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Summary

There is an undercurrent of opinion in Alaska Native Claims Settlement Act (ANCSA) administration that the village corporation structure established under the Act is an anachronism, unsuitable to the needs of modern corporate enterprise and accordingly Alaska Native purposes. This line of criticism suggests that the regional corporate structure, also established under the Settlement Act, is sufficient to the needs of the Alaska Native people. Organizational issues in the Settlement Act are both politically and emotionally sensitive. As a result, discussion of this point of view has been muted. It is nonetheless important. The purpose of this paper is to search out the purposes of village corporation existence as a foundation to change or for a better understanding of the roles that are played by them. The Act serves as a written constitution for the Alaska Native people. It must be interpreted broadly to accomplish these fundamental purposes of the people and not as an instrument of a particular economic theory – which is, at least in part, alien to its heritage.

THE FUTURE OF THE VILLAGE CORPORATION

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Introductions

There is an undercurrent of opinion in Alaska Native Claims Settlement Act administration that the village corporation structure established under the Act is an anachronism, unsuitable to the needss of modern corporate enterprise and accordingly Alaska Native purposes.s This line of criticism suggests that the regional corporate structure,s also established under the Settlement Act, is sufficient to the needss of the Alaska Native people.s

Organizational issues in the Settlement Act are both politically and emotionally sensitive. As a result, discussion of this point ofs view has been muted. It is nonetheless important. The purpose ofs this paper is to search out the purposes of village corporation existence as a foundation to change or for a better understandings of the roles that are played by them.s

The focus of the critique of village corporate existence iss economic. It is pointed out that village corporations are economically inefficient, particularly in comparison with regional corporations.s It is largely on this premise that some have suggested that the village corporation structure be drastically altered through merger into the regional corporation, by managerial neglect followed bys bankruptcy on a natural selection basis or by some other strategy.

While this may well be ultimate destiny for some village corpor- ations, or even most of them, such fundamental changes should not bes intentionally initiated or allowed to happen without clear understand- ing of the ends which are contemplated would be served by village

corporations under the Settlement Act.

The corporate structure of the Settlement Act was a means to a more fundamental end: The long term welfare of the Alaska Native people. The particulars of this purpose, which are implied rather than expressed in the Act, tend to get lost behind the more mundane and recognizable purposes of corporate business management and the administrative directions of the Act. The distinction between ends and means in the Act is blurred: Corporate benefit is too easily equated with benefit to the Native people. Nevertheless, long term ends are implicit in the Act and can be identified. An exploration of the function of the village corporation should include a review not only of the core of statutory and common law legal obligations of the Settlement Act and of corporate law but also a search for the long term purposes which village corporate life was intended to serve. If those long term purposes were improvidently framed in the Settlement Act, or do not now reflect mainstream purposes of the Alaska Native people, then a new policy should be articulated reflecting more accurately the central concerns of the Alaska Native people. Such a policy should employ a strategy to minimize economic and human harm if the village structure is fated to be liquidated. On the other hand, if village corporate purposes as originally conceived are still valid and have a central meaning to Alaska Native purposes, then a different strategy involving reevaluation of means and guidelines is called for, so those purposes can be better conserved. Such a strategy might work around the structure of this Settlement Act or call for its amendment. But purpose would determine technique, not visa versa.

Drift is unacceptable. The issues must be brought into the open. No discussion means low levels of participation. Every person

sharing in the heritage of the Alaska Native people is affected and beyond that person for generations. Self-determination requires information for effective participation in formulation of the common destiny.

Against the background of the goals of the people, a number of options for the future of village corporations should be evaluated. The Settlement Act did not envision a fragmentation of efforts in reaching these goals but an institutional structure allowing diversity bound to overall purpose by a web of cooperative agreements. In weighing the options for the future of the village corporation, the extent to which valid objections to the village structure may be met or ameliorated by implementation of village to village cooperative efforts should be considered. The Act serves as a written constitution for the Alaska Native people. It must be interpreted broadly to accomplish these fundamental purposes of the people and not as an instrument of a particular economic theory - which is, at least in part, alien to its heritage.

Finding the Purposes of Village Corporations

The settlement statute contains no clear statement why village corporations were created. Purpose is to be assumed from assigned powers, from functions and from the historical and cultural background against which the Act was adopted. Although the statute recites certain obligations and restrictions upon corporate activity, which will be dealt with in later pages, it does not really explain what purposes were to be addressed by the village corporation. This omission arose in part from proper deference to the belief that principles of self-determination required that each village corporation be allowed to write its own destiny. Nevertheless some

implications of Congressional purpose in corporate purpose are inherent in the fact that they were set up at all. Why didn't the authors of the Act vest all land interests in the regional corporations? Why did they add, to the existing involvement of shareholder interest in regional corporate structures, yet another universe of corporate complexity? Surely the inefficiency of over two hundred units must have been apparent even then. The establishment of means implies ends.

In responding to this inquiry, only brief reference will be made to the "demon" theory of Settlement Act history. According to a line of argument, following the path of at least intellectual resistance, any time there is something in the Act which someone doesn't like, any time there is something in the Act that is inefficient or which doesn't seem to work very well, it is because the enemies of the Alaska Native people put it there with malice in their hearts.

There are doubtless many inconsistencies, usages, practices, requirements and structures which, if everyone were starting over again, would be done differently. These results from the fallibility of any document drawn by man and not from malice or the political shenanigans of the non-Native world.

Outside the Alaska Native community the basic political opposition to the Act was quantitative. Opposition to the Settlement Act did not focus on what was done with the resources identified in it but on how much land should be given and how much money. For better or worse the organizational structure reflects the well intentioned purposes of those who had a hand in the drafting and principally the handiwork of the Native leadership and their attorneys.

Nevertheless, (as further developed in the section of this paper on the historical setting of the Settlement Act) there is one questionable purpose intrinsic to the Settlement Act which is easy to overlook as a purpose. That function or purpose is to make the Alaska Native think primarily as an acquisitive, economic person. Not everyone who supported adoption of the Act was aware of this consequence. Many might seriously question whether this effect was not an unwarranted intrusion on cultural autonomy. In many ways this economic mandate is the core of the controversy over village corporation existence.

Representation as a Purpose

Critics of the village corporation structure of the Act rely heavily on the economic inefficiency of village corporate organization. Yet there is evidence that representative purposes were uppermost in the minds of the Act's authors and that economic efficiency, as a value, was purposefully given a back seat to representation. The discussion and defeat of the "one big corporation" idea offers ample evidence of the crucial nature of representational issues in the minds of the Act's authors. For if twelve regional corporations are more efficient than 200 plus village corporations, so one or two statewide corporations are more efficient, at least in the world of corporate competition, than twelve regional corporations.

The control of resources carries with it prevailing power. The authors of the Act recognized that in establishing a structure for the disbursement of economic benefits they were also laying the foundation for the political and socio-economic structures of a radically transformed society. Few federal acts are more triumphantly

capitalistic in their approach to the responsibilities of government. A society which neither collectively nor through any of its members had every known substantial economic wealth was endowed under the Settlement Act with the reality of it for the former and the probability of it for the latter.

The Settlement Act was intended to be a settlement with a people, not with individuals, not even with this generation of Alaska Natives but a settlement for all time in which the first generation of leadership holds awesome responsibilities. Individuals rights were recognized and satisfied only with regard to specific claims of occupancy. Since occupancy is recognized without regard to Native or non-Native origins of the occupant, this provision of the Act is more of a settlement of settlers' claims than a Native claims settlement. The entire settlement was delivered to Alaska Natives as capital endowment for a people. The issue of who would control that endowment by what means was answered through the provisions for corporate organization. The representation model was taken from the business corporation.

Corporate Democracy as a Representative System

You don't have to own shares in General Motors to realize that corporate democracy is not as democratic as political democracy. To paraphrase: "Corporate democracy is to democracy as martial music is to music." While some corporations, in which controlling stock is held by one family, sometimes act eccentricly and in response to the will of individual shareholders, most large corporations are broadly held and predictable in their conduct. The individual shareholder has little voice in corporate direction. The management

reigns supreme. Alaska's broadly held regional corporations bear the greatest similarity to the large corporation model.

