

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN

KETCHIKAN GATEWAY BOROUGH,
And Alaska municipal corporation and
political subdivision; AGNES MORAN, an
individual, on her own behalf and on behalf
of her minor son; JOHN COSS, a minor;
JOHN HARRINGTON, and individual; and
DAVID SPOKELY, an individual;

Plaintiffs,

vs.

STATE OF ALASKA; MICHAEL HANLEY,
COMMISSIONER OF ALASKA
DEPARTMENT OF EDUCATION AND
EARLY DEVELOPMENT, in his official
capacity;

Defendants.

Superior Court Case No. 1KE-14-16 CI

UNOPPOSED MOTION
BY THE FAIRBANKS NORTH STAR BOROUGH
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE

COMES NOW the Fairbanks North Star Borough ("FNSB"), by and through its counsel, and hereby moves this court for an order granting leave to participate in an amicus curiae capacity. Plaintiff Ketchikan Gateway Borough, the individual plaintiffs and the State of Alaska defendants do not oppose the FNSB's participation as amicus curiae. If allowed to participate as an amicus curiae, the FNSB will abide by and comply with all existing schedules and will only participate in briefing on significant motions containing substantial questions of law such as dispositive motions. This motion is

supported by the accompanying memorandum of law and the Affidavit of A. René
Broker both filed concurrently.

DATED at Fairbanks, Alaska this 21st day of February, 2014.

FAIRBANKS NORTH STAR BOROUGH



A. RENE BROKER
Borough Attorney
ABA No. 9111076

Fairbanks North Star Borough
Department of Law
P.O. Box 71267
Fairbanks, Alaska 99707
Phone: (907) 459-1318

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MEMORANDUM IN SUPPORT OF
UNOPPOSED MOTION BY THE FAIRBANKS NORTH STAR BOROUGH
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE

I. Introduction

The Fairbanks North Star Borough (hereinafter "FNSB") is asking this court to permit it to participate as *amicus curiae* in these proceedings. Although the current plaintiffs are located in southeast Alaska, the issues are of statewide concern to all municipalities with school districts. Allowing the FNSB to participate in an *amicus* capacity will assist the court in obtaining a wider perspective on how the current statutory scheme impacts other municipalities. There is no specific rule at the trial court

level concerning *amicus curiae* participation and participation is at the discretion of the court. The issues presented by the Ketchikan plaintiffs are of broad public interest and as a borough that is subject to the required local contribution to its school district, the Fairbanks North Star Borough clearly has an interest in this litigation.

II. Facts

The FNSB is a second-class borough involuntarily established in 1964 by the Mandatory Borough Act. As such, it is a general law municipality subject to all the requirements of Title 29 and state statute. The FNSB levies property taxes upon its residents to pay for the cost of all of the governmental functions it maintains, including the local and mandated funding for the Fairbanks North Star Borough School District. As an organized borough, the FNSB is subject to the statutory scheme for state funding of the local school district.

The FNSB is subject to a required local contribution and must tax its residents to supply funding to the local school district to meet that required amount.¹ In FY2014, the FNSB, through property taxes levied on local residents, paid \$26,940,883 to the local school district as the statutorily required minimum local contribution.² The FNSB also contributed \$23,354,165 in optional local contributions and in-kind contributions allowed by A.S. 14.17.410(c).³ The FNSB levied local property taxes upon the taxable real property in the FNSB in the amount of 6.15 mills to pay for the operation of the Fairbanks North Star Borough School District in FY2014.⁴ The required local

¹ A.S. 14.17.410(b) & (c).

² Affidavit of A. René Broker filed concurrently.

³ *Id.*

⁴ *Id.*

contribution in FY2014 equates to a mill rate of 3.29 on the taxable property within the FNSB.

Although the ultimate figures will not be finalized until the end of March, the calculated Basic Need for the Fairbanks North Star Borough School District in FY2014 is estimated to be \$150,674,894.⁵ However, after deducting the required minimum local contribution and the federal impact aid, the State foundation aid paid to the school district will be approximately \$117,445,340.⁶ Therefore Fairbanks North Star Borough School District receives only 78% of Basic Need from the State.

On February 13, 2014, the FNSB Borough Assembly passed a resolution authorizing the participation of the FNSB as *amicus curiae* in any proceedings before this court.⁷ The FNSB Borough Assembly believes that the statutory scheme is an unconstitutional unfunded state mandate illegally imposed upon the FNSB taxpaying residents.

III. Argument

Because the FNSB and its residents are required to contribute to the funding of the local school district, they will be directly affected by the underlying litigation in a similar manner as the Ketchikan Gateway Borough ("KGB") Therefore, the FNSB is requesting that it be allowed to participate as *amicus curiae* on the significant motions when there is a substantial questions of law such as any dispositive motions.

Amicus curiae participation by the FNSB is justified in this matter because it would give the court additional information without the necessity of inserting multiple

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

plaintiffs. The FNSB is not asking to become a full party in this matter through intervention; it merely wishes to be heard as *amicus curiae* on significant motions. There are no court rules applicable to the granting of *amicus curiae* status in a trial court action; however, the Alaska Supreme Court has held that it is not an abuse of discretion for a lower court judge to allow a party to appear as *amicus curiae*.⁸ The Court recognized that intervention by additional parties may bring up additional questions and issues; however, it found that *amicus curiae* participation was the viable alternative.

