide concern and common interest and, thus, not constitute a local or special act within constitutional prohibition against such acts. Const. art. 2, § 19.

2. Statutes ⊙77(1)
In determining whether a legislative act is a local or special act within constitutional prohibition against such acts, ultimate question is whether the act is reasonably related to a matter of common interest to the whole state. Const. art. 2, § 19.

3. Statutes ⊙76(2)
Statute pertaining to organization of Eagle River-Chugiak Borough constituted both special and local legislation within constitutional prohibition against passage of local or special acts if a general act can be made applicable. Laws 1974, c. 145; AS 29.18.030 et seq.; Const. art. 2, § 19.

4. Statutes ⊙76(2)
Nothing in nature of Eagle River-Chugiak area justified departure from general law scheme of incorporating new boroughs; thus, special and local legislation pertaining to organization of the Eagle River-Chugiak Borough violated constitutional prohibition against passage of a local or special act when a general act can be made applicable. Laws 1974, c. 145; AS 29.18.030 et seq.; Const. art. 2, § 19.

5. Statutes ⊙76(2)
Constitutional provision requiring division of state into boroughs and giving legislature broad power over methods by which boroughs may be organized, incorporated or dissolved did not empower legislature to enact special or local laws pertaining to organization of boroughs despite constitutional prohibition against passage of local and special acts when general acts can be made applicable. Laws 1974, c. 145; AS 29.18.030 et seq.; Const. art. 2, § 19; art. 10, § 3.

6. Statutes ⊙76(1)
Constitutional prohibition against enactment of a local or special act if a general act can be made applicable governs exercise of all legislative powers expressly granted by other portions of the Constitution. Const. art. 2, § 19.

04/15/75 The Alaska Supreme Court invalidated Chapter 145, SLA 1974, thereby annulling the Eagle River-Chugiak Borough (*Abrams v. State*, 534 P.2d 91, (Alaska 1975)). The Court:

- *at 94,* affirmed its holding in *Boucher v. Engstrom*, 528 P.2d 456, 461- 462 (Alaska 1974) that "legislation does not become 'local' merely because it operates only on a limited number of geographical areas rather than on a statewide geographical basis. A legislative act may affect only one of a few areas and yet relate to a matter of statewide concern or common interest."

- *at 94,* held that "the ultimate question is whether a legislative act, attacked as 'local' or 'special', is reasonably related to a matter of common interest to the whole state."

- *at 94,* held that Chapter 145 SLA 1974 is "clearly special and local in nature". The Court noted that the operation and scope of the act were limited to the Greater Anchorage Area Borough and the Eagle River-Chugiak area lying within it. The Court also observed that the act purported to create a new local government without regard to the general statutory provisions that prescribed the method that otherwise governed the creation of new local governmental entities through detachment from existing local governments.

- *at 94,* stressed that whether Chapter 145 SLA 1974 is unconstitutional is a two-part question; i.e., that Alaska's Constitution forbids local or special acts only "if a general act can be made applicable."

- *at 94-95,* determined that general State laws concerning boundary changes were, in fact, applicable to the detachment of the Eagle River-Chugiak area from the Greater Anchorage Area Borough and incorporation of that area as a borough. Consequently, the Court held that Chapter 145 SLA 1974 "contravenes the provisions of art. II. § 19, of the Alaska Constitution." In support of that holding, the Court stated:

> We do not find [arguments based on certain differences between the Eagle River-Chugiak area and the rest of the Greater Anchorage Area Borough as justification for

> departure from general law to be] persuasive. Numerous other localities within organized boroughs can also claim to be unique in certain respects. Examples come readily to mind.
>
> . . . Nearly every neighborhood or locality within an existing borough can assert some peculiarity or characteristic which distinguishes it from the rest of the borough. If this is all that is needed to justify a departure from general law, then the legislature could, by special act, create many new boroughs out of old ones on an ad hoc basis. We do not think this is what the framers of our constitution intended.

- *at 96,* concluded that "nothing in the local government articles of the Alaska Constitution overrides the prohibition of art. II, § 19."

Voters subsequently petitioned the Local Boundary Commission to detach and incorporate the "Chugiak-Eagle River Borough."

09/75 The Department of Community and Regional Affairs accepted for filing, petitions to detach the Eagle River-Chugiak area from the Municipality of Anchorage and incorporate that area as the "Chugiak-Eagle River Borough."

The Commission denied the detachment petition and ruled the incorporation petition moot.

10/29/75 The Commission held a hearing at the Chugiak High School regarding the proposed boundary changes.

12/11/75 Commission rendered its decision:

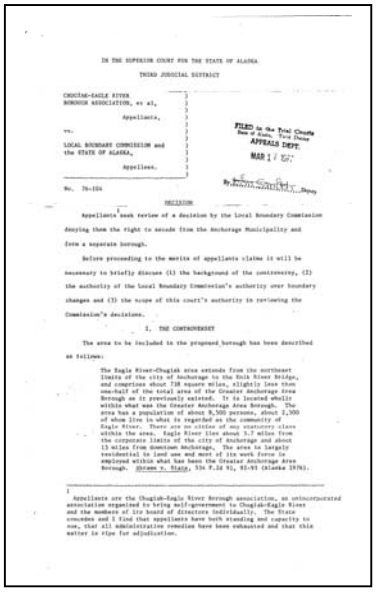
- The petition for detachment of the Eagle River-Chugiak area from the Municipality of Anchorage was denied.
- Denial of the detachment petition mooted the petition for incorporation of the Chugiak-Eagle River Borough.

The Commission's decision was challenged.

01/07/76 The Chugiak-Eagle River Borough association, an unincorporated association organized to bring self-government to Chugiak-Eagle River, and the members of its board of directors individually appealed the Commission's decision to the superior court.

The Court upheld the Commission's decision.

03/16/77 Superior Court Judge James K. Singleton, Jr., affirmed the decision of the Local Boundary Commission (*Chugiak-Eagle River Borough Association v. Local Boundary Commission*, No. 76-104, slip op. (Alaska March 16, 1977)). The Court:



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

CHUGIAK-EAGLE RIVER BOROUGH ASSOCIATION, et al, Appellants, vs. LOCAL BOUNDARY COMMISSION and the STATE OF ALASKA, Appellees.

FILED in the Trial Courts State of Alaska, Third District APPEALS DEPT. MAR 17

No. 76-104

DECISION

Appellants seek review of a decision by the Local Boundary Commission denying them the right to secede from the Anchorage Municipality and form a separate borough.

Before proceeding to the merits of appellants claims it will be necessary to briefly discuss (1) the background of the controversy, (2) the authority of the Local Boundary Commission's authority over boundary changes and (3) the scope of this court's authority in reviewing the Commission's decisions.