For all its failings, democratic government is at least designed to maximize control by and accountability to its shareholders, the people. Corporate democracy is more concerned with economic efficiency even at the expense of control and accountability. The limitations on the effectiveness of representation are not a fatal defect in an organization the purposes of which are narrow and well understood: to make money. The shareholders in an American business corporation are likely to be satisfied without exception so long as that purpose is well served. Only very occasionally is a corporation required to address social issues; trading with South Africa for instance. Though the purposes and values of individuals are varied and include non-economic objectives, the management structure of a corporation, particularly a business corporation, is designed to allow judgement almost exclusively on the financial performance of the corporation. The corporate structure is not comfortable with social issues since fiscal accountability is the only built-in structure for measuring corporate performance.

But as an organizational framework for an institution which was intended not only to pursue larger purposes but which serves as the basic structure of a social order, the traditional business corporate organization is a troublesome device. It bestows no favor on the Alaska Native people to substitute, for the benign colonialism of the federal government, corporate serfdom.

Not only does the modern business corporation tend to be socially deaf but it is only marginally representative. Executive control of American corporate management is largely self-perpetuating. The

circle of management in a widely held corporation is not one in which voice is given to dissent or the presentation of conflicting views. Those who first attain corporate authority very largely control the means of access to information and the possibility of change. Only in the case of corporate economic collapse, do the managers of corporate enterprise have much to fear from the wrath of their owners. Money, or the loss of it, is one thing people can get together on.

With the best of intentions, there is little likelihood, at least in the long run, that Alaska Native corporations will operate much differently, at least not without basic changes in corporate design that have as yet shown no signs of emerging. A continuing review of the suitability of the business corporate law to the purposes of the Alaska Native people may suggest some adjustments.

The Village Corporation As A Grass Roots System of Representation

While each American business corporation tends to be internally monolithic there is considerable diversity among them. The free enterprise system is founded on the proposition that such diversity and competitive struggle among the corporations will, in the long run, result in the greatest benefit to all the people. Thus, the creation of hundreds of smaller corporations through the Settlement Act created the possibility of expression of much more diversity of opinion, purpose and value. The village corporation, by virtue of size and geographic proximity, is closer to the people it represents and is inherently a more representative body than the regional corporation. Each individual in the smaller corporation must count for more and the village corporation, as a result, will be more

responsive to the wishes of individual citizen shareholders.

The village corporations by their diversity, are also the nursery for development of leadership for larger communities of interest and form the organizational foundation from which leaders of dissent or alternative viewpoint can go on to challenge the premises of conduct of the larger organizations of the leadership itself. It is no wonder then that some regional leadership might view the withering away of the village structure with equanimity. It is considerably easier to conduct any enterprise with harmony and without enlarging the possibilities for expression of opposing or alternative views. The existence of harmony between villages and regional corporations in any given situation today should not be allowed to obscure the diversity of village development as a hazard to regional hegemony and an opportunity to insurgents.

The village corporation cannot escape the long history of the village and its complexities of purpose. The regional corporation has almost no heritage. The regional corporation also has a more clearly expressed economic mandate - to manage the subsurface estate for maximum yield, to oversee the economic ventures of the villages of its region and to provide centralized expertise in economic affairs.

It is no wonder then that regional officers tend to view village organization through the eyes of economic purpose - and they are frequently appalled. Seeing few possibilities for economic redemption for such inefficient and necessarily (economically) poorly managed enterprises, some might rather see the experiment in village corporate organization, which also constitutes a drain on regional resources, collapsed as soon as possible.

The effect of merging villages into regions may be to reduce conflict between villages and regions but where that conflict has a real base, the point of difference will remain, though suppressed. The expression of dissent, of differences of opinion, is at the heart of the democratic process. The existence of many separate organizations within the ANCSA corporate structure introduces a method of expressing diversity and dissent which is not present in normal corporate life. By this mechanism perhaps a greater degree of democracy can be introduced into the undemocratic tendencies in forms of corporate enterprise applied to the Native people of Alaska.

Can A Village Corporation Be Dissolved?

Most of the discussion which suggests redesigning Settlement administration to eliminate or pare down village corporation structure has been based on the assumption that a village corporation is no different from any other kind of corporation and should be dissolved, merged or otherwise manipulated, responsible only to the domestic Alaskan law of corporations.

While this proposition may be true, it is yet to be tested in court and there are some aspects of the Act which could lead to a contrary interpretation. Though the corporations of ANCSA are formed through voluntary associations of individuals, once the Act is engaged (or at least once land is received) it may be that it is impossible to let go.

Though the roll of the settlement is closed, the Congress did have in mind that that Settlement Act was a settlement on a people, not just on individuals. Some of the present holders of interests under the Settlement Act, hold under a trust to later generations.

The pattern of later generation control will reflect unequal inheritance of stock and differentiated access to corporate opportunities. But control does not fully equate with beneficial interest.

The corporations of the Settlement Act, while not government instrumentalities in the usual sense, are the instruments of a trust by which the Congress intended to carry out its constitutional responsibilities to the Native people of Alaska, a responsibility which does not attach only to one generation or one roll.

Under Section 7(b) of the Act, as it was adopted, certain mergers of regional corporations were permitted expressly but only within a certain period of time. By implication, regional corporations may not merge at all at any time after the one year period. Merger does not result in a loss of assets or even eliminate representation, but it does terminate a unit of representation in whose separate identity the government (as precursor trustee), and the trust beneficiaries may have a strong interest. The implication is strong that no regional corporation has a right established under the Act to dissolve itself, at least as a deliberate act, while still holding assets or bound under a trust obligation to its villages.

The original statutory provisions relating to the establishment of village corporations made no reference to merger or dissolution whatsoever. The implication is there that the Congress originally did not intend that a village dissolve or merge at all.

In keeping with concerns regarding the economic viability of smaller villages, regional leaders importuned the Congress to adopt merger provisions and a section 30 was added to the Settlement Act by the Act of January 2, 1976 (Pub. L. No. 94-204, 86, 89 Stat. 1148)s

The statute effectively confirms the inability of regional

corporations to merge among themselves and prohibits a village corporation from merging outside of its own region.

Interestingly enough, the Congress did show some regard for a permanent village life. Even in merger, a separate entity must spring to life under Subsection (3) of the amendment to take the right of consent to mineral exploration within the village, a very significant economic power. The new entity consists not of the shareholders of the merged village corporation but of Native residents, a further recognition of the dual nature of the Settlement Act as a settlement with individuals and with a people.

Economic Merger Through Cooperative Agreements

It may prove to be desirable to merge numbers of small village corporations under the 1976 law. But mergers in any case should be approached cautiously having in mind the advantages of the potential for independent action by any village. Non-corporate merger for most purposes can be accompanied through cooperative agreements between villages which allow the "merger" to be tailored exactly to the needs of the situation. If merger is founded on economic efficiency, care should be taken to preserve distinct representational values. Merger of management responsibilities may well be possible without infringing on separate representative identities.

Cooperative agreements can merge the funds of villages for investment purposes, provide for joint control over certain assets and separate control of others. Cooperative agreement can achieve each benefit of merger in law separately, while leaving representational or other purposes of village corporation existence intact. Cooperative agreement can still leave room for independent action

by villages when needed and even leave open the possibility of withdrawal. Mergers under corporate law are difficult, often practically impossible to undo.

Mergers of village corporations are difficult to effect. The merger authority, particularly the authority to merge a village into a regional corporation, leaves unresolved how the pattern of distributions and management checks and balances reflect in other sections of the Act would be carried out. Mergers that do take place will likely remain open to collateral attack by subsequent shareholders or village residents who can claim that the trust responsibilities originally imposed on the village corporation are not being carried out by the successor. The merged village may remain an undigestible rock in the stomach of the regional corporation.

If through mismanagement, or by intentional design, a village corporation went bankrupt, the trust responsibilities and representational rights survive. Nor was the federal constitutional responsibility discharged. In the most probable event that a corporation went bankrupt still holding significant assets in landed estates in the vicinity of the village, it would seem unlikely that the Secretary could avoid entering a federal bankruptcy proceeding for the purpose of husbanding those assets and reasserting the federal responsibility for a trust to Native people in the absence of a responsible corporation. One might anticipate that some responsibility would be recognized to trace assets diverted and to recover them as possible through overturning transactions or setting aside transfers, and tracing management irresponsibilities to corporate directors and those who had dealt with them.

