

ADMINISTRATIVE

TIVE

INQUIRIES

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99801

April 28, 1971

The Honorable William J. Moran
Chairman, House Judiciary Committee
Alaska State House of Representatives
Juneau, Alaska 99801

Dear Mr. Chairman:

This replies to your letter and attachments of April 22, 1971, addressed to the Attorney General, relevant to the House Judiciary Committee Report of May 31, 1970, relating to the Department of Public Safety's "administrative inquiries".

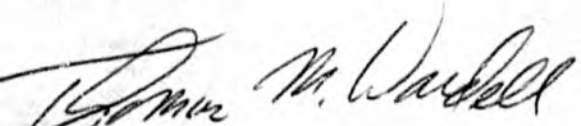
It is my understanding from speaking with Commissioner Emery Chapple this date that the Department of Public Safety has modified its regulations relating to "administrative inquiries" and that a copy of the modified regulations have been forwarded to your committee.

If you or the committee have any further questions on this matter, please contact me at your earliest convenience.

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

By



Thomas M. Wardell
Deputy Attorney General

JEH:TMW:agm

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N — STATE CAPITOL
JUNEAU 99801

April 23, 1971

The Honorable William J. Moran
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V, Capitol Building
Juneau, Alaska 99801

Dear Representative Moran:

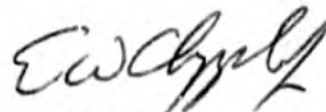
Attached is a copy of our Section 115.020, Administrative Inquiry, as it existed at the time the Judiciary Committee made its recommendations. Also attached is a copy of our Section 115.020 entitled Investigative Inquiry, which is a revision of the previous regulation that was made and distributed on June 1, 1970.

Whereas this matter had not been given a great deal of thought by me previously, a close reading of the revision appears to me to remove the objections that the Judiciary Committee seemed to have.

It is my view that any manual of regulations, its intents and ultimate uses is pretty much dependent upon those persons administering it, and I assure you that it is my policy to see that these matters are carried out, when they arise, in as proper a manner as possible.

I trust this answers your question satisfactorily. Please do not hesitate to call upon me if further discussion is desired.

Very truly yours,



Emery W. Chapple, Jr.
Commissioner

Encs.

CHAPTER 115

REVIEW, HEARINGS AND APPEALS

Sec. 115.010 PROCEDURES (Re: Rule 12 01.0, State Personnel Rules)

- A. Any member in the classified service may seek intra-departmental review of any grievance as follows:
1. The member shall present his grievance in writing to, and discuss it with, his immediate supervisor.
 2. If not satisfied, he may proceed to the next superior.
 3. If still not settled to member's satisfaction, he may, within 10 days, submit grievance in writing and through chain of command, to the Commissioner. The Commissioner shall, within 15 days after receipt of the written grievance, provide the member with his written decision concerning the matter.

Sec. 115.020 INVESTIGATIVE INQUIRY

- A. The Commissioner may direct that an investigative inquiry be made into the circumstances and facts of the charges made against any member which are or may be considered grounds for disciplinary action. The inquiry may be made prior to any disciplinary action or after summary disciplinary action.

An investigative inquiry is not an accusatory nor a decision making body. It is, as the title implies, an investigative body charged with the responsibility for impartially obtaining facts and circumstances surrounding an allegation, and presenting the findings to the Commissioner for consideration during the discharge of his executive responsibilities as the appointing Authority and administrative head of the department.

- B. Inquiry members shall consist of the Commissioner or his designee and other personnel designated by him, provided at least one (1) member is of equal rank with the member charged.
- C. The Commissioner may, but need not, request the presence of the accused in writing. Oral

notice to attend given by any superior is sufficient.

- D. An accused member ordered to appear shall do so or be cited for additional disciplinary action or such other action directed by the Commissioner.
- E. The substance of testimony shall be mechanically or visually recorded and in addition reported on Department forms as prescribed in Chapter 113, Section 020. The recommendations of the individual members conducting the inquiry and the basis for the recommendation shall accompany the report. Such reports shall be forwarded to the Commissioner within five (5) days following the inquiry and the Commissioner shall notify the accused of his final decision within ten (10) days after the inquiry. The notice to the accused shall be as prescribed in Chapter 114.050.
- F. The accused may, but need not, be suspended during inquiry.

Sec. 115.030 APPEAL

- A. If a member is not satisfied with intradepartmental review as outlined in Sections 115.010 - 020, he may request Inter-departmental Review as provided in State Personnel Rules, Section 12 01.14 through 12 01.17, wherein he is allowed legal counsel.