I. THE CONTROVERSY

The area to be included in the proposed borough has been described as follows:

The Eagle River-Chugiak area extends from the northeast limits of the city of Anchorage to the Knik River Bridge, and comprises about 738 square miles, slightly less than one-half of the total area of the Greater Anchorage Area Borough as it previously existed. It is located wholly within what was the Greater Anchorage Area Borough. The area has a population of about 8,300 persons, about 2,000 of whom live in what is regarded as the community of Eagle River. There are no cities of any statutory class within the area. Eagle River lies about 3.7 miles from the corporate limits of the city of Anchorage and about 13 miles from downtown Anchorage. The area is largely residential in land use and most of its work force is employed within what has been the Greater Anchorage Area Borough. Ehrens v. State, 534 P.2d 91, 93-95 (Alaska 1976).

Appellants are the Chugiak-Eagle River Borough association, an unincorporated association organized to bring self-government to Chugiak-Eagle River and the members of its board of directors individually. The State concedes and I find that appellants have both standing and capacity to sue, that all administrative remedies have been exhausted and that this matter is ripe for adjudication.

- *at 9,* held that:

  > The constitution mandates that in setting boundaries the commission strive to maximize local self government, i.e. as opposed to administration by the state government, but with a minimum of local government units preventing where possible the duplication of tax levying jurisdictions. *See* art. X, sec. 1. Further, the constitution tells us that each borough should embrace an area and population with common interests to the maximum degree possible. *See* art. X, sec. 3. Finally, while the constitution encourages the establishing of service areas to provide special services within organized boroughs it cautions that "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 . . .” See art. X, sec. 5.
>
> The constitution is thus clear that if large local governmental entities can provide equal services small governmental entities shall not be established. The legislature has recognized this. . . .

- *at 10,* held that

  > ▪ [T]he commission correctly recognized that the true question posed by constitution and statute is whether the area could function as part of the municipality. It is only if the facts support a negative answer to this question, e.g. that the municipality either couldn’t or wouldn’t furnish needed services, that the commission could lawfully permit detachment.

- *at 11,* held that:

  > . . . [T]here is nothing *in Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92 (Alaska 1974) inconsistent with the commission’s decision. It is true that Justice Erwin did indicate in *upholding* a boundary commission decision incorporating the North Slope as a “regional borough” that art. X, sec. 1 of the constitution should be read to “ . . . favor upholding organization of boroughs by the local boundary commission whenever the requirements for incorporation have been minimally met . . .” But in so saying, Justice Erwin made it clear that he was referring to the incorporation of regional boroughs out of the unorganized borough and not a decision to split one borough into two. See particularly the discussion at 518 P.2d 104.

Attachments:

- ✓ *Chapter 145 Session Laws of Alaska 1974*
- ✓ *Abrams v. State*, 534 P.2d 91 (Alaska 1975)
- ✓ *Chugiak-Eagle River Borough Association v. Local Boundary Commission*, No. 76-104, slip op. (Alaska March 16, 1977)

CHAPTER 145

AN ACT RELATING TO MUNICIPAL INCORPORATION AND DISSOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

(CSHB 853 am S)

Be it enacted by the Legislature of the State of Alaska:

Section 1. LEGISLATIVE FINDING. The legislature finds that the incorporation of an organized borough provided for in secs. 1 – 9 of this Act accords with standards governing borough incorporation under art. X, sec. 3 of the state constitution and that this Act further conforms to the requirements of art. II, sec. 19 of the state constitution governing local acts.

Sec. 2. INCORPORATION. (a) At the first statewide election occurring after May 26, 1974, the lieutenant governor shall hold a special election within the area designated in sec. 3 of this Act at which the qualified voters of the area vote upon the following proposition:

"Shall the Eagle River-Chugiak area be incorporated as a second class organized borough? Yes [ ] No [ ]"

(b) If the question receives the affirmative vote of a majority of qualified voters voting on the question, the area designated in sec. 3 of this Act, on the date of certification of election results by the lieutenant governor, is incorporated as an organized borough of the second class having all the applicable rights, powers, privileges and duties provided under AS 29, and otherwise by the general laws of the state and this Act, including but not limited to entitlement from the date of incorporation to transitional assistance and state revenue sharing in accordance with this Act, AS 29.18.180 – 29.18.200 and AS 43.18.

(c) If the question voted on at the election provided for in (a) of this section fails to receive the affirmative vote of a majority of the qualified voters voting on the question, at the following statewide election the lieutenant governor shall hold a special election within the area designated in sec. 3 of this Act at which the qualified voters of the area vote upon the following proposition:

"Shall the Eagle River-Chugiak area be incorporated as a second class city? Yes [ ] No [ ]"

(d) If the question receives the affirmative vote of a majority of the qualified voters voting on the question, the area designated in sec. 3 of this Act is incorporated as a second class city having all the applicable rights, powers, privileges and duties conferred under AS 29, and otherwise by the general laws of the state, for a second class city, including but not

limited to entitlement from the date of incorporation to transitional assistance and state revenue sharing as provided under AS 29.18.180 – 29.18.200 and AS 43.18.

(e) Before the election provided for in (a) or (c) of this section, and upon due notice, the local boundary commission shall hold at least one public hearing for informational purposes in the area proposed to be incorporated. It may make studies relating to the incorporation it considers appropriate.

(f) The lieutenant governor shall provide for and supervise the elections provided for in this section in the general manner prescribed by the Alaska Election Code (AS 15.05 – 15.60). The state shall pay all election costs under this section.

Sec. 3. BOUNDARIES. The boundaries of the area designated for incorporation under the provisions of sec. 2 of this Act are as follows: All that land included on the effective date of this Act in the Greater Anchorage Area Borough and lying northerly of the following line:
commencing in Knik Arm on the west boundary of the Greater Anchorage Area Borough and on the south boundary of section 17, T14N, R3W, SM; thence east along the south boundary of sections 17, 16, 15, 14 and 13, T14N, R3W, SM; thence east along the south boundary of sections 18, 17, and 16, T14N, R2W, SM; thence south between sections 21 and 22, thence east along the south boundary of sections 22, 23, and 24, T14N, R2W, SM; thence southeasterly to the southwest protracted corner of section 1, T12N, R1W, SM; thence southeasterly to the southwest protracted corner of section 34, T12N, R2E, SM; thence east along the south boundaries of townships 12N, ranges 2E, 3E, 4E and 5E to the east boundary of the Greater Anchorage Area Borough.

Sec. 4. BOUNDARY ADJUSTMENTS. Within six months of incorporation of the municipality as provided in sec. 2 of this Act, the local boundary commission shall hold public hearings within the area incorporated to determine the necessity for boundary adjustments and shall submit its recommendations if any to the legislature in the manner required by law.

Sec. 5. EFFECT OF ACT. Incorporation of an organized borough of the second class under secs. 1 – 9 of this Act divides the area designated in sec. 3 of this Act from the Greater Anchorage Area Borough. Incorporation of a second class city under secs. 1 – 9 of this Act constitutes the city as a second class city within the Greater Anchorage Area Borough.

