

SB

101

COMMITTEE REPORT  
SENATE

FURTHER: None

2/1/79

Date: 2-15-79

Mr. President:

The Committee on JUDICIARY has had SB 101  
disciplining of a licensed guide

under consideration and (a majority of the committee) (the committee)  
reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

replace with CS for SB 101  same title  
[ ] new title

and recommends CS SB 101 DO PASS

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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301  
CHAIRMAN

26101

# RON HAYES

## ALASKAN GUIDE

Box 1711, Anchorage, Alaska 99510

Phone: (907) 272-0051

Dear Sir:

I am a guide, concerned with what I foresee happening to our profession, and I am writing you this letter to ask your opinion.

The Guide Law set up the Guide Board to perform two primary functions, that is, (1) to serve as an impartial, independent arbitrator regulating guides, and (2) to allocate guiding area permits.

I think any guide who attended the last disciplinary session of the Guide Board came away less than satisfied with its performance. The Attorney General's office seems to have so taken over the proceedings that the Board doesn't function as an independent body exercising a judgment separate from the desires of the enforcement officers. Succumbing to the Department pressure to punish a guide even though the guide has been acquitted by a jury after a full trial goes beyond fairness and due process. These disciplinary functions might better be left with the court system which is set up to handle such things.

It is obvious to me that the results under this Board system are unfair, and that our livelihood exists at the whim of the prosecutor so long as the Guide Board has these powers. Don't think it can't happen to you, especially in view of all of the restrictive, technical and over detailed regulation which cover guiding like a double blanket.

Repealing the guide law will put license proceedings back in court where a jury stands between you and the power of the State.

Furthermore, in allocating guide areas, some guides got nothing, some not enough to make a living, and some appear to have done well. While I was one of the more fortunate ones, the land withdrawals by the Federal government have made the Guide Board allocations obsolete and the whole system of area allocation no longer appears feasible.

Besides, almost no Native guides were able to qualify for areas under the regulations established by the Board, and the Native groups rightfully feel they got a raw deal. As a result, they are mounting an effort to repeal the guide law, and for the reasons set forth in this letter I urge you to join with them.

Although the few guides who still have adequate areas may favor retaining the whole guide law, I think they may be taking a short sighted position. First of all, the Native groups will shortly be controlling much of the land and access to it, and secondly, the State is transferring greater powers to the local regional game boards which will be controlled by the Native groups. So whether you presently have a guide area or not, you will not be able to guide without cooperating with the Native organizations directly involved.

Do you want to fight with them over the guide laws, and antagonize the people we will have to work with in the future? Suppose in retaliation they set up subsistence hunting provisions that virtually eliminate guiding? Suppose a local game board adopts a regulation prohibiting the removal of meat, antlers, skins and capes from the game management unit where the animal was taken? This has already been proposed in one unit! What good will a guiding area be then?

We must cooperate and work with these groups if we expect them to cooperate with us in the future for the best conservation and utilization of these resources.

I therefore urge you to join with the Native effort to repeal the guide law, and I'm enclosing herein a ballot for a straw poll among the guides, asking you to let me know your opinion.

Joining the Native effort to repeal the guide law will abolish the Guide Board, returning to the courts the license revocation and suspension questions, and will also show the Native groups that we are ready, and willing to join with them in the management of these wild game resources.

Thank you for reading through this, and double thanks for marking the ballot and mailing it back to me.

Very truly yours,

*Ron Hayes*  
RON HAYES

STATE  
of ALASKA

## MEMORANDUM

TO:  Mark Jensen  
 Guide Licensing and Control Board  
 Box 2220  
 Juneau 99803

DATE: February 7, 1979

FILE NO:

TELEPHONE NO:

FROM: Sarah Elizabeth Fussler *Liza*  
 Assistant Attorney General  
 AGO - Anchorage

SUBJECT: Guide Board Disciplinary Actions:  
 Senate Committee Review

The House Judiciary Committee just cancelled a hearing that I had intended to be present at on Tuesday, February 6; I therefore am not going to be able to make it to Juneau until the 13th of February. However, I am sending a brief outline of some of the arguments for keeping guide disciplinary hearings as they presently exist under AS 08.54.200(a). I also include a list of those guide board cases that resulted in revocation or suspension of licenses, although this list is probably incomplete.

