

LEGAL SERVICES

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MEMORANDUM

February 7, 2011

SUBJECT: Replacement of personnel board members under the proposed language of HB 4 (Work Order No. 27-LS0011\M)

TO: Representative Bob Lynn
Attn: Thomas Reiker

FROM: Lisa Moritz Kirsch 
Legislative Counsel

Thomas Reiker asked for a memo setting out the member appointment procedure under HB 4 when a third party gets the highest number of votes, or the second highest number of votes, in a gubernatorial election.

From a practical perspective, the governor may remove a sitting personnel board member for cause at any time, even though that member was properly appointed and the member's term is unexpired. The Alaska constitution provides that as to a regulatory or quasi-judicial board, members may be removed as provided by law.¹ The removal law for the personnel board is in existing AS 39.25.060(c); a personnel board member may be removed by the governor, but only "for cause." So if cause exists, it is possible a governor could replace a member, or members, at any time.

I found no expression of what "cause" might be for the personnel board, but other boards have used poor attendance at board meetings, non-participation at board meetings, or violations of law as cause for removal. In my opinion, the election alone is not cause for removal. As the term "cause" is used in the statute, it refers to the conduct of the board member, not intervening circumstances beyond the member's control.

If no cause for removal exists, vacancies and opportunities to appoint occur only when a term ends or a member resigns. Therefore, if a third party receives the highest or second highest number of votes in an election, and the board has two members from the party that failed to garner the highest or second highest number of votes, the governor could only appoint a member from the third party if there is a vacancy or cause for removal of a member.

It is possible that someone could read AS 39.25.060(a) as amended in HB 4 to require the governor to immediately strip out the major party members if a third party gubernatorial

¹ Art. III, sec. 26.

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candidate received the highest or second highest number of votes. The mandatory language, "the board shall be made up of two members of each of the two political parties" could lead to the conclusion that when one party is demoted to third place the board must be reconstituted to mirror the election result. But this interpretation would probably be rejected in court because it ignores the removal statute that requires cause to remove a member. In interpreting statutes, courts will harmonize statutes if possible.

However, the language that came from the APOC statute was designed to create a new board, and it may be wise to amend AS 39.25.060(a) in the bill to suit an existing board. Please let me know if you would like me to prepare a sponsor substitute with such changes.

LMK:plm

11-057.plm