Sec. 6. INITIAL ELECTION OF OFFICERS. (a) If incorporation of an organized borough or city takes effect as provided in secs. 1 – 9 of this Act, the lieutenant governor shall provide for the first election of officers of the municipal governing body, in substantial compliance with the provisions of AS 29.18.120 in this section. Members of the initial

municipal governing body are elected and serve terms in accordance with AS 29.18.120 and this section.

(b) The initial assembly of a borough incorporated as provided in this Act shall be comprised of seven members who shall be elected according to an apportionment consistent with the equal representation standards of the Constitution of the United States and set by the local boundary commission after due notice and hearing in the area incorporated. Assembly composition and apportionment as established in this section may be changed, and shall otherwise be governed, as provided in AS 29.23.020.

(c) If incorporation under secs. 1 – 9 of this Act is as a borough, at the election called to choose the initial assembly under (a) of this section the school board of the borough shall also be elected. The board shall be comprised of five members elected for terms as provided in AS 14.12.050, except that the terms of the initial school board members shall be measured for the purpose of compliance with AS 14.12.050 as if election were on the date one year preceding the next regular borough election date, as set by law or otherwise designated by the assembly, preceding the election of the board. School board composition under this section may be changed as provided by AS 14.12.050.

Sec. 7. NAME AND GOVERNING SEAT OF MUNICIPALITY. The initial municipal governing body of the municipality incorporated as provided in this Act shall select the name and governing seat of the municipality.

Sec. 8. BOROUGH POWERS. In addition to exercising the areawide powers required to be exercised within the borough by law, the second class organized borough incorporated under provisions of this Act shall have and may exercise areawide or otherwise the powers necessary to provide the following facilities and services within the borough, other provisions of law governing acquisition of borough powers notwithstanding: health services, sewers, dog control, transportation systems, libraries, and other powers and functions being exercised on the effective date of this Act by the Greater Anchorage Area Borough within the area incorporated under provisions of this Act, whether exercise by the Greater Anchorage Area Borough is on an areawide basis or otherwise. Other powers and functions may be acquired and exercised by the borough incorporated under provisions of this Act as provided by law.

Sec. 9. SUCCESSION AND TRANSITION. (a) Upon incorporation of a municipality under provisions of this Act, the municipality incorporated succeeds to the rights, powers, privileges, duties and functions which are by law applicable to it as a municipality and which are being exercised by the Greater Anchorage Area Borough on May 26, 1974 within the area incorporated. The municipality succeeds also to the assets and liabilities of the Greater Anchorage Area Borough,

whether real or intangible, and including but not limited to bonded or other indebtedness, respecting the area incorporated as to a power or function succeeded to by the municipality, upon final determination of allocation of assets and liabilities between the Greater Anchorage Area Borough and the municipality incorporated as provided in (b) of this section.

(b) Upon incorporation of a borough or city as provided in this Act, the local boundary commission, after due notice and hearing to parties concerned, shall prepare an order providing for an equitable allocation between the Greater Anchorage Area Borough and the municipality incorporated of assets and liabilities, whether real or intangible, and including but not limited to bonded or other indebtedness, respecting the area incorporated as to a power or function succeeded to by the municipality. The commission decision may be appealed under the Administrative Procedure Act (AS 44.62). A final determination under this section is binding on the municipalities. Not less than all property within the area incorporated under provisions of this Act remains subject to taxation to amortize bonded or other indebtedness affecting the area incorporated and existing at the time of incorporation. The assembly of a borough incorporated under provisions of this Act is authorized to levy and collect special charges, taxes, or assessments to amortize the indebtedness.

(c) The provisions of this Act or other law notwithstanding, a power or function which is being exercised on May 26, 1974 by the Greater Anchorage Area Borough within an area incorporated under this Act and which is succeeded to by the borough or city incorporated shall continue to be exercised by the Greater Anchorage Area Borough until the borough or city incorporated under this Act assumes the power or function, which shall not be later than the close of the fiscal year of the Greater Anchorage Area Borough during which incorporation occurs. However, in the case of incorporation of a borough under provisions of this Act, the Greater Anchorage Area Borough shall continue to assess and collect borough taxes levied within the municipality for the borough fiscal year in which incorporation occurs until the close of that year, and thereafter as necessary to enforce collection of the taxes, and shall also collect, or receive, other revenues pertaining to the area incorporated for that fiscal year; taxes and other revenues collected or received shall be remitted as promptly as possible, consistent with this subsection, to the new municipality on a basis fairly reflecting the division of powers and functions during transition between the Greater Anchorage Area Borough and the municipality. The local boundary commission shall by order determine the allocation of tax and other revenues under this subsection. The commission decision may be appealed under the Administrative Procedure Act (AS 44.62). A final determination under this subsection is binding on the municipalities.

(d) Ordinances, rules, resolutions, procedures and orders in effect before the transfer of powers and functions under this section remain in effect until superseded by action of the governing body of the new municipality. The provisions of this Act or other law notwithstanding, Greater Anchorage Area Borough assembly or school board members who are residents of the area which is incorporated as a borough under provisions of this Act continue to serve in office until completion of the transition under (c) of this section, and thereafter their seats on the assembly or school board shall be filled as otherwise provided by law for the filling of a vacancy.

(e) Written notice of intention to assume powers and functions by the new municipality under this section shall be given the Greater Anchorage Area Borough, and officials of the respective municipalities shall arrange for an orderly transfer.

(f) After incorporation of a municipality under provisions of this Act, the Greater Anchorage Area Borough may not authorize new bonded indebtedness or transfer assets with respect to the area incorporated without consent of the governing body of the new municipality.

(g) Applications, petitions, hearings, litigation, and other official proceedings relating to an area incorporated under provisions of this Act and not completed at the time of incorporation continue in effect and may be continued and completed as appropriate under this Act before or in the name of the new municipality.

(h) Records, ledgers, files, documents, and other papers held by the Greater Anchorage Area Borough and pertaining to the area incorporated under provisions of this Act shall upon request of the governing body of the municipality incorporated be transferred or otherwise furnished the new municipality. Officials of the Greater Anchorage Borough shall assist the officials of the new municipality in collecting and reviewing information to be transferred or otherwise furnished under this section.

Sec. 10. DISSOLUTION OF LOST RIVER. The development city of Lost River, as provided in ch. 110, SLA 1972, is dissolved.

Sec. 11. EFFECTIVE DATE. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Permitted to become law
without signature
Effected May 26, 1974

Harold S. ABRAMS et al., Appellants,

v.

STATE of Alaska et al., Appellees,

v.

Lee B. JORDAN, Mayor of the Second Class Borough in the Eagle River-Chugiak Area, et al., Appellees.

Lee B. JORDAN, Mayor of the Second Class Borough in the Eagle River-Chugiak Area, et al., Cross-Appellants,

v.

Harold S. ABRAMS et al., Cross-Appellees.

Nos. 2407, 2418.

Supreme Court of Alaska.

April 15, 1975.

