



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

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April 16, 2015

The Honorable Bill Walker
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: CSSB 64(EDC)(efd fld H) -- relating to
school bond debt reimbursement
Our file: JU2015200249

Dear Governor Walker:

This letter is a supplement to our bill review letter for CSSB 64(EDC)(efd fld H), regarding debt reimbursement for school construction bond payments. This supplement is intended to clarify the distinction between the effective date of the bill and the date of its retroactive application. An effective date clause operates independently of the date of retroactive application. The failure of the effective date clause does not change the date of retroactive application. Whether the bill takes effect immediately or 90 days after signature by the governor, the date of retroactive application remains the same.

The Alaska Supreme Court spoke to this issue in *Arco Alaska, Inc. v. State*, 824 P.2d 798 (Alaska 1992) in the context of a tax statute. There, a bill that changed the tax liability of certain oil companies passed both legislative bodies during the 1989 legislative session and was expressly made retroactive to January 1, 1989. The House vote on the immediate effective date failed to garner the two-thirds vote required by art. II, sec. 18, of the Alaska Constitution and the bill became effective 90 days after the governor's signature. The oil companies sued the state, arguing that the date of the bill's retroactive application was an effective date that failed for not receiving the two-thirds vote. The court ruled in favor of the state, upholding the 90-day-post-signature effective date with a retroactive application to the preceding January 1.

According to the *Arco* opinion, a law's effective date and its retroactive date are "two distinctly different concepts."¹ The court went on to clarify that a retroactive law

¹ *Arco Alaska, Inc. v. State*, 824 P.2d 708, 711 (Alaska 1992)

applies to conduct occurring before enactment of the law, but the legal effect produced by the law occurs only after the law's effective date.²

In the context of the debt reimbursement statute, on the effective date of the bill (which could occur 90 days after signature), the "legal effect produced by the law will occur." That "legal effect" changes the impact of municipal bond elections occurring after the retroactive date of January 1, 2015. Once the bill becomes effective, it will apply to conduct occurring before enactment of the law. As we have said, if the municipality holds a bond election after January 1, 2015, under the bill, the state would not provide debt reimbursement to the municipality for bonds authorized at that election.

Sincerely,

A handwritten signature in blue ink that reads "Susan R. Pollard" followed by a stylized flourish.

Craig W. Richards
Attorney General

CWR/SRP/pav

² *Id.*