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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3667

April 25, 1983



The Honorable Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CS for HB 49
Our file no.: 366-568-83

Dear Representative Bussell:

This letter responds to the several questions relating to the nepotism restrictions proposed in the CS for HB 49, now pending before the House Judiciary Committee.

As discussed at the prior committee hearing, the state is presently a party to litigation which questions the permissible scope of any nepotism prohibition established under the Personnel Rules. Public Employees Local 71 v. State, Case No. 82-4931 Civ. (Third Judicial District). The complaint, filed in June 1982, alleges, in pertinent part, that the director of the division of personnel exceeded statutory authority in adopting Personnel Rule 13 09. The state's position in the litigation is that the personnel Rule was adopted under the authority of AS 39.25. At the present time, the parties are pursuing settlement negotiations.

A brief summary of the legal questions posed in the litigation may prove helpful to the committee. Directly at issue in the litigation is whether AS 39.25.150 confers the requisite statutory authority for the promulgation of any Personnel Rules which relate to a nepotism restriction. See AS 44.62.020. See also Kelly v. Zamarello, 486 P.2d 906, 910 n. 19 (Alaska 1971). If adoption of a nepotism restriction is authorized under AS 39.25, the inquiry turns to whether the rules are "in accordance with standard prescribed by other provision of law." AS 44.62.020. See Boehl v. Sabre Jet Room, Inc., 349 P.2d 585 (Alaska 1960). Our research has not as yet disclosed any Alaska case authority which offers a direct answer to whether it is per-

missible to adopt under the authority of the enabling statute a regulation which extends, but is not inconsistent with, the policy expressed in a separate statutory provision. Two factors may prove relevant were the litigation to proceed to a judicial resolution. First, regulations are typically accorded a presumption of validity. Alaska Intern Industries, Inc. v. Musarra, 602 P.2d 1240 (Alaska 1979). Second, the legislature has amended AS 39.25 subsequent to the enactment of AS 39.10.010, as recently as last session, presumably with knowledge of the long-standing nepotism prohibition in the Personnel Rules. However, since the matter is presently in litigation, any further comment on the merits of the pending litigation would be inappropriate. If, ultimately, the matter is not resolved in the immediate litigation, the Department of Law will review whether the director of personnel enjoys the authority to establish reasonable nepotism restrictions beyond the scope of AS 39.10.010. We are informed that in the interim the division of personnel does not intend to enforce Personnel Rule 13 09. See 1979 Inf. Att'y Gen. Op. (Feb. 13; J-66-191-79).

The committee also questioned whether any legislative action to amend AS 39.10.010 would unduly prejudice the state's position in the litigation. That the propriety of Personnel Rule 13 09 is questioned in pending litigation should not, in our view, impair the Legislature's ability to address this matter. Any inference drawn from the legislature's action or, alternatively, inaction would be speculative at best, and would not be a determining factor in the litigation. Moreover, an appropriate letter of intent would dispel whatever inference may be suggested due to prospective legislative reform.

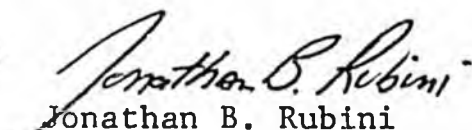
The committee also raised several questions broadly relating to the scope of CSHB 49. The proposed bill establishes nepotism restrictions specific to state "department[s] or agenc[ies]." Absent specific statutory provision to the contrary, the nepotism restrictions would not apply, for example, to the appointment of members or employees of regulatory boards and commissions, such as those regulatory bodies established in Title 8 of the Alaska Statutes. Further, in its most expansive scope the restrictions concern only the relationship between a prospective employee and the commissioner, deputy commissioner or executive head of a particular agency or department. The bill does not, therefore, address the situation of a relationship between two persons not employed within the same department or agency. The example raised at the prior committee hearing, the appointment of a legislator's spouse or child to a position in a state agency or, for that matter, to a position on any legislator's personal staff, would not be within the ambit of the present bill. Of course, other rules adopted by the legislature to

manage internal affairs may address such a situation. Finally, a question was raised as to whether it would be appropriate to limit the coverage to persons related by blood or marriage. More specifically, the question concerned the possible extension of the nepotism prohibition to persons in a meretricious relationship. Without addressing any policy implications, we caution that amending the bill to obtain the contemplated policy objectives would render the legislation extremely vulnerable to challenge as violative of the constitutional guarantees to equal protection, due process and personal privacy.

