FOLDER NO.

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Constitutional Convention
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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D. C.

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November 7, 1955

Hon. E. L. Bartlett
Delegate from Alaska
House Office Building
Washington 25, D. C.

My dear Mr. Bartlett:

Attention: Mrs. Margery Smith

The accompanying memorandum has been prepared in response to your request for information concerning the background of the mineral lands provision of the Alaska statehood bills.

While we are happy to perform this service for you, I am sure you will understand that the memorandum in no way represents an official opinion concerning the desirability of the provision in question.

Sincerely yours,

/s/ Herbert J. Slaughter
Herbert J. Slaughter
Chief, Branch of Reference
Division of Legislation

Enclosure

Dept. of the Interior - Mineral Lands Provision of AK Statehood Bills

MEMORANDUM

RE

THE MINERAL LANDS PROVISION OF THE ALASKA STATEHOOD BILLS

The bills in the 84th Congress for the admission of Alaska into the Union contain a provision which affirmatively declares that the land grants made or confirmed by those bills shall include mineral deposits, and which then proceeds to impose certain express restrictions upon the manner in which Alaska may administer any mineral lands so obtained by it. This provision constitutes section 205(j) in H. R. 2535, as reported by the House Committee on Interior and Insular Affairs on March 3, 1955, and section 205(k) in S. 49, as introduced. The provision was initially drafted in February, 1954, during the consideration of Alaska statehood legislation by the Subcommittee on Territories and Insular Affairs of the Senate Committee on Interior and Insular Affairs. It appears as a part of section 5(j) in the version of S. 50, 83d Congress, reported by that Subcommittee (Committee Print No. 4, dated February 24, 1954), and as section 5(k) in the version of S. 50, 83d Congress, reported by the full Senate Committee on February 24, 1954. Parenthetically, it should be noted that H. R. 2535 makes the proposed restrictions upon administration applicable to all three of the major land grants contemplated, whereas S. 49 would - following the precedent of S. 50, 83d Congress - exempt from those restrictions the grant of 800,000 acres for community development and expansion.

The reasoning which prompted the adoption of the provision in question by the Senate Committee is understood to be (1) that mineral

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deposits must be expressly mentioned in order for mineral lands to be encompassed by a Congressional land grant to a State; and (2) that Alaska should not be accorded greater freedom in the administration of mineral lands than that accorded existing States having Congressional land grants.

(1) During the years when the public land States of the West were being admitted into the Union, it was the general policy of the Congress to include only nonmineral lands within the grants customarily made to new States. Thus the acts under which Colorado (Act of March 3, 1875, 18 Stat. 474, 476), North Dakota, South Dakota, Montana and Washington (Act of February 22, 1889, 25 Stat. 676, 681), Idaho (Act of July 3, 1890, 26 Stat. 215, 217), and Wyoming (Act of July 10, 1890, 26 Stat. 222,224) were admitted specifically provide that "all mineral lands shall be exempted" from the grants made to those States. Language affirmatively excluding mineral lands also appears in the enabling legislation for New Mexico and Arizona (Act of June 20, 1910, 36 Stat. 557, 561, 565, 572, 575), and in the statute under which Nevada obtained a "right of selection" grant in lieu of its original school section grant (Act of June 16, 1880, 21 Stat. 287, 288). The enabling legislation for Oklahoma, on the other hand, expressly included mineral lands within the grants to that State, but prohibited the State from disposing of such lands, except by short-term leases, prior to a specified date (Act of June 16, 1906, 34 Stat. 267, 273).

With respect to those situations where, as was true of the Utah grants and the California school section grant, the law making the

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grant neither affirmatively included nor affirmatively excluded mineral lands, the Supreme Court has held that the failure to mention mineral lands was tantamount to an express exclusion of them from the grant. In United States v. Sweet, 245 U. S. 563 (1918) the Supreme Court, in deciding that the grants to Utah did not encompass mineral lands, summarized its previous decisions and its views on this subject in the following passages of its opinion:

> In the legislation concerning the public lands it has been the practice of Congress to make a distinction between mineral lands and other lands, to deal with them along different lines, and to withhold mineral lands from disposal save under laws specially including them. This practice began with the ordinance of May 20, 1785, 10 Journals of Congress, Folwell's ed., 118, and was observed with such persistancy in the early land laws as to lead this court to say in United States v. Gratiot, 14 Pet. 526, "It has been the policy of the government, at all times in disposition of the public lands, to reserve the mines for the use of the United States;" and also to hold in United States v. Gear, 3 How. 120, that an act making no mention of lead-mine lands and providing generally for the sale of "all the lands" in certain new land districts, "reserving only" designated tracts, "any law of Congress heretofore existing to the contrary notwithstanding," could not be regarded as disclosing a purpose on the part of Congress to depart from "the policy which had governed its legislation in respect to lead-mine lands," and so did not embrace them.
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> By the Act of March 3, 1853, c. 145, 10 Stat. 244, Congress granted to the State of California sections 16 and 36 in each township for school purposes and large quantities of lands for other purposes. Mineral lands were neither expressly excepted from nor expressly included in the grant of the school sections, but were specially excepted from the other grants. This difference led to a controversy over the true meaning of the school grant, the state authorities taking the view that it did, and the land officers of the United States that it did not, include mineral lands. Ultimately the con-

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troversy came before this court in Mining Co. v. Consolidated Mining Co., 102 U. S. 167, and the position taken by the land officers of the United States was sustained, the court saying, p. 174:

"Taking into consideration what is well known to have been the hesitation and difficulty in the minds of Congressmen in dealing with these mineral lands, the manner in which the question was suddenly forced upon them, the uniform reservation of them from survey, from sale, from preemption, and above all from grants, whether for railroads, public buildings, or other purposes, and looking to the fact that from all the grants made in this act they are reserved, one of which is for school purposes besides the sixteenth and thirty-sixth sections, we are forced to the conclusion that Congress did not intend to depart from its uniform policy in this respect in the grant of those sections to the State.

"It follows from the finding of the court and the undisputed facts of the case, that the land in controversy being mineral land, and well known to be so when the surveys of it were made, did not pass to the State under the school-section grant."

That ruling was reaffirmed and followed in Mullan v. United States, 118 U. S. 271, where valuable coal lands, known to be such, were held not to be open to selection by the State as indemnity school lands.

The conditions ensuing from the discovery of gold and other minerals in the western States and Territories resulted in a general demand for a system of laws expressly opening the mineral lands to exploration, occupation and acquisition, and Congress, responding to this demand, adopted from 1864 to 1873 a series of acts dealing with practically every phase of the subject and covering all classes of mineral lands, including coal lands. These acts, with some before noticed, were carried into a chapter of the Revised Statutes entitled "Minerals Lands and Mining Resources." Taken collectively they consittute a special code upon that subject and show that they are intended not only to establish a particular mode of disposing of mineral lands, but also to except and reserve them from all other grants and modes of disposal where there is no ex-

press provision for their inclusion. Thus the policy of disposing of mineral lands only under laws specially including them became even more firmly established than before, and this is recognized in our decisions. Mining Co. v. Consolidated Mining Co., supra, 174; Deffeback v. Hawke, 115 U. S. 392, 402; Davis v. Weibbold, 139 U. S. 507, 516. And while the mineral-land laws are not applicable to all the public land States, some being specially excepted, there has been no time since their enactment when they were not applicable to Utah.

Another statute indicative of the policy of Congress and pertinent to the present inquiry is the Act of February 28, 1891, c. 384, 26 Stat. 796, which defines the indemnity to which a State or Territory is entitled in respect of its school grant. In addition to dealing with deficiencies occurring in other ways, it provides, "And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land." In this there is a plain implication that where those sections are mineral-known to be so when the grant takes effect--they do not pass under the grant. And it does not militate against this implication that under another provision the State may surrender those sections and take other lands in lieu of them where, although not known to be mineral when the grant takes effect, they are afterwards discovered to be so. See California v. Deseret Water & Co., 243 U. S. 415.

What has been said demonstrates that the school grant to Utah must be read in the light of the mining laws, the school land indemnity law and the settled public policy respecting mineral lands, and not as though it constituted the sole evidence of the legislative will. United States v. Barnes, 222 U. S. 513, 520. When it is so read it does not, in our opinion, disclose a purpose to include mineral lands. Although couched in general terms adequate to embrace such lands if there were no statute or settled policy to the contrary, it contains no language which explicitly or clearly withdraws the designated sections, where known to be mineral in character, from the operation of the mining laws, or which certainly shows that Congress intended to depart from its long prevailing policy of disposing of mineral lands only under laws specially including them. It therefore must be taken as neither curtailing those laws nor departing from that policy.