The implication of Settlement Act purpose in the existence of

each village corporation and in the persistence of that existence has serious implications for regional corporations and their corporate management. For if a village fails economically, injured parties are likely to look around for a goat. The implication of a trust relationship in which the region bears some responsibility for the conduct of village affairs and the presence of regional assets make the regional corporation itself an inviting target. The alleged mismanagers of regional corporate responsibility to villages are a likely secondary target. Corporations and individuals in them that do business with village corporations should also be mindful that today's modest overreach of a shaky village may come back to haunt through a variety of imaginative theories seeking to undo the damage - and then some. To date, regional corporations have been loath to intervene in village economic decisions, though clearly given the power to do so, for fear of taking on responsibility for the consequences. But it may evolve that they are damned if they do and damned if they don't.

The Trust Responsibilities of ANCSA Village Corporations

The existence of a number of obligations of village corporations can be drawn from specific provisions of law. While each provision has its special function, it is likely that courts construing these provisions together may imply broader purposes and responsibilities:

First, the existence of a trust responsibility in the village corporation is suggested by Section 3(j), a trust which may well involve substantive duties. A "village corporation" means an Alaska corporation organized to hold, invest, manage and/or distribute lands, property, funds and other rights and assets "for and on behalf of" a "Native village" in accordance with the terms of the Act.

A trust relationship seems to be referred to, obliging the Alaskan corporation to follow the federal purposes on behalf of an unincorporated and possible unorganized entity, the "Native village". Responsibilities are suggested here, for a number of purposes, which go well beyond the ordinary purposes of business corporations, obligated to respond only to their shareholders.

Distributions From Regional Corporations Under Section 7(j) As
A Source of Perpetual Village Authority

Section 7(j) provides that for five years "45%" then, "not less than 50%", of "all corporate funds" received by regional corporations from: (first)§ the Alaska Native Fund; (second)§, under Section 7(j) (which means a piece of both the 70% shared with other corporations and the 30% retained by the home region corporation)§ and (third)§, all other net income of the home regional corporation "shall be distributed to village corporations." Since distribution to shareholders of regional corporations are described on the same basis, we may conclude that village corporations stand on a similar footing as regional corporation shareholders in their right to distribution. In a sense, the village corporation is a non-voting shareholder in the regional corporation. The law of corporations relating to the rights of shareholders of non-voting shares may be a potent source of analogy for village rights.

From the perspective of Congressional intent, the fact that "not less than 50%" is to be distributed after five years is interesting from two perspectives. First, why start at the lower horizon of "not less than 45%"? Evidently the Congress contemplated that the regions would be burdened with extra costs or disbursements during the early years and that the share of the villages could

reasonably be expected to go up rather than down as those initial costs or disbursements were satisfied. What are those initial costs? Most obvious are the pass through disbursements to individuals. But there are also costs involving village assistance. Another range of costs are derived from resource management supervision which is also high in the initial stage. If costs associated with village responsibilities are direct burdens of the regional corporation as the shifting percentile seems to suggest, the Congress must have contemplated that the regional corporation was the servant of village needs, and not that the village was a kind of administrative unit subject to regional corporate control.

Secondly, the Congress evidently foresaw that the village, through their shareholders, would ask for and should be allowed to get a higher proportion of distributable assets. Significantly, apart from the minimum required to go directly to the shareholders or the inherent requirements of management of regional statutory responsibilities, no maximum is put on the extent of village distribution. The possibility was evidently contemplated that the regional corporation might become a management shell only, and that the basic authority for management of distributable assets would be with the villages.

Thirdly, one might ask if an increase of the village share was in the offing, who was to move that increase? Regional corporation shareholders have the legal authority, but such an eventuality is unlikely unless villages serve as collectivities for the expression of regional shareholder interest. Thus the act appeared to contemplate that even without direct voting rights, village corporate interest would be heard through village organization of regional corporation shareholders associated with the village.

Those who contemplate, with satisfaction or relief, the withering away of village corporations through bankruptcy might well keep in mind the potential of the flexible, 7(i) 7(j)s, distribution formula. If a lot of villages get in trouble, particularly if lack of regional corporation care can be identified as the source of the problem, even if only through neglect, the village corporations will constitute a potent political force to expand their share of regional corporation receipts to make up these losses.

The identification of a legislative perception of the villages as the fundamental settlement unit is of course a surprising turnabout of the more current suggestion that the villages should disappear in favor of the region. Why the Congress might have proceeded on an assumption, apparently so out of tune with the emerging reality of the late seventies, will emerge further as we examine the origins of the village and regional corporation concepts of the Act.

The Administration of the Village Share in Alaska Native Fund
Receipts As a Source of Perpetual Village Authority

The Settlement Act provided that anywhere from 45% to 100% (presumably a share reduced by the costs of keeping the regional corporation alive to perform its representational and distributive functions) of the funds appropriated by Congress or contributed by the state to the Alaska Native Fund will be distributed to village corporations. This provision gives each village corporation a stake in accurate and full federal and state conformity with contributory obligations, a stake in efficient regional corporation management of receipts and a stake in equitable arrangements for pass through. Conceivably, village corporations could make collective

arrangements for determining whether 45% was the appropriate pass through or whether the amount should be raised. While the village corporation has no direct vote on the issue, it does have the legal capacity to educate and organize its shareholders through corporate action for forceful influence on the regional corporation.

Significantly, there are no obligations on village corporations to pass through any of their cash receipts. This is wholly in keeping with the collective and capitalist nature of the congressional settlement. The central purpose of the Settlement Act was not to endow individual Natives with benefits but to create a continuing capital stake in the economy of the state and the country in the Native people as a whole. The congressional sponsors of the Act were deeply concerned that, in the past, individual assets had been squandered through lack of a collective responsibility. But more importantly, Congress was concerned that distributions to individuals had been too small in prior settlements to be used for other than consumer purposes. The Act was designed with the basic intent of creating centers of capital formation and growth. The possibility that the assets might be passed through largely to individuals was viewed with disfavor by congressional leaders. The ten percent required distribution by regional corporations was by way of throwing a bone to individuals who might otherwise wait a long time to see beneficial results and who, without the bone, might organize to raid corporate treasures.

Administration of the Village Share in 7(i) Distributions As A Source of Perpetual Village Authority and Inter-Village Conflict

Section 7(i) receipts are the funds constituting the return from the 70% of revenue in subsurface estate and timber rights which each

regional corporation is required to share with all regions. As of this writing, the U.S. District Court for the District of Alaska has ruled on a formula for calculating these distributions. Appeal to the Ninth Circuit is pending. As with Alaska Native Fund receipts, the first level of village corporation concern with 7(i) receipts is in the fair calculation of their amount and in scrutiny of regional corporation performance in protecting the village's interest in those receipts. From 45 to 100 percent of 7(i) receipts will accrue to the village corporation through 7(j) sharing.

The interplay between the right to a proportionate share of 70% of the receipts of other corporations from subsurface and timber estates and the obligation to part with 70% of the receipts from one's own regional corporation is complex and has been receiving extensive treatment elsewhere. What should be noted here is the potential of 7(i) questions for raising sharp differences of interest among village corporations depending upon, among other things, attitudes toward development, the geographic proximity to a particular village, natural endorsement in wealth required to be shared under 7(i), the extent to which that wealth is intertwined with surface estate values which are retained by the village alone and the influence of the final system of 7(i) accounting on village interest. This system will determine whether 7(i) distributions are maximized to meet the overall intent of the act in democratization of distribution benefits or minimized to meet the natural inclinations of "haves" and the ideological objectives of a land oriented settlement. Enhancement of village interest tends to avoid 7(i) distributive effects. If potential regional corporation profits are siphoned off through maximized payment for village-owned surface

estate interests, less is distributed through the 7(i) formula. However, if this condition prevails generally, most villages will be trading away bigger long term benefits in 7(i) distributions for less valuable, short term benefits.

