

STATE OF ALASKA SENATE

2009

Source
SR 5

Senate
Resolve No.
3



Relating to subpoenas issued by the Senate Judiciary Committee and to compliance with those subpoenas.

BE IT RESOLVED BY THE SENATE:

WHEREAS, on July 28, 2008, the Alaska Legislative Council unanimously authorized an investigation into the events and circumstances surrounding the termination of former commissioner of public safety Walt Monegan; and

WHEREAS, on September 12, 2008, the Senate Judiciary Committee, under AS 24.25.010, authorized the issuance of subpoenas to witnesses in the case; and

WHEREAS, at the same hearing, the House Judiciary Committee unanimously concurred in the issuance of the subpoenas; and

WHEREAS, within a few days, the subpoenas for Todd Palin, Randy Ruaro, and Ivy Frye were all served on their respective attorneys, and the subpoenas required Mr. Palin, Mr. Ruaro, and Ms. Frye to appear before the Senate Judiciary Committee on September 19, 2008; and

WHEREAS, on September 19, 2008, Todd Palin, Randy Ruaro, and Ivy Frye failed to appear before the Senate Judiciary Committee in compliance with the subpoenas that had

been served on them; and

WHEREAS the subpoenas for Annette Kreitzer, Dianne Kiesel, Nicki Neal, Brad Thompson, Michael Nizich, Kris Perry, and Janice Mason, were not served immediately upon their issuance by the Senate Judiciary Committee, because Special Counsel Stephen Branchflower, who was charged with seeing that the subpoenas were served, received on September 12, 2008, the same day the subpoenas were issued, a written offer of cooperation from Assistant Attorney General Michael Barnhill; and

WHEREAS Michael Barnhill promised the cooperation of the witnesses represented by the Department of Law, asking only that the subpoenas not be served, and Mr. Branchflower agreed not to serve the subpoenas and began scheduling depositions of the witnesses; and

WHEREAS, three days later, on September 16, 2008, that written promise of cooperation was countermanded by a letter from the Attorney General demanding that the subpoenas be withdrawn; and

WHEREAS the subpoenas were then served on the seven witnesses represented by the Department of Law, requiring that they appear before the Senate Judiciary Committee on September 26, 2008; and

WHEREAS, on September 25, 2008, the Department of Law filed a lawsuit on behalf of Annette Kreitzer, Dianne Kiesel, Nicki Neal, Brad Thompson, Michael Nizich, Kris Perry, and Janice Mason, asking the court to declare invalid the subpoenas issued by the Senate Judiciary Committee; and

WHEREAS, on September 26, 2008, Annette Kreitzer, Dianne Kiesel, Nikki Neal, Brad Thompson, Michael Nizich, Kris Perry, and Janice Mason failed to appear before the Senate Judiciary Committee in compliance with the subpoenas that had been served on them; and

WHEREAS, on October 2, 2008, Superior Court Judge Peter Michalski dismissed the Department of Law's suit, finding that "AS 24.25.010 gives the legislature and the Senate Judiciary Committee's subpoena power" and that there had been "no due process or fair and just treatment violation" of anyone's rights; and

WHEREAS, on October 5, 2008, the Attorney General declared in a letter that "in light of Judge Michalski's decision . . . the seven state employees are willing to testify"; and

WHEREAS, on October 5, 2008, written interrogatories were sent to the seven witnesses who had failed to appear before the Senate Judiciary Committee on September 26, 2008, as well as to Todd Palin, Randy Ruaro, and Ivy Frye; and

WHEREAS, on October 8, 2008, responses to those interrogatories were delivered to Special Counsel Stephen Branchflower; and

WHEREAS, on October 10, 2008, the Alaska Legislative Council unanimously adopted a motion stating that witnesses had "submitted responses to the interrogatories, thereby aiding the investigation";

BE IT RESOLVED by the Senate that, while the witnesses who did not appear as required by their subpoenas committed contempt, under the totality of the circumstances, the Senate imposes no penalty for their failure to appear.