

Alaska State Legislature

Select Committee on Legislative Ethics

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SENATE SUBCOMMITTEE Complaint S 20-03: Senator Lyman Hoffman

DETERMINATION OF PROBABLE CAUSE

The Ethics Office received a complaint, dated August 25, 2020, alleging Senator Hoffman violated the Legislative Ethics Act. The Senate Subcommittee met on September 22, 2020, for a Preliminary Examination.

The subcommittee recognized the unique situation of the current COVID 19 pandemic and unanimously waived the requirement for a subsequent further investigation and an in-person meeting to make a determination of probable cause or dismiss the complaint. The subcommittee's decision of a violation of the Legislative Ethics Act, AS 24.60.080(a)(2), is based upon uncontroverted facts and an admission by Senator Hoffman in writing on September 4, 2020, and orally at the September 22, 2020 meeting.

The facts supporting the Committee's belief that a violation of the Act occurred:

Date(s) or time period during which alleged violation occurred and a description of the activities that are an alleged violation of the Legislative Ethics Act:

The complaint stated meals were provided to Senator Hoffman and his spouse by a registered lobbyist on either January 4th or January 6th of this year.

Part of the Ethics Act that was allegedly violated:

AS 24.60.080(a)(2) (a) Except as otherwise provided in this section, a legislator or legislative employee may not ...; (2) solicit, accept, or receive a gift with any monetary value from a lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a lobbyist, except (A) food or nonalcoholic beverage for immediate consumption (i) with a value of \$15 or less; or (ii) provided as part of an event that is open to all legislators or legislative employees;

THE INVESTIGATION

The committee determined further investigation was not necessary after reviewing the complaint and documents provided by Senator Hoffman, and in recognition of the unique circumstances.

A restaurant receipt, provided by Senator Hoffman, dated January 6, 2020, documented the meals were provided to both Senator Hoffman and his spouse by a lobbyist. The value of each of these meals was in excess of \$15 and therefore in violation of AS 24.60.080(a)(2). Senator Hoffman provided the subcommittee a copy of a check written on September 9, 2020, to cover the cost of the two meals.

DETERMINATION OF PROBABLE CAUSE ORDER AND DECISION

The Senate Subcommittee found probable cause Senator Lyman Hoffman inadvertently violated AS 24.60.080(a)(2) by accepting meals for himself and his spouse from a registered lobbyist valued in excess of \$15.

RECOMMENDATION

The committee determined that corrective action by Senator Hoffman had been taken before the subcommittee met on September 22, 2020, and soon after notification of the complaint allegation. The committee determined further corrective action was not necessary for this inadvertent violation.

Adopted September 22, 2020
by a majority of the Senate Subcommittee

Joyce M. Anderson, Chair

Members Participating

Joyce M. Anderson, Chair
Dennis "Skip" Cook
Deb Fancher
Lee Holmes
H. Conner Thomas
Senator John Coghill
Senator Tom Begich

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SENATE SUBCOMMITTEE COMPLAINT S 10-02

DETERMINATION OF PROBABLE CAUSE OPINION RECOMMENDING CORRECTIVE ACTION

The Senate Subcommittee hereby finds that there is *probable cause* to believe that Senator Albert Kookesh violated the Ethics Code.

The Senate Subcommittee investigated allegations contained in complaint S 10-02 and determined that:

COMPLAINT S 10-02

The Senate Subcommittee received a properly filed complaint against Senator Albert Kookesh dated January 29, 2010.

The complaint alleged the following:

“During the Craig City Council meeting on January 7, 2010 and the Sitka Assembly meeting on February 26, 2010 Senator Kookesh inappropriately mixed his role as State Legislator with his role on the Sealaska board. In both cases, Kookesh cited how much the communities needed him to provide State funding for local projects and then in the same breath identified his need for support from us for the Sealaska Land Bill. Both incidents strongly reflected the idea of a “favor for a favor” and are entirely inappropriate in this context, I believe. Sitka’s comments, although less directly threatening, provide supporting evidence that Kookesh has blurred the lines before Craig. Both actions were in violation of AS 24.60.030(e)(1), Prohibitions related to conflicts of interest and unethical conduct. “

ALLEGATION 1: That Senator Albert Kookesh used his position as an Alaska State Senator inappropriately when he mixed his role as a State Senator and that of his role as chair of the Sealaska board of directors before the January 7, 2010, City of Craig Council meeting. Senator Kookesh cited how much the communities needed him to provide State funding for local projects and then in the same breath identified his need for support for the Sealaska Land Bill – a favor for a favor.

ALLEGATION 2: That Senator Albert Kookesh used his position as an Alaska State Senator inappropriately when he mixed his role as a State Senator and that of his role as the chair of the Sealaska board of directors before the February 26, 2008, City of Sitka Assembly meeting. Senator Kookesh cited how much the communities needed him to provide State funding for local projects and then in the same breath identified his need for support for the Sealaska Land Bill – favor for a favor.

SCOPE OF INVESTIGATION

The Senate Subcommittee met February 17, 2010 and adopted a Scope of Investigation focusing on AS 24.60.030(e)(1), prohibitions related conflicts of interest and unethical conduct.

A legislator may not directly, or by authorizing another to act on the legislator's behalf, agree to, threaten to, or state or imply that the legislator will take or withhold a legislative ... action, as a result of a person's decision to provide or not provide a thing of value;

"Legislative action" is defined in AS 24.60.990(a)(10) to mean; conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction;

"Thing of value" is defined in AS 24.60.990(a)(2) to mean: all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use, or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for;

On February 17, 2010, the subcommittee reviewed the investigative material and heard from Senator Kookesh. The subcommittee found that Senator Kookesh cooperated fully in the investigation.

