HB

1162

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary 2/20/85 1:30 pm
" " 5/2/85 1:30 pm

3/4

COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

2/1/85

Date: ____________________

The Committee on JUDICIARY has had HB 162

"An Act relating to public utility consumer representation; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 162 (Jud) [X] same title [ ] new title

and recommends it do pass

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

[ ] reports it back without recommendation

[ ] referred to the ____________________ Committee

MEMBERS SIGNING **DO PASS**

[signature]

[signature]

[signature]

MEMBERS HAVING **OTHER RECOMMENDATIONS**:

[signature] do not pass

[signature] no rec

[signature] no rec

[signature]

CHAIRMAN

Original sponsors: Clocksin, Collins, Davis, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 152 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public utility consumer representation; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.21.410(a) is amended to read:

(a) The office of public advocacy shall

(1) perform the duties of the public guardian under AS 13.26.360 - 13.26.410;

(2) provide visitors and experts in guardianship proceedings under AS 13.26.131;

(3) provide guardian ad litem services to children in child protection actions under AS 47.17.030(c) and to wards and respondents in guardianship proceedings who will suffer financial hardship or become dependent upon a government agency or a private person or agency if the services are not provided at state expense under AS 13.26.112;

(4) provide legal representation in guardianship proceedings to respondents who are financially unable to employ attorneys under AS 13.26.106(b), to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by public agency, and to indigent parents or guardians of a minor respondent in a commitment proceeding concerning the minor under AS 47.30.775;

(5) provide legal representation and guardian ad litem services under AS 25.24.310; in cases arising under the Uniform

Interstate Compact on Juveniles (AS 47.15); in cases involving petitions to adopt a minor under AS 25.23.100(j); in cases involving petitions to remove the disabilities of a minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a); and in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public defender agency because of a conflict of interests;

(6) provide public utility consumer representation under AS 44.21.460.

* Sec. 2. AS 44.21 is amended by adding a new section to read:

Sec. 44.21.460. PUBLIC UTILITY CONSUMER REPRESENTATION. (a) A public utility consumer representation section is established in the office of public advocacy.

(b) The director of the office of public advocacy shall appoint one or more attorneys to operate the public utility consumer representation section. An appointee shall be familiar with public utility regulation and practice before public utility regulatory commissions. An appointment is for a three-year renewable term. An appointee may not be removed from service, nor may an appointee's salary be reduced, during a term except for good cause shown.

(c) The budget of the section shall be set out as an independent sub-program or element of the office of public advocacy budget submitted by the governor under the Executive Budget Act (AS 37.07). The section's proposed budget shall provide for expert witness fees and other costs of participating in regulatory proceedings in an amount adequate to allow the section to effectively represent residential public utility consumers.

(d) The section may

(1) initiate, intervene as a party in, or otherwise

participate in a hearing or other proceeding involving a public utility for the purpose of representing the interests of residential public utility consumers in the proceeding if the section determines that the result of the proceeding may substantially affect the interests of those consumers;

(2) maintain an action for judicial review of decisions of a public utility regulatory agency and intervene or otherwise participate in civil proceedings involving review or enforcement of a public utility regulatory agency action that the section determines may substantially affect the interests of residential consumers;

(3) select and contract for the services of consultants and experts to assist the section in the preparation and presentation of matters before agencies, commissions, offices or courts;

(4) initiate public education and public reports in the news media to protect and represent public utility consumer interests;

(5) have access, during normal business hours, to the records of state agencies that are not classified by law as confidential; and

(6) conduct discovery necessary to perform the duties set out in this section.

(e) The section shall submit an annual report to the governor and the legislature at the beginning of each regular session of the legislature summarizing the activities of the section in the previous fiscal year.

(f) In this section

(1) "public utility" has the meaning given in AS 42.05.712;

(2) "public utility consumer" means a residential customer of a public utility;

(3) "section" means the public utility consumer

representation section in the office of public advocacy.

* Sec. 3. This Act takes effect July 1, 1985.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

FEB 0 1985

Revision Date:

REQUEST

Bill/Resolution No.: HB 162

Title: "An Act relating to public utility consumer representation."

Sponsor: Repr. Clocksin

Requestor: House Judiciary

Date of Request: 2/5/85

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Consumer Protection Utilities Consumer Representation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		126.5	158.9	166.8	175.1	183.9
200 TRAVEL		10.5	11.0	11.6	12.2	12.8
300 CONTRACTUAL		67.8	75.8	79.6	83.6	87.8
400 SUPPLIES		10.1	8.2	8.6	9.0	9.5
500 EQUIPMENT		14.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		229.4	253.9	266.6	279.9	294.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		229.4	253.9	266.6	279.9	294.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See Attached.

Prepared By: Richard L. Pegues Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: 2/6/85

Approved by Commissioner: Richard L. Pegues /For Norman C. Gorsuch Date: 2/6/85

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Fiscal Note
Analysis
HB 162

February 6, 1984

This fiscal note provides for a three-person staff to establish an office of public utility consumer representation within the Consumer Protection Section of the Department of Law. The office will be staffed by an Attorney, an Associate Attorney and Legal Secretary if House Bill 162 is enacted and if this fiscal note is approved.

It is anticipated that the office will be primarily involved with service and rate filings before the APUC and the FCC. The APUC regulates local and intrastate utilities such as sewer, water, gas, telephone and telecommunications, steam, garbage disposal and electrical power generation and distribution. Filings before the FCC, which are of principal concern to consumers within Alaska, deal with long distance interstate access changes and rate subsidy protection (the division of payments) for high cost areas such as Alaska. Also of concern is the relationship of common carriers that have no service obligations and common certified carriers that do, such as ALASCOM.

The APUC receives hundreds of filings each year of which about 100 filings are contested and are docketed for formal hearings. The office of public utility consumer representation will review all of these contested filings and intervene in those contested filings that require representation of residential consumers, as office resources will permit. There are usually several major issues before the APUC, any one of which could take a substantial portion of the office's resources to represent.

In order to acquire utilities financial and technical expertise for major case examinations, without creating a large in-house staff, outside consultants will be used as expert witnesses. Such experts, in the fields of telecommunications, gasline transmission, electrical engineering, and finance and rate making, cost between $50 per hour and $150 per hour, plus out-of-pocket expenses. We have therefore used an average hourly rate of $100 in budgeting for expert witness services. Additionally, we expect some support costs for expert travel and the costs for exhibits and written testimony are included in this fiscal note projection. It is anticipated that up to 75 hours of expert witness work will be expended on at least 5 occasions during the year for an annual total of 375 expert witness hours.

The costs projected in this fiscal note represent the minimum funds necessary to implement this bill. A three-person staff, and the provision for outside utilities experts, will permit the office to provide utility consumer representation in a reasonable fashion. Obviously, a small staff such as this cannot

intervene in every public utility matter that may adversely impact residential consumers. However, the cost for doing so would be prohibitive. We do believe that the level of activity proposed by this fiscal note is realistic and necessary if a public utility consumer representation program is to function effectively.

