

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 2, 2007

1:07 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg

MEMBERS ABSENT

Representative Nancy Dahlstrom, Vice Chair
Representative Lindsey Holmes

OTHER LEGISLATORS PRESENT

Representative Kurt Olson
Representative Bill Stoltze

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Attorney General

Talis Colberg - Palmer

- CONFIRMATION(S) HEARD AND HELD [Confirmation of
Mr. Colberg addressed again on 3/14/07]

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

TALIS COLBERG, Appointee
Attorney General
Palmer, Alaska

POSITION STATEMENT: Testified as appointee to the position of
Attorney General.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:07:32 PM](#). Representatives Gruenberg, Coghill, Samuels, Lynn, and Ramras were present at the call to order. Representatives Olson and Stoltze were also in attendance.

CONFIRMATION HEARING(S)
Attorney General

[1:08:03 PM](#)

CHAIR RAMRAS announced that the only order of business would be the consideration of the appointment of Talis Colberg to the position of Attorney General.

CHAIR RAMRAS offered his belief that Mr. Colberg is honorable and forthright, and mentioned that the committee would like to hear Mr. Colberg's thoughts on issues of past, present, and future interest to Alaska.

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TALIS COLBERG, Appointee, Attorney General, provided the committee with some personal information, including where his parents came from, where he was born, where he grew up, the various cities and towns that he's lived in, where he went to school, his accomplishments while a child and a young adult, where he'd gone to college, his marital history/status, his employment history to date, his teaching career, his community service, his continuing education efforts, and his hobbies and other items of interest to him.

MR. COLBERG offered that he has an understanding of the concerns that people have regarding the legal system, and relayed that as an attorney he has done work in the fields of property/casualty law, divorce law, business law, wills/trusts/probates, and that his specialty is worker's compensation, as both a defense attorney and a plaintiff's attorney. He mentioned that he is also familiar with circumpolar health issues, the nature of judicial selection versus election, "the pros and cons of the systems that are available," the history of Alaska, the history of Alaska territorial politics, the origins of state Native and non-Native affairs and festivals, and Alaska municipal and borough needs and workings.

MR. COLBERG indicated he's also had an opportunity to work statewide, via the Alaska Humanities Forum, on various projects, including [one] that may ameliorate what some refer to as the urban/rural divide. He noted also that he has lived in Alaska for almost half a century, was born in Alaska, is older than most who've been appointed to serve as attorney general in Alaska, has practiced law longer than most of the aforementioned people when they were appointed, has been active in the legal field and the university field - both as a student and as an instructor - and has been active in the civic affairs of the state.

MR. COLBERG, in response to a question regarding whether it would be better to elect an attorney general as opposed to having the attorney general appointed, said that his traditional answer leans towards the idea that having an elected attorney general seems to be a way of dividing power and keeping it from being too concentrated, though obviously electing an attorney general could also become somewhat obstructive in that a political position could be seen by some people as an opportunity to advance a career as opposed to doing what might be the appropriate thing. He spoke a bit on the topic of an elected judiciary, and then posited that the reason most states have an elected attorney general is because they are comfortable with that system. One of the valuable points of Alaska's system is the concept that a governor and a state are perhaps better served by someone who isn't trying to raise [campaign] funds and promote a particular agenda but is instead simply trying to do the job in a more neutral fashion.

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REPRESENTATIVE COGHILL opined that an appointed attorney general would have a loyalty to the governor whereas an elected attorney general would have a loyalty to the populace.

MR. COLBERG said that statutes stipulate that he is the attorney general for the whole state and must therefore act as an advisor to the governor, the administration, the departments, and the legislature. He surmised that he was picked as being someone who would strive to do the job correctly. In response to a question, he indicated that in order to serve all parties, he would first make a [distinction] between policies and the law; having a general policy direction and being in alignment with that is one thing, but if it gets to the point of running up against an issue of law, it's important to not try to bend a legal opinion to fit the policy goal just to please the

governor. He offered that the DOL staff can be relied upon to give a proper legal opinion, adding that when he seeks opinions from his staff, he is starting off with a general presumption that the person is attempting to give him the correct answer, which he, in turn, passes on to those that have come to him for advice.

