

HB

344

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y · STATE CAPITOL  
JUNEAU, ALASKA 99811  
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 8, 1977

SUBJECT: Confirmation of University of Alaska  
President (Work Order #3480)

TO: Representative Hugh Malone  
Speaker of the House

Representative Steve Cowper

FROM: Richard A. Bradley  
Legislative Counsel

You have requested a bill requiring legislative confirmation of the president of the University of Alaska. Under the constitution (art. VII, §3), the president is appointed "in accordance with law" by the board of regents. Unless unusual legal problems exist, a simple change in the law at AS 14.40.170(a)(1) will accomplish your request. You also requested a memorandum of law on the points raised.

In our view, the bill you propose raises questions in two areas:

(1) Whether the mandate to the board of regents to "appoint the president of the university" "in accordance with law" allows the legislature to require confirmation of the president.

(2) Whether the legislative confirmation case, Bradner v. Hammond, 55 P.2d 1 (Alaska 1976) has any implications for this situation.

The first question involves the construction of art. VII, §3 of the constitution. The section provides:

The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board. [Emphasis added]

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The constitution explicitly requires confirmation of the regents; the president is appointed by the regents "in accordance with law." This language gives the legislature the authority to establish standards or procedures which the regents must comply with or follow in appointing the president; in my opinion, it authorizes the legislature to require, by law, a legislative confirmation of the appointment of the president by the board.

The legislature has apparently not sought to establish by law any procedures or conditions for the board to follow or to meet in its appointment of the president. Review of AS 14.40.120-14.40.270, an article entitled "Board of Regents and President" indicates that the board presently exercises full and unconditioned discretion in its responsibility for the appointment of the president. The only statutory provision on this subject restates the constitutional grant of authority:

The Board of Regents shall: (1) appoint the president of the university by a majority vote of the whole board,... [AS 14.40.170(a)].

It is clear that the legislature could establish qualifications which the board would have to follow in making the appointment. It may constitutionally require that the president have certain academic degrees, that the president have certain experience, that the recruitment of the president be carried out in a specified fashion, or that the president meet other statutory qualifications it sets. It is also my opinion that the legislature can establish a requirement that the appointment by the board be subject to legislative confirmation.

A grant of authority from a state constitution to a legislature for its implementation or execution of a program required in general terms by the constitution typically occurs by the use of the phrase "in accordance with law" or "by law." See, e. g., art. II, §4: A vacancy in the legislature shall be filled...as provided by law" and art. IV, §1: The jurisdiction of courts shall be established by law." When the constitution gave the board of regents the authority to appoint the president of the university "in accordance with law," the writers of the constitution intended that the legislature set the conditions and qualifications of the president. That he be confirmed by the legislature is an appropriate condition established by the legislature "in accordance with law."

Accordingly, I believe that the constitution of the State of Alaska authorizes the legislature to require the appointment of the president by the board of regents be subject to legislative confirmation.

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The remaining question is whether Bradner v. Hammond, supra, poses any difficulties for legislative confirmation of the president of the university. In my judgment, the law of that case poses no difficulty for a law requiring legislative confirmation.

The first and perhaps the most direct reason is that the litigation known as Bradner v. Hammond undoubtedly would not have occurred if the provisions in art. III of the constitution dealing with executive appointments had had language stating that appointments of executive officers should be made "in accordance with law." The significant legal fact arising out of the process of executive appointments in the principal departments [except for the department's "head"] is that the constitution is silent; in such a case, the supreme court in Bradner was forced to determine "the maximum parameters of the delegation of executive appointive authority through the legislative confirmation function" [Bradner, supra, at 7]. The court concluded that the legislative confirmation function "will not be inferred in the absence of an express constitutional provision," [Bradner, supra, at 7]. In my judgment, a provision providing that "deputy commissioners and the directors of the divisions in the principal executive departments will be appointed in accordance with law" would have reversed the supreme court's opinion.

Additional reasons why Bradner is not apropos to this situation may be stated. Chapter 82 SLA 1975, the law challenged by the governor in Bradner, was concerned only with appointments to the principal executive departments. Whatever the university's legal status\* it seems clear beyond doubt that the university is not a principal executive department nor is it a "regulatory or quasi-judicial agency" [art. III, §26]. The appointment of the president is not prerogative of the governor under art. III but the responsibility of the board of regents, "in accordance with law," under art. VII.