Financial Analysis - HB 162

Staff

Attorney V, R25A =	$60,157
Associate Attorney II, R19A =	$41,063
Legal Secretary I, R10B =	$25,237
Total Personal Services	$126,457

Staff Travel

1. Hearing Attendance outside of Anchorage -
   5 hearings, 3 days each for 2 staff members at $80 per day.
   5 x 3 x 2 x $80 = $2,400 per diem
   Travel Cost 5 x 2 x $250 avg. RT instate fare = $2,500 travel

2. Staff travel to gather evidence -
   5 trips at 3 days each.
   5 x 3 x $80 = $1,200 per diem
   5 x 1 x $250 = $1,250 travel

3. Staff travel out-of-state to gather evidence. 3 trips at 5 days each.
   3 x 5 x $80 = $1,200 per diem
   3 x 1 x $650 = $1,950 travel

Total travel and per diem $10,500

Contractual

Communications & Postage - 600 per mo. =	$6,000
Duplicating - 400 per mo. =	$4,000
Rents & utilities est. 452 sq. ft. at $2.30 per mo. 452 x $2.30 x 10 -	$10,396
WP Equipment maintenance - 150 X 10 =	$1,500
Professional fees, hourly rate for licensed utilities experts 375 hrs. x $100 =	$37,500

Utilities experts staff support, preparation of exhibits, written testimony est. 100 hrs. x $40 =	$4,000	
Experts travel to attend hearings and offer testimony.		
5 trips x 3 days x $80 =	$1,200	subsistence
5 trips x $650 travel =	$3,250	travel
Total Contractual Services	$67,846	
Commodities - Ongoing		
Stationary, office supplies & consumables $150 x 3 x 10 =	$4,500	
Utilities/tariff/law library materials $100 x 10 x 2 =	$2,000	
Commodities - Single time		
New position offices materials $1,200 x 3 =	$3,600	
Total Commodities	$10,100	
Equipment - Single time		
New position equipment $1,500 x 3 =	$4,500	
Word Processor $10,000 x 1 =	$10,000	
Total Equipment	$14,500	
TOTAL FISCAL NOTE	$229,403	

Costs beyond FY 86 have been adjusted to delete single time costs, increase annual funding from 10 to 12 months, and they include a 5% inflation factor.

1.	POSITION TITLE Attorney V			RANGE/STEP 25X	BARG. UNIT PX	FORM 12 PAGE/LINE	COV.	APPROV.	DISA
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	ORU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 4,782/mo. X 10	47,820	
6.	Benefits	7,465	
7.	Supplemental Benefits	2,680	
8.	Fixed Benefits	2,192	
9.	TOTAL PERSONAL SERVICES 01		60,157
10.	Travel 02		5,250
11.	Contractual 03		37,400
12.	Commodities 04		3,700
13.	Equipment 05		1,500
14.	Other		
15.	TOTAL COST		108,007

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	108,007
19.		I-A Receipts 1005	
20.		Program Receipts 1020	
21.		Other	

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will serve as the senior member of the office of public utility consumer representation within the Department of Law's Consumer Protection Section. This office will be established in accordance with HB 162, if this bill is enacted. The position will be responsible for initiating, intervening and participating in state or federal hearings or proceedings for the purpose of representing the interest of residential public utilities consumers. The position will also be responsible for maintaining actions for judicial review of public utilities regulatory agency decisions and intervene or otherwise participate in civil proceedings involving review or enforcement action that may substantially affect the interests of residential consumers. Because the positions's duties are those of a public utilities regulation legal expert, allocation to the senior practicing attorney level of Attorney V is recommended.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM CONSUMER PROTECTION

ORU CONSUMER PROTECTION

UTILITIES CONSUMER PROTECTION

Revised Date

FY 81

1.	POSITION TITLE Associate Attorney II			RANGE/STEP 19 A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DIS
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	ORU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			
5.	Salary 3,193/mo. X 10		31,930	
6.	Benefits		4,984	
7.	Supplemental Benefits		1,957	
8.	Fixed Benefits		2,192	
9.	TOTAL PERSONAL SERVICES	01		41,063
10.	Travel	02		5,250
11.	Contractual	03		22,150
12.	Commodities	04		3,700
13.	Equipment	05		1,500
14.	Other			
15.	TOTAL COST			73,663

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	73,663
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will serve as the principal staff assistant to the Attorney in charge of the office of public utility consumer representations. This office will be established in accordance with HB 162, if this bill is enacted. The position will provide legal and public utilities research on behalf of the office. The research will focus on public utilities rate and service filings and will include analysis and investigations of the impacts such filings will have on public utilities residential consumers. The position will also assist the attorneys in the preparation of legal documents and evidence filed by the office in ongoing hearings and proceedings. Allocation of the position to the senior paralegal level of Associate Attorney II is recommended because of the complex nature of public utilities regulation and law.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM CONSUMER PROTECTION

ORU CONSUMER PROTECTION

UTILITIES CONSUMER PROTECTION

Revised Date

FY 8!

1.	POSITION TITLE LEGAL SECRETARY I			RANGE/STEP 10B	BARG. UNIT G	FORM 12 PAGE/LINE		APPROV.	DISAP
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8			
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1,893/mo. X 10	18,930	
6.	Benefits	2,955	
7.	Supplemental Benefits	1,160	
8.	Fixed Benefits	2,192	
9.	TOTAL PERSONAL SERVICES	01	25,237
10.	Travel	02	-0-
11.	Contractual	03	8,200
12.	Commodities	04	2,700
13.	Equipment	05	11,500
14.	Other		
15.	TOTAL COST		47,737

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	47,737
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR O&M USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This position will serve as the clerical support position for the office of public utility consumer representation. This office will b established in accordance with HB 162, if this bill is enacted. The position will provide office communications, scheduling, filing, and the production of all legal documents needed by the new office. The work of the office is expected to result in a substantial volume of legal documents, public communications and evidence requiring the full-time services of a legal secretary.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM CONSUMER PROTECTION

BRU CONSUMER PROTECTION

UTILITIES CONSUMER PROTECTION

Revised Date

FY 81

~~Need keep Original & Copy - will pick~~
~~them up Friday.~~

2/21/85

Chairman Miller, Members of House Judiciary

This is in reply to your question yesterday re; HB162. Ave January 85 cost of electricity was $.067 Kwh, for January 84 it was $.059 Kwh an increase of 14 percent.

My sole intent and purpose in testifying was to clearly state that Utility consumers, particularly those with low or fixed incomes and small businessmen are not adequately or equally represented in legislation, administration or justice in utility rate setting.

The past two years ACAP, with meager ~~Huge~~ funds, legal and other staff, has clearly demonstrated this fact both in Anchorage and Fairbanks. That with appropriate design, organization, staff and funds, this can be duplicated again and again in these two cities and other communities over the state.

H.P. Gasaway 1521 Wilma Ave Anch 99501 phone 277-2073

POSITION

ALASKA PUBLIC UTILITIES COMMISSION

HB 162 BY CLOCKSIN, et. al.

The Alaska Public Utilities Commission supports in concept this legislation. The addition of public utility consumer representation should enhance the quality of the regulatory process by institutionalizing the advocacy interests of residential consumers.

The Commission has one reservation in regard to the proposed legislation. It should not contemplate a decrease in Commission Staff, including Staff counsel or in the Commission's budget. It cannot be assumed that an Office of Public Utility Consumer Representation would in any way lessen the responsibilities of the financial analysts who audit utility filings, the engineers who investigate quality of service problems and analyze the adequacy of plant investment, or the tariff specialists who initially make recommendations to the Commission in regard to utility requests for tariff changes. In fact, this legislation should result in longer proceedings, more voluminous records and broadened Staff responsibilities - all towards the desirable goal of better decision-making. Consequently, the Commission is adamant that the establishment of a Public Utility Consumer Representation Office should not be a substitute for any existing personnel or monies currently designated to and for the Commission.

