

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**  
ANCHORAGE ALASKA  
September 19, 2008  
10:33 a.m.

10:33:08 AM

Matters Pertaining to Legislative Council Investigation

Senator Hollis French read the following statement:

On September 12, 2008, the Senate Judiciary Committee authorized the issuance of fourteen subpoenas; thirteen were for witnesses and the last was for Mr. Frank Bailey's cell phone records. Senate President Lyda Green concurred in that action, thus satisfying the statutory requirements of Alaska Statute 24.25.010(b). The purpose of the subpoenas was to assist Mr. Stephen Branchflower in the investigation into the events and circumstances surrounding the termination of former Public Safety Commissioner Walt Monegan.

Since that time, six of the witness subpoenas were served and seven were not. The subpoenas that were served commanded the witnesses to appear here at 10:00 am today, September 19<sup>th</sup>, 2008, before the Judiciary Committee. Subpoenas were served on attorneys representing Mr. Frank Bailey, Ms. Ivy Frye, Mr. Todd Palin, Mr. Randy Ruaro, and Ms. Murlene Wilkes. By an agreement between Mr. Branchflower and Mr. Bailey's attorney, a copy of the sworn statement that Mr. Bailey gave to Mr. Thomas Van Flein has been given to Mr. Branchflower and will satisfy Mr. Bailey's obligation to comply with his subpoena. Mr. John Bitney was served personally by Mr. Branchflower and Mr. Bitney, accompanied by his attorney, elected to give a statement to Mr. Branchflower in his office, thus satisfying Mr. Bitney's obligation under his subpoena. The subpoena for Mr. Bailey's cell phone records was served on ACS, Inc., and that company has

turned the records over to Mr. Branchflower. Finally, Ms. Wilkes, through her attorney, has agreed to give a statement to Mr. Branchflower this afternoon, thus

satisfying her obligations under her subpoena, assuming the deposition actually takes place.

Ms. Frye, Mr. Palin, and Mr. Ruaro, all having been served with subpoenas through their legal counsel, have neither given statements, nor appeared today in compliance with their subpoenas. Alaska Statute 24.25.030 sets out our procedure in this particular situation. The statute reads as follows: "If a witness neglects or refuses to obey a subpoena ... the senate or the house of representatives may by resolution entered on its journal commit the witness for contempt. If contempt is committed before a committee, the committee shall report the contempt to the senate or house of representatives, as the case may be, for such action as may be considered necessary." A copy of this statement shall be delivered to the president of the senate in order to satisfy the statute's requirements.

Subpoenas were not served on Ms. Dianne Kiesel, Ms. Annette Kreitzer, Ms. Nicki Neal, Mr. Brad Thompson, Mr. Michael Nizich, Ms. Kris Perry and Ms. Janice Mason. The reason those seven subpoenas were not served is because Mr. Branchflower relied on a written offer of cooperation that Assistant Attorney General Michael Barnhill issued in a letter to Legislative Council Chairman, Kim Elton, dated September 9, 2008. Senator Elton accepted the offer in a letter sent to Mr. Barnhill on Friday, September 12, 2008, which was the same day the Senate Judiciary Committee issued its subpoenas. Mr. Barnhill spoke to Mr. Branchflower late that Friday afternoon, to begin scheduling depositions.

The next day, Saturday, September 13, 2008, Mr. Barnhill sent an e-mail to Mr. Branchflower, confirming the details of their phone conversation. The e-mail in relevant part reads as follows:

Steve - this shall confirm our phone conversation of late yesterday afternoon. As a consequence of Senator Elton's letter to me of 9/12/08, Law agrees that the depositions of the four Department of Administration employees, Annette Kreitzer, Dianne Kiesel, Nicki Neal and Brad Thompson, may proceed. Law appreciates the Legislative

Council's willingness to agree with our interpretation of the laws governing confidential state employee personnel files as set forth in our letter of 9/9/08.

Each of these four individuals has confirmed that they wish to proceed with their deposition without service of a subpoena, and that they have elected to have representation from Law at their deposition. Law will provide that representation.

As I explained during our call, Tom van Flein requested on Friday (9/12) that the Department of Law resume representation of these employees in the Office of the Governor who have not sought private counsel. At this point, my understanding is those employees include Mike Nizich, Kris Perry and Janice Mason. When you return on Tuesday, please give me a call and I will report on the status of Law's representation of those employees within the Office of the Governor who have not secured private counsel and their availability for deposition.

That cooperation agreement was abrogated by the Tuesday, September 16, 2008, letter from Attorney General Talis Colberg. The Judiciary Committee's, and Mr. Branchflower's, reliance on the two written promises of the Department of Law is regrettable. Because the subpoenas were not served, there is no legal basis upon which to take any action today regarding them. The original, unserved subpoenas are still in the hands of Mr. Branchflower. He will begin the process of serving them on the seven remaining witnesses, with a new return date of Friday, September 26, 2008.

Regarding the status of the investigation, I have spoken to Mr. Branchflower this morning. He is continuing to gather information and expects to complete his report as planned, by October 10. Thank you and good day.

[10:39:25 AM](#)