Apart from 7(i) differences relating to whether the village considers itself to be a "have" or "have not", other interests will distinguish village opinion which need careful evaluation for each village in determining upon whom that village can more effectively cooperate.

The village which is strongly oriented to traditional values, for instance, and which opposes "growth" because of its influence on lifestyle, and which is not located in close proximity to resources will be inclined to an expansive view of 7(i) sharing which will bring it money at no cost to the local environment. If it is located in an exceptionally wealthy region, however, there may be more cash in enhancing the 30% retained share, provided the village can stop development on its own land.

The combinations influencing each village's interest are legion. The general point to be drawn is that there is no necessary coincidence of interest either with the region in which the village is located or with any other particular village in the region, and automatic cooperation with either on 7(i) issues may work to a village corporation's disadvantage. Each village must first determine its own interest and then look for others of a like mind whether in or out of the region.

The method by which a regional corporation computes or attempts

to enhance the 30% retained revenues¹ is first likely to be of even greater importance to a village within the same region.

If a region is successful in enhancing 30% values through an arrangement (e.g. high payment for surface values, employment or austensibly necessary public works) which passes that value to a village located in proximity to the asset, other villages in the same region (unless they can cash in on similar arrangements) will suffer more than other regions because, mathematically their proportionate share of the 30% is likely to be much higher than their share in the 70%.

It is difficult to see how these different shades of interest in asset distribution and corporate activity could be protected in merger arrangements that resulted in disappearance of the village as a representational entity. Yet they are entitled to be recognized under the Act.

Administration of the Village Share in "All Other" Regional Corporation as a Perpetual Obligation of Village Corporate Existences

"All other" income will consist principally of investment income, interest income and income incidental to programmatic activities. The most obvious village corporation interest is first in the determination of whether these amounts are being fairly and accurately computed. However, more important from a policy perspective is whether regions should be encouraged to produce this income and in what ways. The central issue, which may already have been substantially prejudiced by events, is whether the villages view the regional corporation as

1/ 7(i) funds are properly referred to as the 70% portion required to be shared among the regions. Section 7(i), though, technically refers to both the 70% and the 30% retained in which the village also has a very large interest. We follow the popular reference, calling the 30% 7(j) funds.

the proper body to conduct activities designed to produce "other income." "Other income" sounds like something of an afterthought in the statute - just in case there was some. However, if village corporations decline to seek exercise of their right to substantially all of the distributable income of the regional corporation then "other income" will loom increasingly large. Other income (assuming the retained portion of subsurface income is considered 7(i) income) is principally the income from investment or interest in retained funds. There are many good reasons to utilize the regional corporate structure for investment. What is important is to remember that the villages have a say - perhaps the final say in the matter if they chose to exercise it through shareholder organization. The role of the region can be confirmed either by expanding dividend policy or by increasing the pass through to the villages. The expansion of regional corporate enterprise is by sufferance of the villages, when there is a consensus of the villages, not by right of the region.

Such expansion should serve the common village purposes. The village's review process on "other income" should involve the determination whether and to what extent the villages chose to have the regional corporations serve as the nucleus of capital investment.

Considerable attention has been focused on the right or duty of the regional corporation to review village corporation activity - through its ability to require a plan, budget review, etc. In a sense, focusing on these review provisions tends to distort the real underlying framework of accountability and representation provided for in the act. These specific review provisions are few and narrow. On the other hand, the obligations of the region to account to the villages are as extensive as the villages wish to demand, collectively, through their shareholders, and are inherent in the concept of the village as

the fundamental unit of representation and the region as trustee to the interests of the village.

The regions have so outpaced village corporations in scale of activity that it is hard now to visualize the village corporation as the fundamental unit of representation and control. Nevertheless, there are good reasons to recognize a strong authority in the villages arising from historical circumstances present when the Settlement Act was formed. This historic village primacy casts, incidentally, a special light of interpretation on the provisions of the Settlement Act providing for regional corporation overview of village corporation activity. Regional corporate review must not seem to prefer a regional corporate interest over a village interests

Before going on to review the statutory rights and obligations of the regions, to review village activity in the setting of village cooperative agreements, and the larger issues of the purposes of village and regional corporate organization, it might be well to review the historic context of organization of Alaska Native people, a context against which the Congress established the unique corporate structure of the Settlement Act. An appreciation of this background is necessary to understand what Congress was thinking about when it provided for these corporations and the division of responsibility it envisioned among them.

Organizational Purposes Arising from Historic Setting of the Settlement: The Pre-Settlement Evolution of Village and Regional Organization

In the beginning there was the village. The unique patterns of fundamental social organization of Alaska Natives had presented a problem to the officers of the United States government long

before organizational forms were being reviewed for implementation of an Alaska Native Claims Settlement. Alaska escaped the series of legislative "solutions" to Indian questions of the preceding century not only because of the territory's isolation but because the Indian bureau was accustomed and federal legislation was shaped to deal with "tribes". The possibility that tribal structure might not be the fundamental unit of aboriginal social organization missed not only later generations of Congressmen, but also the founding fathers who wrote in the Constitution that the Congress "shall have the power . . . to regulate commerce . . . with the Indian tribes."

National information programs or services were commonly organized for delivery considering a tribal structure. At least partly as a result, (fortunately for the Native inhabitants as it turned out), the Alaskans never got the word when legislation was adopted extinguishing Indian rights. In the absence of information, the fundamental unfairness of extinguishment caught the attention of the American public and paved the way for adoption of the Settlement Act.

Whatever the views of the federal government, the village remained the fundamental unit of Alaska Native life. The village was the culture carrier. It was the hub from which the meaning of Alaska Native life radiated. It was and is the heart of the Alaska Native identity.

The Alaska Native Claims Settlement Act sprung from two or three quite different, psychologically based, ideological sources. The Alaskan Native demanded protection of his land and way of life. The land and way of life were increasingly threatened by invasion

from the south, an invasion incited by the recognition of the wealth of the Alaska land, wealth defined in the cash terms of American society. The economic ripening of Alaskan oil made that threat precipitous. The developmental segment of American society wanted to clear the way for that resource development. A social engineering segment saw economic self-sufficiency as a social solution to the pervasive poverty in which almost all Alaskan Natives lived

Though the Native people got largely what they wanted in the Act, the terms upon which the settlement was made are those of the larger American culture. This is not a matter for angry rejoinder. The framework was unavoidable. The Settlement was not first written in Yupik or any other Alaska Native tongue. It does not carry the values of the Alaskan languages but of English. It was not forged by a village or a council of village leaders upon the application of petitioners from the government of the United States but visa versas

For the most part, those who represented the Alaska Native position in the forging of the Settlement Act were men and women who had bridged the gulf between the Alaskan Native and English viewpoints. This is no reflection on the patriotic loyalty with which they represented the Alaskan Native point of view. Rather it enabled them to find points of accommodation for the principal objectives and value systems of developers, of social engineers and the Native interests in the arena of settlements. It is no accident that the leader of the Native movement in the crucial time was a man who had already made his way as an entrepreneur in the Alaska commercial world as a construction contractor.

Long before the precise framework for the settlement was envisioned, the Native leadership recognized that only larger forms of organization would serve as vehicles for representation in dealing with the Congress. The Congress was too preoccupied to deal with the individual claims of hundreds of villages. The weary course of the Tlingit-Haida settlement and other judicially defined settlements demonstrated the procedural inadequacy of judicial settlement and the hazards of claims based narrowly on specific evidence of occupation by recognized groups. Besides the dangers in allowing the federal government to mediate difference of opinion among too many segments of Native interest were obvious.

Still, one Native organization would not suffice. Though there were no tribes among the northern Indians, there were still articulated communities of interest based on geography and geography-based ethnic family ties. These newly formed and, for the most part, unprecedented regional Native organizations were large enough for the federal government to deal with. They looked enough like tribes to elicit the recognition of the larger American society. They worked. They attracted the young leadership more sophisticated in the ways of bureaucratic organization. Power arises when someone else recognizes it. The Alaska Native village had not been recognized as the fundamental unit it really was; the Alaska Natives formed regional "tribes" which were.²

2/ As usual, any generalization about the Alaska Native experience can be misleading. Alaska Natives are not one people except as they are being defined so by the larger culture which finds it particularly useful to lump people together based on skin color

This new shaping of Native organization was highly adaptive to the political situation and began immediately to work its effect on the form of settlement itself.