February 19, 1985

Telecopied 2/19/85 -
please call Katherine Wallen at 465-2504
who will deliver to appropriate Committee

Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801 907-586-2345

March 1, 1985

TO: Rep. Mike Miller
House Judiciary Committee

FROM: Scott Highleyman, Executive Director Scott Highleyman
Alaska Environmental Lobby

RE: HB 162, Office of Public Utility Consumer Representation

The AEL is happy to join with a broad range of interests to support HB 162 in creating an office of public utility consumer representation. Creation of this office makes good sense from a public policy perspective. It also makes good sense from a conservation point-of-view.

The Legislature over the last few years has debated several large and small energy producing, state sponsored ventures. Yet we must not forget that the cheapest net production of electricity is through conservation. Utilities receive a fairly constant rate of return on capital regardless of the size of that capital investment. Utilities, therefore, have an incentive to build new, large generating units since their return will then be proportionately larger.

From the consumer angle, that equation is a little different. The consumer pays higher bills for bigger projects. By institutionally adding in the consumer's interest into the rate setting process, we in effect require utilities to show efficiency in their service. Rate increases will be scrutinized more consistently from the consumer angle. This will cause utilities to run a tighter ship, to better justify proposed rate increases, and to look for other energy producing methods such as conservation to increase the net amount of electricity available to Alaskans.

As a coalition that supports fiscal conservatism in energy production as well as conservation of our natural resources, the AEL supports HB 162. A public utilities consumer advocate will ensure a balanced approach to part of the energy equation--the setting of utility rates--and increase our energy efficiency and fairness.

Thank you for your consideration of this legislation. We urge your prompt and favorable attention to creation of this important office.

TO: Senator Fred Zharoff
Representative Adelheid Herrmann

House Judiciary Committee Members,
Representatives M. Mike Miller,
John Sund, Max Gruenberg, Robin Taylor,
Don Clocksin, Fritz Pettyjohn, Randy Phillips

FROM: Fred Torrisi

RE: HB 162

DATE: February 19, 1985

In the fast-changing, deregulated world of today, it is becoming increasingly difficult for those living in remote locations to pay for basic utilities. In all locations it is important that rate schedules be written so as to protect those persons who only use a minimum amount. The Office of Public Utility Consumer Representation which is established by HB 162 is an important step towards protection of these rights.

Alaska Environmental Lobby, Inc.

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Bills would ally state, consumers

By JIM ERICKSON
Daily News business reporter

The state would go to bat for residential customers when utilities want to raise telephone, natural gas or electric rates, under bills being considered by the Alaska legislature.

Legislation introduced this month in the House and Senate would create the Office of Public Utility Consumer Representation, "an advocacy group for consumers to attempt to keep rates responsive to consumer demands," said Don Clocksin, D-Anchorage, one of the sponsors of the legislation.

The office would be part of the state Department of Law.

Besides arguing for consumers before the Alaska Public Utilities Commission, the office also would issue news releases to educate and to protect consumers' interests.

The public utilities commission regulates rates for Alaska's public and private telephone, electric, natural gas and other utilities.

Office proposed to argue utility rates

Utilities routinely spend thousands of dollars on attorneys and expert witnesses to make their case before the commission, Clocksin said. Those costs are then passed on to the consumer in higher bills.

"But very often (commissioners) are presented with evidence only from one side, the side seeking a tariff change," he said.

"They need to hear the side that effects the individual consumer or groups of consumers," Clocksin said. Consumers as a group do not have the ability to hire their own attorneys to argue against rate increases, he said.

The law department estimated the new office, staffed by two full-time lawyers and a clerk, would cost $229,000 in the first year. Included in the amount was $67,000 for hiring of utility consultants and expert witnesses who could testify in regulatory proceedings.

Clocksin said 37 states have similar agencies. "Several of the states have analyzed costs and all indicate substantial savings to consumers much in excess of actual cost of the office itself," he said.

A hearing on the measure is scheduled for 1:30 p.m. Wednesday before the House Judiciary committee. The teleconference hearing will be transmitted to the Anchorage Legislative Information Office, 1024 W. Sixth Ave.

The Alaska Consumer Advocacy Program, a local consumer group funded by annual appropriations from the legislature, infrequently intervenes on behalf of the public in rate increase cases.

But ACAP director Maureen Kennedy said the group has difficulty fighting well-funded and well-prepared utility lawyers, because ACAP funding is uncertain and inadequate.

ACAP has in the past been forced to lay off staff due to budget cuts. That makes it difficult to provide "long term, quality" consumer representation in the complicated rate cases, Kennedy said.

The budget for ACAP this year is $81,000.

The commission and the state Attorney General's Office last year supported the concept of the proposed office when a similar bill was introduced in the Senate.

However, both APUC chairwoman Carolyn Guess and Attorney General Norman Gorsuch stated in written testimony that the establishment of the office might create the appearance of a conflict of interest within the Attorney General's office, because the commission staff is represented in proceedings by an assistant attorney general.

The Need for Representation of Residential Utility Ratepayers in Alaska

A Statement by Representative Don Clocksin

During the past several years, Alaskans have experienced large increases in all types of public utility rates. At the present time residential utility ratepayers have no institutional representation in proceedings that set new rates. In contrast to the ratepayer, utilities are ably represented and can pass on legal fees to those consumers in the form of even higher rates.

37 other states, 5 in the last year, have recognized that gross inequity and passed legislation that affords representation to ratepayers. The effect has been large cost savings for citizens of those states.

The Alaska Department of Law sees the need for this legislation and I'm proud, along with Representatives Collins, Davis, M. M. Miller and Navarre to introduce this legislation designed to protect the interests of the vast majority of Alaskans who face rising utility rates.

The Need for Representation of Residential Utility Ratepayers in Alaska

Currently, the APUC (Alaska Public Utilities Commission) acts as a judge in listening to testimony from utilities and other interested parties on rate increase requests and other policy issues. The Commission staff represents the combined interests of the utility, commercial users and residential ratepayers in making its recommendation. Neither the Commission nor its staff is responsible for protecting the interests of consumers.

Utilities hire lawyers and accountants to argue their case, then pass the costs of that representation on to the ratepayers through rate increases. Commercial and industrial users often form associations to represent their interests, then pass the costs on to consumers through higher-priced goods. In Alaska, no body is empowered to represent the specific interests of consumers before the APUC. Moreover, the Commission is forbidden from taking a position not advocated by one of the parties to a proceeding. Thus, if neither the utility nor the commercial users nor the staff (arguing the combined interests) advocates a position most advantageous to consumers, the APUC cannot issue an order to that effect.

The arrangement is similar to a courtroom: If the prosecutor asks for an assault conviction, the judge cannot approve a murder conviction in the same proceeding. Likewise, our judicial system provides for a defense attorney; the judge is not responsible for hearing the prosecutor's arguments and advocating the rights of the defendant--the defense attorney has that responsibility.

Thirty-seven other states have recognized this inequity and established offices similar to the one proposed or have authorized citizen utility boards (CUBs), funded by ratepayers through solicitations enclosed in utility bills. Maryland set up its Office of Public Counsel in 1924 and 5 states organized offices this past legislative session.

The offices of utility consumer representation have proven to be cost effective in providing consumer advocacy. In 1981, analyst David Schwartz conducted a study of the offices to evaluate the reductions in rate increases brought about solely through the efforts of the offices, compared to their annual budgets. For example, he cites the Ohio office, where the Consumer Counsel effected direct savings of $61.3 million over 3 years. The offices in Massachusetts and Missouri brought about a direct savings of $47.5 million in 2 years, an average of $5.5 million per case. The budgets of these two offices were only $575,000 and $412,400 respectively in 1984.