ALLEGATION 1: DETERMINATION OF PROBABLE CAUSE

The Senate Subcommittee finds that after a thorough investigation of Allegation 1, the actions of Senator Kookesh at the January 7, 2010, City of Craig Council meeting were in violation of AS 24.60.030(e)(1) in that Senator Kookesh implied that he would use his senatorial power by withholding a legislative action – state funding for the City of Craig capital improvement projects – in exchange for a thing of value – a favorable vote by the City of Craig Council on the federal Sealaska land issue (U.S. Senate Bill 881).

Recommending Corrective Action

While the subcommittee found Senator Kookesh in violation of AS 24.60.030(e)(1), it found no evidence that Senator Kookesh actually gained any advantage from his statements. In light of this finding, the Senate Subcommittee finds this violation may be corrected by corrective action instead of sanctions.

The following corrective action is recommended: Senator Kookesh must write a letter of public apology on his official legislative letterhead to the City of Craig stating that he accepts responsibility for a poor choice of words which implied he would use his senatorial power to block funding for capital improvements projects for the City of Craig unless the Craig City Council voted in favor of the federal Sealaska land issue (U.S. Senate Bill 881).

The letter must be concise, factual and address the ethics violation and nothing more. The verbiage must stay on point and not debate whether he agrees with this finding nor how the public or media may have misconstrued his words. It is important that Senator Kookesh realize that his words at the Craig City Council meeting resulted in a widely held public perception that he violated the Ethics law and that the Ethics Committee has found that he did indeed violate the statute.

Further, the letter of public apology must contain a commitment that in the future Senator Kookesh will not imply use of his senatorial power to obtain a favorable outcome of an issue before the Craig City Council or any other elected body or organization. A copy of the letter will also be sent to the Senate President, all members of the Senate and to members of the media from the Senator's district as well to any other individuals who request a copy.

Compliance

Senator Kookesh must either comply with the recommended corrective action within 20 days of receipt of this decision or request a hearing within 20 days of receipt of this decision. AS 24.60.170(g).

ALLEGATION 2: DISMISSAL

The Senate Subcommittee finds the actions of Senator Albert Kookesh, set out in Allegation 2, did not give rise to a violation of the Legislative Ethics Act and therefore dismisses this portion of the complaint.

Adopted this 17th day of February 2010
by a majority of the Senate Subcommittee



Gary J. Turner, Chair

Members Participating

Dennis "Skip" Cook
Ann Rabinowitz
H. Conner Thomas
Gary J. Turner, Chair
Herman G. Walker, Jr.
Senator Gary Stevens
Senator John Coghill

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HOUSE SUBCOMMITTEE COMPLAINT H 12-07

DETERMINATION OF PROBABLE CAUSE Allegation 4(a), 4(b)(2), 4(c), 4(d), and 4(g)

DISMISSAL ORDER Allegation 4(b)(1), Allegation 4(e), and Allegation 4(f)

The House Subcommittee (committee) investigated multiple allegations contained in complaint H 12-07 and determined the following:

1. The House Subcommittee received a properly filed complaint against Representative Alan Dick dated December 12, 2012. The House Subcommittee amended the complaint on January 16, 2013, to include Allegation 4(g).
2. The complaint and amended complaint alleged the following:
 - **ALLEGATION 4(a):** That Representative Dick used his Fairbanks legislative office, equipment, and services for involvement in and support of partisan political activity and for his private benefit. Representative Dick and his wife resided at his Fairbanks legislative office for a period of at least 2-½ weeks for their private benefit and to conduct partisan political activities in violation of AS 24.60.030(a)(2).

A legislator ... may not use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, for the private benefit of the legislator, ... or another person;

- ALLEGATION 4(b): That Representative Dick used and authorized the use of his Fairbanks legislative office, equipment, services, and staff for the purpose of campaign and fund raising activities in violation of AS 24.60.030(a)(5).

A legislator ... may not use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning;

- ALLEGATION 4(c): That Representative Dick required his legislative staff to perform services – campaign and fund raising related activities – on government time for his private benefit in violation of AS 24.60.030(a)(4).

A legislator ... may not require a legislative employee to perform services for the private benefit of the legislator ... at any time, or allow a legislative employee to perform services for the private benefit of a legislator or employee on government time;

- ALLEGATION 4(d): That Representative Dick required his legislative staff to assist with candidate activities, campaign activities and fund raising activities while on government time in violation of AS 24.60.030(b).

A legislative employee may not on government time assist in political party or candidate activities, campaigning, or fund raising. A legislator may not require an employee to perform an act in violation of this subsection.

- ALLEGATION 4(e): That Representative Dick used his Fairbanks legislative office as his campaign headquarters for a period of at least 2-½ weeks thereby displaying current campaign signs, campaign correspondence, campaign fliers, and other campaign materials in the office which could be viewed by constituents, other legislative staff, and members of the public in violation of AS 24.60.030(d).

A legislator, ..., or another person on behalf of the legislator ..., or a campaign committee of the legislator ..., may not distribute or post campaign literature, placards, posters, fund-raising notices, or other communications intended to influence the election of a candidate in an election in public areas in a facility ordinarily used to conduct state government business. This prohibition applies whether or not the election has been concluded. However, a legislator may post, in the legislator's private office, communications related to an election that has been concluded.

- ALLEGATION 4(f): That Representative Dick, while campaign door-knocking, threatened to take legislative action – an employment decision – with the underlying implication that his actions would be dependent upon a person or

person's decision to provide or not provide a political contribution or a thing of value in violation of AS 24.60.030(e)(1).

A legislator may not directly, or by authorizing another to act on the legislator's behalf agree to, threaten to, or state or imply that the legislator will take or withhold a legislative, ... action, including support or opposition to ..., employment, ... as a result of a person's decision to provide or not provide a political contribution, ..., or provide or not provide a thing of value;

- ALLEGATION 4(g): That Representative Dick submitted expenses to the Legislature for attending the Alaska Federation of Natives annual convention – held October 17-19, 2012, in Anchorage – for reimbursement related to a matter of legislative concern and also received reimbursement for some of the same expenses from his campaign account for House District 38 in violation of AS 24.60.030(a)(3) and that Representative Dick's legislative travel was combined with campaign activities in violation of AS 24.60.030(a)(2) and AS 24.60.030(a)(5).

