

MUNICIPALITY OF ANCHORAGE



Office of the Municipal Attorney
Civil Division, Suite 730

Telephone: 907-343-4545
Fax: 907-343-4550

Mayor Ethan Berkowitz

February 3, 2016

VIA FIRST CLASS MAIL

Colonel James E. Cockrell
Director, Alaska State Troopers
5700 East Tutor Road
Anchorage, Alaska 99507-1225

Re: Provision of Law Enforcement Services by the Alaska State Troopers to Areas of the Municipality of Anchorage with No Local Police Services
Dept. of Law Matter No. 15-0807

Dear Colonel Cockrell:

I am writing to confirm my understanding that, after June 30, 2016, the Alaska State Troopers will continue to provide law enforcement services to areas of Southcentral Alaska that have no local law enforcement, including within the Municipality of Anchorage.

You have previously advised the Municipality that, effective July 1, 2016, the Alaska State Troopers will no longer maintain a post in Girdwood. By letter of February 23, 2015, you indicated that AST will assign two or three Bureau of Highway Patrol troopers to patrol Alaska State Highway 1 (the Seward Highway) from the Girdwood area, but advised that these troopers will be authorized only to provide traffic enforcement, to conduct search and rescue operations, and to “backup” local officers.

As you know, state law requires the Alaska State Troopers to enforce criminal laws throughout the state. *See AS 18.65.080 Powers and Duties of the Department and Members of State Troopers* (“The Department of Public Safety and each member of the state troopers is charged with the enforcement of all criminal laws of the state . . .”).

In practice, the Alaska State Troopers are the “primary” source of law enforcement for all Alaskans “who live in places that do not have local certified police officers.”¹ Elsewhere, they serve as a “secondary” source of law enforcement.²

¹ *See Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 950 (Alaska 2005) (“Alaskans who live in places that do not have local certified police officers receive law enforcement services from the Alaska State Troopers, a division of the Alaska Department of Public Safety.”).

² *See ALASKA STATE TROOPERS, 2012 ANNUAL REPORT* at 11 (“D Detachment also served as the primary or secondary source of law enforcement for over 30 villages located in Interior Alaska.”); *id.* at 12 (describing areas in which AST’s “E Detachment” is the “primary provider of public safety”), available at: <http://dps.alaska.gov/pio/releases/resources/annual%20reports/2012%20Annual%20Report.pdf>

Consistent with applicable statutes, the Alaska State Troopers have for many years provided “primary” law enforcement to areas of the Municipality of Anchorage. Appropriately so.

Legally, the Municipality of Anchorage is a borough.³ And, like most boroughs in Alaska, the Municipality of Anchorage does not provide law enforcement services on an area-wide basis.⁴ Nor is there any requirement that it do so. This is in contrast to the requirement that AST enforce the law throughout the state, as noted above.

Instead, consistent with the Alaska Constitution⁵ and the Anchorage Municipal Charter,⁶ the Anchorage Police Department is authorized to provide general police protection services only within the Anchorage Metropolitan Police Service Area.⁷

³ The Municipality of Anchorage was formed by the unification of the Greater Anchorage Area Borough and the City of Anchorage. See ANCHORAGE MUNICIPAL CHARTER art. XIX (dissolving all cities within the boundaries of the former Greater Anchorage Area Borough). Cf. LOCAL BOUNDARY COMMISSION, *Local Government in Alaska* at 4 n.1 (May 2015), available at <https://www.commerce.alaska.gov/web/Portals/4/pub/2015%20%20LOCAL%20GOVERNMENT%20IN%20ALASKA.pdf>.

A “unified municipality” is an organized borough (unified, home-rule borough). A unified municipality is defined as such by the Local Boundary Commission in 3 AAC 110.990(1). The Alaska Constitution recognizes only two types of municipalities, cities and boroughs (Alaska, Const., art. X, sec. 2).

⁴ See, e.g., DEPARTMENT OF PUBLIC SAFETY, ALASKA POLICE STANDARDS COUNCIL *Member Agencies* (indicating that only Sitka, Wrangell, Bristol Bay and the North Slope have a borough-wide police department), available at: <http://dps.alaska.gov/apsc/agencies.aspx>.

⁵ See ALASKA CONST. art. X, § 5 *Service Areas*.

⁶ See, e.g., ANCHORAGE MUNICIPAL CHARTER, § 9.01 *Service Areas*.

⁷ See Anchorage Municipal Code 27.30.135 *Anchorage Metropolitan Police Service Area*. See also AMC 27.10.015 *Service Area Jurisdiction*:

B. *Extension of service beyond boundary of service area*. If any governmental service . . . is funded through one or more service areas, the boundaries of which do not encompass the entire municipality, the municipality shall not be authorized to extend such services beyond the boundaries of the service area except as provided in AS 29.35.020 or as a response to a public emergency. Any such extension of services in response to a public emergency is a discretionary function of the municipality and shall be deemed to be a gratuitous extension of services on an extraterritorial basis.

(emphasis added).

The Anchorage Metropolitan Police Service Area includes none of the outlying portions of the Municipality south of McHugh Creek⁸ and the Anchorage Assembly has no ability to alter the Metropolitan Police Service Area's boundaries.⁹

As a consequence, the communities of Indian, Rainbow, Bird, Girdwood, and Portage are presently served by no "local certified police officers." They are, in all relevant respects, identically situated to other communities that receive their primary law enforcement from the Troopers: they are neither cities with a local police force, nor located within a borough with area-wide police powers.¹⁰ In the absence of law enforcement provided by the Troopers, crimes committed in portions of the Municipality of Anchorage without local police services will go uninvestigated; the Alaska State Troopers thus have a legal obligation and duty to provide for the continued enforcement of the state's criminal laws in the area.¹¹

Indeed, our situation appears to be nearly identical to the arrangement that prevails in the unified City and Borough of Juneau. It is our understanding that the Juneau Police Department is authorized only to provide law enforcement services within City and Borough's "Roaded Service Area (No. 9)."¹² Outside the service area, it is our understanding that the Troopers provide primary law enforcement. The Municipality of Anchorage should be treated no differently.