Action was instituted to determine validity of formation of the Eagle River-Chugiak Borough. The Superior Court, Third Judicial District, Anchorage District, Eben H. Lewis, J., upheld validity of the borough and appeal was taken. The Supreme Court, Connor, J., held that statute pertaining to the organization of the Eagle River-Chugiak Borough was special and local in nature; that nothing in nature of the Eagle River-Chugiak area justified departure from general law scheme of incorporating new boroughs and, therefore, the statute pertaining to creation of the borough contravened constitutional prohibition against passage of local or special acts when a general act can be made applicable; and that constitutional provision requiring division of state into boroughs did not grant power to enact special and local laws creating boroughs notwithstanding the prohibition against passage of local or special acts.

Reversed and remanded.

Erwin and Fitzgerald, JJ., did not participate.

1. Statutes ⇐77(1)

Legislative act may affect only one of a few areas and yet relate to a matter of statewide concern and common interest and, thus, not constitute a local or special act within constitutional prohibition against such acts. Const. art. 2, § 19.

2. Statutes ⇐77(1)

In determining whether a legislative act is a local or special act within constitutional prohibition against such acts, ultimate question is whether the act is reasonably related to a matter of common interest to the whole state. Const. art. 2, § 19.

3. Statutes ⇐76(2)

Statute pertaining to organization of Eagle River-Chugiak Borough constituted both special and local legislation within constitutional prohibition against passage of local or special acts if a general act can be made applicable. Laws 1974, c. 145; AS 29.18.030 et seq.; Const. art. 2, § 19.

4. Statutes ⇐76(2)

Nothing in nature of Eagle River-Chugiak area justified departure from general law scheme of incorporating new boroughs; thus, special and local legislation pertaining to organization of the Eagle River-Chugiak Borough violated constitutional prohibition against passage of a local or special act when a general act can be made applicable. Laws 1974, c. 145; AS 29.18.030 et seq.; Const. art. 2, § 19.

5. Statutes ⇐76(2)

Constitutional provision requiring division of state into boroughs and giving legislature broad power over methods by which boroughs may be organized, incorporated or dissolved did not empower legislature to enact special or local laws pertaining to organization of boroughs despite constitutional prohibition against passage of local and special acts when general acts can be made applicable. Laws 1974, c. 145; AS 29.18.030 et seq.; Const. art. 2, § 19; art. 10, § 3.

6. Statutes ⇐76(1)

Constitutional prohibition against enactment of a local or special act if a general act can be made applicable governs exercise of all legislative powers expressly granted by other portions of the Constitution. Const. art. 2, § 19.

7. Constitutional Law ⇐15

Different provisions of Constitution should be read so as to avoid conflict whenever possible.

George A. Dickson & John Hedland, David Engles of Rice, Hoppner, Blair & Hedland, Anchorage, for appellants in 2407.

Gerald L. Sharp, City-Borough Atty., Juneau, amicus curiae for appellants in No. 2407.

William F. Tull, Palmer, amicus curiae on behalf of Mat-Su Borough.

John Ken Norman & Gary Thurlow, Anchorage, amicus curiae on behalf of Greater Anchorage Area Borough.

Charles Cranston & Vernon L. Snow, of Gallagher, Snow & Cranston, Anchorage, for appellees in 2407; Cross-Appellants in 2418.

Peter Argetsinger, Asst. Atty. Gen., Anchorage, Avrum Gross, Atty. Gen., Juneau, for State of Alaska.

OPINION

Before RABINOWITZ, C. J., CONNOR and BOOCHEVER, JJ., and DIMOND, J. Pro Tem.

CONNOR, Justice.

This appeal and cross-appeal present the question of whether the formation of the Eagle River-Chugiak Borough was validly accomplished under the Alaska Constitution. At the center of the conflict are two constitutional provisions:

"The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected." Alaska Const., art. II, § 19.

"The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law." Alaska Const., art. X, § 3.

Appellants assert that the prohibition against local or special acts renders invalid Ch. 145 SLA 1974 by which the Eagle River-Chugiak Borough was organized. They argue that the legislature created a borough by a local or special law when a general law could have been made applicable, and that the "general law" constitutional provision controls the operation of legislative power under art. X, § 3, of the Alaska Constitution. They conclude, therefore, that Ch. 145 SLA 1974 is unconstitutional and that the borough created by the legislature is invalid.

Appellees support the validity of the borough by arguing that the legislative act was not local or special legislation, that even if it was local or special legislation the constitutional prohibition does not apply because a general law cannot be made applicable to the particular subject matter of the legislative act, and that the legislature possesses independent power under art. X, § 3, of the Alaska Constitution, apart from the provisions of art. II, § 19, to create the Eagle River-Chugiak Borough.

I.

The Eagle River-Chugiak area extends from the northeast limits of the City of Anchorage to the Knik River Bridge, and comprises about 738 square miles, slightly less than one-half of the total area of the Greater Anchorage Area Borough as it previously existed. It is located wholly within what was the Greater Anchorage

Area Borough. The area has a population of about 8,500 persons, about 2,500 of whom live in what is regarded as the community of Eagle River. There are no cit- Eagle River lies about 3.7 miles from the ies of any statutory class within the area. corporate limits of the City of Anchorage and about 13 miles from downtown Anchorage. The area is largely residential in land use and most of its work force is employed within what has been the Greater Anchorage Area Borough.

In 1974 the legislature passed Ch. 145 SLA 1974, which became law without the governor's approval. The act provided for an election concurrent with the next statewide election following its passage, to be conducted solely within the Eagle River-Chugiak area, on the question of whether the area should be incorporated as a second class borough. If a majority voted "no" in the first election, the act provided for a subsequent election in which the voters would decide whether the area should be incorporated as a second class city. The election on borough incorporation took place on August 27, 1974, and the proposition passed by a vote of 1,233 to 979. Under the terms of the act, the area then became incorporated.

The act required the Local Boundary Commission to hold a public hearing before the election, and to review the boundaries set forth in the act after the election. Additionally, the Commission was required to promulgate a plan of apportionment, after which the Lieutenant Governor was required to, and did, on December 3, 1974, conduct an election for municipal officers.[1]

Prior to the enactment of Ch. 145 SLA 1974 there existed, and still exists, a comprehensive statutory system for the incorporation of boroughs, including those to be established within the boundaries of boroughs already in existence.[2] The general law scheme for organizing a borough consists of a petition to the Department of Community and Regional Affairs, a review of that petition for form by the Department, public hearings by the Local Boundary Commission, and a decision by the Commission as to whether the standards set out in the statutes have been met. In the event of favorable Commission action, an election can be held within the area proposed for incorporation. When a new borough is to be created within an existing one, both a new incorporation and a change in existing boundaries must occur, and the action must be approved at an election within the new borough. The action may also be conditioned upon electoral approval within the existing borough, and it must be submitted to the legislature.