AS 24.60.030(a)(3) A legislator ... may not knowingly seek, accept, use, allocate, grant, or award public funds for a purpose other than that approved by law, or make a false statement in connection with a claim, request, or application for compensation, reimbursement, or travel allowance from public funds.

As 24.60.030(a)(2) A legislator ... may not use public funds, ... for involvement in or support of or opposition to partisan political activity, or for the private benefit of the legislator, ... ;

AS 24.60.030(a)(5) A legislator ... may not use or authorize the use of state funds, . . . for the purpose of political fund raising or campaigning;

SCOPE OF INVESTIGATION:

The House Subcommittee met on the following dates: December 12, 2012; January 16, 2013; February 26, 2013; and August 21, 2013.

On December 12, 2012, the committee adopted a Scope of Investigation focusing on Allegations 4(a) through 4(f). On January 16, 2013, the committee adopted an amended Scope of Investigation adding Allegation 4(g). Representative Dick was informed of the additional allegation via a telephone call on January 27 and also by letter sent to his email address on the same date.

On January 16, 2013, February 26, 2013, and August 21, 2013, the committee reviewed the investigative material. Representative Dick appeared before the committee on February 26, 2013, and August 21, 2013 to explain the allegations.

On August 21, 2013, the committee subdivided Allegation 4(b). Allegation 4(b)(1) focused on the storage of campaign signs and materials in Representative Dick's Fairbanks legislative office. Allegation 4(b)(2) focused on the use of government assets and resources, i.e., staff and equipment in Representative Dick's Fairbanks legislative office, for campaign activities.

The committee's investigation included:

- Seventeen interviews.
- Representative Dick's 2012 legislative travel expense reports and receipts on file with the Legislative Affairs Agency accounting office.
- Representative Dick's 2012 campaign financial reports on file with the Alaska Public Offices Commission.
- Representative Dick's 2012 applicable campaign receipts when supplied.
- Listing of House District 6 cities/villages and House District 38 cities/villages. (Note: Representative Dick was elected to House District 6 and ran as a candidate for House District 38. The change in legislative district boundaries occurs every ten years following the Federal census. The new legislative boundaries were effective for the 2012 elections.)
- Applicable personnel information relating to Representative Dick's staff.
- Review of internal inquiries received and correspondence relating to the subject matter of the complaint.
- Video footage for specific dates of the Fairbanks legislative office facilities on the 3rd floor of the Alaska USA Federal Credit Union.

DISMISSAL ORDER

On February 26, 2013, the committee dismissed Allegation 4(b)(1), Allegation 4(e), and Allegation 4(f) for the following reasons:

Allegation 4(b)(1). The House Subcommittee determined that there was insufficient tangible evidence to find that Representative Dick violated AS 24.60.030(a)(5) in that he used and authorized the use of his Fairbanks legislative offices for storing campaign signs and other campaign materials.

Allegation 4(e). The House Subcommittee determined that there was insufficient evidence to find that Representative Dick violated AS 24.60.030(d) in that he "distributed or posted" in his Fairbanks legislative office campaign signs, correspondence, fliers, and other campaign material in public areas in a facility ordinarily used to conduct state government business.

Allegation 4(f). The House Subcommittee determined there was insufficient evidence to find that Representative Dick violated AS 24.60.030(e)(1) in that he threatened to take legislative action – an employment decision – while campaigning in Ruby on October 1-

2, 2012, based on a person or person's decision to provide or not provide a contribution to his political campaign or provide or not provide a "thing of value" pursuant to the definition in AS 24.60.990(a)(2).

DETERMINATION OF PROBABLE CAUSE

Allegation 4(a): The House Subcommittee finds that Representative Dick violated AS 24.60.030(a)(2), use of state resources for a nonlegislative purpose, involvement in or support of or opposition to partisan political activity, and for a private benefit of the legislator and another person, in that Representative Dick, his wife, and his son used his Fairbanks legislative office as a residence on and off for a period of approximately one month between mid-October 2012 and mid-November 2012. The period in question coincided with the 2012 General Election held on November 6, 2012.

The investigation revealed that Representative Dick had sleeping paraphernalia in his office for a period of time and was observed by building staff coming and going at all times of the day and night. His personal truck was seen "in the parking lot on numerous occasions overnight." Video footage provided by the Alaska USA Federal Credit Union contract maintenance company further affirmed that Representative Dick, his wife, and son stayed at his Fairbanks legislative office on at least one occasion.

Representative Dick admitted to the committee that he, his wife and sometimes his son resided at his Fairbanks legislative office from mid-October to mid-November 2012. He also stated in his recorded interview on January 17, 2012, "there's some nights in August when I ... slept on the couch."

The investigative material verified that Representative Dick campaigned for House District 38 up to and including General election day, November 6, 2012. The committee determined that it was realistic to conclude that Representative Dick performed campaign activities out of his legislative office in light of the fact the office was his home base for a period of several weeks prior to the general election.

The committee noted that AS 24.60.030(a)(2)(D) permits legislators to use their "private office *in the capital city during a legislative session* and for the ten days immediately before and the ten days immediately after a legislative session for *nonlegislative purposes* if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and minimal wear and tear or the legislator promptly reimburses the state for the cost." There is no such "nonlegislative purpose" exception in the Act for the use of a legislator's office during the interim.

