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JUNEAU BAR ASSOCIATION

February 22, 1984

Senator Bill Ray
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

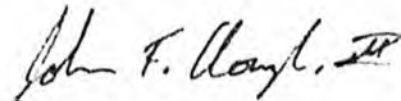
Re: Senate Bill No. 453, "An Act relating
to the Commission on Judicial Conduct;
and providing for an effective date."

Dear Senator Ray:

The Juneau Bar Association has been asked to comment upon Senate Bill 453 relating to the Commission on Judicial Conduct currently pending before your Committee. After reviewing this bill and discussing it with other members of the Juneau Bar as well as members of the Commission on Judicial Conduct, we strongly recommend the passage of this legislation. I have asked Mr. Michael M. Holmes to present this letter to your Committee as part of his testimony pertaining to the bill.

Thank you for the opportunity to comment on this legislation.

Very truly yours,



John F. Clough, III
President, Juneau Bar Association

JFC:gp

AN ACT RELATING TO THE COMMISSION ON JUDICIAL CONDUCT
AND PROVIDING FOR AN EFFECTIVE DATE.

- Section 1. Changes the name and make-up of the Commission on Judicial Qualifications
Name will be the Commission on Judicial Conduct
3 Judges or Justices
3 members who have practiced law for 10 yrs.
3 public members
- Section 2. Provides that the Commission shall inquire into an allegation that a judge, within a period of not more than 6 yrs. before the start of the current term, committed an act that constituted conduct in violation of the Code of Judicial Conduct.
- Section 3. Substitutes AS 44.62.310 (d), relating to Agency meetings public, for AS 44.62.310 (c) (2) ****(SEE ACCOMPANYING STATUTES)
- Section 4. Provides that the commission may informally and privately admonish the judge or recommend counseling.
- Section 5. Provides that acts of the commission are not valid unless concurred in by a majority of the members serving on the commission at the time the act is taken.
- Section 6. New Section.....
(b) Makes all records, files and reports of the commission confidential unless:
(1) Judge, in writing, waives confidentiality;
(2) the subject matter of the hearing has become public; then provides what the commission shall do.
(3) formal charges have been filed;
(4) there is an inquiry by the Alaska Judicial Council, then provides that the Judicial Council shall maintain the confidentiality of the information it receives.
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Section 7. New section which provides that the commission may request the judge to submit to a physical or mental examination. If the judge refuses, the fact that he refused may affect the decision on the hearing, adversely.
- Section 8. Changes the name from Commission on Judicial Qualifications, to Commission on Judicial Conduct.
- Section 9. July 1, 1984 effective date.

Quoted in Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd., Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).

Stated in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in Boehl v. Sabre-Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Public Administrative Law, §§ 553-775.

Article 6. Agency Meetings Public.

Section

- 310. Agency meetings public
- 312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

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- (2) juries;
- (3) parole or pardon boards;
- (4) meetings of a hospital medical staff; or
- (5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976)

Effect of amendment. — The 1976 amendment added the second and third sentences of subsection (a).

A meeting of the board of governors of the Alaska Bar Association in Hawaii in 1978 was not subject to the

requirements of this section. Horowitz v. Alaska Bar Ass'n, Sup. Ct. Op. No. 2059 (File Nos. 4310, 4311), P.2d (1980).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Administrative Law, §§ 281, 282.

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

- (1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;
- (2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
- (3) the people of this state do not yield their sovereignty to the agencies which serve them;
- (4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;
- (5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972)

Revisor's note. — AS 44.62.312(a) is based on Cal. Gov't C.A., sec. 54950

Cross reference. See note under AS 44.62.310.

Legislative history report. — For report on ch. 98, SLA 1972 (SB 253), see 1972 House Journal, p. 158.

Article 7. Legislative Review of Rules.

Section

320. Legislative annulment of regulations and review

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