According to Schwartz, the offices have provided high QUALITY representation. Many state offices have succeeded in appealing to the courts or petitioning other regulatory bodies to overrule decisions made at the Commission level. In 1980, for example, the Missouri Supreme Court ruled in favor of the Office of Public Counsel, requiring that automatic utility rate adjustment clauses be substituted with stricter regulatory review of cost fluctuations.

The offices have encouraged utilities to operate more efficiently. Despite the successes of the offices outlined above, utilities have not gone out of business and consumers have not been faced with massive rate increases on the rebound. Closer monitoring and evaluation of utility rate increases have forced utilities to more carefully justify proposals and to run tighter, leaner operations.

The Alaska Public Utilities Commissioners and the State Attorney General support the establishment of an Office of Consumer Utility Representation to protect the interests of residential ratepayers in Alaska.

MEMORANDUM State of Alaska

TO: Senate State Affairs Commitee
Senator Vic Fischer, Chairman
Pouch V (Mail Stop 3100)
Juneau, Alaska 99811

ATTN: Nancy Lord

DATE: February 22, 1984

FILE NO:

TELEPHONE NO:

FROM: Carolyn S. Guess, Chairman
The Alaska Public Utilities Commission

SUBJECT: Comments on SB 452

The Alaska Public Utilities Commission supports in concept this legislation. The addition of public utility consumer representation should enhance the quality of the regulatory process by institutionalizing the advocacy interests of residential consumers.

The Commission has two reservations in regard to the proposed legislation. 1) This legislation should not contemplate a decrease in Commission Staff, including Staff counsel or in the Commisssion's budget. It cannot be assumed that an Office of Public Utility Consumer Representation would in any way lessen the responsibilities of the financial analysts who audit utility filings, the engineers who investigate quality of service problems and analyze the adequacy of plant investment, or the tariff specialists who initially make recommendations to the Commission in regard to utility requests for tariff changes. In fact, this legislation should result in longer proceedings, more voluminous records and broadened Staff responsibilities - all towards the desirable good of better decision-making. Consequently, the Commission is adamant that the establishment of a Public Utility Consumer Representation Office should not be a substitute for any existing personnel or monies currently designated to and for the Commission. 2) The second reservation is in regard to whether or not the establishment of Public Utility Consumer Representation within the Department of Law presents a conflict to the existing function of the Assistant Attorneys General assigned to the Commission Staff. This issue has two dimensions; one internal to the Attorney General's office (see the attached memorandum from Virginia Rusch), and the second between the Commission and the Attorney General's Office. The Commission is uncomfortable with legal counsel provided by an adversarial party and questions whether other parties to proceedings will accept the Commission's objectivity under those circumstances. Accordingly, the Commission would recommend that if the legislation is adopted the Commission be budgeted for two attorney positions of its own hire.

The legislature may want to consider defining "residential consumer" in that there have been and will continue to be residential consumers with differing interests in utility proceedings, i.e., the Chugach retail residential consumer and the Homer and Matanuska wholesale residential consumer; the residential telephone consumer in Anaktuvuk Pass who depends on the carrier of last resort, and the residential consumer in Anchorage desirous of service from an inter-exchange competitor of Alascom; the all-electric heat consumer and the minimal consumption user of any electric utility.

March 9, 1984

The Honorable Vic Fischer
Chairman, Senate State Affairs Committee
Alaska State Senate
Pouch V
Juneau, Ak 99811

Re: SB 452

Dear Senator Fischer:

Senator Bill Ray and other members of the Senate State Affairs Committee have requested my written comments on SB 452 which establishes on office of consumer representation for utility matters within the Consumer Protection Section of the Office of the Attorney General.

I believe the concept of consumer representation for utility rate hearings is laudible and I commend you for making this proposal. If the Office of the Attorney General is funded by the Legislature to provide this function, we will endeavor to do so effectively and efficiently.

The current budget submitted by the Department of Law does not contain a fiscal request sufficient to provide for the services envisioned by SB 452. My current priorities are reflected in the budgetary submission prepared by the Department of Law and submitted by the Governor. If the Legislature enacts this bill, I would strongly urge the Legislature to review if any, an appropriate means of financing the consumer representation positions outlined in the fiscal note previously submitted by my office. It would not be my intention to shift funds from my agency priorities and programs to fund this new responsibility.

During the course of the hearing held on February 23, 1984, several questions surfaced about establishment of a consumer advocate within the Department of Law. Basically, these questions revolved around two issues:

1. whether placement of the proposed consumer advocacy function in the Attorney General's Office would create a conflict of interest;

2. whether a proposal in the Legislature which gives the advocate responsibility for disseminating information to the public, conflicts with the Code of Professional Responsibility for Lawyers as established by the Alaska Bar Association.

I am acutely sensitive to the dramatic interest in conflict of interests in our state at this time. Under existing law at AS 42.05.111, the Attorney General's Office is legal counsel for the Public Utilities Commission. Establishment of a consumer advocate within the Attorney General's Office superficially creates the appearance of a conflict of interest.

However, even though two assistant attorney's general may have occasion to advocate divergent positions, a conflict of interest is avoided if direct supervisory authority for each attorney is separately lodged. Several other states, including New Mexico and the State of Washington, require their Office of the Attorney General to provide dual services to different state agencies which sometimes have competing interests. The New Mexico Supreme Court recently decided In the Matter of the Rates and Charges of the Mountain States Telephone and Telegraph Company, 653 P.2d 501 (New Mexico, 1982) that no actual conflict existed where the Attorney General represented the state utility commission and served as a consumer advocate.

The New Mexico court reasoned that the Attorney General did not exercise direct control over the advocacy of the assistant attorney's general who represented the commission. Other states are in accord with this reasoning. See State v. Mississippi Public Services Commission, 418 So. 2d 779 (1982), and Connecticut Commission on Special Revenue v. Connecticut Freedom of Information Commission, 174 Connecticut 387 A.2d 533 (1978).

I believe that when the performance of any legal duties required of the Attorney General presents an actual or perceived conflict of interest, different assistant attorney general's must be assigned to handle any inconsistent functions. This common sense approach is supported by cases in several jurisdictions. Cf. Medical Disciplinary Board v. Johnston, 99 WN 2d 466, _____ P.2d _____ (1983) and Shaffer v. State Board of Veterinary Medicine, 237 S.E.2d 510 (1977).

In summary, I note that the supervision of the APUC attorneys and the consumer representative attorney will be

separated according to SB 452. This separation adequately insulates the Office of the Attorney General from the perceived conflict of interest problem.

The second possible problem in the proposed legislation is raised at Section 44.23.070(d)(4) of the bill which states that the Office of Public Utility representation may:

> assist and advise individual public utility consumers and public utility consumer organizations on matters concerning public utilities that serve the individuals or the members of public utility consumer organizations.

The language which allows the public utility advocate to advise consumers was raised as an issue because it may bring the lawyer advocate in conflict with the Code of Professional Responsibility applicable to all members of the Alaska Bar, found at Section DR7-107 (H) and (J). The relevant section of this Code prohibits lawyers from publicizing their positions taken before adminstrative and judicial proceedings. The case law is well settled that the attorney's general have an implicit duty by virtue of their office "to inform people of (the) state of action taken in his (or her) official capacity". Gold Seal Chinchillas Inc. v. State, 420 P.2d section 698, 701 (WN. 1966). See also FTC v. Cinderella Career and Finishing Schools Inc., 404 F.2d 1308 (D.C. Cir. 1968). Thus, constraints that may be appropriate for the private bar designed to avoid "trial" of cases in the press and public are reduced for the Attorney General who has an obligation to inform the citizens of the state regarding matters which may affect their interest.

