

SUBJECT: Redistricting Litigation

REQUESTED BY: Administration/Council

PREPARED BY: Tom Klinkner, City Attorney DATE: July 18, 2001

FOR AGENDA OF: July 16, 2001

SUMMARY:

As the Council requested, the following provides information concerning litigation by the City of Wasilla to challenge the recent Redistricting Board decision. It addresses the following: (i) the City's objections to the redistricting of the Mat-Su area; (ii) the legal arguments that the City may assert in support of its position; (iii) the court proceeding in which the City's challenge would be litigated; and (iv) my firm's qualifications to represent the City in its challenge.

1. The City's Objections to the Redistricting Plan. Based on the discussion at the July 11 special Council meeting, the City's principal objection to the redistricting plan concerns the inclusion of the outlying Mat-Su area in House District 12-F along with the Denali Borough and the Ft. Wainwright and Ft. Greely military reservations, and the creation of a senate district that combines this house district with another Fairbanks house district. As a result of this arrangement, the Mat-Su area elects only one senator, with the other senator representing the area being elected principally by voters in the Fairbanks area. In contrast, the Mat-Su area currently elects two senators, with one senator also representing part of the Eagle River area of Anchorage.

The City also is concerned that the house districts in the Mat-Su area contain near to the maximum population permitted by law. Because the Mat-Su area is expected to continue to be the most rapidly growing area in the state, it is likely that the area will be underrepresented significantly for most of the next 10 years.

2. The City's Legal Arguments. In litigation challenging the Redistricting Board's plan, the City would present arguments that question both the merits of the plan itself, and the procedure under which the plan was adopted. On the merits of the plan, the City would argue that House District 12-F does not meet the standard for house districts in Article VI, §6 of the Alaska Constitution: "Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area." The City would argue that the outlying Mat-Su area, Denali Borough and the Ft. Wainwright and Ft. Greely military reservations do not constitute a "relatively integrated socio-economic area."

Regarding the procedure under which the plan was adopted, the City may argue that the Redistricting Board adopted the plan in violation of the state's Open Meetings Act. The City also may argue that the Board abdicated its responsibilities by

essentially adopting a plan that was prepared and presented by a private interest group. Other procedural arguments may result from discovery undertaken after the litigation commences.

3. The Court Proceeding. Challenges to the redistricting plan must be filed in superior court no later than July 18. While the City would finance and direct the litigation, standing for the challenge must be established by naming individual registered voters as plaintiffs. I understand that Council members and one member of the public have agreed to be named as plaintiffs in the litigation.

Typically, all challenges to a redistricting plan are consolidated in one superior court action. Also, it is expected that any party dissatisfied with the superior court's decision will appeal to the state supreme court, which will finally decide all challenges to the redistricting plan. Article VI, §11 of the State Constitution requires that the courts handle redistricting litigation on an expedited schedule. This means that the supreme court should issue its final decision in the litigation within a matter of a few months, instead of the longer period required to complete most litigation. Article VI, §11 also provides that if the court finds the redistricting plan invalid, the matter is returned to the Redistricting Board for correction and development of a new plan. It is possible that the court will provide detailed directions concerning the development of a new plan if the plan is returned to the Redistricting Board.

The specific course of the litigation of redistricting plan challenges will depend on how many actions challenging the plan are filed, and the issues that the challenges raise. The superior court judge to whom the consolidated challenges are assigned will establish the schedule and detailed procedural requirements for the litigation.

While each challenge to the plan will be filed separately, it is likely that some challengers will cooperate in prosecuting the litigation. This will allow a sharing of expertise and costs that will assist all of the participants. I will explore opportunities for cooperation with other challengers of the plan after the complaints have been filed.

4. My Firm's Qualifications to Represent the City. For our representation of the City, I propose to assemble a team consisting of an attorney experienced in trial litigation, a paralegal, and myself. The litigation attorney would focus on deposing witnesses and presenting the City's case at trial, if any. This attorney most likely would be Max Garner. Max has nearly a decade of trial experience including service as District Attorney in Palmer. The paralegal would be Jean Blake. Jean is proficient at computerized litigation support, particularly important in this case with its massive record and expedited schedule. Jean already has begun setting up a database including the verbatim transcripts of the Redistricting Board's proceedings, and the various redistricting plans that the board considered. I would be responsible for researching and briefing the City's legal arguments, interviewing witnesses, and other aspects of preparing the case. I have over 20 years' experience litigating municipal law questions, including issues involving elections and municipal boundaries. Much of this experience will be directly applicable to the issues in this litigation. I also have

successfully participated in several Alaska Supreme Court appeals involving municipal and other public law issues.

In addition to having substantial experience that is applicable to this litigation, my firm is not committed to representing any other party whose interests would conflict with those of the City. As I stated previously, we have been retained to challenge the redistricting plan on behalf of the City of Cordova. However, I see no conflict between that representation and our representation of the City, as each city will raise issues specific to its own geographic area. On the other hand, our representation of another party in this litigation should generate economies of scale that would allow us to represent both communities more cost effectively.

FISCAL IMPACT: No Yes, amount requested: Not to Exceed \$30,000
Fund: General Fund, Fund Balance to Legal Services, account no. 01.51.411.332.00

RECOMMENDED ACTION:



Reviewed by: SARAH PALIN, Mayor