While much of this recent history is obvious, even self-evident, to the adult generation of Native leadership, it is well worth reciting for the benefit of the young, the forgetful or the general readers. The regional organization, supported by the cash flow generated by the Settlement Act and the Congressionally created legal power over villages was so adaptive that it is now the dominant form of Alaska Native organization, to the point where its hegemony is supported by newly framed "customs" as well as Congressional enactment.

Functional Differentiation Between Village and Regional Corporations

The significance of this history lies in the differences between region and village in value orientation and purpose, in right to be heard as the authentic voice of the people. These differences are reflected in many provisions of the Settlement Act.

The regional corporation is well suited to meet the developmental interest in economic enterprises. It is large enough to support the bureaucratic organization indispensable to large scale

or prior arrival. The Indians of Southeast Alaska and the Interior are more tribal in configuration than Eskimos, but lack the strong central structure of plains Indians. The Bureau of Indian Affairs attempted fitfully in earlier years to organize natives into villages under the Wheeler-Howard Acts. Particularly in Southeast Alaska these organizations sometimes worked well and formed a basis for business enterprise.

economic activity. It is cash oriented. Its assets are exclusively cash-related, generated from the cash settlement and the subsurface estate - an interest in real property which has meaning only for its cash equivalent or economic developments. The real land, the land of the Native people is the surface estate, land held by village corporations.

The regional corporation is large enough to form a vehicle for the delivery of social services and to provide an economic unit from the perspective of those who want to see the Native people get a permanent economic stake in society. Regional corporations are wealthy enough to be centers of capital formation, to engage in risk takings. Most villages quite conspicuously should not engage in risk taking. Their assets are so small that the establishment of a single enterprise would absorb a disproportionate amount of assets. Risk taking is intended for enterprises large enough to absorb the total loss of one enterprise as a tolerable proportion of investments in many. Most villages are too small to support alone the bureaucracy of management, the technical staff expertise in resource or enterprise management needed for evaluation or the fiscal management staff required to assure accountability. If the average village is to engage in this type of activity - entrepreneurship, it must do so in some quite different form - through participation with others - whether villages, regional corporations, independent corporate enterprises, cooperative organizations or whatever other forms are suggested, not through the standard form of ANCSA village corporations.

The Special Responsibility of the Village Corporation - A Historic
Setting

Since the village corporation is so clearly set up in a way guaranteed to fall short of the optimum objectives of economic enterprise in the usual sense, what are the objectives of the village corporation?

Just as that government is best which is closest to the people, so it is true that the form of Native organization which is closest to the people is best. The village corporation is representative. The municipal corporations which, as was foreseen, are likely to rise in many villages are not as well adapted to the Native purposes because the basis of "ownership" in a municipal corporation is residence. With at least historic justifications, Alaska Native people are suspicious of municipal corporations as institutions easily dominated by an aggressive outsider. While the dangers of capture of village corporations by non-Natives through the acquisition of ownership are likely exaggerated (and the risks of capture by less scrupulous Alaska Natives or by non-Natives of Native corporate management underestimated) nonetheless, the unalienability of its shares, for the present, makes the village corporation specially suitable for carrying the cultural heritage associated with the village. This was the historic role of the village before the Act. It should be continued.

Though the regional corporations are defined in ways which seem to establish them as more powerful under the settlement - the right to review plans and budgets of villages, etc., the larger reality casts them rather as trustees of the wealth generated by the settlements. They are responsible to the villages and the

people, not the other way around. This is reflected in the way a regional review authority is stated in the Act and in the emphasis on cooperative agreements among villages in the Act. The analogy is similar to the federation of the states of the United States in the United States. In the original model, the states are sovereignties of unlimited general government powers; the federal government exercises the necessary refereeing function in a federal system and otherwise such powers only as are permitted by the states. The village corporation is the first representative of the original interests of the people in land, in the heritage.

The very lack of financial and managerial capacity gives the village a special perspective on the purpose and value of any activity taking place in Alaska. The regions, whose bank accounts, real or potential, are the central reason for their being, will tend to have a more dollar-oriented perspective. The villages will act as a moderating influence on this regional view.

In practice, there is a tendency for the opposite flow of influence to occur. Village corporate leadership, unsure of objectives, looks to the region for advice. The advice given, while generally sound, is usually enterprise-oriented. The risk of serious and undesirable loss under such circumstances is great.

What then is the proper economic role for the village corporation? How, if at all, is it different from the regional corporation except in size? Village corporations are poorly situated to act as investment companies. Regional corporations, through their greater aggregations of capital wealth, can spread risk, retain expert fiscal control and management. If villages are going to

act in this sphere, the sphere of money making enterprise for the sake of profit, they should do so only through cooperative agreement so that their resources are pooled and risk and cost of management spread so that each village bears only a small proportion of these overhead costs. The Congress appreciated this, which is why cooperative agreements are selected out for specific reference while so many other subjects are ignored. Cooperative agreements are the crucial factor which will make the village system work.

It is undesirable for regional and village corporations, acting collectively or otherwise, to compete against each other to mutual disadvantage. Vigorous competitive activity among business corporations may make for a strong American economy. It is not at all clear that competition among ANCSA corporations has a beneficial relationship to any public good or Alaska Native interest.

A philosophy must be developed concerning the separate spheres of action of the regional and village corporations as a guideline in principal to corporate activity. The ANCSA corporations should avoid the kind of trouble for instance that confuses Alaska local government. In Alaska, a borough and a city are governments of equal potential though having different names and accordingly conflict and compete among each other until they are merged together.

The Act may provide some hints as to the possible economic and other roles of village corporations, particularly with its cooperative agreements section. The basic purpose of village corporations is to support the values of village life. This may include the promotion of local industry operating within the

confines of a circle of villages, but the principal purpose of economic promotional activity should be to create desirable jobs for the villagers and to enhance the quality of village life not to create economic activity for its own sake or for the sake of profit. The village corporation should answer the questions: What would you do to make the village a better place if only you had the money to spend? The region, on the other hand, is the proper manager of capital investments. If villages have a surplus of funds, not necessary to meet the needs of village purpose, they should enter into cooperative agreements with regions or other villages for the investment of such funds on a larger scale.

When a village corporation identifies a potential profit-making enterprise based within the confines of the village, its own resources should go only to the equity portions, or a share only in the debt. The region should act in the role of banker (or find a banker) so that the whole resources of the village corporation are not jeopardized.

If a proposed new business is a reasonable risk, venture capital can be secured through the regional corporation or other outside resources. A requirement of a debt base to financing makes it much more likely that adequate fiscal scrutiny will be observed.

But the key to village corporation purpose is not economic but non-economic values. The regional corporation is a poor carrier for the civilization of the Native people though it may provide a financial bulwark. The village corporation is the successor to the village corporation established under the Indian Reorganization Act (IRA) as a form by which village people can meet the outside world. One student of the Act has suggested that village

corporations should consider continued utilization of IRA corporation forms as a method of avoiding the alienation of stock which will start to occur at the end of the twenty year period of statutory inalienability and a technique for keeping state taxing authorities at bay. While the evaluation of this specific mechanism is beyond the scope of this article, it demonstrates the proper spirit in responding to the Settlement Act.

Settlement Act stock is inalienable only for a limited time. Provision for expiration of alienation reflects two other hidden purposes of the Act: termination and integration. Should these objectives be recognized and accepted? If not, what strategies can be developed to utilize still the benefits of the act but divert these aspects of the Settlement Act's social and political determinism? By the same token, recognition must be given to the determinism of the Act in forcing or encouraging its beneficiaries into the mode of acquisitive economic thought. Maybe this mode is desirable. It may be the currency of survival. But these effects should be weighed and if they are not in keeping with basic traditions, strategies should be developed to escape the Act's straight-jacket on the minds of Alaska Native people.

The Village as the Trust Enforcer

A primary objective of the village in approaching the dollar aspects of the settlement should be the protection, enhancement and accurate and forceful representation of the shareholders in the regional corporation of the village's region.