Appellants brought an action on October 30, 1974, seeking to have Ch. 145 SLA 1974 declared unconstitutional and void and seeking to have enforcement of that statute enjoined. On November 22, 1974, appellants sought a preliminary injunction against conducting the election for municipal officers which was scheduled for December 3, 1974. On November 27, 1974, the superior court entered a temporary restraining order which allowed the election to proceed but prohibited certification of the results pending a further hearing. That further hearing was held on Decem-

1. Other transitional steps include a determination by the Local Boundary Commission, subject to judicial review, of the allocation of debts and assets between the new borough and the Greater Anchorage Area Borough, and written notice by the new borough of its intention to assume its powers. These steps have not been taken, but the act requires that the new borough assume its powers no later than the end of the current fiscal year, i. e., June 30, 1975. In the meantime the Greater Anchorage Area Borough must continue to assess and collect taxes in the new borough until that date, and allocate to the new borough an amount to be determined by the Local Boundary Commission, subject to judicial review. Under the act the Greater Anchorage Area Borough has been prohibited from transferring assets or authorizing bonded indebtedness in the new borough since September 12, 1974.

2. *See* AS 29.18.030 et seq.

ber 20, 1974. On December 20. 1974. oral argument was presented to the superior court, and that court entered a declaratory judgment to the effect that Ch. 145 SLA 1974 was local and special legislation, but was not violative of art. II, § 19, of the Alaska Constitution. Appellants filed this appeal on December 23, 1974, and were granted a stay pending the decision of the appeal. This court also entered an order expediting the appeal because the questions presented obviously should be decided promptly for the benefit of the affected governmental entities and the public.

II.

[1] The first question is whether Ch. 145 SLA 1974 is a local or special act. Our previous opinions in Boucher v. Engstrom, 528 P.2d 456 (Alaska 1974), and Walters v. Cease, 394 P.2d 670 (Alaska 1964), provide background for the resolution of this question. In Walters v. Cease, we held that the Mandatory Borough Act, Ch. 52 SLA 1963, was local and special legislation, and that it could not constitutionally be submitted to the voters for adoption by referendum.[3] In Boucher v. Engstrom, we held that an initiative to relocate the state capital did not amount to special or local legislation, and thus could be placed upon the ballot. We observed that legislation does not become "local" merely because it operates only on a limited number of geographical areas rather than on a statewide geographical basis. A legislative act may affect only one of a few areas and yet relate to a matter of statewide concern or common interest. Boucher v. Engstrom, *supra,* 528 P.2d at 461–62.

[2] Boucher v. Engstrom does represent a retrenchment on the definition of "local" found in Walters v. Cease. But the ultimate question is whether a legislative act, attacked as "local" or "special", is reasonably related to a matter of common interest to the whole state.[4]

[3] In the case at bar it appears that Ch. 145 SLA 1974 is both special and local legislation. The act provides a method of creating a new borough which is peculiar to the locality where it is applicable. The subject matter can hardly be said to be of statewide interest or impact.

Specifically, the operation and scope of the act are limited to the Greater Anchorage Area Borough. The act creates law which affects only the governmental structure of the Greater Anchorage Area Borough and the Eagle River-Chugiak area lying within it. It can have no effect upon any other part of the state. It purports to create a new local government, and does so without regard to the general statutory provisions that prescribe the method that otherwise governs the creation of new local governmental entities from existing ones. In our opinion the legislation is clearly special and local in nature.

III.

[4] This brings us to the next question. Appellees argue that even if Ch. 145 SLA 1974 is a local or special act, it is permissible legislation. The Alaska Constitution forbids local or special acts only "if a general act can be made applicable." Whether a general act can be made applicable is subject to judicial determination. We find AS 29.18.030 et seq. to be an applicable general law.

Appellees argue that the Eagle River-Chugiak area is unique and that this justifies the special treatment given to it by the legislature. The trial court found that the

3. Alaska Constitution, art. XI, § 7, provides: "The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety."

4. Boucher v. Engstrom, 528 P.2d 456, 463 (Alaska 1974).

Eagle River area has a separate identity, that it has been a distinct community in the Anchorage bowl, and that it is the only large "exurban" community in Alaska. Appellees point out additionally that the area is separated from the rest of the Greater Anchorage Area Borough by the Chugach Mountains, the Chugach State Park, and by military reservations. A majority of the electorate of the area has voted against a unified Greater Anchorage Area Borough and against extension of areawide power by the borough over the area.

We do not find this justification persuasive. Numerous other localities within organized boroughs can also claim to be unique in certain respects. Examples come readily to mind.

Douglas, with a 1970 population of 1,243, located on an island across from the state capital, can claim to be distinct, providing a largely residential community for persons working in the capital city. Historically Douglas was a city proudly separate from Juneau. Similarly, it could be claimed that College, with a 1970 population of 3,434, is the only community surrounding the central state university. Nearly every neighborhood or locality within an existing borough can assert some peculiarity or characteristic which distinguishes it from the rest of the borough. If this is all that is needed to justify a departure from general law, then the legislature could, by special act, create many new boroughs out of old ones on an ad hoc basis. We do not think this is what the framers of our constitution intended.[5]

We find nothing in the nature of the Eagle River-Chugiak area which justifies a departure from the general law scheme of incorporating a new borough. Those unusual aspects which appellees have ascribed to the area present no insurmountable barriers to creating a new borough by following the procedures set forth in AS 29.18.030 et seq. Therefore, we hold that Ch. 145 SLA 1974 contravenes the provisions of art. II. § 19, of the Alaska Constitution.

IV.

[5] Finally, appellees urge that under Art. X, § 3, of the Alaska Constitution the legislature is given broad power over the methods by which boroughs may be organized, incorporated, or dissolved. From this, it is argued, the legislature derives power to enact such laws as Ch. 145 SLA 1974 despite the prohibition of art. II, § 19, of the Alaska Constitution.

[6] But Art. II, § 19, governs the exercise of all legislative powers expressly granted by other portions of the constitution. There is no intimation in its language or in the articles concerning local government which would create an exception to this prohibition against local or special laws.

[7] It is an undisputed maxim of constitutional construction that different provisions of the document shall be read so as to avoid conflict whenever possible. Thus, "[w]henever possible, all provisions should be given effect, and each interpreted in light of the others, so as to reconcile them, if possible, and to render none nugatory." Lemon v. Bossier Parish School Board, 240 F.Supp. 743, 744 (W.D.La.1965).[6] We have carefully read the debates and discussions during Alaska's constitutional convention as they relate to the import of art.

5. *Accord*, State v. Hodgson, 183 Kan. 272, 326 P.2d 752, 762 (1958); *see also* Albuquerque Met. Arroyo Flood Control Authority v. Swinburne, 74 N.M. 487, 394 P.2d 998 (1964).

6. *Accord*, People v. Western Air Lines, 42 Cal.2d 621, 268 P.2d 723, 732 (1954), appeal dismissed, 348 U.S. 859, 75 S.Ct. 87, 99 L.Ed. 677; Cooper Motors v. Board of County Commissioners, 131 Colo. 78, 279 P.2d 685, 688 (1955); Latting v. Cordell, 197 Okl. 369, 172 P.2d 397, 399 (1946).

