

Introduced by: McBride,
McGahan
Date: Jan. 4, 1982
Vote: 6 Yes, 9 No
Action: Defeated

KENAI PENINSULA BOROUGH

RESOLUTION 83-10

REQUESTING THAT THE ORDER TRANSFERRING DISTRICT JUDGE JAMES C. HORNADAY FROM HOMER BE SET ASIDE AND FOR STUDY AND MODIFICATION OF THE STATE STATUTES FOR PEREMPTORY DISQUALIFICATION OF JUDGES.

WHEREAS, Homer District Court Judge James C. Hornaday has been giving more than minimum sentences for Operating A Motor Vehicle Under The Influence (OMVI) cases in response to the local increase in such cases and with the approval of the majority of citizens in the Homer area; and

WHEREAS, AS 22.20.022 allows peremptory disqualification of a District Court or Superior Court judge in either civil or criminal actions by filing an affidavit alleging "the belief that a fair and impartial trial cannot be obtained" without any cause or reason being given as a basis for such belief; and

WHEREAS, peremptory disqualification of District Court Judge James C. Hornaday has been exercised in 80% of cases brought before him relating to OMVI; and

WHEREAS, many citizens and organizations think it is in the best interest of the community to have stronger sentencing in such cases in order to encourage the desire for rehabilitation among such offenders and in order to protect the public from the loss of life, injuries, and property damage being incurred because of the prevalence of operating motor vehicles while under the influence of alcohol or drugs; and

WHEREAS, Homer District Court Judge James C. Hornaday is being transferred to Anchorage because of the high rate of peremptory disqualifications in OMVI cases even though the voters in the last election supported Judge Hornaday's retention;

NOW THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That the transfer of District Court Judge James C. Hornaday to Anchorage be set aside.

Section 2. That a legislative review of AS 22.20.020 (disqualification of judicial officer for cause) and AS 22.20.022 (peremptory disqualification of a judge in either civil or criminal action) with particular consideration to the right of sentence appeals granted in AS 22.10.020 and

AS 22.07.020 with respect to the desirability of modifying or restricting the peremptory disqualification of judges without cause.

Section 3. That in view of the high total of deaths, injuries, and property damages on our highways caused by driving while under the influence of alcohol, the legislature consider imposition of mandatory sentences for first, second, and third offenders in OMVI cases.

Section 4. That an administrative review should be held with respect to the legitimate authority to change the home station of a judge without his consent or without just cause, except on a temporary basis, where the judge was appointed to a seat in a community and has been supported by the community and retained by a vote of the electorate in that seat.

Section 5. That a public hearing be held with concerned citizens in Homer concerning the transfer to Anchorage of District Court Judge James C. Hornaday with the requested attendance of the following: Governor Bill Sheffield or his representative, the Alaska Judicial Council or its representative, Chief Justice Burke or his representative, Senators Don Gilman and Paul Fischer, and Representatives Hugh Malone, Milo Fritz, and Bette Cato.

DEFEATED
~~ADOPTED~~ BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON
THIS 4th DAY OF January 1983.

Donald L. McCloud, Assembly President

ATTEST:

Borough Clerk