This occurs now in a haphazard way through the widespread use of proxies. At meetings of regional corporations, most shareholders

from a village are usually represented by one or more proxy holders, in effect representatives of the villages. The procedures whereby these representatives are selected should be carefully examined to assure that a system guaranteeing accurate representation is assured. Is the individual who successfully promotes the most signatures for himself the right representative for the village? Or should the village council select a proxy holder and encourage members of the village to give their proxies to that person?

What methods are established to assure continuing accountability of the proxy holder for all the issues that might come before the meeting? What method is followed to assure that the proxy holder is fully informed on the wishes of the shareholders? How might issues of differences of opinion among shareholders be resolved by the proxy holder?

One technique for articulating and resolving differences among shareholders and which makes sure the maximum weight of the village is preserved is the voting trust. Through a voting trust, a member of the trust agrees to be bound by a majority in the trust. This assures that a group sentiment is expressed in voting in the larger corporation regardless of individual views. While a voting trust submerges individual opinion, it does give great weight to a collective viewpoint - e.g. that of the village - and, if implemented with adequate meetings of its members, gives a greater guarantee of effective representation than a proxy alone. The village corporation can administer a voting trust made up of stock of village shareholders in the stock of the regional corporation.

The Responsibility of the Village to Plans, Budget and Audits
the Responsibility of the Regional Corporation to Help

The preceding discussion emphasizes that the village not the region, was the more fundamental unit of Native organization and the concept of village representations, accordingly, was deeply rooted in the formation of the Settlement Acts. The region was a service unit and referee to village interests not the other way around. The village was perceived as the fundamental unit of popular responsibility and power.

Yet some terms of the Act sometimes seem to turn this around. Section 7(1) and 8(b) vest certain review powers in the regional corporation over the village while at the same time inferentially imposing some procedural requirements on village organization. Each village must establish a village plan. Each village must set an annual budget. Each village must conduct an annual audits

The ingredients of program planning and budgeting, so dear to government, have been imposed on villages by indirection, through statutory description of regional corporation powers and responsibilities in these areas.

The Act's directions to regional corporations are sketchy: The regional corporation "may" withhold funds until a village corporation submits a "satisfactory" plan. As Professor Price has indicated³ the use of "may" in reference to withholding funds against a "satisfactory plan" indicates that withholding may be too drastic a remedy for a particular fault. But surely it would be

3/ Price "Regional Village Relations Under ANCSA" - UCLA, Alaska Law Review.

dereliction of regional corporation duty not to require and if necessary assist the village in the process of preparing a formal plans. While the region has limited authority over the substance of a plan, the absence of a village plan meeting prescribed procedural requirements puts the region broadly in jeopardy for anything going wrong in the village that could be traced to the absence of a plan.

The only expressed substantive standard for village plans in the Act is suggested by the grant of specific authority for the region to require joint ventures, generally, with other villages, and for joint ventures with the region, particularly, that will benefit the regional areas. What this contemplates in practice is that the region has the responsibility to review any major village proposal to meet a village need to see if it is something that should be done cooperatively. A procedure for dispute resolution is obligatory. While the term "arbitration" is used, no particular form of arbitration is provided for. Thus any form which the village has agreed to in advance is suitable. "Arbitration" suggests only a consensual agreements.

Why, out of all the dozens if not hundreds of dispute potentials under the Settlement Act was this one picked out for a special arbitration procedure? Because the system of organization of the Act requires a workable, agreed to method of resolving disputes. The arbitration procession, in a sense, asks the Native corporations to establish a "supreme court" or courts for each region or for the whole to resolve disputes arising among them, as an analogy to the Supreme Court role as arbitration to the federal system of the United States. The Congress saw that cooperative

agreement, not litigation, was the answer to this kind of issue - not just a dispute resolution but the advancement of the interests of all parties.

Annual budgets "shall" be subject to "review and approval".s Something going beyond "submission" of a "satisfactory" plan is required when it comes to budgeting. The regional corporation "shall assist and advise Native villages in preparation of articles of incorporation and other documents necessary to meet the requirements of this sub-section.s" Budget documents are "other documents necessary.s" Accordingly, assistance in preparing budgets is mandatory on the regional corporation.

The plan is, of course, less subject to regional guidance because the substance of a plan is peculiarly the right and responsibility of the village. Only where that plan involves the possibility of conflict with overall regional programs or where village plans may be in conflict does the region appear to have a clear, substantive authority.

The most prominent feature of these provisions is the burden they place on the region to establish a procedure for its action in relation to village corporations. The region is given the power, in part the duty, to review plans. As we have indicated, as a practical matter, a duty is imposed to require at least that a plan be prepared, in form, insofar as otherwise all misfortunes attributable to the absence of a plan are likely to be laid at the region's doorstep. The region must at least establish a procedure and standards for determining whether the discretion to review is exercised. Some kind of plan must be available to allow the region to exercise this preliminary judgement. Guidelines for what

constitutes a "satisfactory" plan must be established if the region is to narrow the range of its guarantee of village solvency. Most beneficially and with maximum protection for the region, guidelines should be established on a consensual basis with the villages.

The relationship between the region and the villages and the direction to be taken by the region might best be visualized in the context of the Congress's concerns regarding village economic immaturity. The region is seen as performing the tasks of guidance and standard setting until each village is on its feet.

Thus the basic standard by which the region can consider reducing its responsibility is the extent to which the village has demonstrated its capability for independences. The degree of oversight should depend upon some measure of how economically sophisticated the village is or has become. For instance, the extent of review of plans and budgets could depend upon whether the village has successfully prepared such plans and budgets in preceding years. The question is really: "Is this village ready to go it alone?" The courts may well apply a standard of negligence to a relationship in which the regional corporation is seen in the role of guardian to the economic welfare of the village. The question is: "Would a reasonable regional corporation, considering what it knew or should have known about the economic maturity of this village, have allowed it to proceed with the level of supervision or oversight it actually received?"

When something goes wrong, the burden is likely to be on the region, with its superior resources, to prove that what it did or did not do was reasonable under the circumstances. The best way

for a regional corporation to build up a "reasonableness" standard against which its own behavior in particular cases is to be judged is to articulate what "reasonableness" is through rules and guidelines arrived at on a consensual basis. Of course this imposes costs on a regional corporation. But objection to this cost is not pertinent since these are not ordinary business corporations. They are the instruments of settlement and the dividend to the shareholder is not the only guide to successful performance. Some attorneys and managers seem inclined to give a very rigid concept of regional corporation authority focusing on conventional fiscal obligations to shareholders. This is an erroneous and may be an ultimately financially disastrous interpretation.

The statute gives the regional corporation the job of writing the law on the subject of requirements for budget and planning, having in mind its responsibility to assure the financial security of the village corporation.

The reasons for giving the region authority to review budgets are not hard to come by. There was widespread concern that unsophisticated villages would waste their assets, particularly during the early years. The Congress decided to establish a five year "learning period" for village corporations, during which more intensive regional corporation surveillance would be required. But the purpose of this provision was to protect the villages from their own improvidence, not to invest the region with sweeping power to control the course of village purpose nor to impose control over the long term objectives of the plan along with sound managements

Required Cooperative Agreements

The authority of the region to require a plan to provide for joint financing with other villages and with the regional corporation

is a power to referee potential sources of conflict. The emphasis is on potential. The authority lies to encourage cooperation. The power to require joint participation is not unlimited but must also be exercised reasonably. Reasonableness does not just mean the regional corporation has a good idea for spending money. Unless there is a reason for cooperative undertaking as distinguished from individual undertaking, there is no authority to require participation.

Some regional refereeing role in economic planning is a necessity otherwise the villages could spend their entire wealth on destructive competition. Every village, for instance, cannot start a fish processing plant for a larger areas. Some economic enterprises clearly call for organization on a scale beyond the village. It is cheaper to run a consumers cooperative serving six villages than ones Who decides what village takes the leadership? The region is to call the shots on such enterprise in the interest of maximum efficiency.

The regional corporation need not always be caught in the middle on these kinds of arrangements. Some kinds of enterprises very small scale service enterprises depending for their economic vitality only on the servicing of single villages, such as a general store, can make it alone. The region would have no authority in such a case to require joint venturing.

