

LEGAL SERVICES

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MEMORANDUM

March 16, 2018

SUBJECT: Authority over the State Officers Compensation Commission
(Work Order No. 30-LS1498)

TO: Representative Sam Kito
Attn: Crystal Koeneman

FROM: Daniel C. Wayne
Legislative Counsel



Question Presented

You asked who, if anyone, has oversight over actions of the Alaska State Officers Compensation Commission (ASOCC). The short answer: the legislature.

A recommendation by ASOCC is only a recommendation. Under AS 39.23.540, ASOCC is authorized to make findings and recommendations regarding the salaries, benefits, and allowances of members of the legislature, the governor, the lieutenant governor, and each principal executive department head.¹ ASOCC does not directly set or change the

¹ AS 39.23.540(a). AS 39.23.540, in its entirety, provides:

Sec. 39.23.540. Duties of the commission.

(a) The commission shall review the salaries, benefits, and allowances of members of the legislature, the governor, the lieutenant governor, and each principal executive department head and prepare a report on its findings at least once every two years, but not more frequently than every year. The commission shall notify the legislature that the report is available.

(b) The commission may request reports or studies from any state agency as to the rate and form of compensation, benefits, and allowances for legislators, the governor, the lieutenant governor, and each executive department head. A state agency from which a report or a study is requested shall furnish it within a period of time prescribed by the commission.

(c) By November 15, the commission shall prepare its preliminary findings and recommendations for compensation of state officers that is reasonable and equitable. The commission shall give reasonable public notice of its preliminary findings and recommendations, solicit public comments, and give due regard to the public comments, before submitting a final report under (d) of this section.

salaries, benefits, and allowances it reviews. Instead, once ASOCC makes its recommendations final after public comment and delivers them to the legislature, the recommendations are effective and have the force of law only if, under AS 39.23.540(d), the legislature does not enact a bill disapproving all the recommendations within 60 days or, under AS 39.23.540(g), the legislature appropriates enough money to fully fund all of the commission's recommended increases.

In addition, the five members of ASOCC are appointed by the governor under AS 39.23.500(a). Board members are in the exempt service and can be terminated at the will of the executive. Otherwise, as you pointed out in your email, ASOCC is largely independent. It is established in the Department of Administration "[f]or budgetary purposes,"² and the director of personnel in the Department of Administration serves as "ex officio secretary to the commission and provide[s] research, technical, and

(d) The commission shall make available to the governor and presiding officers of each house of the legislature a final report of its findings and recommendations as to the rate and form of compensation, benefits, and allowances for legislators, the governor, the lieutenant governor, and each principal executive department head during the first 10 days of a legislative session. Subject to (g) of this section and unless a bill disapproving all the recommendations for all officers listed in this section is enacted into law within 60 days after the recommendations are submitted to the governor and presiding officers of each house of the legislature, a recommendation as to the compensation, benefits, and allowances for

(1) a legislator has the force of law and becomes effective on the first day of the next regular legislative session; and

(2) the governor, the lieutenant governor, and each principal executive department head has the force of law and becomes effective on the first day of the fiscal year following the fiscal year in which the recommendation is submitted.

(e) The commission may prepare amendments to the report submitted under (d) of this section and notify the legislature that the amendments are available.

(f) A commission member who does not concur in the proposed or final recommendations may attach written objections to the commission's report of its findings and recommendations.

(g) A recommendation under this section increasing the compensation, benefits, and allowances of a public officer is not effective unless all recommended increases included in the final report under (d) of this section are fully funded by appropriations.

² AS 39.23.500(e).

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administrative serves."³

It is also conceivable that suit could be brought against the ASOCC. However, ASOCC has broad authority under AS 39.23 in making its recommendations.⁴ Given ASOCC's broad authority and the fact that the legislature has retained its power to reject ASOCC's advice and cause it to have no legal effect,⁵ it is hard to envision the basis for such a suit against ASOCC.

Of course, another way that the legislature has "oversight" over ASOCC is that the legislature may amend or repeal any portion of AS 39.23 at any time.

If I may be of further assistance, please advise.

DCW:dls
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³ AS 39.23.530.

⁴ For an example of a statutory limitation on ASOCC's authority, see AS 39.23.560.

⁵ AS 39.23.540(d) and (g).