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The members of the Senate Committee on Interior and Insular Affairs who took an active part in the study of S. 50, 83d Congress, considered that, in the light of the holdings of the Supreme Court, statutory language expressly including mineral deposits within the contemplated land grants to Alaska would probably be necessary in order for these grants to encompass mineral lands.

(2) A material change in the attitude of the Congress towards the granting of mineral lands to the States was evinced by legislation initially enacted in 1927 and amended (in particulars not here material) in 1932 and 1954 (Act of January 25, 1927, 44 Stat. 1026, as amended May 2, 1932, 47 Stat. 140, and April 22, 1954, 68 Stat. 57; 43 U. S. C., 1952 ed., secs. 870, 871, Supp. II, sec. 870). This legislation provides, in effect, that all grants to the States of numbered sections in place for the support of public schools shall encompass sections that are mineral in character equally with sections that are nonmineral in character. The legislation further expressly states that its provisions shall not be applicable to grants other than those of numbered school sections in place, nor to indemnity or lieu selection rights under school section grants. Its provisions, therefore, would not extend of their own force to any of the grants proposed to be made in the Alaska statehood bills here under consideration, since these would be "right of selection" grants rather than grants of numbered sections in place. Furthermore, the 1927 legislation

states that "all lands in the Territory of Alaska" are excluded from its operation.

The act of 1927 sets forth, in addition to the provisions just mentioned, certain conditions which the States must observe in administering mineral lands obtained by them under that measure. Summarized in general terms, these conditions are: (1) that the States must reserve the mineral deposits from any disposition of title to the lands; (2) that the mineral deposits shall be subject to lease as the State legislatures may direct; and (3) that the income derived from leasing the mineral deposits is to be utilized for public school purposes by the States.

The incorporation in S. 50, 83d Congress, of the restrictions that now appear in sections 205 (j) of H. R. 2535 and 205 (k) of S. 49 presumably reflected a desire upon the part of the Senators concerned to achieve, so far as practicable, parity of treatment between Alaska and the existing States having Congressional land grants. In other words, the thought was that Alaska should be allowed to obtain mineral lands only if it would administer them in substantially the same manner that States now having mineral land grants are required to administer the lands obtained by them under those grants. This is evident from the close parallelism between the conditions proposed to be imposed upon Alaska and those contained in the 1927 act. Omission of the third of the conditions set forth in the latter may be attributed to the fact that S. 50, 83d Congress - unlike some of the earlier statehood bills - did not earmark for public school pur-

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poses any of the land grants proposed to be made by it, whereas the 1927 act applies to grants that were so earmarked at the time they were made.

The action taken with respect to S. 50, 83d Congress, was, however, not the first occasion upon which the Senate Committee on Interior and Insular Affairs has incorporated restrictions upon the disposition of mineral lands in statehood bills for Alaska. The original proposal for the making to Alaska of a "right of selection" grant in lieu of a grant of numbered sections in place - as presented to the Committee in 1950 by Senators Anderson and O'Mahoney (section 5(b) of Committee Print A, dated May 23, 1950, of H. R. 331, 81st Congress) - read as follows:

> "After five years from the admission of Alaska into the Union, the State, in addition to any other grants made in this section, shall be entitled to select not to exceed twenty million acres from the vacant, unappropriated, and unreserved public lands. Such selections shall be made in reasonable compact tracts. Where the lands desired are unsurveyed at the time of selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey. Such lands may be granted or sold by the State in tracts of not more than ___ acres for any purpose but with a reservation to the State of a royalty of not less than ___ per centum on all minerals produced therefrom."
> (Underlining supplied.)

Section 5(b) of H. R. 331, 81st Congress, in the form in which it was subsequently reported by the full Committee on June 29, 1950, read as follows:

"After five years from the admission of Alaska into the Union, the State, in addition to any other grants made in this section, shall be entitled to select not to exceed twenty million acres from the vacant, unappropriated, and unreserved public lands in the State. Such selections shall be made in reasonably compact tracts: Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied. Where the lands desired are unsurveyed at the time of selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey. Such lands may be granted or sold by the State in tracts of not more than 640 acres for any purpose, but with a reservation to the State of a royalty of not more than 12½ per centum on all minerals produced therefrom. The lands granted to the State of Alaska pursuant to this subsection, the income therefrom and the proceeds thereof when said lands are sold, shall be held by said State as a public trust for the support of the public schools and other public educational institutions." (Underlining supplied.)

