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From: [Dan Bockhorst](#)

To: [Ketchikan Charter Commission](#)

Sent: Friday, June 04, 2004 4:32 PM

Subject: Re: Time Line

Debby. Thanks for your inquiry this morning regarding the procedures and timelines for consolidation. A brief and direct response to your inquiry is provided in the following two paragraphs. However, I am also taking the opportunity afforded by your inquiry to address with the matter in a more comprehensive context following the next two paragraphs.

First, there is no requirement for both legislative review and voter approval of a consolidation proposal. Either, but not both, of those steps is necessary (i.e., if reviewed by the legislature, the proposal need not be approved by the voters; conversely, if submitted to the voters it need not be approved by the legislature). I assume that the Ketchikan Consolidation Commission (KCC) intends to develop a proposal that would be subject to voter approval (as was the case with the 2000 petition from the City of Ketchikan).

The following is a brief overview of the process and time generally involved with each step for a consolidation proposal requiring voter approval:

1. Petition submitted to DCED;
 2. DCED conducts technical review of the petition (the law allows 45 days for completion of this step);
 3. If the petition is complete and in the proper form, DCED accepts the petition for filing; if not, the petition is returned for correction or completion;
 4. After the petition is accepted for filing, the petitioner must provide extensive public notice of the filing of the petition and serve copies of the petition on certain organizations (allow 10 days);
 5. Individuals and organizations may file responsive briefs and written comments concerning the petition (the law requires that at least 49 days are allowed for such from the date of the first publication or posting of the notice of filing);
 6. The petitioner may file a reply to the responsive briefs and written comments (the law allows at least 14 days);
 7. DCED must prepare a preliminary report addressing the proposal (the law does not set a deadline, but it would be reasonable to allow 45 days);
1. Individuals and organizations may comment on DCED's preliminary report (the law requires at least 28 days);

9. Following consideration of the comments on the preliminary report, DCED must publish its final report (no deadline is set in the law, but it would be reasonable to allow 21 days for preparation of the final report);

10. The LBC will hold a hearing on the proposal in Ketchikan (the law requires a notice period of at least 30 days);

11. The LBC must render a decision verbally (the law allows 90 days from the date of its last hearing);

12. The LBC must adopt a written statement setting out the basis for its decision (the law allows 30 days);

13. Opportunity for individuals and organizations to seek reconsideration (the law provides for a period of 20 days for the LBC to order reconsideration on its own motion or at the request of others; granting reconsideration [which is seldom done] would extend the process considerably);

14. If the LBC approves the petition (with or without amendments and conditions), the LBC notifies the Director of the State Division of Elections;

15. Within 30 days of notification by the LBC, the Director of the Division of Elections must order the consolidation election;

16. The consolidation election must be held 30 to 90 days after the order of the election;

17. The Division of Elections certifies the election results (it took 16 days for certification of the 2001 Ketchikan consolidation election);

18. If voters approve the consolidation proposition, the Director of the Division of Election must, within 10 days of certification of the election results, set a date for election of officials of the new municipality;

19. The election of new officials must be held within 60 to 90 days of the date of the order;

20. The Director of the Division of Elections certifies the results of the election of new officials; consolidation would take effect on that date.

While there is certainty with regard to the time involved in some of the procedural steps outlined above, there are also variables that, at this point, render it impossible for me to predict with precision when an election would actually occur. Some of those variables are beyond the control of the KCC and this agency. Nonetheless, steps can be taken now to help ensure that consideration of the petition proceeds in a timely and efficient manner.

The schedule in this proceeding and, more importantly, the success of the consolidation proposal hinges on two key points. The first is to whether the petition is technically sound. If the petition has technical flaws, it will delay the proceedings. More importantly, serious technical flaws, even if corrected after the petition is formally filed, will likely undermine confidence in and support for the proposal by voters and local officials.

The second critical element is a petition that reflects sound public policies; one that will gain the endorsement of local voters and public policy makers, especially elected officials of the Ketchikan Gateway Borough, City of Ketchikan, and City of Saxman.

Development of the petition to consolidate the City of Ketchikan and Ketchikan Gateway Borough – two sophisticated and intricate local governments that have existed, collectively, for 145 years – is a tremendous challenge. For that reason, I continue to maintain that it is critical for the KCC to significantly involve the talented staff of the Ketchikan area local governments in the development of the petition. That can be done without compromising the policy-making role of the KCC. It is also appropriate, in my view, to strive to seek significant input from the elected officials of the City of Ketchikan, Ketchikan Gateway Borough, and City of Saxman.

I recognize that the KCC has, from the beginning, made a conscientious effort to keep local public officials and the general public informed of its considerable efforts. I am uncertain, however, whether those efforts have been sufficient to meet the two key objectives noted above. I do have fears that such may not be the case – but I am too far removed from the proceedings at this point to know whether those concerns are legitimate.

I will offer just one example of the basis for my uncertainty and concern. It relates to the name of the proposed consolidated borough. (One would think that the issue of a name would be a simple, non-technical issue; however, that may not be the case here.)