II, § 19, and art. X.[7] We find nothing in these discussions which would indicate that art. X, § 3, was intended to operate as an exception to the "general law" rule of art. II, § 19. Indeed, if every grant of power were read as an exception to the "general law" provision, that provision would be rendered wholly nugatory in its effect.

We conclude that nothing in the local government articles of the Alaska Constitution overrides the prohibition of art. II, § 19.

Having found the questioned act invalid, we reverse the judgment below and remand for the entry of a judgment in favor of appellants.

7. *See* Const.Conv.Min. pp. 1760–70, 1774, 1824–27, 2768–71 (Jan. 10–25, 1956).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

CHUGIAK-EAGLE RIVER BOROUGH ASSOCIATION, et al, Appellants, vs. LOCAL BOUNDARY COMMISSION and the STATE OF ALASKA, Appellees.	FILED in the Trial Courts State of Alaska, Third District APPEALS DEPT. MAR 17 1977 By Tom Smith Deputy

No. 76-104

DECISION

Appellants[1] seek review of a decision by the Local Boundary Commission denying them the right to secede from the Anchorage Municipality and form a separate borough.

Before proceeding to the merits of appellants claims it will be necessary to briefly discuss (1) the background of the controversy, (2) the authority of the Local Boundary Commission's authority over boundary changes and (3) the scope of this court's authority in reviewing the Commission's decisions.

I. THE CONTROVERSEY

The area to be included in the proposed borough has been described as follows:

> The Eagle River-Chugiak area extends from the northeast limits of the city of Anchorage to the Knik River Bridge, and comprises about 738 square miles, slightly less than one-half of the total area of the Greater Anchorage Area Borough as it previously existed. It is located wholly within what was the Greater Anchorage Area Borough. The area has a population of about 8,500 persons, about 2,500 of whom live in what is regarded as the community of Eagle River. There are no cities of any statutory class within the area. Eagle River lies about 3.7 miles from the corporate limits of the city of Anchorage and about 13 miles from downtown Anchorage, The area is largely residential in land use and most of its work force is employed within what has been the Greater Anchorage Area Borough. Abrams v. State, 534 P.2d 91, 92-93 (Alaska 1976).

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1 Appellants are the Chugiak-Eagle River Borough association, an unincorporated association organized to bring self-government to Chugiak-Eagle River and the members of its board of directors individually. The State concedes and I find that appellants have both standing and capacity to sue, that all administrative remedies have been exhausted and that this matter is ripe for adjudication.

For some time residents of this area have questioned the advantages of inclusion within the Greater Anchorage Area Borough. In 1971 and 1972 these questions produced ~~a full~~ scale secessionist movement with growing legislative support. The movement achieved apparent success in 1974 with the passage of Ch. 145 SLA 1974. The act established a procedure for incorporation of the area as an independent borough subject only to local voter approval. The election was held on August 27, 1974, resulting in a narrow victory for incorporation, 1233 to 979. Under the terms of the act the Chugiak-Eagle River Borough was born. It survived approximately seven months until the Supreme Court, in Abrams v. State, supra, held that the enabling act was local and special legislation prohibited by the state constitution, Alaska constitution, Art. II, § 19. This decision judicially restored the area to the Greater Anchorage Area Borough. In the meantime, the remaining areas of that borough had voted to unify. A challenge to unification by residents of the Chugiak-Eagle River area was rejected by the Supreme Court in Jordan v. Reed, 544 P.2d 75 (Alaska 1975).

Appellants, thereafter relying in part on a suggestion in Abrams, supra, commenced proceedings before the Local Boundary Commission seeking the commission's approval (1) to detach the Chugiak-Eagle River area from the Anchorage municipality by local action (see 19 AAC 15.170) and (2) to establish it as a separate borough (see AS § 29.18.030). The petitions were approved in form in September 1975. A public hearing was held at the Chugiak High School within the area affected by the petition on October 29, 1975. The Commission heard from both opponents and proponents of the proposed borough. A public decisional meeting was held on December 11, 1975, at which time the detachment petition was rejected which, in the opinion of the Commission, mooted the incorporation petition since the Commission concluded that detachment was a prerequisite to incorporation where the area to be incorporated was already part of an organized borough.

In the meantime, appellants filed an action for declaratory judgment in this court on January 7, 1976, alleging (1) that the commission's decision to deny detachment was "arbitrary and capricious and not supported

in fact or law" and (2) that the commissioner, Sheila Gallegher, had a severe conflict of interest in that she had, prior to her appointment to the Commission, served successively as Greater Anchorage Area Borough attorney and School Board attorney.[2] The state moved to dismiss, alleging that the action should have been brought as an appeal pursuant to Appellate Rule 45. Appellants acquiesced, but cf. Moore v. State, 553 P.2d 8, 28-29 (Alaska 1976). Judge Lewis thereafter denied the motion to dismiss but ordered appellants to perfect an appeal. A notice of appeal subtitled amended complaint was filed on April 6, 1976.

II. THE AUTHORITY OF THE LOCAL BOUNDARY COMMISSION

Article X, § 12 of the Alaska State Constitution provides as follows:

> 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 45 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 commissioner or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Pursuant to this authority the legislature has established two procedures whereby the Local Boundary Commission may authorize or approve proposed boundary changes. The first procedure, "general action" is governed by AS § 29.68.010(a) which provides:

> The local boundary commission 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 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by resolution concurred in by the majority of the members of each house.

Substantially similar is AS § 44.19.260. Procedures for boundary changes by "general action" are established in 19 Alaska Administrative Code, Chs. .05 and .10. Such procedures do not require a local election to validate boundary changes.

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[2] This contention was not briefed and has apparently been abandoned. Counsel for appellants indicated in oral argument that they were not interested in a remand and wished the matter resolved quickly on the merits to pave the way for supreme court review.

The second procedure, boundary changes by local action, is found in AS 29.68.010(b) which provides in relevant part:

> In addition to the ~~regulations governing annexation by~~ local action adopted under AS 44.19.260, the local boundary commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territories by cities and boroughs by local action. The procedures established under this subsection shall include:
> (1) A provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;
> (2) Provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and
> (3) Provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within ~~the area~~ petition the assembly or council.

Significantly, the legislature provided in AS 29.68.010(c) that "a boundary change effected under (a) of this section, i.e. 'general action', prevails over a boundary change initiated by 'local action', without regard to priority in time."

The boundary commission has established, by regulation, procedures for initiating boundary changes by local action both as to annexations and detachments. These regulations are found in 19 Alaska Administrative Code 15.010-15.300.[3] Consistent with the statute, the regulations provide that if, in the opinion of the commission, a "detachment" is of "substantial public importance" the "local action" procedures can be by-passed in favor of a direct report to the legislature. See 19 Alaska Administrative Code, § 15.230(e). The Commission did not find the instant matter to be "of substantial public importance" and, therefore, proceeded to consider the "detachment" as local action under 19 Alaska Administrative Code, Ch. 15.

III. THE SCOPE OF JUDICIAL REVIEW

The scope of judicial review of administrative action depends upon the nature of the action reviewed. If an agency acts quasi-judicially its decisions are reviewed more strictly than if it acts quasi-legislatively.

