

July 15, 1991

The Honorable Nancy Bear Usera
Commissioner
Department of Labor
P.O. Box 21149
Juneau, AK 99802-1149

Re: Proximity of construction
equipment to power lines
Our File No. 663-91-0499

Dear Commissioner Usera:

You have asked for an opinion on whether or not Alaska Statute 18.60.670(1) permits an operator to place equipment 10 feet away from an overhead power line, even though such equipment is capable of lateral, vertical, or swinging motion and thus capable of intruding into the 10-foot protective envelope. In other words, (1) Can an operator place a piece of equipment that has a 100-foot boom 10 feet from an overhead power line, so long as the operator of the equipment keeps the equipment outside of the 10-foot protective envelope; or (2) must the operator place the equipment in a manner such that the boom is 110 feet from the overhead power line, so that there is not a possibility that the boom could enter the 10-foot protective envelope?

It is our opinion that AS 18.60.670(1) permits an operator to place equipment outside the 10-foot envelope, even though the equipment is capable of vertical, lateral, or swinging motion and thus capable of penetrating into the 10-foot envelope.

The statutes AS 18.60.670 -- 18.60.695, only prohibit the actual placement and operation of such equipment inside the 10-foot

envelope. We base this opinion on the statutory construction of AS 18.60.670 in conjunction with related statutes on overhead high voltage lines, AS 18.60.675 -- 18.60.695.

AS 18.60.670 provides:

A person individually or through an agent or employee may not

(1) place any type of tool, equipment, machinery or material that is capable of lateral, vertical or swinging motion, within 10 feet of a high voltage overhead electrical line or conductor;

(2) store, operate, erect, maintain, move or transport tools, machinery, equipment, supplies, materials, apparatus, buildings or other structures within 10 feet of a high voltage overhead electrical line or conductor.

When a statute is ambiguous, a court will look to statutes that relate to the same subject matter, particularly those statutes passed at the same time, to assist the court in interpreting it. In Alaska Children's Services v. Williamson, 606 P.2d 786, 789 (Alaska 1980), the court stated:

The two statutes at issue here were enacted at the same time and deal with the same subject matter. They are *in pari materia* and should be construed with one another and in such a manner as to give maximum effect to each.

Similarly, in In re Estate of Hutchinson, 577 P.2d 1074, 1075 (Alaska 1978), the court stated: "It is an established principle of statutory construction that all sections of an act are to be construed together so that all have meaning and no section conflicts with another." See also Hafling v. Inlandboatmen's Union of Pacific, 585 P.2d 870 (Alaska 1978).

When construing safety legislation, as here, the court will liberally construe the legislation to effectuate the legislation's purpose. ITT Grinnell Corp. v. Donovan, 744 F.2d 344, 349 (3d Cir. 1984). However, when construing a statute that carries criminal penalties, the court strictly construes the criminal statute and resolves ambiguities against the state. Romeri v. State, 585 P.2d 679 (Alaska App. 1990). A person who violates AS 18.60.670 is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both.

In 1972, the legislature enacted AS 18.60.070 at the same time it enacted all of the statutes related to overhead high voltage power lines, AS 18.60.070 -- 18.60.095. AS 18.60.675 is particularly helpful in construing AS 18.60.670. AS 18.60.675 provides that before one can operate equipment that is capable of vertical, lateral, or swinging motion, the operator must place a warning sign on the equipment that reads: "It is unlawful to operate this equipment within 10 feet of high voltage lines." AS 18.60.675 provides:

A person individually or through an agent or employee may not operate a crane, derrick, power shovel, drilling rig, hoisting equipment, or similar apparatus, any part of which is capable of vertical, lateral or swinging motion, unless the operator or the operator's employer posts and maintains in plain view of the operator, a durable warning sign legible at 12 feet, that reads as follows: "It is unlawful to operate this equipment within 10 feet of high voltage lines."