Section 5(b) of S. 50, 82d Congress, as introduced and also in the form in which it was reported by the Senate Committee on May 8, 1951, contained language identical to that last above quoted.

These earlier proposals, it will be noted, differ in a number of respects from the restrictions contained in the bills now pending. In particular, the current language expressly calls upon Alaska to adopt a mineral leasing system, while the earlier versions permitted the mineral deposits to be disposed of along with the surface, provided a royalty interest was reserved by the State. On the other hand, the current language does not attempt to prescribe

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maximum or minimum rates of royalty as did the earlier versions, but appears to leave the terms of leasing wholly to the discretion of the State legislature. From a practical standpoint, this second difference may be more important than the first, since if the Alaska legislature is left, as H. R. 2535 and S. 49 now intend to provide, with the untrammelled right to frame its own mineral leasing laws, it can, if it so choses, establish priorities that will tend to keep the surface and mineral rights in the same hands and can, in general, fit the provisions of its mineral leasing system to whatever may be its concepts of the public interest.

MEMORANDUM
Re
The Mineral Lands Provision of the
Alaska Statehood Bills

The bills in the 84th Congress for the admission of Alaska into the Union contain a provision which affirmatively declares that the land grants made or confirmed by those bills shall include mineral deposits, and which then proceeds to impose certain express restrictions upon the manner in which Alaska may administer any mineral lands so obtained by it. The provision constitutes section 205(j) in H. R. 2535, as reported by the House Committee on Interior and Insular Affairs on March 3, 1955, and section 205(k) in S. 49, as introduced. The provision was initially drafted in February, 1954, during the consideration of Alaska statehood legislation by the Subcommittee on Territories and Insular Affairs of the Senate Committee on Interior and Insular Affairs. It appears as a part of section 5(j) in the version of S. 50, 83rd Congress, reported by that Subcommittee (Committee Print No. 4, dated February 24, 1954), and as section 5(k) in the version of S. 50, 83rd Congress, reported by the full Senate Committee on February 24, 1954. Parenthetically, it should be noted that H. R. 2535 makes the proposed restrictions upon administration applicable to all three of the major land grants contemplated, whereas S. 49 would--following the precedent of S. 50, 83rd Congress--exempt from those restrictions the grant of 800,000 acresfor community development and expansion.

The reasoning which prompted the adoption of the provisions in question by the Senate Committee is understood to be (1) that mineral deposits must be expressly mentioned in order for mineral lands to be encompassed by a Congressional land grant to a State; and (2) that Alaska should not be accorded greater freedom in the administration of mineral lands than that accorded existing States having Congressional land grants.

(1) During the years when the public land States of the West were being admitted into the Union, it was the general policy of the Congress to include only nonmineral lands within the grants customarily made to new States. Thus the acts under which Colorado (Act of March 3, 1875, 18 Stat. 474, 476), N. Dakota, S. Dakota, Montana and Washington (Act of February 22, 1889, 25 Stat. 676, 681), Idaho (Act of July 3, 1890, 26 Stat. 215, 217), and Wyoming (Act of July 10, 1890, 26 Stat. 222,224) were admitted specifically provide that "all mineral lands shall be exempted" from the grants made to those States. Language affirmatively excluding mineral lands also appears in the enabling legislation for New Mexico and Arizona (Act of June 20, 1910, 36 Stat. 557, 561, 565, 572, 575), and in the statute under which Nevada obtained a "right of selection" grant in lieu of its original school section grant (Act of June 16, 1880, 21 Stat. 287, 288). The enabling legislation for Oklahoma, on the other hand, expressly included mineral lands within the grants to that State, but prohibited the State from disposing of such lands, except by short-term leases, prior to a specified date (Act of June 16, 1906, 34 Stat. 267, 273).