The joint venturing provisions arise from the recognition that village economic self-sufficiency is the exceptional case. Most rural enterprises depend for their survival on successful interdependence - usually a market consisting of more than one villages If two villages both propose to embark upon enterprises in circumstances where the economy of the area will only allow one to survive,

the region has a duty to intercede.

In the delivery of many goods and services it is difficult to say that one village has a clear right over another to engage in that business. Nor is it desirable to allow one village to get in a position of economic power over another. Accordingly, the region may require that the villages share, through joint venturing or joint financing, in the building of an enterprise.

A common example would be the construction of a fish processing plant. Clearly the catch from many villages would be necessary to make the plant work. But should one village get ~~all~~ the benefit and have all the control over the processing, so important to all the villages? Such circumstances seem to require participation in the management of the enterprise of all villages affected. In some circumstances it may be more efficient, particularly if the scope of the enterprise is large and all villages in the region are affected, to have the regional corporation itself conduct the enterprise. For instance, the development of a transportation and wholesale marketing business requires a larger scale of organization for the purchase of airplanes, warehousing and expert staff, that might well work best with more than one region cooperating to cover dozens of villages. No village is in a position to undertake such an enterprise alone. If it were, is it fair to allow that one village to exploit the others? Through joint venturing, each village can express itself to the extent of its interest.

The regional role as trustee and arbitrator of a federal system requires the regional corporation to do not less than analyze all village plans to determine how they fit together and to referee

potential conflicts. The arbitration is more likely to involve the region establishing an arbitration between two villages than an arbitration of village-regional differences

The duty of the regional corporation to stop a village from undertaking an improvident enterprise arises under its budget review authority and not its planning review authority. Budget review is not subject to arbitration and the duty of the region to exercise veto over a clearly improvident investment will not be easily avoided.

For instance, a village plan might include a program for village economic self-sufficiency through the development of a sawmill. The plan is subject to review and should be subject to review because the proposal is interconnected with the regional corporation interest in timber. Other villages may be involved because their surface estate rights are affected and the labor of the people of the village engaged. A careful balancing and packaging of these interests is required in the financial and management arrangements made. If agreement is not easily resolved, some arbitration may be required. The region must impose it. Arbitration might be before an economic court or a general Alaska Native court of contractual design previously agreed to between the villages and the regions for settling these matters.

Continuing the example as part of its budget, the village includes expenditures for capital investment in the sawmills. The regional corporation reviews the budget. It reasonably requires, by its regulations, that all budgetary items requiring an investment of over 15% of the annual income of the village (or over a certain dollar limit) be accompanied by or followed by a prosforma investment analysis. The region must then say, after looking at the invest-

ment analysis, (if it is true) "I am sorrys The sawmill you propose is not economically viable. It will go bankrupt. The region dis-approves." This authority is not subject to arbitration as a requirement of the Act. It is possible that the region, in reviewing budgets, may set up a review process for the benefit of the parties. But it is not required and the form of review would be purely a matter of choice for the regional corporation or, on the region's option, agreement among the parties. There is nothing to stop the parties from adding more requirements to their joint administrative arrangements if they believe it is desirable.

The Duty to Exchange Information

There are significant additional implications in the requirements of review and arbitration concerning the power and duty of the region to gather and disseminate information concerning village economic activity and to report on its own economic activity. The region is obliged to act as a clearinghouse for information respecting economic plans to assure the whole works smoothly. If its own plans run at significant variance to village interest, failure to fully disclose may be a trap. The region is caught in an uncomfortable conflict of interest between its own profit making practices and its trust responsibilities to its villages. Under such circumstances, open book operations are the only safe answer.

For instance, the region would probably be liable for damages if it allowed two villages to develop projects which would end up in destructive competition. The regional corporation would itself be liable if it proceeded on its own to develop a project which resulted in economic loss to a village. The region would be liable if it sponsored a village cooperative arrangement among one group

of villages which worked to the detriment of another.

There are natural tendencies for each corporate unit, whether village or region, to proceed with a good deal of secrecy. Once an island of legitimate security is established there is a tendency for it to spread. "National security" secrecy encourages federal officials, when in doubt (or when in fear of embarrassment) to stamp it confidential. The same happens in private enterprise. There is a legitimate zone of "business secrets," which, if revealed, will cause financial loss to the corporation. From this springs the attitude, "when in doubt, keep it close to your chest." This has the effect of limiting the flow of information of mutual benefit.

The Congress was interested in seeing the whole system work together. Accordingly, within each region, substantial information sharing is required under section 7(i) (j) (l) (m), 8(b), 14(c) (5) and those advantages which are protected by secrecy must be subject to regulations

Though in a particular case one village may benefit from information sharing, in the long run it is destructive to adopt a wholesale secrecy policy in which one village tries to get ahead of another or the region ahead of either. Good development ideas must be shared and financing and management shared when other Settlement Act beneficiaries have a stake in the success of the enterprise.

An additional benefit of this approach is that risks of failure, which inevitably accompany any new enterprise, will be spread over many villages or the village and the regions. Thus no village will end up with all its eggs in one basket.

Voluntary Cooperative Agreements

The previous paragraphs covered joint agreements that might

be imposed as a matter of regionally diagnosed economic desirability or to avoid conflicts; joint agreements which are mandated by the Act. However, there are few limitations on the power of village corporations to voluntarily develop cooperative arrangements with either other villages, the region or third parties to enhance any perceived interest.

First among these agreements, in point of obviousness, is the desirability - even the necessity of entering into cooperative arrangements for the performance of basic accounting responsibilities. Village responsibilities can be handled more cheaply with many participants in such matters as setting up and managing books and accounts, budgets, stock records, the performance of audits, the development and maintenance of land records, the development of associated training programs and similar tasks. Few villages can do it on their own without spending much more than they can afford. An accounting firm might charge \$2,000 to perform some of these tasks for one village, \$1,500 for each of eight villages and \$750 for each of thirty, - and do a better job each time the number of its clients increases. Compatibility of accounts will make for better accountability and enhance the possibilities for cooperation among villages.

In these matters, a village should seek organization agreement and determine its needs first and then seek out the services required, rather than responding to a proposal by a private entrepreneur. When the entrepreneur initiates the plan, promotional costs are high and the competitive factor in keeping cost down is lost also. Additionally, if a village responds rather than initiating action, the village is not forced to figure out for itself exactly what it wants and how much it can pay. Goals get fuzzy

and the purposes of the village and purposes of the contractor can get confused. The setting of internal management goals and comparative shopping for services are very beneficial to the villages, both in cost reduction and in gaining business experience.

Before discussing purposes and methods of cooperative agreements for conducting enterprise, it would be well to comment on the nature of the village plan and the kind of purpose that might be expressed in it.

As soon as village corporations are about to get some money they are besieged by proposals for what to do with it - buy this or that, hire this person or another, invest in this enterprise or another. But before making any choices among the options urged on it by individuals, each concerned with his own benefit, each village must decide collectively what it wants to do. Does the village want to set up and own enterprise? Does it want to bankroll others in setting up ventures? Does it want to put in a dock or water system? What does it want to do? Setting long term purposes is the village corporation's most essential activity.

Village Purpose and Investment Policy

The village should be careful to distinguish between the purposes for its existence and the care of its assets, its investment policy. A good investment policy for a village corporation is passive. The village corporation is not a money making machine. Its investment policies should follow the cash needs of its "purpose" policies. The principal responsibility of a village corporation is to look out for the village - to make improvements in the village which everyone can benefit from to establish enterprise in the village which will be economically self-sufficient and which will

provide satisfying and reasonably paying employment to its residents, to improve the quality of life of the people in the village in whatever manner seems sensible and appropriate to the people. It is unlikely that every village will be confident that the first plan it develops is the right one. It may be that for many, maybe most, the best policy will be to put money away for a time until a good use can be settled on.

But putting money away, investing money, is not the purpose of village corporation activities. Investment policy should be the servant of purpose. It serves no village purpose, for instance, to buy property in Anchorage. Purchasing of such property, though, might be a part of investment policy, the policy which determines what you do with the money until you need it.