The Court wrote:

This court has recognized that "additional parties are . . . the source of additional questions, briefs, objections, arguments and motions;" where no new issues are presented, it is most effective to allow participation by a brief *amicus curiae* rather than by intervention.⁹

Where, as here, there is no undue delay or prejudice and the requested participation is limited, FNSB's participation as *amicus curiae* is appropriate. The FNSB is not raising any new issues and its participation would be limited to only substantial motion containing questions of law. Participation by the FNSB would assist the court by showing how the issues presented by the KGB are not limited to the KGB but affect other organized boroughs and municipalities within the State of Alaska.

The FNSB has contacted the attorneys for the plaintiffs and the defendants in this matter and has been told that the KGB and the individual plaintiffs as well as the State of Alaska and named commissioner do not object to the FNSB appearing as *amicus curiae*.¹⁰

⁸ *Alaskans for a Common Language v. Kritz*, 3 P.3d 906, 916, (Alaska 2000).

⁹ *Keane v. Local Boundary Comm'n*, 893 P.2d 1239, 1259 (Alaska 1995) quoting *State v. Weidner* 684 P.2d 103, 114 (Alaska 1984).

¹⁰ Affidavit of A. René Broker.

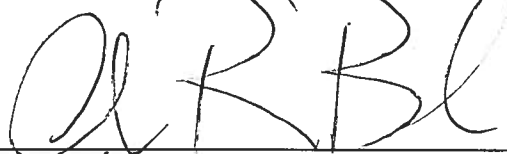
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IV. Conclusion

As an organized borough which is required to fund a portion of the Basic Need of the local school district, the Fairbanks North Star Borough has a significant interest in the outcome of this lawsuit. Neither the plaintiffs nor the defendants object to the FNSB participating in an *amicus curiae* capacity. If allowed to participate as *amicus curiae*, the FNSB agrees to abide by all established schedules and limits its participation only to significant motions which contain a question of law such as dispositive motions. The FNSB respectfully requests that the court grant the motion and allow the FNSB to participate as *amicus curiae*.

DATED at Fairbanks, Alaska this 26th day of February, 2014.

FAIRBANKS NORTH STAR BOROUGH


A. RENÉ BROKER
Borough Attorney
ABA No. 9111076

district”) as the statutorily required local contribution. The required local contribution in FY2014 equates to a mill rate of 3.29 on the taxable property within the FNSB.

3. The FNSB also contributed \$23,354,165 in optional local contributions and in-kind contributions.

4. The FNSB levied local property taxes upon the taxable real property owned by the residents and businesses in the FNSB in the amount totaling 6.15 mills to pay for the operation of the local school district in FY2014.

5. The calculated “Basic Need” for the local school district in FY2014 is estimated to be \$150,674,894. My understanding is this is an estimation and the final figures will be finalized at the end of March, 2014. After deducting the minimum required local contribution and federal impact aid, the State foundation aid paid to the local school district will be approximately \$117,445,340. Dividing the amount to be paid by the amount calculated for Basic Need means that the local school district only receives 78% of Basic Need from the State of Alaska.

6. On February 13, 2014, the FNSB Borough Assembly passed a resolution authorizing the FNSB to participate as *amicus curiae* in this proceeding. Attached is a true and correct copy of Resolution 2014-08 directing the Borough Attorney to take appropriate steps to accomplish such participation.

7. On or about February 19, 2014, I spoke to Scott Brandt-Erichsen and Louisiana W. Cutler, attorneys for the plaintiff. They indicated to me that they would not oppose a motion by the FNSB to participate as *amicus curiae*.

8. On or about February 24, 2014, I spoke to Assistant Attorney General Kate Vogel of the Attorney General's office. She indicated to me that she was filling in

for Margaret Paton-Wash representing the defendants, the State of Alaska and the Commissioner. She told me that that the defendants would not oppose a motion by the FNSB to participate as *amicus curiae* as long as the FNSB agrees to abide by all established schedules and limits its participation only to significant motions which contain questions of law.

FURTHER AFFIANT SAYETH NAUGHT.

DATED at Fairbanks, Alaska this 26th day of February, 2014.


A. RENÉ BROKER

SUBSCRIBED AND SWORN TO BEFORE ME on this 26th day of February,

2014.