Please let us know if we can offer any further assistance on this matter.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Jonathan B. Rubini
Assistant Attorney General

JBR:jb

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JUNEAU, ALASKA 99811
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P.O. Box 4-13, 3
ANCHORAGE, ALASKA 99509
248-1515



Charlie Bussell
CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
SPECIAL COMMITTEE ON FISHERIES
MEMBER
LEGISLATIVE COUNCIL
MEMBER
ALASKA CODE REVISION COMMISSION

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

April 26, 1983

Mr. Kenneth L. Brown
1501 West 33rd Avenue
Anchorage, Alaska 99503

Dear Mr. Brown:

Thanks for taking the time to write expressing your interest in House Bill 49, an Act relating to nepotism.

The House Judiciary Committee has had House Bill 49 under consideration during several hearings. I tend to agree with you. I see little or no need for this legislation.

It seems to me that our leaders and supervisors should be able to control the work being done by individuals employed for that purpose.

Thank you again for writing and for becoming a part of the legislative process.

Very truly yours,

Charlie Bussell
Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

JUDICIARY
Referral

REPRESENTATIVE CHARLES BUSSE
HOUSE JUDICIARY COMMITTEE



RE: HB - 49 (NEPOTISM)

I VEHEMENTLY OPPOSE THIS BILL, AND I SUGGEST YOU DO ALL IN YOUR POWER TO KILL IT. I WORK FOR DOT/AF - IT IS A LARGE STATE DEPARTMENT WITH A LARGE POOL OF EMPLOYEES - I SUGGEST THAT SOMEONE SEE HOW MANY EMPLOYEES WOULD BE AFFECTED IF THIS IS ENACTED.

WHAT PURPOSE DOES THE BILL SERVE THAT THE EXISTING LAW DOES NOT? AS LONG AS A PERSON DOES NOT USE THEIR POSITION OR HAVE ANY INFLUENCE IN THE HIRE OF A RELATIVE, ANY FURTHER RESTRICTIONS ARE AN INVASION OF THESE CIVIL RIGHTS. AND WHAT DOES MARITAL STATUS HAVE TO DO WITH PROMOTIONS? - WHY NOT PASS A LAW AGAINST CO-HABITATION BETWEEN EMPLOYEES? - IT IS A PROPOSAL THAT WOULD BE A FLAGRANT VIOLATION OF PRIVACY. KILL IT!

KENNETH L. BROWN
1501 W 33RD AVE
ANCHORAGE, ALASKA
99503



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

M E M O R A N D U M

March 2, 1983

TO: House Judiciary Committee

FROM: Teresa B. Cramer *Teresa B. Cramer*
Administrative Assistant

SUBJECT: Committee Substitute for House Bill 49 (State Affairs)
Nepotism in State Government

The existing statute prohibiting nepotism in state employment forbids only the employment of anyone related to the executive head of a department or agency. The statute states in full:

It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency. AS 39.10.010.

The Personnel Rule is more extensive, prohibiting the employment of relatives of the head of a division or subdivision within that division or subdivision. In addition, the Rule prohibits the employment of two related persons in the same agency unless express approval is given by both the appointing authority and the Director of Personnel. A copy of the Rule is attached.

The scope of the Personnel Rule is broader than the statutory authority granted in AS 39.10.010. The rule-making authority given to the Personnel Board by the State Personnel Act may not extend to nepotism, since the nepotism statute is not part of that Act. The Attorney General has advised the Division of Personnel that the nepotism rule exceeds the scope of statutory authority. A lawsuit has been filed challenging the Department of Transportation's implementation of nepotism prohibitions.