MR. COLBERG, in response to questions, relayed that when he is asked for advice, he does not first run that issue by the governor or anyone else but instead simply allows his staff to do their job and provide him with the information that he needs to fulfill the request made of him. He also surmised that when members of his staff are asked to provide opinions, they are not first running everything by him, though for certain issues and decisions, his staff will ultimately come to him. In response to further questions, he said that although he would not advocate for having the state's attorney general be elected - particularly given the current governor - he would not be adverse to the concept should legislation come forth requiring it, though he, himself, would not run for the position.

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REPRESENTATIVE COGHILL mentioned state/federal jurisdictional issues, Alaska National Interest Lands Conservation Act (ANILCA), fisheries policy, rivers and other waters, and said he would like the state - via the attorney general and the governor - to ask the federal government to make a decision on the "federal tribal status." He went on to say:

For money purposes, coming into Alaska, we have money coming into various different tribal groups, but it's been kind of the way of establishing a sovereignty movement that really is inappropriate, in my view, and puts us in huge tension as to how do we enforce criminal laws, how do we enforce child enforcement safety laws, how do we [enforce] ... all these various laws. And we've had kind of this flex system because we have people acting like they have sovereignty, we have the feds that ... won't address the issue but they keep giving money and they keep calling various different things, "tribal," which they won't define. ... [It] puts our police in a bad position, puts you in the department of law in a bad position, puts us as [legislators] in a bad position. So is there something that you, or you and the governor, ... [are] focused on [in order to] ... get this thing resolved?

MR. COLBERG said that although there is nothing specific in the works, that issue is something that he would like to be the focus of his tenure as attorney general, provided that he has the time to devote to it. He went on to offer a theory regarding how the current situation came to be, and said it would be nice if there were a way to resolve the uncertainties that currently litter the landscape as a result of competing, inconsistent jurisdictions. Many in the Native community are apprehensive about surrendering what they perceive as sovereignty. He mentioned that the Alaska Rural Justice and Law Enforcement Commission, of which he is co-chair, spends a huge amount of time trying to figure out how to apply the Indian Child Welfare Act such that the state can play a role.

MR. COLBERG reiterated that he wants to make an effort to resolve this issue, to get the federal government to make a determination, adding that he is willing to pursue any possible avenue. He mentioned that he'd spoken to Ted Popely and Don Mitchell (ph), and offered his belief that they were of the opinion that a court case that would lead to critical decisions being made, one way or the other, was one method by which to resolve the issue. Mr. Colberg pointed out that although a court case would provide answers, it might embitter the parties in a way that would be hard to overcome for quite some time. He posited that simply requesting a response from Congress might be a less confrontational method, and said he doesn't know why the issue hasn't been addressed in that fashion yet.

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REPRESENTATIVE LYNN asked what could be done legally to stop the federal government from creating [more] wilderness areas in Alaska.

MR. COLBERG said he will have to research that issue further, but he is not sure whether anything the state undertakes will preempt federal legislation. He offered his recollection that the state, at one point, was not generally in favor of a massive expansion of the state's park system but lacked an effective form of resistance.

REPRESENTATIVE LYNN referred to the Alaska Gasline Inducement Act (AGIA), and asked about potential litigation.

MR. COLBERG said he doesn't envision the AGIA itself engendering any litigation; once a [gas pipeline] proposal is agreed upon,

however, and steps are taken towards realizing a gas pipeline, all sorts of litigation might ensue. In response to questions, he said he's not had trial experience since the beginning of his legal career, and that he will be relying on attorneys within the DOL that specialize in whatever area of law a given case might pertain to; he surmised that those attorneys, when the situation calls for it, will in turn hire attorneys that specialize even further in a particular field for any case that requires it, such as any suit pertaining to oil and gas issues.

CHAIR RAMRAS asked Mr. Colberg whether he would be willing to address the problems inundating the state's current worker's compensation system.

MR. COLBERG said he would be willing to apply what he knows in an attempt to address those problems, though not to the exclusion of all other issues that are placed before him. He offered a theory regarding how the current worker's compensation situation came to be, expanded upon the difficulties of the situation and the problems associated with possible solutions, and opined that the whole issue needs to be looked at comprehensively.

CHAIR RAMRAS relayed that the private sector is desperate for a solution, and encouraged Mr. Colberg to help as best he can.