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With respect to those situations where, as was true of the Utah grants and the California school section grant, the law making the grant neither affirmatively included nor affirmatively excluded mineral lands, the Supreme Court has held that the failure to mention mineral lands was tantamount to an express exclusion of them from the grant. In United States v. Sweet, 245 U. S. 563 (1918) the Supreme Court, in deciding that the grants to Utah did not encompass mineral lands, summarized its previous decisions and its views on this subject in the following passages of its opinion:

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> "Taking into consideration what is well known to have been the hesitation and difficulty in the minds of Congressmen in dealing with these mineral lands, the manner in which the question was suddenly forced upon them, the uniform reservation of them from survey, from sale, from preemption, and above all from grants, whether for railroads, public buildings, or other purposes, and

looking to the fact that from all the grants made in this act they are reserved, one of which is for school purposes besides the sixteenth and thirty-sixth sections, we are forced to the conclusion that Congress did not intend to depart from its uniform policy in this respect in the grant of those sections to the State.

"It follows from the finding of the court and the undisputed facts of the case, that the land in controversy being mineral land, and well known to be so when the surveys of it were made, did not pass to the State under the school-section grant."

The conditions ensuing from the discovery of gold and other minerals in the western States and Territories resulted in a general demand for a system of laws expressly opening the mineral lands to exploration, occupation and acquisition, and Congress, responding to this demand, adopted from 1864 to 1873 a series of acts dealing with practically every phase of the subject and covering all classes of mineral lands, including coal lands. These acts, with some before noticed, were carried into a chapter of the Revised Statutes entitled "Mineral Lands and Mining Resources." Taken collectively they constitute a special code upon that subject and show that they are intended not only to establish a particular mode of disposing of mineral lands, but also to except and reserve them from all other grants and modes of disposal where there is no express provision for their inclusion. Thus the policy of disposing of mineral lands only under laws specially including them became even more firmly established than before, and this is recognized in our decisions. Mining Co v. Consolidated Mining Co., supra, 174; Deffeback v. Hawke, 115 U. S. 392, 402; Davis v. Weibbold, 139 U. S. 507, 516. And while the mineral-land laws are not applicable to all the public land States, some being specially excepted, there has been no time since their enactment when they were not applicable to Utah.

Another statute indicative of the policy of Congress and pertinent to the present inquiry is the Act of February 28, 1891, c. 384, 26 Stat. 796, which defines the indemnity to which a State or Territory is entitled in respect of its school grant. In addition to dealing with deficiencies occurring in other ways, it provides, "And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land." In this there is a plain implication that where those sections are mineral--known to be so when the grant takes effect--they do not pass under the grant. And it does not militate against this implication that under

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another provision the State may surrender those sections and take other lands in lieu of them where, although not known to be mineral when the grant takes effect, they are afterwards discovered to be so. See California v. Deseret Water & Co., 243, U. S. 415.

What has been said demonstrates that the school grant to Utah must be read in the light of the mining laws, the school land indemnity law and the settled public policy respecting mineral lands, and not as though it constituted the sole evidence of the legislative will. United States v. Barnes, 222 U. S. 513, 520. When it is so read it does not, in our opinion, disclose a purpose to include mineral lands. Although couched in general terms adequate to embrace such lands if there were no statute or settled policy to the contrary, it contains no language which explicitly or clearly withdraws the designated sections, where known to be mineral in character, from the operation of the mining laws, or which certainly shows that Congress intended to depart from its long prevailing policy of disposing of mineral lands only under laws specially including them. It therefore must be taken as neither curtailing those laws nor departing from that policy.

The members of the Senate Committee on Interior and Insular Affairs who took an active part in the study of S. 50, 83rd Congress, considered that, in the light of the holdings of the Supreme Court, statutory language expressly including mineral deposits within the contemplated land grants to Alaska would probably be necessary in order for these grants to encompass mineral lands.

(2) A material change in the attitude of the Congress towards the granting of mineral lands to the States was evinced by legislation initially enacted in 1927 and amended (in particulars not here material) in 1932 and 1954 (Act of January 25, 1927, 44 Stat. 1026, as amended May 2, 1942, 47 Stat. 140, and April 22, 1954, 68 Stat. 57; 43 U. S. C., 1952 ed., secs. 870, 871, Supp.II, sec. 870). This legislation provides, in effect, that all grants to the States of numbered sections in place for the support of public schools shall encompass sections that are mineral in character equally with sections that are nonmineral in character. The legislation further expressly states that its provisions shall not be applicable to grants other than those of numbered school sections in place, nor to indemnity or lieu selection rights under school section grants. Its provisions, therefore, would not extend of their own force to any of the grants proposed to be made in the Alaska statehood bills here under consideration, since these would be "right of selection" grants rather than grants of numbered sections in place. Furthermore, the 1927 legislation states that "all lands in the Territory of Alaska" are excluded from its operation.