The Guide Licensing and Control Board is presently required to hold a hearing to determine whether disciplinary action shall be taken against a guide whenever a guide is charged with or convicted of a state or federal sport fish, game or guide statute or regulation, or if the board receives complaints concerning the licensee from three or more clients of separate parties. AS 08.54.200(a). The "charge" may be made by the board or Department of Commerce, based on an administrative investigation.

The Guide Board's duty as an administrative body is to determine whether a person is morally fit to be a guide and to continue to engage in lawful guiding. Alaska Board of Fish & Game v. Loesche, 537 P.2d 1122, 1125 (Alaska 1975). "Morally" is used in the broad sense of the word - whether the guide is ethically competent. The board does not determine criminality, and its disciplinary function is primarily remedial. Hence the board is not bound by a criminal burden of proof, criminal rules, or the results of criminal prosecutions. Agency action is civil, remedial and bound by administrative procedures.

If the guide board were limited to disciplining only guides convicted of criminal conduct, the board would be placed in the implausible and indefensible position at times, of licensing a guide, and holding him out to the world as qualified to guide, even though he may have engaged

in the most egregious kind of unethical conduct imaginable. For example, a guide could have hunted and harrassed game with airplanes, wasted game meat, and taken an over-limit of species; because of a technical or procedural error in obtaining evidence resulting in a suppression order in the criminal case, or because out-of-state witnesses refuse to or are unable to testify against the guide in a criminal action, or simply because of the vagaries of a jury, the guide may not be convicted. The board would be bound to allow a guide to continue to be licensed, even though it knew, by a preponderance of evidence, that the guide was not fit for the profession. Game violation cases are difficult to establish; they often occur in remote areas where they are difficult to detect. They also often do not receive the same attention of prosecuting attorneys that is given to robbery, murder and other cases.

Limiting the guide board to hearing only cases based on criminal convictions is also inconsistent with the guide chapter as a whole. The guide board is charged, in AS 08.54.040 with establishing guide performance standards and with prohibiting unsportsmanlike, unethical or unsafe guiding activities, and activities against conservation principles or degrading to the guiding profession. The board is authorized to revoke or suspend a guide's license for unethical or unsafe conduct or conduct that adversely affects natural resources. AS 08.54.200. In order to accomplish these ends the board must be able to hear a case even absent a criminal conviction.

Other licensing boards and agencies are not limited to cases involving a criminal conviction before they can inquire as to the fitness of the individual to be licensed for that profession. For example, disciplinary action may be taken against a lawyer even though he may have not been convicted of any crime. Ex parte Wall, 107 U.S. 265 (1883). A guide must be accorded due process in a disciplinary hearing, since his guide license has some proprietary value (Herscher v. State, Department of Commerce, 568 P.2d 996 (Alaska 1977)); however disciplinary action against a guide regardless of criminal conviction is not only appropriate but is the only way realistically to maintain the high standards of professional conduct that are demanded of guides in the State of Alaska.

The Guide Board has taken disciplinary action against several guides, sometimes based on unethical conduct and other times based on criminal convictions.

In Re Richard Herscher - Resulted in revocation of Mr. Herscher's guide license based on two criminal convictions. The board also heard evidence of unethical conduct, wherein Mr. Herscher had endangered the life of an Alaska State Trooper, but the consideration of this unethical activity was stricken in the Supreme Court of Alaska because at the time the board did not have any regulations defining the term "unethical activity" and the Alaska Supreme Court ruled that without such regulations the unethical activity language of the statute was too broad. The board has, subsequent to the Herscher case, adopted substantive regulations defining unethical conduct. 12 AAC 38.180.