The Blue Ribbon Commission recommends that legislation prohibiting nepotism in state employment be adopted to provide statutory authority for the Personnel Rule. The prohibition against employing relatives does limit the opportunities for some Alaskans to find state jobs. The disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created by people working for a close relative who is a highly-placed state official.

Bill Analysis

Page 1 The first section of the Committee Substitute is based on the
Line 9 existing statute and Personnel Rule. The first paragraph
 prohibits the appointment of relatives or the spouse of the
 commissioner, assistant or deputy commissioner of a department
 or the relatives or spouse of an executive head of an agency.
 The reference to AS 39.25.020 means that the prohibition will
 extend to departments or agencies in all branches of government.

Paragraph (a) differs from the existing Personnel Rule and the statute by including reference to assistant and deputy commissioners and by its application to departments and agencies which are not part of the executive branch of government. It also differs by prohibiting the appointment rather than the employment of relatives. Prohibiting appointments of relatives permits people whose relationship is created (by marriage or adoption) after both are employed within a department to continue their employment even if one is the commissioner, deputy or assistant commissioner. However, the relative could not be promoted while related to the commissioner, since a promotion is an appointment to a higher position.

Line 16 Paragraph (b) prohibits the appointment of relatives of a division director to a position within that division. Like the first section, this prohibition extends to all branches of government through reference to AS 39.25.020.

Line 21 Paragraph (c) requires that before two relatives may be employed in the same department, the commissioner must approve the appointment in writing. This prohibition is limited to the executive branch.

Line 27 The commissioner may not approve an appointment if one of the people will be working in a direct supervisory relationship to the other spouse or relative.

Page 2 The commissioner may not approve an appointment which is
Line 1 prohibited by paragraphs (a) or (b).

Line 3 Paragraph (d) defines "second degree of kindred" as it is defined in the current Personnel Rule. The definition extends beyond the normal definition by including aunts and uncles,

House Judiciary Committee
March 2, 1983
Page Three

who are usually defined as being third degree kindred. The definition applies only to the nepotism statute.

"Second degree of kindred" is defined to include full, half, and step relationships. It does not include in-law relationships.

Line 7 The second section of the Committee Substitute provides for an immediate effective date.

TBC:lmk
Attachment

13 09.0 Nepotism

13 09.1 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the appointing authority of the agency.

13 09.2 No person may be employed in a position in any division or subdivision of any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the head of the division or subdivision of the agency.

13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director.



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

March 2, 1983

TO: House Judiciary Committee

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The Personnel Rule is more extensive, prohibiting the employment of relatives of the head of a division or subdivision within that division or subdivision. In addition, the Rule prohibits the employment of two related persons in the same agency unless express approval is given by both the appointing authority and the Director of Personnel. A copy of the Rule is attached.

The scope of the Personnel Rule is broader than the statutory authority granted in AS 39.10.010. The rule-making authority given to the Personnel Board by the State Personnel Act may not extend to nepotism, since the nepotism statute is not part of that Act. The Attorney General has advised the Division of Personnel that the nepotism rule exceeds the scope of statutory authority. A lawsuit has been filed challenging the Department of Transportation's implementation of nepotism prohibitions.

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13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director.

Sec. 39.10.010. Nepotism prohibited. It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency. (§ 1 ch 98 SLA 1959)

Am. Jur. 2d reference. — 63 Am. Jur. 2d, Public Officers and Employees, § 97.

Chapter 15. Official Bonds.