I trust this adequately outlines my position on this matter and I welcome you or the members of your Committee to make additional inquiry if I can be of any further assistance.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG: eer

cc: Senator Bill Ray
Senator Arliss Sturgulewski
Senator Pat Rodey
Senator Tim Kelly

intervene in every public utility matter that may adversely impact residential consumers. However, the cost for doing so would be prohibitive. We do believe that the level of activity proposed by this fiscal note is realistic and necessary if a public utility consumer representation program is to function effectively.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 162

Title: "An Act relating to public utility consumer representation."

Sponsor: Repr. Clocksin

Requestor: House Judiciary

Date of Request: 2/5/85

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Consumer Protection Utilities Consumer Representation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		126.5	158.9	166.8	175.1	183.9
200 TRAVEL		10.5	11.0	11.6	12.2	12.8
300 CONTRACTUAL		67.8	75.8	79.6	83.6	87.8
400 SUPPLIES		10.1	8.2	8.6	9.0	9.5
500 EQUIPMENT		14.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		229.4	253.9	266.6	279.9	294.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		229.4	253.9	266.6	279.9	294.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See Attached.

Richard L. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: 2/6/85

Richard L. Pegues /for

Approved by Commissioner: Norman C. Gorsuch Date: 2/6/85

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

1.	POSITION TITLE Attorney V			RANGE/STEP 25X	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.
3.	CONTINUATION LEVEL		ADDITION					

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 4,782/mo. X 10	47,820	
6.	Benefits	7,465	
7.	Supplemental Benefits	2,680	
8.	Fixed Benefits	2,192	
9.	TOTAL PERSONAL SERVICES	01	60,157
10.	Travel	02	5,250
11.	Contractual	03	37,400
12.	Commodities	04	3,700
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		108,007

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	108,007
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This position will serve as the senior member of the office of public utility consumer representation within the Department of Law's Consumer Protection Section. This office will be established in accordance with HB 162, if this bill is enacted. The position will be responsible for initiating, intervening and participating in state or federal hearings or proceedings for the purpose of representing the interest of residential public utilities consumers. The position will also be responsible for maintaining actions for judicial review of public utilities regulatory agency decisions and intervene or otherwise participate in civil proceedings involving review or enforcement action that may substantially affect the interests of residential consumers. Because the positions's duties are those of a public utilities regulation legal expert, allocation to the senior practicing attorney level of Attorney V is recommended.

13. REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM CONSUMER PROTECTION

DRU CONSUMER PROTECTION

FY.8

1.	POSITION TITLE Associate Attorney II			RANGE/STEP 19 A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DIS
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	ORU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION				

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 3,193/mo. X 10	31,930	
6.	Benefits	4,984	
7.	Supplemental Benefits	1,957	
8.	Fixed Benefits	2,192	
9.	TOTAL PERSONAL SERVICES	01	41,063
10.	Travel	02	5,250
11.	Contractual	03	22,150
12.	Commodities	04	3,700
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		73,663

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	73,663
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

Justification

This position will serve as the principal staff assistant to the Attorney in charge of the office of public utility consumer representations. This office will be established in accordance with HB 162, if this bill is enacted. The position will provide legal and public utilities research on behalf of the office. The research will focus on public utilities rate and service filings and will include analysis and investigations of the impacts such filings will have on public utilities residential consumers. The position will also assist the attorneys in the preparation of legal documents and evidence filed by the office in ongoing hearings and proceedings. Allocation of the position to the senior paralegal level of Associate Attorney II is recommended because of the complex nature of public utilities regulation and law.

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM CONSUMER PROTECTION

ORU CONSUMER PROTECTION

FY.8

1.	POSITION TITLE LEGAL SECRETARY I			RANGE/STEP 10B	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DIS
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	ORU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 1,893/mo. X 10	18,930	
6.	Benefits	2,955	
7.	Supplemental Benefits	1,160	
8.	Fixed Benefits	2,192	
9.	TOTAL PERSONAL SERVICES	01	25,237
10.	Travel	02	-0-
11.	Contractual	03	8,300
12.	Commodities	04	2,700
13.	Equipment	05	11,500
14.	Other		
15.	TOTAL COST		47,737

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	47,737
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR OMB USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This position will serve as the clerical support position for the office of public utility consumer representation. This office will be established in accordance with HB 162, if this bill is enacted. The position will provide office communications, scheduling, filing, and the production of all legal documents needed by the new office. The work of the office is expected to result in a substantial volume of legal documents, public communications and evidence requiring the full-time services of a legal secretary.

3. REQUEST FOR

AGENCY DEPARTMENT OF LAW

PROGRAM CONSUMER PROTECTION

ORU CONSUMER PROTECTION

FY.8

Utilities experts staff support, preparation of exhibits, written testimony est. 100 hrs. x $40 =	$4,000	
Experts travel to attend hearings and offer testimony.		
5 trips x 3 days x $80 =	$1,200	subsistence
5 trips x $650 travel =	$3,250	travel
Total Contractual Services	$67,846	

Commodities - Ongoing

Stationary, office supplies & consumables $150 x 3 x 10 =	$4,500
Utilities/tariff/law library materials $100 x 10 x 2 =	$2,000

Commodities - Single time

New position offices materials $1,200 x 3 =	$3,600
Total Commodities	$10,100

Equipment - Single time

New position equipment $1,500 x 3 =	$4,500
Word Processor $10,000 x 1 =	$10,000
Total Equipment	$14,500
TOTAL FISCAL NOTE	$229,403

Costs beyond FY 86 have been adjusted to delete single time costs, increase annual funding from 10 to 12 months, and they include a 5% inflation factor.

Financial Analysis - HB 162

Staff

Attorney V, R25A =	$60,157
Associate Attorney II, R19A =	$41,063
Legal Secretary I, R10B =	$25,237
Total Personal Services	$126,457

Staff Travel

1. Hearing Attendance outside of Anchorage - 5 hearings, 3 days each for 2 staff members at $80 per day.
   5 x 3 x 2 x $80 = $2,400 per diem
   Travel Cost 5 x 2 x $250 avg. RT instate fare = $2,500 travel

2. Staff travel to gather evidence - 5 trips at 3 days each.
   5 x 3 x $80 = $1,200 per diem
   5 x 1 x $250 = $1,250 travel

3. Staff travel out-of-state to gather evidence. 3 trips at 5 days each.
   3 x 5 x $80 = $1,200 per diem
   3 x 1 x $650 = $1,950 travel

Total travel and per diem $10,500

Contractual

Communications & Postage - 600 per mo. =	$6,000
Duplicating - 400 per mo. =	$4,000
Rents & utilities est. 452 sq. ft. at $2.30 per mo. 452 x $2.30 x 10 -	$10,396
WP Equipment maintenance - 150 X 10 =	$1,500
Professional fees, hourly rate for licensed utilities experts 375 hrs. x $100 =	$37,500

Fiscal Note
Analysis
HB 162

February 6, 1984

This fiscal note provides for a three-person staff to establish an office of public utility consumer representation within the Consumer Protection Section of the Department of Law. The office will be staffed by an Attorney, an Associate Attorney and Legal Secretary if House Bill 162 is enacted and if this fiscal note is approved.

It is anticipated that the office will be primarily involved with service and rate filings before the APUC and the FCC. The APUC regulates local and intrastate utilities such as sewer, water, gas, telephone and telecommunications, steam, garbage disposal and electrical power generation and distribution. Filings before the FCC, which are of principal concern to consumers within Alaska, deal with long distance interstate access changes and rate subsidy protection (the division of payments) for high cost areas such as Alaska. Also of concern is the relationship of common carriers that have no service obligations and common certified carriers that do, such as ALASCOM.