In Re John Pangborn - Mr. Pangborn's license was revoked in 1978, the revocation being based in part on convictions of taking a cub bear, and burying the carcass on a guided hunt, while he was already on probation for an earlier violation.

In Re Martin Kasser - Mr. Kasser's guide license was revoked in 1978 based on two criminal convictions.

In Re Erickson - A 1974 case in which Mr. Erickson lost his guide license as a result of an illegal moose hunt with Garner Ted Armstrong.

In Re Edward L. Stevenson - Resulted in a suspended suspension i.e. probation, as a result of improper bear hide sealing (1977).

In Re Richard L. Lusk (1977) - Resulted in a two year denial or renewal of his license for taking big game same day as airborne.

In Re Harry Morton - The board decided to deny renewal of Mr. Morton's assistant guide license based on non-residency (1978).

In Re Eugene Kempf - This case resulted in a one year suspension for illegal sport fishing (1977).

In Re Phillip Esai - The board put Mr. Esai on probation for one year upon a finding that he had failed to be present when his assistant guide was guiding (1977).

In Re Blankenship - License revocation based on two convictions (1977).

In Re Warren - Resulted in a one year probation for Mr. Warren upon a finding that he had guided in a district for which he was not certified (1977).

In Re Wilder Rice - Two years suspended license in 1978 for one state game regulation violation and unethical conduct.

In Re Loesche - License revoked by Fish and Game Board, predecessor of the Guide Board, for criminal and unethical conduct.

In Re Ramstad - License revoked for criminal violations.

I do recommend that the statute be changed in one regard: delete the requirement that the board revoke a license when a guide has been convicted of two fish and game or guiding statutes or regulations. I do not believe that this provision of the statute is legally defensible, because it takes any discretionary authority out of the board, and would require it, technically, to revoke a guide's license for two minor sport fishing violations that may have occurred at any time in the guide's career. I believe that this statute should be amended in this regard only.

SEF:ln

cc: Bill Bellingar  
Fred Wolstad

Sec. 08.54.190. Expiration and renewal. (a) A master guide, registered guide, class-A assistant guide, assistant guide or transporter license expires on December 31, following issuance.

No license may be issued to a class-A assistant guide or assistant guide who has failed to renew his license for two consecutive years unless he again meets the qualifications for initial issuance of the license.

A master or registered guide who fails to renew a license is not required to requalify under § 100(2) or § 110(8) of this chapter, respectively. (§ 1 ch 17 SLA 1973; am § 12 ch 127 SLA 1974; am § 4 ch 106 SLA 1976)

Effect of amendments. — The 1974 amendment substituted "class-A assistant guide" for "class-A guide" in subsection (a).

The 1976 amendment substituted "assistant guide or transporter license" for "assistant guide license" in subsection (a) and added "following issuance" to the end of that subsection.

Editor's note. — Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.54.200. Grounds for disciplining a licensee. (a) The board shall hold a hearing to determine if disciplinary action is necessary if one or more of the following complaints concerning the licensee have been filed with the board:

- 1. three or more clients of separate parties; or
- 2. a licensee has been charged with a violation of federal or state sport fish, game or guide statutes or regulations; or
- 3. a licensee has been convicted of a violation of federal or state sport fish, game or guide statute or regulation.

After a hearing, the board may revoke, suspend, or deny renewal of a license if the board finds that the licensee

1. has engaged in unethical activity, unsafe activity, or activity which adversely affects the natural resources of the state when such activity is unrelated to the legal and legitimate purposes of the contract hunt;

2. has violated a provision of a federal or state sport fish, game or guide statute or regulation.

After a hearing, the board shall revoke a license if the board finds that the licensee

- 1. does not meet the qualifications specified by statute or regulation for the class of license held;
- 2. is incompetent as a master guide, registered guide, class-A assistant guide, or assistant guide;
- 3. has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations.

No person who is disciplined under this section may engage in any hunting or transporting activity during the period of license revocation

Title 9  
Code of Civil Procedure