I recall that in February of this year, the Ketchikan City Attorney responded to an inquiry from the KCC regarding technical aspects of the charter. He also made comments to the KCC regarding the name of the proposed consolidated borough.

The KCC had proposed to simply name the government “Ketchikan.” The City Attorney had urged inclusion of the word “Borough” or “Municipality” in the name. I sent a note to the KCC concurring with the City Attorney’s comments about the name (and his views concerning the charter).

The name of the proposed government is an important technical issue. Not to

be overly dramatic, a leading treatise on municipal law – *The Law of Municipal Corporations* by Eugene McQuillin – characterizes the name of a municipal corporation as “the very being of its constitution, ‘the knot of its political existence,’ and is, therefore, indispensable to every corporation.”

The Ketchikan City Attorney raised a legitimate technical concern over the name. He stressed that the absence of the word “Municipality” or “Borough” in the name would lead to confusion as to whether references to “Ketchikan” were made to the municipal corporation or the geographic area.

A number of states have laws that expressly require the type of municipal corporation to be used in the name of that corporation (e.g., the “City of [name]”) – see *McQuillin Mun Corp*, § 5.02 (3rd Ed). While the laws of the State of Alaska do not expressly impose such a requirement, Section 10.06.105 of the Alaska Statutes, implicitly calls for such.

AS 10.06.105(a) requires clarity and proper representation with regard to naming of non-municipal corporations. It states: “A corporate name must contain the word ‘corporation’, ‘company’, ‘incorporated’, or ‘limited’, or an abbreviation of one of these words. The corporate name may not contain a word or phrase that indicates or implies that the corporation is organized for a purpose other than the purpose contained in its articles of incorporation.” If the laws of the State of Alaska expressly require clarity and proper representation in the name of non-municipal corporations, it is reasonable to expect the same for municipal corporations. Moreover, AS 10.06.105(b) provides (again for non-municipal corporations) that, “the corporate name may not contain the word ‘city’, ‘borough’, or ‘village’ or otherwise imply that the corporation is a municipality.”

It is noteworthy that each of the 162 city and borough governments in Alaska follows the convention of including the proper type of municipal corporation in its name. The name of each of the 146 city governments in Alaska includes, “City of.” Likewise, each of the 16 organized boroughs includes the word “Borough” or “Municipality” in its name.

Naming the proposed consolidated borough “Ketchikan” does not follow convention. The City Attorney was correct that such would cause confusion whether “Ketchikan” refers to the municipal corporation or to the geographic area. Indeed, notwithstanding the statement in the petition that “Ketchikan” means the proposed consolidated government (i.e., the municipal corporation), the same name is used repeatedly in the petition in regard to the geographic area (e.g., “Ketchikan has long been the center of residential, retail and business activity within this region of the State”)

I am uncertain why the KCC never adopted the change recommended by the

City Attorney. I am concerned, however, that if legitimate technical concerns were raised but not resolved by the KCC, particularly early in the proceedings, it may have created an atmosphere that was not conducive to the free and full exchange that is vital for the development of a proper petition in this circumstance.

It is evident to me that the apparent decision by the KCC to discount the City Attorney's recommendation did not resolve the concern. Instead, it will likely only push the concern into a different venue. I expect that the issue will be raised in written comments or a brief filed by the City of Ketchikan or some other entity or individual. If that is not the case, I expect this agency will raise the issue. Moreover, I anticipate that the LBC would respond by amending the petition to change the name. Such action, while well grounded, could be perceived by some as divisive or heavy-handed.

Please do not view my comments as any criticism of the KCC. Members of the KCC have obviously dedicated substantial resources to the effort. My concern, again, is that an atmosphere be created that allows the development of the best possible petition. The deadline for filing the petition is less than four months away. Perhaps it would be fitting for the KCC to meet with local officials to determine their perceptions concerning the two critical topics addressed above.

As always, I am committed to providing whatever level of assistance we can offer to serve the best interests of the greater Ketchikan area.

Cordially,

Dan Bockhorst
269-4559

Ketchikan Charter Commission wrote:

Dan, In reviewing the Petition, it references a possible fall election or early in the next calendar year. It was our impression that the timeline for the Petition would preclude a fall election in that once approved by the LBC, the legislature must also approve the action prior to a local election. Our question goes to the timeline. As we understand it the following occurs: 1. Our petition documents are submitted through the Borough to the LBC by September 30, 2004. 2. The LBC then reviews, makes suggestions, has community meetings and eventually gives their approval, with this process taking up to one year. 3. Once the LBC has approved the final documents, they are submitted to the Legislature for

approval. If there is no word after 30 days, the action is approved by default. (This would put it to February, 2006 by our estimates).4. An election would then take place on the Petition (April/May of 2006), with another election, WHEN the consolidation is approved, following closely after the approval election, for the new sitting Assembly.5. The actual beginning of the consolidation government would then occur on July 1, 2006. Please advise if this timeline is essentially correct.

Thank you. Debby Otte, Secretary

Ketchikan Charter Commission