

# Shareholder attorneys ruled out in case against Aleut Corp.

The Alaska Supreme Court last week said two attorneys representing shareholders in the Aleut Corporation should have been disqualified in a suit brought by the shareholders against the corporation.

The issue arose in the case of The Aleut Corporation, et al v. Lillie McGarvey, et al. McGarvey and 18 other share-

holders through their attorneys, John Anthony Smith and Kneeland Taylor, sued the corporation and its officers seeking to set aside a directors' election held May 14, 1977.

The dissident shareholders claimed Carl Moses, the corporation president, misrepresented in his proxy solicitation certain facts as to corporation

investments and said also the election should be invalidated because amended by-laws under which the election was held violated certain provisions of state law and the Alaska Native Settlement Act.

The corporation moved to disqualify Smith and Taylor from representing the shareholders because Smith previously had

acted as the corporation's general counsel from 1971 and 1975 and had had a substantial relationship to the issues in question. When this motion was denied by Anchorage Superior Judge Seaborn Buckalew, the corporation petitioned the Alaska Supreme Court for review of that ruling.

In reversing Buckalew's ruling and sending the case back to the lower court with directions to grant the corporation's motion that the two attorneys be disqualified from representing the shareholders, the Supreme Court, in an opinion written by Justice Warren Matthews, said it believed there was a strong likelihood that during the course of his representation of the Aleut Corporation as general counsel, Smith acquired knowledge of the workings of the corporation which would aid him in the prosecution of the lawsuit against it.

"We believe that an attorney may not represent a third party against a former client where there exists a substantial possibility that knowledge gained by him in the earlier professional relationship can be used against the former client, or where the subject matter of his present undertaking has a substantial relationship to that of his prior representation," Matthews wrote, pointing out that these principles have been expressed by many authorities over the years.

The court said that, because

of his former position as counsel to the corporation, Smith was aware of certain potential problem areas concerning the main issues in question in the suit. At issue in the suit was whether property acquired in Fairbanks during the time Smith was general counsel for the corporation was a good investment and whether amendments made to the corporation's by-laws on Smith's advice were valid under state and federal law.

Smith had participated in discussions of the merits of purchasing the Fairbanks property while acting as general counsel for the corporation and had drafted portions of the purchase agreement. He also had advised the corporation to eliminate cumulative voting in 1974 and use a geographical seating system instead.

The court said that Taylor as well as Smith should be disqualified because it was a well established principle that where one partner in a law firm is disqualified from representing a client, all are.

In response to Smith's and Taylor's points that they are representing the shareholders without charging them any fee and were doing so only because other attorneys had refused to represent them, the court concluded the opinion by saying nothing in the opinion should be construed to reflect adversely on the motives of Smith and Taylor in undertaking the representation of the shareholders.