I am of the opinion that there are no constitutional provisions limiting the legislature in the exercise of its discretion to require legislative confirmation of the appointment of the president of the university. Accordingly, attached you will find a bill responsive to your request.

RAB:smh

\*Art. VII, §§ 2 and 3, Alaska Constitution and see University of Alaska v. National Aircraft Leasing Ltd., 536 P.2d 121 (Alaska 1975); see also Billy G. Berrier's opinion of March 1, 1977 to Chairman Sackett of the Senate Finance Committee on that question.

MINUTES OF HOUSE HESS COMMITTEE

April 4, 1977

The meeting was called to order by Chairman Parr at 3:05 p.m. Members present: Parr, Nakak, Chatterton, Ose and Phillips with Dr. Beirne and Mr. Cotten coming in later.

Absent: Bennett & Buchholdt

Committee Substitute for HB 205 was passed around for signature.

Bills before the committee today were: HCR 36, HB 360, HB 361, HB 362, BH 363 and HB 344. Chairman Parr announced that Mr. Larry Peska from Legislative Audit was present to answer any questions. Mr. Parr also announced that there were two Committee Substitutes before the committee, one that he had made up and one that Representative Miles had prepared, both regarding HB 361.

Both Committee Substitutes were gone over Section by Section and discussed. There was discussion by the members and those present as to how the federal monies for the University are presently handled. Mr. Parr felt there would be a lot of grant money the University would lose if it was run through the State. Mr. Peska stated most of the grants are being passed through the State now. Mr. Chatterton stated there were a lot of grants that were not federal and said some of the corporations etc. that make grants to the University now would not be so eager to make them to the State.

There was discussion as to the transfer of funds within the University now.

With reference to bringing the University under the State accounting guidelines, there was much discussion as to whether the word "Shall" should be used or "may". It was the feeling that the Commissioner of Administration should not run or manage the university, just maintain the accounting procedure.

HB 361

Action

With reference to HB 361, Mr. Ose moved that line 24 be amended to read after the word "Alaska" insert "and" and change the word "setting" to "set." There being no objection the motion carried.

HB 361 Action Mr. Parr moved on line 27 to delete the word "comptroller" and insert "Board of Regents". There being no objection the motion carried.

HB 361 Action Mr. Chatter moved to adopt Mr. Miles Section 7 of his committee substitute in place of Mr. Parr's. There being no objection the motion carried.

HB 361 Action Mr. Chatterton moved to pass out HB 361 as a committee substitute as amended. There being no objection, the motion carried.

HB 362 Action Mr. Parr asked the committee's pleasure of HB 362. Mr. Ose moved to pass it out of committee. There being no objection the motion carried.

HCR 36 Action Mr. Parr asked the committee's pleasure on HCR 36. Mr. Chatterton moved to table the bill. There being no objection, the bill was tabled.

HB 344 Action Mr. Parr asked the committee's pleasure on HB 344. Mr. Chatterton moved that it be passed out with individual recommendations. After discussion Mr. Chatterton withdrew his motion and offered a motion to table the bill. Mr. Phillips objected. After discussion on the bill, a vote was taken and the motion to table the bill passed.

HB 360 Action The next bills before the committee were HB 360 and HB 363. With reference to HB 360, Dr. Beirne said he was not sold on a manager team. Mr. Phillips spoke in favor of it. Mr. Chatterton then moved to table HB 360 and 363. Dr. Beirne seconded the motion. After discussion on the motion, Mr. Chatterton eliminated HB 363 from his motion. The motion to table HB 360 carried.

HB 363 Action The next bill before the committee was HB 363. Mr. Ose moved to pass the bill out. There being no objection, the motion carried.

Mr. Parr announced to the Committee that a piece of legislation has been introduced by Lisa Rudd asking the Regents not to rehire Hiatt. He said he had heard by the grapevine that they weren't going to keep him on anyway but just wanted to alert the committee that there was the possibility of another bill regarding the University coming before the Committee.

Mr. Parr then passed a breakdown by district on a fiscal note to the committee regarding HB 212 which will be before them at the meeting tomorrow and asked the committee to look it over before the next meeting.

The meeting adjourned at 4:40 p.m.