Allegation 4(b)(2): The House Subcommittee finds that Representative Dick violated AS 24.60.030(a)(2)(5), a legislator may not use or authorize the use of a government asset or resource for the purpose of campaigning, in that he required one of his legislative employees, a government asset, to prepare background material for a Fairbanks Chamber of Commerce candidate debate using legislative office equipment, a government

resource. The material was prepared the same day the debate was to take place. Representative Dick was an invited candidate panelist.

Representative Dick stated he was confused about whether the debate was related to his status as a legislator. However, the committee was resolute that a legislator would most definitely be able to distinguish between a chamber of commerce debate for the prime purpose of a “candidate” debate versus a forum whereby a legislator is on a panel discussing a current issue or pending legislation.

Allegation 4(c) and Allegation 4(d): The House Subcommittee finds that Representative Dick violated AS 24.60.030(b), a legislator may not “require” a legislative employee to perform services for the legislator’s private benefit on government time, and AS 24.60.030(a)(4), a legislator may not “require” a legislative employee to assist in political party or candidate activities, campaigning or fund raising activities on government time, in that Representative Dick not only required but demanded that one of his legislative employees, while on government time, prepare background material for the Fairbanks Chamber of Commerce candidate debate that was to take place that day in which Representative Dick was a candidate panelist.

Representative Dick admitted to the committee that he required his legislative staff to prepare the material for a chamber of commerce candidate debate on state time and with the use of state resources.

A review of the interviews and other investigative material affirms that Representative Dick was constantly reminded by staff in 2011 and 2012 that candidate, campaign, political party, and fund raising activities must not be performed in a state facility, with the use of government resources, or by staff on government time.

Allegation 4(g): The House Subcommittee finds that Representative Dick violated AS 24.60.030(a)(3), a legislator may not knowingly seek, accept, or use public funds for a purpose other than that approved by law, or make a false statement in connection with a claim, request, or application for reimbursement or travel allowance from public funds, and AS 24.60.030(a)(2), a legislator may not use public funds for involvement in or support of or opposition to partisan political activity or for the private benefit of a legislator, and AS 24.60.030(a)(5), a legislator may not use state funds for the purpose of political fund raising or campaigning, in that Representative Dick at the:

Denakkanaaga Elders Conference, June 6-10, 2012, held in Nikolai

- Received reimbursement from both the Legislature and District 38 campaign account for the following expenses.
 - Flew his own plane from Fairbanks to Nikolai to McGrath and back to Fairbanks – Legislature paid \$705.63 for aviation mileage and campaign account reimbursed \$473.40 for aviation gas.
 - One meal in McGrath – Legislature paid \$17.00 and campaign account reimbursed \$18.00.

- Received reimbursement from the Legislature for two nights lodging in McGrath, \$330, when he had a residence in McGrath. (Note: Rep Dick stated at the House Subcommittee on August 21, 2013, that he did not have a residence in McGrath. However, this statement contradicts the information he gave to the committee's investigator in a recorded interview on January 17, 2013, in which he stated, "... but I also have a residence in McGrath which was within the district.")

Signing SB 130, June 13-15, 2012, held in Anchorage

- Received reimbursement from both the Legislature and District 38 campaign account for the following expenses.
 - Drove his car from Fairbanks to Anchorage and back to Fairbanks – Legislature paid \$388.50 for mileage and campaign account reimbursed \$103.00 for gas (and groceries)..
 - One meal in Anchorage – Legislature paid \$18.00 and campaign account reimbursed \$11.75.

Aniak Courthouse Dedication, June 26-27, 2012, held in Aniak

- Received reimbursement from both the Legislature and District 38 campaign account for flying his own plane from Emmonak (located only in District 38) to Aniak and then to Sleetmute – Legislature paid \$351.08 for aviation mileage and campaign account reimbursed \$286.50 for aviation fuel.

Association of Village Council Presidents Annual Convention, October 2-6, 2012, held in Bethel

- Received reimbursement for renting a car in Anchorage for one day for a cost of \$84.10. Travel reimbursement claim submitted to the Legislature stated he drove his own car from Anchorage to Fairbanks and therefore did not need to rent a car.

Alaska Federation of Natives (AFN) Annual Convention, October 17-19, 2012, held in Anchorage

- Received identical reimbursement from the Legislature and District 38 campaign account for the following expenses.
 - Pen Air flight from Fairbanks to Anchorage - \$251.
 - Hotel accommodations in Anchorage - \$735.84.
- Received reimbursement from both the Legislature and District 38 campaign account for one meal. Legislature - \$51.00; campaign account - \$31.00.
- Upgraded the type of rental car allowed by the Legislature and did not pay for the upgrade - \$57.50.
- Received reimbursement for mileage from the Legislature for driving his own car from Anchorage to Fairbanks when he actually rented a car through the Legislature for the same trip – mileage reimbursement of \$194.25.
- Received reimbursement for rental car use on October 21 and 22, outside of authorized legislative travel - \$57.78. (Note: Additional lodging and three stops for gas were recorded on his campaign expense report for October 21 and 22 for a total of \$259.16.)

Tour of Kodiak Island School District and met with local educators, October 23-26, 2011, held in Kodiak

- Received reimbursement of \$258 from the Legislature in 2011 for lodging and one meal when these costs were paid for by the Kodiak School District.

RECAP of above expenditures and reimbursements.

<u>Date</u>	<u>Item</u>	<u>Campaign</u>	<u>LAA</u>	<u>Not Allowed</u>
June 6-10	Aviation gas/mileage	473.40	705.63	
	Meal	18.00	17.00	
	Lodging			330.00
June 13-15	Aviation gas/mileage	103.00	388.50	
	Meal	11.75	18.00	
June 26-27	Aviation gas/mileage	286.50	351.08	
Oct 2-6	Rental car			84.10
Oct 17-20	Airline	251.00	251.00	
	Lodging	735.84	735.84	
	Meal	31.00	51.00	
	Rental car upgrade			57.50
	Mileage			194.25
	Rental car, Oct 21-22			57.78
	Gas & Lodging, Oct 21-22	259.16		
Oct 23-26	Lodging & one meal			258.00
TOTALS		<u>2,169.65</u>	<u>2,518.05</u>	<u>981.63</u>

Legislators have a statutory, moral, and ethical responsibility to certify that travel expenses related to a trip taken for a matter of legislative concern are accurate and meet approved requirements. Representative Dick stated that staff completed all his travel reimbursement requests and even signed the form on his behalf. He indicated he was not involved with the paperwork or aware of what was submitted. Many trips had numerous changes to the initial itinerary and sometimes the event itself was cancelled due to weather or other extenuating factors of which were only known by Representative Dick.