⁸ See *id.* at 135A.:

. . . The Anchorage Metropolitan Police Service Area consists of the areas formerly known as the City of Anchorage, the Spenard Service Area of the Greater Anchorage Area Borough, the Muldoon-Sand Lake Area, the Dimond Industrial Park Area, the Oceanview-Klatt Area, the Basher Area and a portion of the Far North Bicentennial Park, the Southeast Midtown Area, Independence Park and surrounding area, Section 16, except Boling Subdivision, the Eagle River-Chugiak Area and all other areas of the municipality north of McHugh Creek.

⁹ See ANCHORAGE MUNICIPAL CHARTER art. II ("Among rights guaranteed by this Charter are: . . . (2) The right of immunity from the creation or alteration of a service area, except upon a vote within the area affected.").

¹⁰ Indian, Rainbow, Bird, Girdwood, and Portage are much like the other communities served by the Troopers' "E Detachment" posts: Anchor Point, Ninilchik, Cooper Landing, and Crown Point. *Cf.* ALASKA STATE TROOPERS, 2012 ANNUAL REPORT at 12.

¹¹ See AS 18.65.080; ALASKA CONST, art. I, § 1 *Inherent [and Equal] Rights*, § 7 *Due Process*, and § 12 *Criminal Administration* ("Criminal administration shall be based upon . . . the need for protecting the public"). See also *Alaska Inter-Tribal Council*, 110 P.3d at 968 n.91 (suggesting that a claim could be made, in appropriate factual circumstances, that state law enforcement services could be "so lacking in fairness" as to "give rise to a plausible substantive due process claim").

¹² See Ordinance 88-25 of the City and Borough of Juneau, Alaska (May 31, 1988).

Colonel James E. Cockrell
February 3, 2016
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The Municipality appreciates that your organization is facing difficult budgetary and internal challenges. We also recognize that AST retains some amount of flexibility in how it will enforce the state's criminal laws. But we do not believe it is within the discretion of AST to leave an area of the state entirely without general law enforcement services.

I am therefore writing to confirm my understanding that, regardless of whether the Troopers maintain a post within Municipality, the Alaska State Troopers will continue to provide general law enforcement services to areas of the Municipality of Anchorage that are not served by a local police force.

Please do not hesitate to contact me if I can provide any further information. I would be happy to meet with you or members of your staff at any time convenient to you to further discuss this matter.

Sincerely,

A handwritten signature in cursive script that reads "William D. Falsey". The signature is written in black ink and is positioned above the typed name and title.

William D. Falsey
Municipal Attorney

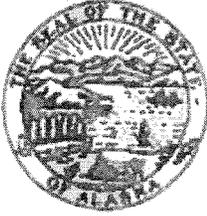
cc: Mayor Berkowitz (via email)
Assembly Chair Traini (via email)
Assembly Member Evans (via email)
Assembly Member Johnston (via email)

Chair Daniels, Girdwood Board of Supervisors (via email)

Asst. AG John Novak (via email)

Enclosure

Letter of Col. Cockrell to Anchorage Police Chief Mew (Feb. 23, 2015)



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Public Safety

DIVISION OF ALASKA STATE TROOPERS
Office of the Director

5700 East Tudor Road
Anchorage, Alaska 99507-1225
Main: 907.269.5511
Fax: 907.337.2059

February 23, 2015

Chief Mark T. Mew
Anchorage Police Department
4501 Elmora Road
Anchorage, Alaska 99507-1599

Dear Chief Mew:

I am writing to inform you that beginning on January 1, 2016, the Alaska State Troopers (AST) will no longer provide police services to the community of Girdwood and the surrounding areas within the Municipality of Anchorage. This was a difficult decision because of our long standing history of providing police services to Girdwood and the support of its citizens. This decision was made necessary to address staffing needs elsewhere on the Kenai Peninsula and the likelihood of continued budget and staffing reductions in the coming years. It is also generally believed that the Municipality of Anchorage should provide police services within their boundaries.

At this time, AST is still planning to provide two or three Bureau of Highway Patrol (BHP) troopers assigned to patrol the Seward Highway from the Girdwood area. They will only be authorized to provide traffic enforcement along the Seward Highway, respond to search and rescues and provide backup to your officers. AST would be willing to partner with the Anchorage Police Department to respond to accidents along the Seward Highway, especially within the Traffic Safety Corridors and take over investigative authority for serious and fatal motor vehicle crashes, if we have a BHP unit available. More formal details could be worked out before the transition actually occurs.

It's my goal to make this transition as smooth as possible. Our two agencies have had a long standing history of working together and I am hopeful this will continue. I will make available any information that you might need as you plan for the transition and will also direct my staff to work closely with your staff to ensure for a smooth transition. Again, we are only making this move because of the current fiscal realities and the need to reallocate trooper positions elsewhere on the Kenai Peninsula.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Cockrell".

Colonel James E. Cockrell
Director, Alaska State Troopers

Cc: Commissioner Gary Folger
Deputy Commissioner Terry Vrabec
Finance Director Kelly Howell
Major Matt Leveque, Deputy Director
Major Dennis Casanovas, Deputy Director
Captain Andy Greenstreet, "E" Detachment Commander