Sec. 115.040 EXEMPTIONS

- A. No temporary, provisional or probationary member shall have the right to review, hearing or appeal concerning dismissal, unless same is due to racial, religious or political reasons.

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- A. Any member in the classified service may seek intra-departmental review of any grievance as follows:
1. The member shall present his grievance in writing to, and discuss it with, his immediate supervisor.
 2. If not satisfied, he may proceed to the next supervisor.
 3. If still not settled to member's satisfaction, he may, within 10 days, submit grievance in writing and through chain of command, to the Commissioner. The Commissioner shall, within 15 days after receipt of the written grievance, provide the member with his written decision concerning the matter. (In order to arrive at his decision, the Commissioner may, but need not, ask for an Administrative Inquiry.) (Re: Section 115.020)

Sec. 115.020 ADMINISTRATIVE INQUIRY

- A. Inquiry members shall consist of the Commissioner or his designee and other personnel designated by him, provided at least one (1) member is of equal rank with the member charged.
- B. The Commissioner may, but need not, request the presence of the accused in writing. Oral notice to attend given by any superior is sufficient.
- C. An accused member ordered to appear shall do so or be cited for additional disciplinary action or such other action directed by the Commissioner.
- D. An accused does not have the right of legal counsel at an inquiry; however, he may remain silent.
- E. The substance of testimony shall be recorded and reported on Department forms as prescribed in Chapter 113, Section 020, as will the finding and recommendations of the members conducting the inquiry. Such reports shall be forwarded to the Commissioner.
- F. The Commissioner shall notify the accused as

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Revised

prescribed in Sec. 115.010, paragraph 3.

- G. The accused may, but need not, be suspended during inquiry.

Sec. 115.030 APPEAL

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THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Judiciary Committee Report

on

DEPT. OF PUBLIC SAFETY ADMINISTRATIVE INQUIRIES

The disciplinary procedures of the Department of Public Safety have recently come to the attention of the Judiciary Committee. Of particular concern to the committee is Sec. 115.020D of the department's "Regulations and Operations Manual", relating to "Administrative Inquiries", which provides that "An accused does not have the right of legal counsel at an inquiry; however, he may remain silent." Testimony before the committee stated that in at least one instance a trooper subject to disciplinary action was advised that at his administrative inquiry he could have legal counsel, but when he appeared at the inquiry without legal counsel he was not allowed to speak in his own defense or to cross-examine opposing witnesses. As a result of the inquiry he was dismissed from service in the department.

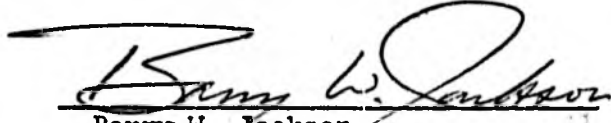
The committee is not concerned with the merits of the personnel action, which has been appealed under the personnel rules.

The committee believes that, although this administrative inquiry is not required by statute or the constitution since a hearing under the state personnel rules is available, when the inquiry is held, due process requires that the accused be allowed to have legal counsel and that whether or not the accused has legal counsel present he be allowed to testify on his own behalf, cross-examine witnesses and present evidence. The committee believes that Sec. 115.020D may be invalid despite the right to a subsequent "due process" hearing before the personnel board and in any event is very bad state policy and that the department's procedure in the case considered by the committee was improper in not allowing the accused trooper to defend himself and to cross-examine witnesses. The committee also believes that it was improper for the administrative inquiry to be filmed (video-taped) for use as an instructional aid at the training school for state troopers. (There was testimony that the film would be used for this purpose, and the committee has been told that the film has come from Sitka, the site of the training school, in response to the committee's request to see it.)

By way of comparison, the committee notes that Art. 135 of the Uniform Code of Military Justice (10 U.S.C., sec. 935) provides that in court-of-inquiry proceedings a person who is designated a "party" to the proceedings shall be given due notice of the inquiry and he has a right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence. In addition, sec. 0304(d) of the Coast Guard Supplement to the Manual for Courts Martial, United States, provides that for all three levels of investigation (informal, formal, and courts of inquiry) in that branch of the armed forces a party to an inquiry or investigation has the following rights: (1) to be given due notice of his designation as a "party"; (2) to be present during proceedings; (3) to be represented by counsel; (4) to challenge members of a court of inquiry but only for cause stated to the court (this obviously applies only to the third type of investigation); (5) to cross-examine witnesses; (6) to introduce evidence; (7) to testify as a witness, but he must first be advised of his rights under Art. 31 of the

U.C.M.J. (Miranda warnings, etc.); (8) to make a voluntary statement; (9) to make concluding argument. These investigations and inquiries are not "courts martial" nor are they non-judicial disciplinary proceedings under Art. 15 of the U.C.M.J. (10 U.S.C., sec. 815); they are investigatory proceedings apart from judicial or other final action, and they thus appear to be analogous to the Department of Public Safety's "administrative inquiries".