Notary Public in and for Alaska

Commission Expires: with office

Fairbanks North Star Borough
Department of Law
P.O. Box 71267
Fairbanks, Alaska 99707
Phone: (907) 459-1318

1 By: Diane Hutchison
2 Karl Kassel
3 Luke Hopkins, Mayor
4 Introduced: 02/13/2014
5 Adopted: 02/13/2014
6

7 FAIRBANKS NORTH STAR BOROUGH

8
9 RESOLUTION NO. 2014 - 08

10
11 A RESOLUTION AUTHORIZING THE PARTICIPATION OF THE FAIRBANKS NORTH
12 STAR BOROUGH AS AMICUS CURIAE IN *THE KETCHIKAN GATEWAY BOROUGH*
13 *V. STATE OF ALASKA* LITIGATION CHALLENGING THE CONSTITUTIONALITY OF
14 THE STATE OF ALASKA'S EDUCATION FUNDING STATUTORY SCHEME
15

16 WHEREAS, the Ketchikan Gateway Borough and other individual plaintiffs
17 recently filed suit against the State of Alaska in a complaint in the Superior Court in
18 Case Number 1 KE 14-16 CiV challenging the constitutionality of the State of Alaska's
19 education funding statutory scheme; and
20

21 WHEREAS, the Fairbanks North Star Borough, like the Ketchikan
22 Gateway Borough, is a second class borough, and was involuntarily established by the
23 Mandatory Borough Act; and
24

25 WHEREAS, because the Fairbanks North Star Borough was incorporated
26 through the Mandatory Borough Act, state law requires the Fairbanks North Star
27 Borough taxpayers to make a required local contribution to fund the "basic need" of our
28 local school district thereby reducing the state's legally required contribution to the
29 district's "basic need"; and
30

31 WHEREAS, the required local contribution is an unconstitutional dedicated
32 State tax imposed on the Fairbanks North Star Borough and its residents; and
33

34 WHEREAS, under this statutory scheme the State is permitted to
35 substantially underfund the Fairbanks North Star Borough school district with the
36 Fairbanks North Star Borough and its taxpayers forced to make up the difference; and
37

38 WHEREAS, this statutory scheme is an unconstitutional unfunded state
39 mandate illegally imposed on Borough taxpayers.
40

41 NOW, THEREFORE, BE IT RESOLVED that the Assembly of the
42 Fairbanks North Star Borough authorizes the participation of the Fairbanks North Star
43 Borough as an amicus curiae in any proceedings before the superior court and if
44 necessary, the Alaska Supreme Court and directs the Borough Attorney to take
45 appropriate steps to accomplish such participation.
46

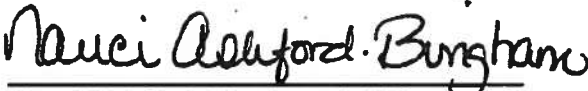
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PASSED AND APPROVED THIS 13TH DAY OF FEBRUARY, 2014.



Karl Kassel
Presiding Officer

ATTEST:



Nanci Ashford-Bingham, MMC
Borough Clerk

48

49 Ayes: Hutchison, Golub, Roberts, Lawrence, Dodge, Davies, Kassel

50 Noes: None

51 Excused: Sattley, Dukes

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Defendants.

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**ORDER GRANTING UNOPPOSED MOTION
BY THE FAIRBANKS NORTH STAR BOROUGH
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE**

Upon consideration of the unopposed motion of the Fairbanks North Star
Borough ("FNSB"), for leave to participate as *amicus curiae*, it is hereby ordered:

1. The FNSB may participate as *amicus curiae*;
2. The FNSB shall abide by all scheduling orders;
3. The FNSB's participation as *amicus curiae* shall be limited to motions with
substantial questions of law including all dispositive motions.

IT IS SO ORDERED.

DATED at Ketchikan, Alaska this _____ day of _____, 2014.

Honorable William B. Carey
Superior Court Judge

Fairbanks North Star Borough
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P.O. Box 71267
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Superior Court Case No. 1KE-14-16 CI

CERTIFICATE OF SERVICE

I, Andrea Fields, hereby certify that on the 27th day of February, 2014, I served by first class United States mail, postage prepaid, and electronic mail, true and correct copies of the following documents on the person(s) identified below:

1. Unopposed Motion by the FNSB for Leave to Participate as Amicus Curiae;
2. Memorandum in Support of Unopposed Motion by the FNSB for Leave to Participate as Amicus Curiae;
3. Affidavit of A. René Broker in Support of the Unopposed Motion by the FNSB for Leave to Participate as Amicus Curiae;

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4. Order Granting Unopposed Motion by the FNSB for Leave to Participate as Amicus Curiae; and

5. Certificate of Service.

Person(s) Served:

Scott A. Brandt-Erichsen
Ketchikan Gateway Borough
1900 1st Avenue, Suite 215
Ketchikan, Alaska 99901
scottb@kgbak.us

Louisiana W. Cutler
K & L Gates LLP
420 L Street, Suite 400
Anchorage, Alaska 99501
louisiana.cutler@klgates.com

Michael C. Geraghty
Attorney General's Office
Anchorage Civil Office
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501
attorney.general@alaska.gov

Rebecca E. Hattan
Attorney General's Office
Labor & State Affairs Section
Box 110300
Juneau, Alaska 99811
rebecca.hattan@alaska.gov

Margaret Paton-Walsh
Attorney General's Office
Labor & State Affairs Section
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501
Margaret.Paton-Walsh@alaska.gov

DATED at Fairbanks, Alaska this 27th day of February, 2014.

FAIRBANKS NORTH STAR BOROUGH



Andrea Fields, Legal Assistant