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REPRESENTATIVE COGHILL said he would like the attorney general to deal with the "reserve water rights issue," surmising that it will require the DOL to maintain an aggressive stance and that there is a willingness on the part of the Department of Natural Resources (DNR) to work on this issue; with the "R.S. 2477" issue, though that one might not be so easily addressed; and with the issue of how the federal government fails to understand the agreement arrived at under the Alaska National Interest Lands Conservation Act (ANILCA).

MR. COLBERG expressed a willingness to research those issues further.

REPRESENTATIVE GRUENBERG asked Mr. Colberg to investigate the issue of whether the legislature should introduce legislation that would specifically give the governor the immediate authority to remove a university regent with cause after a hearing.

[Chair Ramras turned the gavel over to Representative Coghill.]

MR. COLBERG said he would.

REPRESENTATIVE GRUENBERG asked Mr. Colberg whether he would be willing, on behalf of the state, to file an amicus curiae brief in a case going before the U.S. Supreme Court on the issue of open primaries.

MR. COLBERG said he'd not yet had a chance to review that issue.

REPRESENTATIVE LYNN asked him to do so.

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MR. COLBERG, in response to questions about the direction the State of Alaska took with regard to [the Venetie case], indicated that it provides a good illustration of the distinction between a matter of policy and a matter of law, and acknowledged that there are still some issues surrounding [that case] which haven't been resolved, though perhaps not all of those issues would have been resolved even if the lawsuit had been pursued, since litigation generally only addresses specific points. In response to a further question, he reiterated that he would be willing to ask Congress to address the issue of [tribal sovereignty].

[Representative Coghill returned the gavel to Chair Ramras.]

MR. COLBERG, in response to a question, indicated he's not yet had time to consider the issue of whether any changes need to be made regarding how the DOL conducts its business.

REPRESENTATIVE COGHILL said one of the issues the legislature is concerned about pertains to criminal sentencing, particularly the plea bargaining process. He asked Mr. Colberg to comment.

MR. COLBERG mentioned that a lack of resources can become an issue as the department attempts to find ways to stretch the resources it has and still get the job done. He suggested that additional resources regarding staffing levels might result in a rise in conviction rates, and spoke of the department's high turnover rate and the comparatively low salary rate for state-employed attorneys; absent more resources, it's hard to envision how to adequately sustain prosecutions and other services.

REPRESENTATIVE COGHILL said he is concerned that the resources at the prosecution level are so slim that misdemeanors are not even being dealt with, thus engendering an attitude of lawlessness.

MR. COLBERG concurred, and relayed that the Alaska Rural Justice and Law Enforcement Commission is attempting to address the lack of sufficient law enforcement, particularly in remote areas of the state, but there too the issue of adequate compensation arises.

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CHAIR RAMRAS concurred with Representative Coghill's points, and asked Mr. Colberg to articulate his vision regarding what he wants to accomplish as attorney general.

MR. COLBERG said his vision is to try to address the urban/rural divide, which he characterized as getting worse. In response to questions and comments, he again spoke of the comparatively low salary rate for state-employed attorneys and the difficulty of retaining competent staff. In response to further questions, he said that the DOL employs approximately 540 people, that all of the attorneys are exempt, that he's terminated one employee, and that in the case of that termination, although he was ultimately responsible for the decision, he did receive input.

MR. COLBERG, in response to questions, said he has a high level of respect for the Alaska Supreme Court and the current judicial system, and that it would be wrong for him to try to characterize the Alaska Supreme Court as being activist. In response to further questions, he said that he doesn't have a desire to change how judges are selected; that perhaps the composition of the Alaska Judicial Council (AJC) is a bit skewed with regard to its attorney members because Alaska Bar Association (ABA) members don't participate much when it comes to voting on members to serve on the AJC; that if the legislature wanted to it could change statute such that the ABA would have to present the governor with more possible candidates for the AJC; that he would research whether a state-employed attorney can serve on the AJC; and that should a judge face criminal prosecution, the matter would have to come before his office.

[Members then provided Mr. Colberg with a list of issues they wanted him to address the next time he came before the committee.]

[The House Judiciary Standing Committee considered the appointment of Talis Colberg to the position of Attorney General again on 3/14/07.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:03 p.m.