The APUC receives hundreds of filings each year of which about 100 filings are contested and are docketed for formal hearings. The office of public utility consumer representation will review all of these contested filings and intervene in those contested filings that require representation of residential consumers, as office resources will permit. There are usually several major issues before the APUC, any one of which could take a substantial portion of the office's resources to represent.

In order to acquire utilities financial and technical expertise for major case examinations, without creating a large in-house staff, outside consultants will be used as expert witnesses. Such experts, in the fields of telecommunications, gasline transmission, electrical engineering, and finance and rate making, cost between $50 per hour and $150 per hour, plus out-of-pocket expenses. We have therefore used an average hourly rate of $100 in budgeting for expert witness services. Additionally, we expect some support costs for expert travel and the costs for exhibits and written testimony are included in this fiscal note projection. It is anticipated that up to 75 hours of expert witness work will be expended on at least 5 occasions during the year for an annual total of 375 expert witness hours.

The costs projected in this fiscal note represent the minimum funds necessary to implement this bill. A three-person staff, and the provision for outside utilities experts, will permit the office to provide utility consumer representation in a reasonable fashion. Obviously, a small staff such as this cannot

ALASKA PUBLIC INTEREST RESEARCH GROUP
Post Office Box 1093/Anchorage, Alaska 99510/(907) 278-3661

February 20, 1985

Dear Rep. Miller:

Enclosed is a copy of my testimony on HB 162 before the House Judiciary Committee.

Please feel free to give me a call if I can answer any questions about the issue.

Sincerely,

Maureen Kennedy

Maureen Kennedy
Director

ALASKA PUBLIC INTEREST RESEARCH GROUP
Post Office Box 1093/Anchorage, Alaska 99510/(907) 278-3661

Good afternoon. My name is Maureen Kennedy. I am Director of the Alaska Public Interest Research Group. AkPIRG has 600 members statewide and works on economic issues of concern to our members. We have worked on utility issues for much of our 11 year history.

We are very supportive of the Office authorized in HB 162. Once the bill is passed, Alaska will join 37 other states which provide for representation of utility ratepayers within state government. The logic for establishing such an office is straightforward: utilities argue their rate cases using funds provided by the ratepayers themselves. Costs of representation are rolled into the rate base and passed on to consumers in the form of rate increases. So the utilities are covered. The past also shows that commercial or wholesale utility interests are able to represent themselves whenever rate increases affect them as a group. On the other hand, it is nearly impossible for one ratepayer or a group of ratepayers to represent themselves, to analyze a rate proposal or policy change, and to pay for it. For example, when AkPIRG intervened in Alascom's 85% rate increase request in 1978, we spent $2,500 on attorney's fees compared to Alascom's estimated $1 million. Those 37 states agree that it is the government's responsibility to make sure

that the citizens' interests are clearly and adequately argued before the Commission.

Right now, the APUC, acting as a judge in the proceeding, hears all the utility's reasons why a rate increase should be approved, and its underfunded staff must ferret out the rest of the story--are the estimates correct? Will this policy change have that result? What happened to the revenue from last year's rate increase? Contrary to popular opinion, the APUC staff is not responsible for representing the ratepayer's interests, but rather the combined interests of the utility, the residential ratepayer and the commercial and industrial users.

The legislative history is very clear that the two "consumer" slots were established to broaden the scope of the Commission, not to represent consumer interests. Those commissioners must balance the interests of the utilities and users, just as the person filling the "business" slot is required to balance consumer interests with utility interests. If lawyers make a convincing case for a rate increase, all commissioners have a responsibility to approve it.

Nationally, most utility decisions come down somewhere between the staff and utility positions if the ratepayer is not represented specifically. If a state adds an Office of Public Utility Consumer Representation, however, decisions end up in the middle, between the utility and the Office. Commissioners say that more information from additional sources makes for better more equitable decisions.

This conclusion is borne out by analysis of the impact of

the North Carolina Office of Public Advocacy on approved rate increases between 1974 and 1980. Before the office was established in 1977, the PUC approved 90.3% of requests for electric rate increases. In the following three years, only 70.2% of requests were approved. This reduction represented a $247 million savings to ratepayers. Correspondingly, approved requests for telephone rate increases decreased from 70% to 46% after the Office was established. None of the utilities has gone out of business as a result of the recent decisions of the PUC; in fact, I would argue that the utilities are in better shape as they run leaner, more efficient operations. And clearly, the citizens of North Carolina have benefited from reduced utility rates.

All the Offices have saved consumers substantially more in utility bills than they have cost the taxpayer. The North Carolina office points to $50 million in savings in 1979. Ohio's office saved $61.3 million between '77 and '80, and Florida, Arkansas, Missouri and New Mexico saved citizens of those states $113.3 million during the same time period, including $49 million in direct refunds to consumers.

These savings are <u>direct</u> savings; that is, no other party to the proceedings argued for these decreases. There were additional situations where both the offices and the PUC staff both might have argued for the lower rate increases. An Alaskan Office of Public Utility Consumer Representation promises to bring similar benefits to Alaskans.

Let's be clear. Staff for these offices do not go off helter skelter arguing for rate cuts for the sake of rate cuts

for ratepayers. The offices employ staff attorneys, economists, accountants, engineers and telecommunications specialists to analyze utility issues and present well-reasoned arguments to the commission. In fact, the quality of representation at the offices has been proven: in those few cases where an Office has gone to court on an issue, it usually wins.

Nationally, offices tend to be split, housed either within the AG's office or under the governor's office as a separate entity--accountable to the governor, to the legislature, or to a board appointed by one of the above. Theoretically, AARP/RG favors an independent office which could be less susceptible to political pressure by utilities through the governor or the AG. This pressure is a very real threat, and at least one office has closed down as legislators realized the pressure was castrating the office.

Of those offices within the AG's office, a half dozen or so also have AG staff representing the PUC. No problems with a conflict of interest have developed. In fact, three of these states, New Mexico, Connecticut and Mississippi, have been brought to court over the issue by utilities. In each instance, the court has agreed that the alleged conflict does not exist.

Here in Alaska, both the AG and the Public Utilities Commission agree that a conflict of interest is not a problem. We agree with that conclusion.

It has been suggested that in order to avoid the perceived conflict of interest, that the Office be housed in the new Office of Public Advocacy. If this is the only mechanism acceptable to

the legislature, we would support it. However, we have strong concerns that the function would get lost in the shuffle of a brand new office whose other functions include representing children in custody proceedings and murderers in court. The Consumer Protection Division of the AG's office performs a function parallel to that of the proposed office and is well-established. In fact, many states roll the dual functions of the consumer protection and ratepayer representation into one office.

Likewise, we are concerned about the fiscal note the proposal carries. If approved, Alaska's Office will have the second lowest budget of all 37 state offices. In order to be effective, the Office must have legal AND financial staff. Utilities often use the technical complexity of utility economics to discourage even PUC analysis of issues. We would go so far as to suggest that if only two professional staff are hired that one be an accountant/economist, or at least an attorney with a very strong financial background. We are better off with the current system than with an Office will all the responsibility and no resources to adequately represent ratepayers.