The act of 1927 sets forth, in addition to the provisions just mentioned, certain conditions which the States must observe in administering mineral lands obtained by them under that measure. Summarized in general terms, these conditions are: (1) that the States must reserve the mineral deposits from any disposition of title to the lands; (2) that the mineral deposits shall be subject to lease as the State legislatures may direct; and (3) that the income derived from leasing the mineral deposits is to be utilized for public school purposes by the States.

The incorporation in S. 50, 83rd Congress, of the restrictions that now appear in sections 205(j) of H. R. 2535 and 205(k) of S. 49 presumably reflected a desire upon the part of the Senators concerned to achieve, so far as practicable, parity of treatment between Alaska and the existing States having Congressional land grants. In other words, the thought was that Alaska should be allowed to obtain mineral lands only if it would administer them in substantially the same manner that States now having mineral land grants are required to administer the lands obtained by them under those grants. This is evident from the close parallelism between the conditions proposed to be imposed upon Alaska and those contained in the 1927 act. Omission of the third of the conditions set forth in the latter may be attributed to the fact that S. 50, 83rd Congress--unlike some of the earlier statehood bills--did not earmark for public school purposes any of the land grants proposed to be made by it, whereas the 1927 act applies to grants that were so earmarked at the time they were made.

The action taken with respect to S. 50, 83rd Congress, was, however, not the first occasion upon which the Senate Committee on Interior and Insular Affairs has incorporated restrictions upon the disposition of mineral lands in statehood bills for Alaska. The original proposal for the making to Alaska of a "right of selection" grant in lieu of a grant of numbered sections in place--as presented to the Committee in 1950 by Senators Anderson and O'Mahoney (Section 5b) of Committee Print A, dated May 23, 1950, of H. R. 331, 81st Congress)--reads as follows:

> "After five years from the admission of Alaska into the Union, the State, in addition to any other grants made in this section, shall be entitled to select not to exceed twenty million acres from the vacant, unappropriated, and unreserved public lands. Such selections shall be made in reasonable compact tracts. Where the lands desired are unsurveyed at the time of selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey. Such lands may be granted or sold by the State in tracts of not more than _____ acres for any purpose but with a reservation to the State of a royalty of not less than _____ percentum on all minerals produced therefrom".

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Section 5(b) of H. R. 331, 81st Congress, in theform in which it was subsequently reported by the full Committee on June 29, 1950, read as follows:

"After five years from the admission of Alaska into the Union, the State, in addition to any other grants made in this section, shall be entitled to select not to exceed twenty million acres from the vacant, unappropriated, and unreserved public lands in the State. Such selections shall be made in reasonably compact tracts: Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whetherfor homestead, mineral, right-of-way, or other purposes whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied. Where the lands desired are unsurveyed at the time of selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey. Such lands may be granted or sold by the State in tracts of not more than 640 acres for any purpose, but with a reservation to the State of a royalty of not more than 12½ per centum on all mineral produced therefrom. The lands granted to the State of Alaska pursuant to this subsection, the income therefrom and the proceeds thereof when said lands are sold, shall be held by said State as a public trust for the support of the public schools and other public education institutions." (Underlining supplied.)

Section 5(b) of S. 50, 82nd Congress, as introduced and also in the form in which it was reported by the Senate Committee on May 8, 1951, contained language identical to that last above quoted.

These earlier proposals, it will be noted, differ in a number of respects from the restrictions contained in the bills now pending. In particular, the current langunge expressly calls upon Alaska to adopt a mineral leasing system, while the earlier versions permitted the mineral deposits to be disposed of along with the surface, provided a royalty interest was reserved by the State. On the other hand, the current language does not attempt to prescribe maximum or minimum rates of royalty as did the earlier versions, but appears to leave the terms of leasing wholly to the discretion of the State legislature. From a practical standpoint, this second difference may be more important than the first, since if the Alaska legislature is left, as H. R. 2535 and S. 49 now intend to provide, with the untrammelled right to frame its own mineral leasing laws, it can, if it so chooses, establish priorities that will tend to keep the surface and mineral rights in the same hands and can, in general, fit the provisions of its mineral leasing system to whatever may be its concepts of the public interest.