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[3] 19 Alaska Administrative Code 20.030 defines annexations to mean "an alteration of municipal boundaries which adds territory" and detachment to mean "an alteration of municipal boundaries which deletes territory". The same regulation defines "municipality" to mean "an organized borough including a unified local government, or an incorporated city of any class".

An agency acts quasi-judicially if it adjudicates disputes between persons or organizations using procedures similar to those used in courts, e.g. taking evidence from the parties and their witnesses, permitting cross-examination and then making a judgment based upon a record limited to the evidence presented. An agency acts legislatively when it makes rules or performs other functions normally performed by legislative bodies. Like such bodies an agency may hold hearings but the rules of evidence do not apply, there is no cross-examination and the agency record is not limited to the testimony and other evidence produced at the "hearings". While the parties have generally agreed that standards similar to those articulated in AS 44.62.560 and AS 44.62.570 are applicable to this case, this presupposes that the boundary commission acts in a quasi-judicial or adjudicative rather than quasi-legislative or rule making capacity in determining boundaries. The APA section governing judicial review of quasi-legislative or rule-making activities is AS 44.62.300 which provides in relevant part:

> An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid (1) for substantial failure to comply with sections 10-320 of this chapter or (2) in the case of an emergency regulation or order of repeal, upon the ground that the facts were cited in the statement do not constitute an emergency under section 250 of this chapter.

The Alaska Supreme Court in Moore v. State, 553 P.2d 8 (Alaska 1976) and Kelley v. Zamarello, 486 P.2d 906 (Alaska 1971) considered judicial review of quasi-legislative actions. In the latter case the supreme court held that judicial review of such action was limited to the following considerations:

> ...First, we will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, we will determine whether the regulation is reasonable and not arbitrary.[4] This latter inquiry is proper in the review of any legislative enactment. Kelley v. Zamarello, 486 P.2d at 911.

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4 Thus the court seems to view the "arbitrary and capricious" standard as distinct from and more limited than the substantial evidence test. Cf. Davis, Administration Law of the Seventies (1976) §29.01-3 at 658, with Id. §29.01-4 at 664-665.

In explaining the deferrence given administrative rule making the Supreme Court said this:

> The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposals; and each, after consideration of the relevant policies and arguments, decide whether to adopt the proposed enactment. When an administrative rule making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule making activity takes on a quasi-legislative aspect. We have held that, under proper standards, such delegations of legislative power to administrative agencies are constitutional. Boehl v. Saber Jet Room, Inc. 349 P.2d 585 (Alaska 1960).

While the Local Boundary Commission is not subject to the rule making provisions of the administrative procedure act the supreme court has, on a number of occasions, recognized that its boundary adjusting or annexation activities are clearly legislative or political rather than judicial. See Fairview P.U.D. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962), cert. denied, 371 U.S. 5, 83 S.Ct. 39, 9 L.Ed.2d 49 (1962); Oesau v. City of Dillingham, 439 P.2d 180 (Alaska 1968); U.S. Smelting & Refining v. Local Boundary Commission, 489 P.2d 140 (Alaska 1971) and Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

Since the constitution, the statutes and applicable regulations make it crystal clear that a "detachment" is simply the converse of an "annexation" and that the Local Boundary Commission's authority to do either is derived from the same provision in the constitution, statutes and regulations, it necessarily follows that this court's scope of judicial review of detachments is limited to the same extent that it would be over annexations.

There is nothing in Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974) suggesting a contrary result. For there, the supreme court was not dealing with the Local Boundary Commission's power over annexation or detachment but rather its power over the incorporation of an organized borough in an area in which no organized local government previously existed, an activity which the legislature at least at that

time apparently considered quasi-judicial. The then applicable statute, AS 7.10.110 specifically provided for judicial review in the manner prescribed by AS §§ 44.62.560-44.62.570. Section 7.10.110 was repealed as part of the recodification on the municipal government code. The present section AS 29.18.090(b) while continuing to provide for judicial review, under the "administrative procedure act" makes no further reference to the administrative adjudication review provisions of that title. Regardless of the legislature's intent as to the nature of the boundary commission's activities in approving or rejecting borough incorporations pursuant to AS 29.18.030 et. seq., it is clear that there is no express authorization at all for judicial review of actions taken pursuant to AS 29.68.010 or AS 44.19.250 et. seq.

Finally, even where the legislature has indicated an intent to treat the Local Boundary Commission's activities as quasi-judicial the supreme court in Mobil Oil Co., supra, in effect treated them as quasi-legislative for it required no findings of fact and in effect viewed the

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5 The Local Boundary Commission's actions in altering boundaries are akin to rule making, i.e. are quasi-legislative while in approving boroughs it performs a function similar to licensing, i.e. acts quasi-judicially. See Wright, The Courts and The Rule Making Process: The Limits of Judicial Review 59 Corn.L.Rev. 375, 391 (1974).

Davis suggests that during the 1970's the U.S. Supreme Court has adopted the "arbitrary, capricious and abuse of discretion" standard for review of rule making rather than the substantial evidence test. See Davis, Administrative Law of the Seventies (1976) § 29.01-3 at pg. 658. Davis suggests that past decisions indicate a narrower scope of review for rule making than for adjudication but notes that recently the supreme court's definition of "reasonable":

> ...has been vastly elaborated, and in the process of elaboration the courts have sometimes increased the intensity of their review. In determining what rules are "reasonable" the courts did not until recently inquire into the factual basis of rules; now they often do. Id. § 29.01-1 at 654-655.

This trend paralells the more stringent application both the U.S. Supreme Court and our own has been giving the "rational basis test" in equal protection litigation. See Isaakson v. Rickey 550 P.2d 359 (Alaska 1976). Where the Alaska court indicated an intention to closely consider the specific factual assumptions underlying statutory discriminations without presuming factual support as was done in the past. Assuming that this approach will be applied here, I have concluded that the commission's written decision supplemented by the transcript of the agencies deliberations adequately convey the basis for its decision. Cf. Davis, op. cit. § 29.01-6 at 669.

function of the commission in establishing boroughs as akin to legislative. Cf. 518 P.2d at 97, text accompanying n. 11.

In conclusion, it is clear that the boundary commission, in dealing with annexations or detachments, perform a legislative function not a judicial one. True, hearings are held but they are in the nature of legislative hearings intended to give notice and solicit comment, i.e. sample feelings and opinions rather than judicial hearings intended to establish a record from which specific findings of fact will be made and specific conclusions of law derived. Thus, a "judicial" standard of review would be completely inappropriate. As the supreme court pointed out in Port Valdez Co. v. City of Valdez, 522 P.2d 1147 at 1155 (Alaska 1974):

> The complex, social, political and economic judgments leading to the decision as to whether an annexation is wise fall more properly within administrative and legislative competence; ordinarily those decisions will be overturned only when they involve an abuse of discretion...