The Judiciary Committee requests that the Department of Public Safety, with the assistance and advice of the Department of Law, review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness.



Barry W. Jackson
Barry W. Jackson
Chairman
House Judiciary Committee

CHAPTER 101

PROFESSIONAL CONDUCT

Sec. 101.010

BASIC OBJECTIVES

- A. To cause all members to constantly strive to increase the respect and honor of the profession in the public mind, and to strengthen public confidence in law enforcement.
- B. To encourage members to fully appreciate and value the responsibilities of their office.
- C. To regard the work of the Department as an honorable profession and to consider in it an opportunity to render a valuable service to society.
- D. To continually develop and maintain complete support and cooperation of the public.
- E. To increase and advance the effectiveness of the service by encouraging complete cooperation of all members for their mutual benefit.
- F. To develop complete coordination of effort in all official relationships with other governmental agencies.

Sec. 101.020

GENERAL RULES OF OFFICIAL CONDUCT

All members of the Department shall:

- A. Be habitually courteous; they shall dutifully accept their responsibilities as public servants and shall be attentive to citizens seeking assistance or information or who desire to register complaints or give evidence.
- B. Regard punctuality in all their engagements and the diligent performance of their duties as a prime responsibility to the public.
- C. At all times be cognizant of their primary obligation to render impartial, efficient, and effective services to the public in the discharge of their duties and to always regard their office as a public trust.

- D. Administer their duties in a courteous, fair, just, impartial and reasonable manner, according no one more reasonable treatment than others. They shall recognize the limitations of their authority and at no time use the power or influence of their office or position for their own personal advantage.
- E. Accept the responsibility for the proper care of state property and recognize the fact that any misuse or waste of such property is equally as reprehensible as the misuse of funds from the state treasury.
- F. Cooperate with all Federal, State, City and local officials to further insure the safety and general welfare of the public. They shall not permit personal differences or jealousies to influence their cooperation with other agencies.
- G. Add to their further development and effectiveness by adequate study and dedicated attention to self improvement, always keeping in mind that the professional must keep fit not only in body, but particularly in character, education and ideals of service.

They shall welcome the opportunity to make available to everyone any and all useful information concerning matters of public safety and welfare.
- H. Conduct their public and private life in such a manner that the public will regard them as examples of fidelity, stability and morality.
- I. Bear faithful allegiance to their government, and be loyal to their profession. They shall accept as a sacred obligation their responsibilities as citizens to support the Constitution of the United States, and as public officials they shall consider the privilege of defending the principles of liberty as defined in our Constitution and Laws the greatest honor that may be bestowed upon any man.

Sec. 101.030

ORIGIN OF CODES

It is the philosophy of the Department that the reputation that this governmental organization bears with the public is influenced,

to a very great degree, by the reaction of the public to the impact of the personalities of its members. Personalities that are characterized by such traits as loyalty, determination, alertness, intelligence, unselfishness, honesty and moral ascendancy are instantly appealing and respected. Each and every member is expected to make a dedicated effort to so conduct both his official and private life that he will inspire the confidence and trust of the public.

The Department considers law enforcement as an honored profession and recognizes the value and importance of developing and maintaining public confidence in the many and various endeavors and has accordingly enacted exacting rules of official conduct for all members.

To further emphasize the ideals and professional conduct which the Department has always sought to uphold, the Code and Canons of Ethics of the International Association of Chiefs of Police are adopted for the benefit of all Department of Public Safety members and especially for the guidance of all commissioned personnel.

Throughout the history of this Department, other reliable and necessary rules for conduct and performance of duty have been developed and are herein promulgated in their latest form.

Sec. 101.040

APPLICATION OF CODES AND RULES

All of the ethical standards and rules expressed herein are inclusive and together constitute the standards of conduct by which all members of the Department of Public Safety are to be governed. It shall be the duty of each member to study and become familiar with the rules and regulations governing the organization and operation of the Department, as well as the rules governing control and discipline.

CANONS OF POLICE ETHICS

Article 1. Primary Responsibility of Job

The primary responsibility of the police service, and of the individual officer, is the protection of the people of the United States through the upholding of their laws, chief among these is the Constitution of the United States and its amendments. The law enforcement officer always represents the whole of the community and its legally expressed will and is never the arm of any political party or clique.