The management of investment is a specialized profession. There are strong reasons why investment should be handled through cooperative agreement either with the region or other villages or both. The establishment of a bank by several regional corporations will be helpful in assisting villages with wise investment management policy.

There are substantial costs associated with investment management. The larger the sums of money invested, the smaller the proportion which is necessary to spend for managements. In managing money market instruments - time deposits, government bonds, etc., which earn interest but can be quickly turned into cash when needed, efficiency and profitability requires investment on the scale of tens of millions of dollars. That suggests a very large cooperative agreement with many, many corporations involved. Some kinds of investments, like money market investments, are very low risk, provide low earnings but are easily reduced to

cash when cash is needed for something really important. Other investments like the investment in purchase of a building is not very "liquid" since it can be sold most profitably only when there is a willing buyer, which seldom happens just when the owner wants to sell. This kind of investment is long term and must be very carefully considered since the money will not be available easily for purposes closer to real village interests. A good investment policy calls for a "balanced portfolio" - some higher risk, some lower risk and spread out over different enterprises or activities, but bearing first in mind the possibilities that cash may be needed promptly for something really important.

Cooperative Organization for Business

A single village managing its own investment is likely to end up with an unbalanced portfolio - all of its assets tied up in a very small number of investments. Local ventures, like most small businesses just starting, are very high risk. Nationally, the majority of new small businesses end in failure. There is no reason to suppose that Alaska village corporation sponsored businesses will do an awfully lot better. Rather than each village investing in one business, which will result in some villages losing all their investment and some being very successful, it might be better to pool assets through a small business investment company owned by many villages or through a bank or other arrangement so that there will be a common pool of expert supervision over the investments, standards for profitability, and the risk of failure will be spread so the danger of any one village going under will decrease and the possibilities of all doing better will increase.

When a single village underwrites an enterprise for its own

area, there is a possibility that its failure will be disguised through additional cash injections or hidden subsidy. Why does a village want an industry in the village if the industry must always get new loans, with little hope of repayment to survive, if the people of the village must work long hours for low wages to make it work, if it brings in a lot of people from outside the village who disrupt village life? The business may technically show a small profit, yet from a village perspective, it is a failure.

A great many uses of money, even the usual case, will involve mixed questions of investment and purpose policies. A village industry, it is hoped, is a good, profitable and safe investment of village money. It is also hoped that it will make the people of the village happier. Care is necessary in keeping account of these two objectives: happiness or well being on the one hand and profits on the other, keeping them accounted for separately. From considering these objectives distinctly but together, the village will be strengthened.

Considerable caution should be exercised in buying out a local business as an objective of corporate social policy. An investment which just results in the substitution of Settlement Act investment for investment by others may not involve a real benefit to the village. On a larger scale, if the Settlement Act simply buys out existing investment in rural Alaska, perhaps a new, more desirable set of landlords results but control is purchased at the expense of much of the financial benefit of the Acts. If the business is badly run, however, or is small and it could be made into a bigger or more profitable business, the investment may be worthwhile.

Cooperative Organization for Purposeful Activity

Besides investments, purpose-directed corporate activity can also be accomplished more economically through cooperative endeavor.

Purchase and transportation costs in support of any good project are almost always less if the scale is larger. Building 100 meeting houses under one contract is cheaper than building each of ten separately.

Cooperative Organization for Market Strength

Many villages are being approached by companies who want to invest in natural resources protected by the village through ownership of the surface estate. Such a company can go to one village and then another saying "If you don't give us just what we want, we will go to the other village instead and you will lose the benefits we are promising." This is called "whipsawing." There are strong advantages to villages cooperating and exchanging information on natural resource and land policy and problems so that they won't be whipsawed.

In the ordinary life of business corporations, secrecy is the rule. That is because the usual corporation is locked in competition with other corporations. The tendency in village and regional corporations is very strongly this way, to keep secrets because they may be in competition with each other. But the Settlement Act will not work if the corporations spend their resources in destructive competition and miss opportunities through failure to share information. In the larger world of commerce, it is beneficial to the economy of the country to encourage competition. Agreements to restrict competition may be unlawful under the anti-trust laws but it will depend upon the circumstances. The Settlement Act is a special case. The advice of a lawyer is necessary in setting up arrangements which may seem to have the effect of restricting competitions

The Selection of Partners

The selection of associates in a venture and the kind of agreement that should be entered into depend on many factors. Depending on the kinds of objectives sought, the associates should be

- 1.s An independent entrepreneur or businessman -
or group of them.
- 2.s A bank or financial institution - or a groups
of them.
- 3.s Another village or a group of them.s
4. The regional corporation or one or more neigh-
boring regions.
5. An existing non-profit corporation.
- 6.s A municipal corporation - or several of them.
- 7.s The state or a federal agency - or several
of them.

If the activity is not necessarily to be profit-making, one of the latter on the list may well be preferable. If the purposes are those sometimes associated with government, tax free governmental structures may be better and may provide access to free grants or low interest money. Water, sewer and docking facilities, for instance, are in this category.

The fact that something is good to do does not mean that the village corporation is the best entity to do it. The village may wish to urge someone else to do what it would like to see done or assist and support someone else. The basic questions are the degree of control which may be desirable or necessary in the village interest and the incentive necessary to get others interested in

the desired goal. The degrees of control needed will depend upon how closely allied the interests of the associating parties are

Other village corporations make good associates because there is already so much common interest. But cooperating villages are also sharing weaknesses such as management inexperience so other associates may well be needed to compensate for village weaknesses.

Cooperative agreements are not all good. If the activity is on a small enough scale to be accomplished without too large an investment of village assets, the advantages of cooperation must be weighed against the loss of control, the result of shared control and costs of communication.

A Cooperative Exchange

But going it alone should be the exceptions. There is a need for a place of exchange where villages seeking associates or advice to help in common endeavors can come for further assistance. To the extent that regional corporations maintain active village assistance programs, the region is a good organization to support such activity. As we have indicated, through its obligation to provide guidance and information exchange systems, the regions may well decide to initiate a cooperative exchange with some degree of formality. The strength of the region's own interest in such affairs may warrant a separate forum for village corporation exchange, even crossing regional boundaries. For many purposes villages from different regions may have more in common with each other than they do with their respective regions.

Cooperative Policy Compacts

Forms of agreement have purposes well beyond combination for economic activity. Some agreements, particularly those having to do with resource management, may be simply binding agreements to pursue common policies or exchange information. Villages could agree, for instance, to a set of common and coordinated policies on land or ownership sales, providing for notice or consultation before any sale is made so villages will not compete against each other driving the price down, and provide for common systems of land disposal and management. Villages could enter into agreements involving mutual promises not to sell or dispose of certain land without joint agreement so that the conservation policies of one village are not undercut by a developmental policy of a neighbor.

Whipsawing tactics of major companies could be defeated by compacts calling for the exchange of information among villages. After all, when the Ajax Oil Company negotiates separately with villages A, B and C, it knows exactly what goes on in each negotiation. Why should village A only know what goes on in its own negotiation and not know what goes on in conversations between Ajax and village B or village C? That ignorance is a source of strength to Ajax with its knowledge of all negotiations.

Conclusion

The first rush of administrative enthusiasm following the adoption of the Settlement Act with its hundreds of corporate structures has focused on rationalizing it along the lines of purpose of commercial corporations. This movement has been helpful

in identifying economic weaknesses in the Settlement Act structure and in identifying economic strength as an objective of Settlement Act organization. But economic efficiency is not a goal of overall Alaska Native purpose but merely an instrument of larger purposes, purposes which finds their grass roots expression in village life. Many of the purposes of economic efficiency can be promoted through cooperative arrangements among villages or between villages and other entities without destroying the village's corporate identity, a result of mergers. Indeed cooperative arrangements, promoted and refereed by the regional corporation, are mandated by the Act. Corporate competitiveness within Settlement Act structures is not in the best interest of the Alaska Native people. The Act envisions a cooperative system of endeavor aimed at human goals. The profit-making mandates of corporate life must not be allowed to dominate the lives of the people, but must be transformed to serve contemporary adaptations of traditional Alaska Native points of view and lifestyles.