

LEGAL SERVICES

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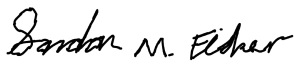
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 6, 2021

SUBJECT: Appointment of board members by presiding officers
(CSHB 63(TRA); Work Order No. 32-LS0286(G))

TO: Representative Louise Stutes
Attn: Kerry Crocker

FROM: Sandon M. Fisher
Legislative Counsel 

You asked whether the provisions of CSHB 63(TRA), which grant the presiding officers the authority to appoint a total of four public members to the Alaska Marine Highway Operations Board (Board), raise any constitutional issues. Granting the presiding officers of the legislature the authority to appoint public members of an executive branch board or commission may raise a separation of powers issue. The separation of powers doctrine provides that one branch of government may not exercise the powers committed to another branch and is designed to safeguard the independence of each branch of government.¹ The doctrine is implied from the creation of the three branches of government, the powers assigned to them, and the avoidance of encroachment by one branch on another.² If a power is granted to one branch of government, the authority of the other branches to act in that area will be narrowly construed.³ Article III, secs. 1 and 16, of the Alaska Constitution vest executive authority in the governor. CSHB 63(TRA), in allowing the presiding officers of the legislative branch to appoint public members of the Board, could be seen as violating the separation of powers doctrine because the legislature is involving itself in executive functions.

However, while the Board is located within the executive branch, the Board only provides "advice and recommendations" to the commissioner of transportation and public safety.⁴ Because of the advisory nature of the Board, it is possible that a court would find

¹ *Bradner v. Hammond*, 553 P.2d 1, 5 - 6 (Alaska 1976).

² *Id.*

³ *Id.* at 7.

⁴ The attorney general has advised that "the constitution is not offended by having legislators serve on boards and commissions that can only inquire and advise . . . and do not actually execute or administer the law." 2016 Op. Alaska Att'y Gen. (July 19).

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that no separation of powers violation exists. It is noteworthy that the presiding officers appoint public members to the Citizens' Advisory Commission on Federal Management Areas in Alaska⁵ and the Alaska Minerals Commission.⁶

If I may be of further assistance, please advise.

SMF:lme

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However, the attorney general opinion does not specifically address the potential separation of powers issue raised by the appointment of public members of boards and commissions by the presiding officers.

⁵ AS 41.37.170.

⁶ AS 44.33.431(b).