



KENAI PENINSULA BOROUGH

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MIKE NAVARRE BOROUGH MAYOR

MEMORANDUM

TO: Kelly Cooper, Assembly President
Penny Vadla, President, Board of Education
Members, Kenai Peninsula Borough Assembly
Members, Kenai Peninsula Borough School District Board of Education

THRU: Mike Navarre, Borough Mayor *MN*

FROM: Colette Thompson, Borough Attorney *CT*

COPY: Risk Management Committee

DATE: October 19, 2017

SUBJECT: Litigation Status Report

Following is a summary of the non-routine litigation in which the borough and school district are involved. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the borough.

1. *Hunt v. Kenai Peninsula Borough* — Case No. 3AN-16-10652CI. In this lawsuit the plaintiffs ask the court to declare the borough assembly's invocation policy violates the Alaska Constitution. They also seek a declaration that the plaintiffs are public interest litigants and request an award of full and reasonable attorneys' fees and costs as well as nominal damages. The borough filed a motion for partial summary judgment and discovery is in process. Plaintiffs' opposition to the borough's motion is due October 13, 2017. Trial call is scheduled for February 12, 2018 with trial scheduled for the week of February 26, 2018 in the Anchorage Superior Court, Judge Erin Marston presiding.
2. *Interior Telephone Co. v. Kenai Peninsula Borough* - Case No. U-17-11; and, *Matanuska Telephone Assn. v. Kenai Peninsula Borough* - Case No. U-17-12. MTA and ITC filed formal complaints and requests for declaratory rulings against the Kenai Peninsula Borough before the Regulatory Commission of Alaska ("RCA"). They sought a ruling that the Kenai Peninsula Borough is responsible to pay third-party costs associated

with delivering their customers' calls from their telecommunication service areas to the Kenai Peninsula Borough's selective routers in Soldotna and Kenai. The borough filed answers and motions to dismiss in both cases. Briefing on the motions to dismiss has been completed by the parties. On April 18, 2017, the RCA published notice that it was dismissing the utilities' formal complaints and requests for declaratory rulings against the borough as they lack jurisdiction to resolve the complaints. The notice further stated that a formal investigation would not be opened by the RCA and a written order would follow. The RCA has issued a written order in the ITC case but not the MTA case. Settlement negotiations are underway.