In our opinion, AS 18.60.675 demonstrates that, with respect to equipment that is capable of lateral, vertical, or swinging motion, the legislature only intended that such equipment not be actually placed or operated within the 10-foot protective envelope. If the legislature wanted to prohibit the placement or operation of this type of equipment so that it could not possibly enter the 10-foot protective envelope, it would have required the sign to state that it was unlawful to place or operate the equipment in such a way that it was possible for the equipment to enter the 10-foot protective envelope. Furthermore, it would appear that we would create an internal inconsistency if we were to interpret AS 18.60.670 to prohibit the placement of such equipment so it could not possibly penetrate the 10-foot protective envelope, when clearly AS 18.60.675 only requires an operator to post a sign prohibiting the operator from actually penetrating the 10-foot protective envelope. Additionally, because a violation of AS 18.60.670 carries criminal penalties, a court very likely would construe the statute in favor of the defendant.

Lastly, in interpreting a statute, a court will give some deference to an administrative agency's long-standing interpretation of the statute. State, Dept. of Rev. v. Alaska Pulp America, 674 P.2d 268, 277 (Alaska 1983). The Alaska Department of Labor has authority to adopt safety and health regulations pursuant to AS 18.60.020. In 1973, the Department adopted a Construction Code and a General Safety Code. Since then, the Department has

allowed equipment, such as cranes, to operate up to the protective envelope.

The Alaska Department of Labor's Occupational Safety and Health Standards Construction Code addresses the minimum allowed distances between power lines and equipment such as cranes. Code Sec. 05.140(a)(1)(0)(i) provides that equipment such as cranes may not be operated within 10 feet of a power line. Consequently, the crane may be operated up to the protective envelope, even though it is capable of intruding into the protective envelope. Construction Code Sec. 05.140(a)(1)(0)(i) provides, in pertinent part:

O. Except where electrical distribution and transmission lines have been de-energized and visibly grounded at point of work or where insulating barriers . . . have been erected . . . equipment or machines shall be operated proximate to power lines only in accordance with the following:

(i) For lines rated 50 kV. or below, minimum clearance between the lines and any part of the crane or load must be 10 feet;

(ii) For lines rated over 50 kV., minimum clearance between the lines and any part of the crane or load must be 10 feet plus 0.4 inch for each 1 kV. over 50 kV., or twice the length of the line insulator, but never less than 10 feet;

(iii) In transit with no load and boom lowered, the equipment clearance must be a minimum of 4 feet for voltages less than 50 kV., and 10 feet for voltages over 50 kV., up to and including 345 kV., and 16 feet for voltages up to and including 750 kV.

It is fair to presume that when the Department of Labor adopted these regulations, it had in mind AS 16.60.070 and knew its

requirements. The Department's adoption of these regulations illustrates its long-standing interpretation of AS 18.60.070 that the statute only prohibits the operation of equipment capable of lateral, vertical, and swinging motion inside the 10-foot protective envelope.^{1/}

In summary, it is our opinion an operator of equipment capable of lateral, vertical, or swinging motion may work just outside the 10-foot protective envelope, as long as the equipment is never allowed to penetrate that envelope.

If you should have any questions regarding this opinion, please feel free to contact me.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:

Toby N. Steinberger
Assistant Attorney General

^{1/} Construction Code Sec. 05.140(a)(1)(0) and General Safety Code Sec. 01.0705(j) are the same as federal occupational and safety regulation 29 U.S.C. § 1926.550(a)(15). Federal OSHA requires the State of Alaska to have regulations as strict or stricter than federal OSHA. To the extent that the OSHA CC & GSC regulations require a greater distance than 10 feet, the Department of Labor is simply complying with the federal mandate that the state's regulations be as strict as the federal regulations. Moreover, if the Department of Labor interpreted AS 18.60.070 to require that any equipment capable of lateral, vertical, or swinging motion be placed or operated so that there was no possibility it could come within the 10-foot envelope, the Department of Labor could have adopted such a regulation, because it would be stricter than the federal regulation.

Commissioner Usera
File No. 663-91-0499

July 15, 1991
Page 7

TNS:reb:highpwr