Representative Dick admitted that he was overall remiss and negligent in providing staff oversight when travel reimbursement claims were processed and subsequently submitted to the Legislative Affairs Agency. He stated he would take responsibility for all errors on his travel claims.

The committee was adamant that a legislator be accountable for ensuring the accuracy of travel reimbursement requests even if staff completes and signs the travel reimbursement form. Further, the committee was informed by Representative Dick's campaign treasurer

that many of the receipts requested relating to applicable campaign expenses were not available as Representative Dick did not make a conscious effort to retain receipts.

Representative Dick's lack of attention to detail is unacceptable for a public official. A legislator's accountability to constituents and the public is paramount in maintaining public trust and confidence in government.

The committee noted that it was well documented that legislative travel paid for with legislative funds could not be combined with campaign activity while on that trip. Representative Dick was informed of this restriction at the in-person ethics training for new legislators conducted by the ethics administrator prior to the beginning of the 2011 legislative session. Several 2011-12 ethics newsletters also covered this subject. Additionally, the committee administrator has attested and documented that she had personal conversations with Representative Dick on multiple occasions regarding the myriad of restrictions on combining the use of government resources with activities relating to campaigns.

After reviewing numerous legislative travel reports and campaign expenditure reports, the committee concluded that Representative Dick seemed to operate under the premise that rules and regulations regarding legislative travel did not apply to him as he frequently combined legislative activities with campaign activities. The committee commented that it was highly probable other 2012 trips met these criteria but lacked the required documentation.

RECOMMENDATION AND CORRECTIVE ACTION:

The House Subcommittee finds that Representative Dick violated multiple sections of the Legislative Ethics Act, AS 24.60, as noted in the preceding pages. The residents of the State of Alaska have the right to expect that state resources will be used by legislators for activities related to performing their legislative duties and not for activities that provide a private benefit or for partisan political purposes such as campaigning or fundraising.

High moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state. AS 24.60.010(1). Representative Dick's misuse of public resources violated the trust, respect, and confidence of the residents of our great state. Representative Dick had a cavalier mindset when it came to conducting the public's business in a manner that preserved the integrity of the legislative process and avoided conflicts of interest or even appearances of conflicts of interest.

Corrective action recommended by the House Subcommittee includes requiring Representative Dick to pay the Legislature \$3,499.68 for reimbursement of improperly received benefits. AS 24.60.178(b)(5). The costs are broken down as follows: eight separate expenses totaling \$2,518.05 were reimbursed by the Legislature and likewise reimbursed via Representative Dick's campaign account; and seven separate expenses

totaling \$981.63 were reimbursed by the Legislature when the expenses were either not allowed or authorized under the Legislative Affairs Agency travel guidelines and/or the House of Representatives travel guidelines.

The committee further recommends that Representative Dick pay all of the costs associated with the investigation and adjudication of the complaint. AS 24.60.178(c). The costs totaled \$14,495.35 and included: \$9,350.00 – investigator interviews; \$2,654.10 – other investigator costs, including travel expenses and per diem; \$2,373.75 – transcription services; \$52.50 – legal counsel; and \$65.00 – process server fee.

Representative Dick must reimburse the Legislature a total of \$17,995.03 for improperly received benefits plus the costs associated with the investigation of the complaint. The committee recommends reimbursements be completed by September 1, 2014. Payments should be made directly to the Legislative Affairs Agency accounting office. The committee chair will review the status of compliance on a monthly basis and provide updates to committee members.

Pursuant to AS 24.60.170(g), Representative Dick may comply with this opinion or request a hearing before the committee. Representative Dick admitted to the allegations outlined in 4(a), 4(b)(2), 4(c), 4(d), and 4(g) as noted in the preceding pages.

If Representative Dick fails to comply with the time table stipulated for corrective action as defined in this opinion, the committee may formally charge him as provided in AS 24.60.170(g) or may refer the matter to the House of Representatives. The House of Representatives may take action to enforce the corrective action or may decline to take action and refer the matter to the committee. In either case, the committee may formally charge Representative Dick under AS 24.60.170(h).



Adopted this 21st day of August 2013
by a majority of the House Subcommittee

Gary J. Turner, Chair

Members Participating

Gary J. Turner, Chair
Dennis “Skip” Cook
Antoinette “Toni” Mallott
H. Conner Thomas
Herman G. Walker, Jr.
Representative Craig Johnson (alternate member)
Representative Chris Tuck

Alaska State Legislature

Select Committee on Legislative Ethics

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HOUSE SUBCOMMITTEE COMPLAINT H 10-01

DETERMINATION OF PROBABLE CAUSE ALLEGATIONS 1, 3(a)(2), 4, and 7(b)

DISMISSAL ORDER AND DECISION ALLEGATIONS 2, 3(a)(1), and 3(b), 5, 6, and 7(a).

The House Subcommittee received a properly filed complaint against Representative Bob Lynn dated November 3, 2010. The complaint contained seven allegations. Each one will be addressed separately in this public decision. Allegation 3 was subdivided into Allegation 3(a) and Allegation 3(b). Allegation 3(a) was then subdivided into Allegation 3(a)(1) and Allegation 3(a)(2). Allegation 7 was subdivided into Allegation 7(a) and Allegation 7(b).

