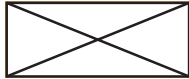


off the record

a bi-weekly legislative
update from
Senator Kim Elton

Room 504, State Capitol, Juneau, AK 99801 ♦ 465-4947 ♦ 465-2108 FAX ♦ October 15, 1999

Capitol Undercurrents



Hmmmmmm!—Gov. Jay Hammond, a leader in the fight against the ballot initiative that proposed using permanent fund earnings to bridge the budget gap, is now suggesting the state ought to at least review state taxes on the oil industry because “I’m told oil companies now get \$2 for every \$1 Alaska receives” (Anchorage Daily News, September 19, 1999). His post-election suggestion is one of the clearest indications of why the oil patch probably financed more than 40 percent of the half-million dollar “Vote Yes” campaign.

And who was on the grassy knoll?—Before abandoning the majority caucus, Rep. Jerry Sanders sent a letter to his House Republican colleagues during the special session saying there is a conspiracy between the House Speaker and the governor. Sanders alleged a 20-year political relationship between Tony Knowles and Brian Porter and said that relationship was selling true Republican values down the river. He suggested that all Republicans who voted for using the earnings reserve to close the budget gap and also voted for a subsistence solution had fallen under the spell of the Knowles/Porter cabal.

resisting the urge to merge . . .

Alaskans get Backbone

In an attempt to prove that “special interest” is not always a pejorative term, I give you Backbone, a special interest group coalescing about the BP/ARCO merger issues.

The non-partisan group includes former governors and legislators of all political persuasions, religious leaders, ex-commissioners, retired state oil and gas experts, and business men and women. They are a “special interest” interest group asking questions and raising issues that need to be asked and raised before Alaskans sign off on the merger of BP-Amoco and ARCO, the behemoths of the North Slope.

Backbone notes Alaska’s antitrust law provides that monopolies and attempted monopolies are unlawful and that mergers and acquisitions are unlawful when competition is lessened. They suggest that the state delay BP’s takeover of ARCO by filing antitrust suits until Alaskans figure out the right deal.

The angst they have over a fast-tracked review of the merger is legitimate. The governor’s office and the legislature must represent the interests of each Alaskan. BP is responsible to its shareholders. It is unreasonable to expect shareholder interests and Alaska’s interests will ever end up in some state of harmonic convergence. I’m not going out on a limb here—Alaska has collected more than \$6 billion through difficult, expensive, and protracted litigation from our oil industry “partners” over more than two decades. The oil industry sued the state over a taxing regime called separate accounting (a regime that enhanced state revenues) and lost, after protracted litigation, in both the Alaska and U.S. Supreme Court. Why should we expect, after a merger, that state interests and BP shareholders’ interests are harmonious?

Some suggest that having the governor negotiate a merger deal while “partnering” with and while resisting new taxes on the oil industry is like watching the Smith Bros. debate the merits of cough drops. I disagree. I think the governor is trying to protect the interests of Alaskans. Having said that, some



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believe the governor's negotiating stance is enhanced if we use the tools of federal and state anti-trust law before a deal is signed, sealed and approved. An anti-trust suit can focus merger discussions. Exhibit 'A' in this premise is all the settlements with the oil industry that occurred only after the state filed suits. Those suits induced reasonable settlement discussions.

The governor says he expects to have a template of merger conditions hammered out with BP fairly soon. He wants to take that plan on the road and present it in public forums. It's an aggressive timetable given all the merger questions and ancillary issues.

One of the big, unresolved questions concerns how BP should divest itself of North Slope acreage. Under state law, BP can't have more than 500,000 acres under lease. They seemingly would have to, after the merger, relinquish 360,000 acres.

The question is: what acreage? They can divest themselves of the lower value leases—leases where expectations are low. Or, under state law, they can even "reduce" credited lease acreage by selling a percentage of each lease. For example, for a lease of 100 hundred acres in which they have 100 percent ownership, they could sell 49 percent, retain a controlling 51 percent, and then legally claim they had divested themselves of 49 of the 100 acres. That, of course, circumvents the purpose of the law—they would retain controlling interest of 100 acres while being credited with only 51 acres.

One of the most important ancillary issues hanging over merger discussions is revenue. The \$1 billion in annual efficiencies of operation accruing from a merger does not translate into more money for the state. Given that, some folks are saying we need to revisit the tax breaks given the oil industry in previous years. Both the economic limit factor (ELF) and separate accounting are likely subjects of discussion next session.

In addition to the governor's merger review, the legislature has a parallel-track, bi-partisan, joint Senate and House merger review committee that also is reviewing the competition, ac-

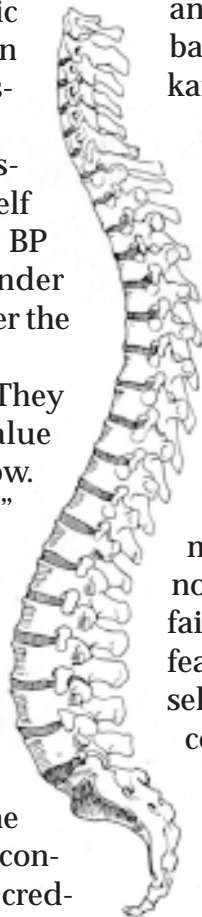
cess and revenue aspect of the merger. I'm impressed by the questions they've asked and the way the merger committee's Republicans and Democrats are handling the implications of the proposed wedding of BP and ARCO. They realize the state must ensure a pre-nuptial agreement that protects all Alaskans regardless of political party.

Alaska is especially fortunate that Juneau Rep. Beth Kerttula is serving on the legislature's merger review committee. She is working closely with merger chair Republican Sen. Rick Halford and other committee members and putting her background in oil and gas law to work for all Alaskans.

I suspect the governor's timetable for his merger review will slip. I support his pledge to seek full public review of any proposed merger pact but don't think the outstanding weighty issues can be resolved as quickly as he wishes. We can't answer many of the competition, access, and revenue questions in just the next few weeks. We need to be assured that one oil company, controlling more than 70 percent of the oil production facilities on the North Slope, more than 70 percent of the oil pipeline, and more than 80 percent of the tanker capacity, does not have the power to quash competition and unfairly leverage the state. Just as Alaskans should fear an oligarchy form of government where the select control the reins of law, so should we be concerned about an *oil*garchy on the Slope where one company rules.

I'm not suggesting that will happen. I am suggesting it *could* happen and we need to take the time to make sure it doesn't. If filing an anti-trust lawsuit gives us that time, we ought to do it.

(The next edition of the newsletter will review oil tax issues that must be examined during the merger review.)



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