Article 2. Limitations of Authority

The first duty of a law enforcement officer, as upholder of the law, is to know its bounds upon him in enforcing it. Because he represents the legal will of the community, be it local, state or federal, he must be aware of the limitations and prescriptions which the people, through law have placed upon him. He must recognize the genius of the American system of government which gives to no man, groups of men, or institution, absolute power, and he must insure that he, as a prime defender of that system, does not pervert its character.

Article 3. Duty to be Familiar with the Law and with Responsibilities of Self and other Public Officials

The law enforcement officer shall assiduously apply himself to the study of the principles of the laws which he is sworn to uphold. He will make certain of his responsibilities in the particulars of their enforcement, seeking aid from his superiors in matters of technicality or principle when these are not clear to him; he will make special effort to fully understand his relationship to other public officials, including other law enforcement agencies, particularly on matters of jurisdiction, both geographically and substantively.

Article 4. Utilization of Proper Means to Gain Proper Ends

The law enforcement officer shall be mindful of his responsibility to pay strict heed to the selection of means in discharging the duties of his office. Violations of law or disregard for public safety and property on the part of an officer are intrinsically wrong; they are self-defeating in that they instill in the public mind a like disposition. The employment of illegal means, no matter how worthy the end, is certain to encourage disrespect for the law and its officers. If the law is to be honored, it must first be honored by those who enforce it.

Article 5. Cooperation with Public Officials in the Discharge of Their Authorized Duties

The law enforcement officer shall cooperate fully with other public officials in the discharge of authorized duties, regardless of party affiliation or personal prejudice. He shall be meticulous, however, in assuring himself of the propriety, under the law, of such actions and shall guard against the use of his office or person, whether knowingly or unknowingly, in any improper or illegal action. In any situation open to question, he shall seek authority from his superior officer, giving him a full report of the proposed service or action.

Article 6. Private Conduct

The law enforcement officer shall be mindful of his special identification by the public as an upholder of the law. Laxity of conduct or manner in private life, expressing either disrespect for the law or seeking to gain special privilege, cannot but reflect upon the police officer and the police service. The community and the service require that the law enforcement officer lead the life of a decent and honorable man. Following the career of a policeman gives no man special prerequisites. It does give the satisfaction and pride of following and furthering an unbroken tradition of safeguarding the American republic. The officer who reflects upon this tradition will not degrade it. Rather, he will so conduct his private life that the public will regard him as an example of stability, fidelity and morality.

Article 7. Conduct toward the Public

The law enforcement officer, mindful of his responsibility to the whole community, shall deal with individuals of the community in a manner calculated to instill respect for its laws and its police service. The law enforcement officer shall conduct his official life in a manner such as will inspire confidence and trust. Thus, he will be neither overbearing nor subservient, as no individual citizen has an obligation to stand in awe of him nor a right to command him. The officer will give service where he can, and require compliance with the law. He will do neither from personal preference or prejudice, but rather as a duly appointed officer of the law discharging his sworn obligation.

Article 8. Conduct in Arresting and Dealing with Law Violators

The law enforcement officer shall use his powers of arrest strictly in accordance with the law and with due regard to the rights of the citizen concerned. His office gives him no right to prosecute the violator nor to mete out punishment for the offense. He shall, at all times, have a clear appreciation of his responsibilities and limitations regarding detention of the violator; he shall conduct himself in such a manner as will minimize the possibility of having to use force. To this end he shall cultivate a dedication to the service of the people and the equitable upholding of their laws whether in the handling of law violators or in dealing with the law-abiding.

Article 9. Gifts and Favors

The law enforcement officer, representing government, bears the heavy responsibility of maintaining, in his own conduct, the honor and integrity of all government institutions. He shall, therefore, guard against placing himself in a position in which any person can expect special consideration or in which the public can reasonably assume that special consideration is being given. Thus, he should be firm in refusing gifts, favors, or gratuities, large or small, which can, in the public mind, be interpreted as capable of influencing his judgment in the discharge of his duties.

Article 10. Presentation of Evidence

The law enforcement officer shall be concerned equally in the prosecution of the wrong-doer and the defense of the innocent. He shall ascertain what constitutes evidence and shall present such evidence impartially and without malice. In so doing, he will ignore social, political, and all other distinctions among the persons involved, strengthening the tradition of the reliability and integrity of an officer's word.

The law enforcement officer shall take special pains to increase his perception and skill of observation, mindful that in many situations his is the sole impartial testimony to the facts of the case.