The complaint alleged the following:

Allegation 1 stated Rep. Lynn included in his May-June legislative end-of-session newsletter to constituents a statement that he was running for another term. The actual statement is as follows: "Reporting a Fact: I have filed for a new term as your State Representative." The complaint alleged this statement had no legislative purpose, did not benefit anyone but Rep. Lynn and was a "re-elect me" message.

Allegation 2 stated Rep. Lynn sent out a "Telephone Handy Dandy" card to his constituents in May-June containing legislative contact information and voting information. The complaint alleged the card had no legislative purpose, inappropriately included legislative contact information, inappropriately included voting information and was for the sole purpose of name recognition during voting time.

Allegation 3(a)(1) stated Rep. Lynn's "Telephone Handy Dandy" card contained select community and business contact information and left out phone numbers for businesses in

competition with those listed. Listed on the card were the following businesses: Century Theater, Dimond Cinema, Tikahtnu Stadium 16, Anchorage Daily News, Chugach Electric, Enstar Gas, Garbage, Phone ACS, Phone GCI, and GCI Cable Modem. The complaint alleged the card had no legislative purpose and provided a private benefit to Rep. Lynn.

Allegation 3(a)(2) stated Rep. Lynn's "Telephone Handy Dandy" card contained select community and business contact information and left out phone numbers for businesses in competition with those listed "even if fine print disclaimers [are printed on the card] which generally go unread are made." Rep. Lynn's disclaimer read as follows: "Private businesses displayed on this form are for reference only. There is absolutely no endorsement, recommendation, or support, actual or implied, of any kind whatsoever." The complaint alleged the card had no legislative purpose and provided a private benefit to the for profit competitive businesses even with a fine print disclaimer provided by Rep. Lynn.

Allegation 3(b) stated Rep. Lynn's "Telephone Handy Dandy" card "promote[d] politically friendly businesses" and advertised contact information for businesses found worthy by individual legislators. The complaint alleged the card had no legislative purpose and used state resources to promote and advertise contact information for businesses found worthy by an individual legislator even with a fine print disclaimer provided by Rep. Lynn.

Allegation 4 stated Rep. Lynn's campaign web site contained legislative contact information, specifically his Juneau contact information and Anchorage contact information, in addition to campaign contact information from November 2009 to at least the end of July 2010. The complaint alleged the inclusion of this information was not an appropriate use of legislative contact information, inappropriately burdened state resources with campaign activity and put political competitors at an underserved advantage.

Allegation 5 alleged that including legislative contact information on Rep. Lynn's campaign web site coupled with the fact that his chief of staff is his campaign treasurer and a former employee who worked for Rep Lynn until mid to late February 2010 was his campaign deputy treasurer created a "high likelihood that contact would be made with the campaign Treasurer or Deputy Treasurer operating in their legislative capacity."

Allegation 6 stated Rep. Lynn's end-of-session newsletter contained "feel good" campaign advertising materials and "various sections with former public officials and statements like his favorite quotes." The complaint alleged this information provided a private benefit to Rep Lynn, had no legislative purpose and was solely for campaign-related image advertising.

Allegation 7(a) stated Rep. Lynn discussed in his end-of-session newsletter the August 24 Primary and described and characterized the political positions of some, but not all, of the Republican candidates for Governor and Lt. Governor. The specific statements are as follows: [emphasis as noted in the end-of-session newsletter]

- "Rep. **Ralph Samuels** was the only one in the entire legislature to vote against AGIA – and by the way, Samuels is running against **Sean Parnell** for governor in the August 24th Republican Primary Election."

- “In January, Governor Parnell attempted to address some of these concerns with new tax credits for all drilling and work expenses, as well as allowing companies to use tax credits in all one year, rather than. Good move.”
- “This is the pipeline favored by the late Governor Hickel, and now by gubernatorial candidate Bill Walker.”
- “Enstar Gas likes the bullet line proposals, and it being pushed by Rep. Jay Ramtras, a candidate for Lieutenant Governor from Fairbanks.”
- “Sen. Hollis French a Senate Democrat (and a candidate for governor) initiated a Senate Judiciary Committee companion bill, SB 284 that came to be almost identical to my HB 409.”
- “Instead, Rep. Ramtras said he would hear SB 348 – Democrat Gubernatorial candidate Sen. Hollis French’s Judiciary Committee companion bill.”

The complaint alleged the statements did not have a legislative purpose, provided a private benefit to Rep. Lynn and were re-elect me in nature.

Allegation 7(b) stated Rep. Lynn in his end-of-session newsletter described several pieces of legislation he intended to pursue in the next legislative session and a statement that he hopes to be in the legislature in January. The specific statements are as follows:

- “I will likely file a resolution next session on that subject, and push the administration to consider legal action against the federal government based on the 10th Amendment.”
- “I remain optimistic about both the TransCanada and Denali big diameter pipeline efforts – but I’m prepared to evaluate alternatives if necessary.”
- “If reasonable adjustments to the tax structure can generate more oil and gas, I’ll consider it – so long as Alaska gets a *fair* return.”
- “I’ll continue basing decisions based on evidence available at the time, plus constructive input from constituents. Oil and gas producers work for their shareholders. I do too. My “shareholders” are my constituents.”
- “I’ll never give up hope. I hope to be in the legislature in January to file a similar “legal presence” requirement for a driver’s license. Your support of “legal presence” for a license is required.”

The complaint alleged the statements did not have a legislative purpose, provided a private benefit to Rep. Lynn and were re-elect me in nature.

SCOPE OF INVESTIGATION:

The House Subcommittee met on the following dates: November 23, 2010 and December 13, 2010.