Each of the responsibilities listed on p. 2 of the bill is necessary if this Office is to function properly. Many issues of importance to Alaskan citizens must be argued before bodies other than the APUC--interstate telephone issues, for instance, come under the jurisdiction of the FCC. Utilities can go to the courts if they feel the APUC has erred in a decision; the Office should be able to do so as well. The APUC often will not allow parties to intervene in a proceeding unless the party can pay for

an expert witness to significantly add to the record. (And experts cost money. Chugach pays its witnesses between $75 and $300 a day for their services. The contractual portion of the fiscal note should be increased.)

Now, you will be hearing great opposition to this bill from utility lobbyists and general managers. If I were a utility policymaker, I would oppose HB 162 as well. It would make it more difficult for me to convince the APUC that it should grant me a rate increase, and might set my rate of return lower than I might have liked.

Their arguments will be that proceedings will take twice as long, that an office can't represent the interests of all ratepayers around the state at once, that they have consumer advisory boards of ratepayers or coop members themselves which represent consumer interests adequately, that staff from the Office won't understand the real world of utility management and finances, that consumers are already represented through the "consumer" members on the APUC, and perhaps they will bring up the conflict of interest issue.

The utilities would be correct on only one point: regulatory decisions will take longer. If more parties are arguing, decisions take longer. With an Office of Public Utility Ratepayer Representation, the ultimate decisions will be based on more information, will be better decisions and will be more equitable.

These days, coops are nearly indistinguishable from investor-owned utilities. The APUC staff and Commission think that coop rate requests are too high just as often as they

criticize AEL&P or Alascom. Coop members are just as disgruntled about high utility rates as other utility customers, and the few times that most utilities, including MEA, tried to get membership to end regulation by the APUC, arguing that members could control utility policies at the coop voting booth, members disagreed and voted for continued APUC oversight. Clearly, members do not think the coops adequately represent their interests.

The remaining issue is the statewide equity issue. How can the Office represent telephone customers in Aniak as well as Anchorage? This too is a red herring. Does this mean that Alascom or the APUC staff cannot take a position on a statewide policy or rate issue? Of course not. The utility, the APUC staff and any other intervenors take the position they think best and most equitably balances the interests of ratepayers statewide. As an added protection, the Commission itself makes the final decision balancing those interests.

Other states have had over 60 years experience in representing consumers before regulatory bodies. We are not striking out into new territory, we are catching up with what's par for the course in other states. I would urge you to pass the bill out of committee today, and urge your colleagues to support it once it reaches the floor.

Rep. M. M. Miller
HB 162

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

MEMORANDUM

TO: House Judiciary Committee DATE: February 25, 1985

FROM: Representative Don Clocksin SUBJECT: HB 162 Public Utility Consumer Representation

As promised, here are copies of legal decisions relating to the conflict issue surrounding HB 162, an act creating an Office of Public Utility Consumer Representation.

I hope you will find these materials useful in your consideration of this issue.

DC:JD:blg

Attachments

[13] Sections 78–45b–4 and –5 are obviously remedial and procedural in nature. They serve only to facilitate recovery of existing child support debts. They create no new obligations, and destroy no vested interests. There is no basis in reason or law for not applying those sections to actions accrued or pending at the time the laws were enacted.

Affirmed. No costs.

HA[illegible], C.J., and OAKS, HOWE and DURHAM, JJ., concur.

99 Wash.2d 466

In the Matter of the Suspension or Revocation of the License to Practice Medicine of James JOHNSTON.

WASHINGTON STATE MEDICAL DISCIPLINARY BOARD, Petitioner,

v.

James C. JOHNSTON, M.D., Respondent.

No. 48104–1.

Supreme Court of Washington, En Banc.

May 5, 1983.

Physician sought review of an order denying his petition seeking to reverse the State Medical Disciplinary Board's decision to revoke his license to practice medicine. The Superior Court, Thurston County, Hewitt Henry, J., denied the petition, and the physician appealed. The Court of Appeals, 29 Wash.App. 613, 630 P.2d 1354, reversed and remanded. Appeal was taken. The Supreme Court, William H. Williams, C.J., held that: (1) the physician was not deprived of due process in the proceeding; (2) the fact that investigative and adjudicative functions were combined in one agency and the fact that the same assistant attorney general served both as the Board's legal advisor and prosecutor did not deny the physician a fair, impartial and neutral hearing; and (3) the Administrative Procedure Act was not violated in the proceedings.

Decision of Court of Appeals reversed and decision of trial court reinstated.

Utter, J., concurred in the result with an opinion in which Dolliver and Dimmick, JJ., joined.

Rosellini, J., dissented in an opinion in which Dore, J., concurred.

1. Constitutional Law ⇐255(1), 278(1)

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within meaning of due process clauses of Fifth and Fourteenth Amendments. U.S.C.A. Const.Amends. 5, 14.

2. Constitutional Law ⇐287.2(5)

Professional license revocation proceeding is "quasi-criminal" in nature and, accordingly, entitled to protection of due process. U.S.C.A. Const.Amends. 5, 14.

3. Constitutional Law ⇐318(1)

Although biased decisionmaker is constitutionally unacceptable, where there is merely a general predilection toward a given result which does not prevent agency members from deciding particular case fairly, there is no deprivation of due process. U.S.C.A. Const.Amends. 5, 14.

4. Physicians and Surgeons ⇐11.3(4)

Although comments of member of State Medical Disciplinary Board tended to demonstrate possible prejudgment bias against physician and his unorthodox medical practices, when read in light of Board's duty to take emergency action to summarily suspend physician's license if necessary to protect public, those comments were an elaboration on why physician's license had to be suspended summarily for protection of public and did not indicate prejudgment bias. West's RCWA 18.72.150(6); U.S.C.A. Const.Amends. 5, 14.

5. Constitutional Law ⇐287.2(5)

Procedures of State Medical Disciplinary Board did not violate physician's right to due process in disciplinary proceeding by concentrating investigatory, prosecutory and adjudicatory functions in one body. U.S.C.A. Const.Amends. 5, 14.

6. Constitutional Law ⇐287.2(5)

It was not necessary to read due process clause of State Constitution more broadly than federal due process clause so as to determine whether concentration of investigatory, prosecutory and adjudicatory functions in State Medical Disciplinary Board was impermissible where appearance of fairness doctrine already provided procedural protections beyond minimum requirements of federal due process clause. (Per Chief Justice William H. Williams, with two Justices concurring and three Justices con-

curring in the result.) West's RCWA Const. Art. 1, § 3; U.S.C.A. Const.Amends. 5, 14.

7. Administrative Law and Procedure ⇐309

Under appearance of fairness doctrine, proceedings before quasi-judicial tribunal are valid only if reasonably prudent and disinterested observer would conclude that all parties obtained fair, impartial and neutral hearing. (Per Chief Justice William H. Williams, with two Justices concurring and three Justices concurring in the result.) West's RCWA Const. Art. 1, § 3; U.S.C.A. Const.Amends. 5, 14.

8. Administrative Law and Procedure ⇐309

There is no inherent unfairness in mere combination of investigative and adjudicative functions in one agency, without more, that would prompt invocation of appearance of fairness doctrine. (Per Chief Justice William H. Williams, with two Justices concurring and three Justices concurring in the result.) West's RCWA Const. Art. 1, § 3; U.S.C.A. Const.Amends. 5, 14.

9. Physicians and Surgeons ⇐11.3(4)

Mere combination of adjudicative and investigative powers in State Medical Disciplinary Board, without more, did not deny physician a fair, impartial and neutral hearing in disciplinary proceeding. (Per Chief Justice William H. Williams, with two Justices concurring and three Justices concurring in the result.) West's RCWA Const. Art. 1, § 3; U.S.C.A. Const.Amends. 5, 14.