IV. THE MERITS OF THE APPEAL

Applying these standards of review it is clear that the boundary commission's decision must be upheld. It is undisputed that the commission has the authority under the constitution, the statutes and the regulations to conduct proceedings regarding boundary changes. It is equally clear that both annexations and detachments fall within the general definition of boundary changes. The record amply supports the conclusion that the constitutionally required notice was furnished all interested parties, that the requisite hearings were held, that the commission invited comment and gathered data from governmental and private sources and concluded after a careful consideration of all relevant factors, that a detachment would not be consistent with constitutional or statutory standards.[6] Appellants vigorously argue that the commission was limited in reviewing the evidence to considering the viability of the proposed

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[6] Appellants argue that the boundary commission was obligated to liberally construe AS 29.18.030 in favor of incorporation and if the standards there contained were minimally met, authorize incorporation as an independent borough unless governmental bodies other than the Anchorage municipality would be "very seriously jeopardized". See 19 AAC 15.230. Thus appellants argue that the commission misconceived the meaning of the word "inimical"

area as a borough. The constitution, the statutes and the regulations are to the contrary. The constitution mandates that in setting boundaries the commission strive to maximize local self government, i.e. as opposed to administration by the state government, but with a minimum of local government units preventing where possible the duplication of tax levying jurisdictions. See art. X, sec. 1. Further, the constitution tells us that each borough should embrace an area and population with common interests to the maximum degree possible. See art. X, sec. 3. Finally, while the constitution encourages the establishing of service areas to provide special services within organized boroughs it cautions that "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...". See art.X, sec. 5.

The constitution is thus clear that if large local governmental entities can provide equal services small governmental entities shall not be established. The legislature has recognized this. See AS 29.18.021 which provides:

> (a) A community within the unorganized borough may not incorporate as a city if the services may be provided by annexation to an existing city.
> (b) A community within an organized borough may not incorporate as a city if the services could be provided on an area wide or non-area wide basis by the borough in which it is located or by annexation to an existing city.

Cf. former section 29.18.100 which provided essentially the same limitations.

In summary, the commission could not, consistent with its statutory obligations, have limited consideration to whether Chugiak-Eagle River

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6 (Cont'd)
in the regulation. It is clear, however, that the commission interpreted it in the only possible way to avoid conflict with the constitution and statutes, i.e., a detachment would be "inimical" to the interest of the state as a whole, if services required by the area to be detached could as easily be provided by the existing borough or municipality. If the regulations were interpreted as appellants suggest to preclude consideration of the extent to which the area to be detached was integrated into the existing borough or municipality it would probably be unconstitutional. Thus, there is a rational basis for the agency's interpretation. Cf. Kelley v. Zamarello, 486 P.2d 906 (Alaska 1971). It is also clear that determining what is and is not "inimical" is the precise role the constitution assigns the agency and consequently the rational basis test applies.

met the requisites for incorporations as a borough. Under the constitution the statutes and the regulations the commission was compelled to determine whether any services to be provided by the proposed new borough could be provided by the existing municipality before allowing a detachment. Its decision that such services could be provided by the existing municipality is certainly not irrational and is consistent with the statutory guidelines.

Appellants' criticism of each of the commission's fact findings is based on the false assumption that the question to be decided is limited to whether Chugiak-Eagle River could survive if independent while the commission correctly recognized that the true question posed by constitution and statute is whether the area could function as part of the municipality. It is only if the facts support a negative answer to this question, e.g. that the municipality either couldn't or wouldn't furnish needed services, that the commission could lawfully permit detachment.

The boundary commission's findings that Eagle River is not a "boundary", a finding questioned by appellants, must be considered in context for the word boundary admits of many definitions, one of which is the one urged by appellants namely, "a convenient basis for delimiting a territory". In this sense, Eagle River certainly serves as a boundary but the commission consistent with its view of its responsibility to determine the ability of Eagle River to function as part of the municipality considered the word boundary as synonymous with "barrier" and in that sense it is clear that Eagle River is not a barrier to the integration of Eagle River into the Greater Anchorage Municipality. In this sense the military bases are also not barriers to integration because of the substantial traffic from, to and through them.

By the same token the commission's reference to "hubs of social activity" was intended to show the interdependent relationship between the area and the municipality.

Further, there is nothing in Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974) inconsistent with the commission's decision. It is true that Justice Erwin did indicate in upholding a boundary commission decision incorporating the North Slope as a "regional

borough" that art. X, sec.1 of the constitution should be read to "...favor upholding organization of boroughs by the local boundary commission whenever the requirements for incorporation have been minimally met..." But in so saying, Justice Erwin made it clear that he was referring to the incorporation of regional boroughs out of the unorganized borough and not a decision to split one borough into two. See particularly the discussion at 518 P.2d 104.

Finally, while it is true that there is language in the supreme court's opinion in Abrams v. State, 534 P.2d 91 (Alaska 1975) that would appear to authorize the incorporation of an area already within an organized borough without a preliminary "detachment" the language can be read as merely holding that the detachment-incorporation procedure followed here satisfies the requisite for a "general law" dealing with the subject of borough incorporation precluding special legislation. Justice Connor points out at 534 P.2d 93, "...when a new borough is to be created within an existing one, both the new incorporation and a change in existing boundaries must occur." (emphasis supplied)

In conclusion, the Local Boundary Commission properly held that a successful "detachment" was a condition prerequisite to consideration of a petition to incorporate a new borough within the area of an organized borough and that where the petition was denied the question of incorporation became moot. Further, the commission's decision whether to grant or deny a petition for detachment is a political or legislative judgment not a judicial one and is, except for due process considerations and the necessity of complying with existing statutory and regulatory standards, immune from judicial interference unless unreasonable, i.e. reached in total disregard of the available facts.

In reaching these conclusions, I have not overlooked the sincere aspirations of appellants for political autonomy or their strongly held belief, so eloquently argued by their counsel, that Chugiak-Eagle River will be better governed if governed separately from Anchorage. But decision for union or separation is political, not judicial and committed by constitution, statute and regulation to the Local Boundary Commission

not the court.[7] Thus my views regarding the wisdom of the proposed secession are irrelevant. A judge must always remember that his function is a limited one, to apply the law to the facts before him, not to use a strained interpretation of statutes or constitution to foist his political, ethical and moral views on the parties or the public. To forget this limitation is to abandon the judical restraint without which an independent court cannot be permitted to function in a republic.

IT IS THEREFORE ORDERED:

The decision of the Local Boundary Commission is affirmed.

DATED at Anchorage, Alaska, this 16 day of March, 1977.

James K. Singleton Jr.

JAMES K. SINGLETON, JR.
SUPERIOR COURT JUDGE

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[7] Appellants argue that so much power should not be vested in a part time commission selected from laymen not lawyers but this argument should more properly be directed to the constitutional convention or made in support of an amendment to the constitution.

cc: Vincent Vitale, Esq.
Rodger W. Pegues, Esq.

I certify copies of the above were mailed to counsel on March 16, 1977.

Suzanne Schweitzer