On November 23, 2010, the subcommittee adopted a Scope of Investigation. No specific statutes were referenced in the complaint. The subcommittee determined, based on the allegations in the complaint, the following sections of the Legislative Ethics Act, AS 24.60, were applicable:

AS 24.60.030(a)(2) [emphasis added]

A legislator or legislative employee may not use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of ... the legislator, ...or another person;

AS 24.60.030(a)(2)(J) [emphasis added]

...; this paragraph does not prohibit a legislator from sending any communication in the form of a newsletter to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee;

AS 24.60.030(a)(5) [emphasis added]

A legislator or legislative employee may not use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning;

AS 24.60.030(b) [emphasis added]

A legislative employee may not on government time assist in political party or candidate activities, campaigning, or fund raising. A legislator may not require an employee to perform an act in violation of this subsection.

AS 24.60.90(a)(2) defines benefit as including all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for.

AS 01.10.060(8) defines a person as including a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

The subcommittee conducted an investigation by reviewing and analyzing the following materials:

- The above named statutes.
- Applicable advisory opinions, especially Advisory Opinion 07-07, Use of legislative contact information when campaigning and included on campaign materials.

- Rep. Lynn's end-of-session newsletter.
- Rep. Lynn's "Telephone Handy Dandy" card.
- Rep. Lynn's interview comments.
- APOC Case No. 10-17-CD, Alaska Energy First v. Rep. Bob Lynn.
- Rep. Lynn's primary and general campaign contribution list.
- State Corporate Groups active as PACS (Political Action Committees) in 2010.
- Other background materials .

The subcommittee determined Rep. Lynn wrote his own newsletter and inserted the graphics, took the CD to a printer and then took the printed newsletter to a private mail house for distribution. Rep. Lynn's staff reviewed the newsletter and telephone card for accuracy and typographical errors. It is important to note that Rep. Lynn's Telephone Handy Dandy card also contained listings for: police and fire emergency numbers, Anchorage city offices, non-emergency Anchorage city numbers, libraries, schools, voting and military information, and the numbers to call for time and weather.

DETERMINATION OF PROBABLE CAUSE

The House Subcommittee found "probable cause" that the actions of Rep. Bob Lynn referred to in Allegation 1, Allegation 3(a)(2), Allegation 4, and Allegation 7(b) were in violation of the Legislative Ethics Act, AS 24.60.

Allegation 1: The House Subcommittee on December 13, 2010, found Rep. Lynn in violation of AS 24.60.030(a)(2), use of state resources for the private benefit of Rep. Lynn, AS 24.60.030(a)(2)(J), a communication expressly advocating the election of Rep. Lynn and for the private benefit of Rep. Lynn, and AS 24.60.030(a)(5), the use or authorization of the use of state resources for campaigning. The subcommittee determined the statement contained in Rep. Lynn's end-of-session newsletter "Reporting a Fact: I have filed for a new term as your State Representative." was a "vote for me" statement and advocating for his election. The committee relied upon the definition of benefit in AS 24.60.990(a)(2).

Allegation 3(a)(2): The House Subcommittee on December 13, 2010, found Rep. Lynn in violation of AS 24.60.030(a)(2), use of state resources for the private benefit of a person. The subcommittee determined listing selective for profit competitive businesses on Rep. Lynn's Telephone Handy Dandy card implied endorsement of these business which in turn provided a private benefit to a person [an entity] as defined in AS 01.10.060(8). The committee relied upon the definition of benefit in AS 24.60.990(a)(2). The subcommittee determined Rep. Lynn's disclaimer, or a disclaimer of any kind, was not sufficient to nullify the receipt of a private benefit by the for profit competitive businesses listed on the card.

The subcommittee notes legislators may list public entities and regulated utilities on such a card or in a communication to constituents without violating the provisions of AS 24.60.030(a)(2).

Allegation 4: The House Subcommittee on December 13, 2010, found Rep. Lynn in violation of AS 24.60.030(a)(5), the use or authorization of state resources for the purpose of campaigning, and AS 24.60.030(b), requiring a legislative employee to perform services on government time that assist in candidate activities or campaigning. Rep Lynn's campaign web site contained legislative contact information along with the statement "For Legislative Business Only." In Advisory Opinion 07-07 the Ethics Committee determined a legislative phone number is a "state resource." The committee found that it is reasonably foreseeable that listing legislative contact information on campaign materials will result in an increase in the number of campaign-related calls to a legislative office regardless if the legislative office number is conveyed simultaneously with the instruction that it is to be used for legislative business only and a separate number for campaign-related calls. Further, the committee found the inclusion of the legislative office phone *required* or *allowed* legislative staff to handle campaign related phone calls while on government time in violation of AS 24.60.030(b). Legislative employees may respond to unsolicited campaign calls. However, calls generated from a legislative phone number on campaign material do not fall in the unsolicited category nor are they beyond the legislator's control.

The subcommittee noted that the Ethics Office sent an email alert on February 4, 2010, to all legislators focusing on campaign related items. One section of the alert reminded legislators that legislative contact information was not permitted on campaign materials. One of the campaign materials mentioned was campaign web sites. In addition A.O. 07-07 was provided which included an explanation of why legislative contact information should not be contained on campaign materials. Rep. Lynn's web site was not changed until sometime after the legislative session ended in May.

The subcommittee did not address the allegation of "put[ting] political competitors at an underserved advantage" by providing legislative contact information. This allegation does not fall within the jurisdiction of the Legislative Ethics Act.

Allegation 7(b): The House Subcommittee on December 13, 2010, found Rep. Lynn in violation of AS 24.60.030(a)(2), the use of state resources for the private benefit of Rep. Lynn, AS 24.60.030(a)(2)(J), a communication expressly advocating the election of Rep. Lynn and for the private benefit of Rep. Lynn, and AS 24.60.030(a)(5), the use or authorization of state resources for the purpose of campaigning. The subcommittee determined the statements in Rep. Lynn's end-of-session newsletter as outlined in Allegation 7(b) were advocating for his election for another term in the House.