Section

- 10. Form, amount, and conditions
- 20. Obligation and effect
- 30. Action on bond
- 40. Recovery on defective bond
- 50. Procedure when bond becomes insufficient

Section

- 60. Number of sureties
- 70. Justification of sureties
- 80. Release of sureties
- 90. Proceedings for release of sureties
- 100. Failure to file new bond

Sec. 39.15.010. Form, amount, and conditions. The official bond of an officer or employee of the state required by statute, or rule or regulation under authority of law shall be in a form joint and several, and made payable to the state in the penal sum and with the conditions required by law. (§ 11-2-1 ACLA 1949)

Cross reference. — As to surety bonds furnished by the principal executive officer of each department and subordinate officials, see AS 39.05.050.

Am. Jur. 2d references. — 12 Am. Jur. 2d, Bonds, § 1 et seq.; 63 Am. Jur. 2d, Public Officers and Employees, §§ 122, 414-482.

Sec. 39.15.020. Obligation and effect. Bonds of state officers and employees are in force and obligatory upon the principal and sureties for breach of the condition of the bond committed during the time the officer or employee discharges the duties of or holds the office or appointment. Each bond is considered in force and obligatory upon the principal and sureties for the faithful discharge of all duties required of the officer or employee by any law enacted after the execution of the bond and this condition shall be set out in the bond. (§ 11-2-2 ACLA 1949)

Sec. 39.15.030. Action on bond. An official bond executed by a state officer or employee is in force and obligatory upon the principal and sureties to and for the state, and for the use and benefit of all persons injured or aggrieved by the wrongful act or default of the officer or employee in his official capacity or employment. A person injured or aggrieved may bring suit on the bond in his name. (§ 11-2-3 ACLA 1949)

1. REQUEST
 Bill/Resolution No. HB 49
 Title An Act relating to nepotism in State employment
 Requested by Abood Date 1-25-83

II. FISCAL DETAIL
 Agency Affected Administration
 Program Category Affected Centralized Administrative Services
 BRU, Program, or Subprogram(s) Affected Labor Relations
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-					
PART TIME	-0-					
TEMPORARY	-0-					

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No fiscal impact.

Guy E. Strangheim

IV. DATE 1-25-83 PREPARED BY [Signature]
 AGENCY Division of Labor Relations
 PHONE 465-4404

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 OMS Reviewed By: Liz Blecker

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 49, SB 56
 Title An Act relating to nepotism in State employment
 Requested by House State Affairs Date January 24, 1983

II. FISCAL DETAIL
 Agency Affected Administration
 Program Category Affected Central Administrative Services
 BRU, Program, or Subprogram(s) Affected Personnel
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83.	FY 84.	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0					

FUNDING (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No fiscal impact presuming the Executive Branch will not be expected to monitor or enforce this Act in the Legislative or Judicial Branch.

IV. DATE January 24, 1983 PREPARED BY Frank Raye
 AGENCY Administrator Personnel
 PHONE 465-4430

Original: Legislative Finance OMB Reviewed By: Liz Blecker
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

47D7/0121-7

COMMITTEE REPORT

2/28

(7)

HOUSE

FURTHER: JUDICIARY

1/18/83

Date: 2/25/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 49

"An Act relating to nepotism in state employment; and providing for an effective date"

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for (State Affairs) ⁴⁹ CSHB(SA) same title new title
- and recommends it do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation ² Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING DO PASS

Walt Furnace

John G. Anderson

Paul Stutz

Walt FURNACE

Ronald J. Furman

MEMBERS HAVING OTHER RECOMMENDATIONS:

W. W. [Signature] - NO REC

Rep. Walt Furnace
CHAIRMAN

HB 49 TITLE & SPONSOR SUMMARY

08:22 3/02/83 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO NEPOTISM IN STATE EMPLOYMENT; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: HOUSE RULES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 2/28/83 IN (H) JUDICIARY

08:22 3/02/83 PAGE 2 OF 2

HB 49	HOUSE	ACTION
DATE	SEQ	PAGE

LEGISLATIVE ACTION

01/18/83	01	0039
02/28/83	02	0361
02/28/83	03	0361

 FIRST READING -- COMMITTEE REPORTS
 S.A. -- CS05, NR01
 TWO F/NOTES EQUAL ZERO
 JUDICIARY
 RULES

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