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May 22, 2009

To Whom It May Concern:

I have been asked whether Alaska law would require a renegotiation of the State of Alaska contract with the Alaska Correctional Officers Association (ACOA). For the reasons set forth below, I believe the answer is no.

Following an impasse in negotiations between the ACOA and the State, the matter went to binding arbitration. The arbitrator's opinion was favorable to the ACOA in the sense that it provided for a new three-year agreement, for 2009-2012. State law required that the arbitrator's decision be submitted to the legislature by the 60th day of the legislative session if it were to be considered. AS 23.40.215(b)("[t]he complete monetary and nonmonetary terms of a tentative agreement shall be submitted to the legislature no later than the 60th day of the legislative session to receive legislative consideration during that calendar year."). Although the arbitrator's decision was completed just prior to the 60th day of the legislative session, it was not submitted to the legislature for more than a week following the 60th day of the legislative session, and thus was statutorily too late for consideration.

The State has taken the position that because the legislature did not fund the contract, the contractual terms have been rejected, and therefore the contract must be renegotiated. The State's position is incorrect.

While the Alaska Supreme Court has never faced the issue of whether the State administration, having failed to meet the 60th day deadline for submission of a contract even though it had the ability to do so, can claim legislative inaction means rejection of contract terms. However, it seems highly unlikely the court would reach such a result.

The court has held that in opposite circumstances, legislative inaction cannot be held to be rejection. In University of Alaska Classified Employees v. University of Alaska, the court held that legislative inaction does not amount to adoption or approval of contract terms. Moreover, if the State's interpretation of the law were correct, then it would allow any State administration to simply hold onto adverse arbitrator's decisions until it was too late for funding that year, and thereby invalidate the arbitrator's decision.

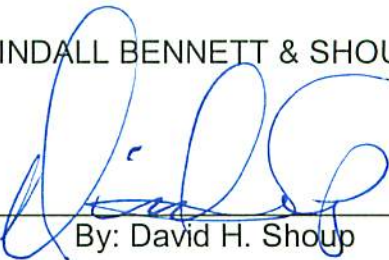
Finally, AS 34.40.215(b) provides that if the 60th day deadline is missed, the

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State must submit the terms of a contract to the legislature within ten days after the convening of the next legislative session. In the interim, in my opinion, no renegotiation is required by state law.

Very truly yours,

TINDALL BENNETT & SHOUP

A handwritten signature in blue ink, appearing to read "David H. Shoup", is written over a horizontal line. The signature is stylized and cursive.

By: David H. Shoup