Article 11. Attitude Toward Profession

The law enforcement officer shall regard the discharge of his duties as a public trust and recognize his responsibility as a public servant. By diligent study and sincere attention to self-improvement he shall strive to make the best possible application of science to the solution of crime and, in the field of human relationships, strive for effective leadership and public influence in matters affecting public safety. He shall appreciate the importance and responsibility of his office, and hold police work to be an honorable profession rendering valuable service to his community and his country.

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Sec. 115.020 ADMINISTRATIVE INQUIRY

- A. Inquiry members shall consist of the Commissioner or his designee and other personnel designated by him, provided at least one (1) member is of equal rank with the member charged.
- B. The Commissioner may, but need not, request the presence of the accused in writing. Oral notice to attend given by any superior is sufficient.
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- D. An accused does not have the right of legal counsel at an inquiry; however, he may remain silent.
- E. The substance of testimony shall be recorded and reported on Department forms as prescribed in Chapter 113, Section 020, as will the finding and recommendations of the members conducting the inquiry. Such reports shall be forwarded to the Commissioner.
- F. The Commissioner shall notify the accused as

described in Sec. 115.010, paragraph 3.

- C. The accused may, but need not, be suspended during inquiry.

Sec. 115.030 APPEAL

- A. If a member is not satisfied with intra-departmental review as outlined in Sections 115.020-029, he may request Inter-departmental Review as provided in State Personnel Rules, Section 12 01.14 through 12 01.17, wherein he is allowed legal counsel.

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- A. No temporary, provisional or probationary member shall have the right of review, hearing or appeal concerning dismissal, unless same is due to racial, religious or political reasons.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

April 19, 1971

MEMORANDUM

TO: William J. Moran, Chairman
House Judiciary Committee

FROM: Arthur H. Peterson *Art*
Revisor of Statutes

SUBJECT: Department of Public Safety's "administrative inquiries"

You will find attached a copy of the Judiciary Committee's May 31, 1970 report on this subject, appearing in Supp. No. 19 of the 1970 House Journal. In the last paragraph, the committee requested the Department of Public Safety, with the assistance and advice of the Department of Law, to "review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness." The review and revision may have been completed, but I am not aware of it, nor do I know of a report on the matter by either the Department of Public Safety or the Department of Law in response to the committee's request.

Att.

AHF:ic

5/31/70

HOUSE JOURNAL

Judiciary Committee Report

on

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The committee is not concerned with the merits of the personnel action, which has been appealed under the personnel rules.

The committee believes that, although this administrative inquiry is not required by statute or the constitution since a hearing under the state personnel rules is available, when the inquiry is held, due process requires that the accused be allowed to have legal counsel and that whether or not the accused has legal counsel present he be allowed to testify on his own behalf, cross-examine witnesses and present evidence. The committee believes that Sec. 115.020D may be invalid despite the right to a subsequent "due process" hearing before the personnel board and in any event is very bad state policy and that the department's procedure in the case considered by the committee was improper in not allowing the accused trooper to defend himself and to cross-examine witnesses. The committee also believes that it was improper for the administrative inquiry to be filmed (video-taped) for use as an instructional aid at the training school for state troopers. (There was testimony that the film would be used for this purpose, and the committee has been told that the film has come from Sitka, the site of the training school, in response to the committee's request to see it.)

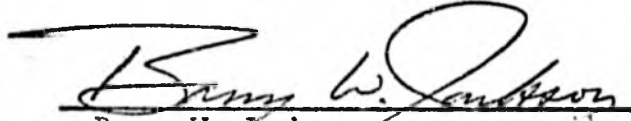
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HOUSE JOURNAL

- 2 -

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Barry W. Jackson
Chairman
House Judiciary Committee

April 22, 1971

The Honorable John E. Havelock
Attorney General
Pouch K
Juneau, Alaska 99801

Dear Mr. Havelock:

You will find attached a copy of the Judiciary Committee's May 31, 1970 report on the Department of Public Safety's "administrative inquiries," appearing in Supp. No. 19 of the 1970 House Journal. In the last paragraph, the committee requested the Department of Public Safety, with the assistance and advice of the Department of Law, to "review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness." The review and revision may have been completed, but I am not aware of it, nor do I know of a report on the matter by either the Department of Public Safety or the Department of Law in response to the committee's request.

We appreciate hearing from you on this matter. Thank you.

Sincerely,

William J. Moran
Chairman
House Judiciary

WJM/lb

April 21, 1971

The Honorable Emery W. Chapple, Jr.
Commissioner, Dept. of Public Safety
Pouch N
Juneau, Alaska 99801

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Sincerely,

William J. Moran
Judiciary Chairman

WJM:jc

Encl.

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