The subcommittee would like to point out that the mention of current and future legislation is not a prohibited activity in a legislative newsletter at any time. However, during an election year when mention is also made the legislator will pursue the legislation in the next legislative session and/or specific mention is made of what action the legislator will take in the next legislative session, these statements leave the reader with the impression the legislator is advocating for votes based on future action the legislator will pursue in the next legislative session.

RECOMMENDATIONS FOR CORRECTIVE ACTION:

The subcommittee recommends no corrective action as allowed under AS 24.60.174. The subcommittee strongly recommends Rep. Lynn forward his 2011 legislative newsletters to the Ethics Committee Administrator for review prior to distributing to constituents. It is further recommended that when Rep. Lynn is notified by the Ethics Administrator of corrective action, such as noted in Allegation 4, that he take expeditious action to correct the violation.

DISMISSAL ORDERS AND DECISIONS

The House Subcommittee dismissed Allegation 2, Allegation 3(a)(1), Allegation 3(b), Allegation 5, Allegation 6 and Allegation 7(a) in that Representative Bob Lynn did not violate provisions of the Legislative Ethics Act, AS 24.60.

Allegation 2: The House Subcommittee on November 23, 2010, dismissed Allegation 2. The subcommittee determined Rep. Lynn's Telephone Handy Dandy card had a legislative purpose, providing constituents with legislative contact information so they can contact their legislator concerning constituent issues and other issues of importance to the constituent; and, therefore including legislative contact information was permitted.

The subcommittee referenced Complaint H 96-02 which determined that providing voter information, i.e., voter contact information, is permitted when communicating with constituents and has a legislative purpose.

The subcommittee further determined the Telephone Handy Dandy card was not mailed for the "sole purpose of name recognition during voting time" as the card was mailed in May-June which was well before the August 24 Primary and the 30 days timeframe before an election recommended by the Ethics Office. AS 24.60.030(a)(2) and AS 24.60.030(a)(5).

Allegation 3(a)(1): The House Subcommittee on December 13, 2010, dismissed Allegation 3(a)(1). The subcommittee determined Rep. Lynn did not receive a private benefit from listing selective for profit competitive businesses on the telephone card. AS 24.60.030(a)(2).

Allegation 3(b): The House Subcommittee on November 23, 2010 dismissed Allegation 3(b). The subcommittee determined there was insufficient credible evidence available to determine that there was a promotion of "political friendly" businesses. AS 24.60.170(c) states, "If the committee determines ... that there is insufficient credible information than can be uncovered to warrant further investigation by the committee, ... the committee shall dismiss the complaint and shall notify the complainant and the subject of the complaint of the dismissal." The committee noted that corporate contributions are prohibited to any candidate's campaign pursuant to AS 15.13.074(f).

Allegation 5: The House Subcommittee on November 23, 2010, dismissed Allegation 5 as vague and having no merit. The subcommittee determined there was insufficient credible evidence available to determine that a "high likelihood that contact would be made with the [Rep. Lynn's] campaign Treasurer or Deputy Treasurer operating in their legislative capacity." AS 24.60.170(c) states, "If the committee determines ... that there is insufficient credible information than can be uncovered to warrant further investigation by the committee, ... the committee shall dismiss the complaint and shall notify the complainant and the subject of the complaint of the dismissal."

The subcommittee further noted that the Legislative Ethics Act does not prohibit legislative employees from serving as campaign treasurers or deputy treasurers and additionally the Ethics Office provides to all legislative offices a Model Office Policy on the procedure to follow when calls, emails, or inquiries are received that are of a campaign nature at a legislative office or by a legislative employee on government time.

Allegation 6: The House Subcommittee on November 23, 2010, dismissed Allegation 6. The subcommittee determined the alleged "feel good" article titled "Political Consultant" did not expressly advocate for Rep. Lynn's re-election nor was the article clearly only for the private benefit of Rep. Lynn. AS 24.60.030(a)(2), AS 24.60.030(a)(2)(J), AS 24.60.020(a)(5).

The subcommittee determined the alleged "feel good" article on "Family News" was not an implied "re-elect me" statement or for the private benefit of Rep. Lynn. AS 24.60.030(a)(2), AS 24.50.030(a)(2)(J) and AS 24.60.030(a)(5).

The subcommittee determined the allegation of "various sections with former public officials and statements like his favorite quotes" was vague and had no specific documentation as was noted with the other allegations in the complaint. The subcommittee pointed out that it is not the position of the subcommittee to review complaint materials to try to determine the intent of the complainant in regard to allegations of misconduct by legislators.


Allegation 7(a): The House Subcommittee on December 13, 2010, dismissed Allegation 7(a). The subcommittee determined the mention of current and former legislators in Rep. Lynn's end-of-session newsletter along with the fact they are running for a particular office did not violate AS 24.60.030(a)(2) or AS 24.60.030(a)(5), for campaigning. The subcommittee noted the complaint alleged only Republican candidates were listed but Rep. Lynn's newsletter mentioned one Democrat senator running for governor.

The subcommittee noted there may be a perception of impropriety by including the fact a former or current legislator or other person is a candidate for office and encourages Rep. Lynn and other legislators to voluntarily refrain from this practice to avoid an appearance of campaigning or advocating for a particular candidate.

GENERAL STATEMENT

The subcommittee points out that Rep. Lynn cooperated with the investigation and provided documentation when requested.

Adopted this 13th day of December 2010
by a majority of the House Subcommittee


Herman G. Walker, Jr., Vice Chair (Quor)

Members Participating

Dennis "Skip" Cook
Representative Berta Gardner
Representative Carl Gatto
Antoinette "Toni" Mallot
Gary J. Turner
Herman G. Walker, Jr., Vice Chair

Member Absent for the December 13, 2010 Meeting
(Note: Present for the November 23, 2010 meeting.)
H. Conner Thomas, Chair