10. Attorney General ⇐2

When performance of any legal duty required of attorney general presents actual conflicts of interest, different assistant attorney general can, and should, be assigned to handle those inconsistent functions. West's RCWA 43.10.067; CPR DR7-110.

11. Physicians and Surgeons ⇐11.3(4)

Fact that same assistant attorney general served as State Medical Disciplinary Board's legal advisor and prosecutor in disciplinary proceeding did not deny physician a fair, impartial and neutral hearing. (Per Chief Justice William H. Williams, with two Justices concurring and three Justices concurring in the result.) West's RCWA 43.10.067; CPR DR7-110; West's RCWA Const. Art. 1, § 3; U.S.C.A. Const.Amends. 5, 14.

12. Physicians and Surgeons ⇐11.3(4)

State Medical Disciplinary Board did not violate Administrative Procedure Act section prohibiting ex parte consultations by agency members with parties or witnesses during proceeding where Board consulted its investigators and Board chairman had telephone conversation with a witness prior to proceeding seeking revocation of physician's license. West's RCWA 18.72.150(2), 34.04.115.

13. Physicians and Surgeons ⇐11.3(4)

State Medical Disciplinary Board did not violate Administrative Procedure Act section requiring all evidence relied to be offered into evidence on record where reports in question were not considered by Board in making its decision. West's RCWA 34.04.100(2).

14. Physicians and Surgeons ⇐11.3(4)

State Medical Disciplinary Board did not violate Administrative Procedure Act section requiring findings to be based exclusively on record and on matters officially noticed by Board when licensed physicians who served as members of Board were permitted to utilize specialized knowledge in evaluating evidence presented to them. West's RCWA 18.72.040, 34.04.090(7), 34.04.100(4).

15. Physicians and Surgeons ⇐11.3(5)

Action taken by State Medical Disciplinary Board after giving physician ample opportunity to be heard, exercised honestly and upon due consideration, even though it may be believed an erroneous decision has been reached, is not arbitrary or capricious. West's RCWA 34.04.130(6)(f).

16. Physicians and Surgeons ⇐11.3(3)

Conclusions of State Medical Disciplinary Board in deciding to revoke physician's license to practice medicine were fully supported by record and were not arbitrary or capricious. West's RCWA 34.04.130(6)(f).

Ken Eikenberry, Atty. Gen., Richard A. Finnigan, Asst. Atty. Gen., Olympia, for petitioner.

Hamley, Hamley & Armstrong, G. Cliff Armstrong, Bellevue, for respondent.

WILLIAM H. WILLIAMS, Chief Justice.

This is a medical disciplinary proceeding wherein petitioner, Washington State Medical Disciplinary Board (board), sought to revoke the medical license of respondent, Dr. James C. Johnston. After an administrative hearing, the board ordered revocation of respondent's medical license. On review, the Thurston County Superior Court upheld the board's ruling. Division Two of the Court of Appeals reversed and remanded for a new administrative hearing on the basis of the appearance of fairness doctrine. *State Med. Disciplinary Bd. v. Johnston*, 29 Wash.App. 613, 630 P.2d 1354 (1981). For the reasons set forth below, we reverse the Court of Appeals and reinstate the board's revocation of respondent's license to practice medicine.

From 1973 to 1976, respondent conducted a "preventive medicine" practice in Bellevue. Part of his practice consisted of treating various ailments with "natural remedies". The board initiated these medical disciplinary proceedings against respondent for his alleged "gross incompetency" in the treatment of two patients, Robert Hendrickson and Marcella Moore, and for aiding and abetting Remigio Peralta in the unlicensed practice of medicine. The following is a summary of the facts underlying respondent's involvement with Hendrickson, Moore, and Peralta:

Robert Hendrickson: Respondent first saw Mr. Hendrickson in May of 1976 for a urinary problem. In early July of 1976 Hendrickson, complaining of a large blister on his abdomen, again contacted respondent. On July 19, 1976, respondent went to Hendrickson's home and found him to be critically ill. Respondent later testified that at this point, he repeatedly suggested hospitalization and diagnostic tests to Mr. Hendrickson, but that Hendrickson refused because of his distrust in hospitals and the medical profession. It was at this point, according to the respondent, that he pursued "natural remedies" as a last resort. The program of treatment prescribed by the respondent included herbal tea enemas, a liquid diet, and periods of fasting.

By August 2, 1976, Mr. Hendrickson had lost a great deal of weight and remained critically ill. Respondent testified that he again recommended hospitalization, but Hendrickson refused. An abdominal wall abscess developed, which respondent treated by suturing. Respondent testified this abscess was in fact a sterile ulcer. After three more office visits, respondent finally convinced Mr. Hendrickson to seek hospital care. He was admitted to Swedish Hospital in Seattle on August 10, 1976, and was placed in the care of Dr. Robert M. Mack. Dr. Mack's initial diagnosis was that Mr. Hendrickson's abdominal problems were the result of a cancerous growth. The diagnosis was confirmed by laboratory analysis of tissue specimens removed during exploratory surgery.

While in the hospital, Hendrickson developed pneumonia and acute renal failure and his condition continued to deteriorate until, on August 25, 1976, he died. Dr. Mack's final diagnosis noted three contributing causes of death: (1) cancer of the colon; (2) respiratory failure caused by pneumonia; and (3) renal failure resulting from shock.

Marcella Moore: Mrs. Moore, like Mr. Hendrickson, had a strong aversion to traditional medicine, and had a history of inclination toward self-medication. She had been a patient of the respondent since 1974. Respondent visited Mrs. Moore on November 3, 1976, at the home of Dave and Carolyn McCormack, with whom Moore was then living. He found her to be seriously ill and preliminarily diagnosed the problem as gallstones lodged in her bile duct. Respondent recommended hospitalization, but Moore refused, preferring a program of "natural remedies".

Respondent spent the night caring for Mrs. Moore, his treatments consisting mainly of oral medications and administrations

of coffee enemas diluted to the strength of three tablespoons of coffee per quart of water. According to respondent, at about 3:30 a.m. on November 4, Moore passed several gallstones in her bowel movements.

The following morning, respondent left Mrs. Moore in the care of Dave McCormack. According to respondent, Mr. McCormack was instructed to give her no more than two coffee enemas that morning and to immediately call him if there were any complications. Mr. McCormack testified that respondent instructed him to have Mrs. Moore eat normally and sleep as much as possible.

Later that afternoon, Moore began to feel much better and insisted on continuing the coffee enemas. They were administered approximately 10 times in the next 10 hours at stronger concentrations than respondent had prescribed. At 7:30 p.m. on November 4, 1976, Mrs. Moore had a seizure. Mr. McCormack phoned respondent, who instructed that the enemas should be discontinued and that he should be instructed of any changes in her condition. Nevertheless, Moore insisted on continuing the coffee enemas and suffered several more seizures, the last coming at approximately 5:45 a.m. on November 5. At this point, McCormack again phoned respondent, who ordered the dispatch of an ambulance.

Mrs. Moore was admitted to Evergreen Memorial Hospital in Everett, where Dr. Paul Sandstrom became her attending physician. She was comatose upon admission and suffered from an extreme electrolyte imbalance. Mrs. Moore died 12 days later. The autopsy report stated the cause of death as "the administration of large volumes of fluid by enema." Exhibit 6.

Remigio Peralta: In 1975, respondent employed Remigio Peralta, who worked in Dr. Johnston's laboratory, served as a massage therapist, and assisted in the delivery of babies. Peralta had completed 3½ years of medical school at the University of Washington and held a degree in Naturopathy from Bernadean University in Las Vegas, Nevada, but was not licensed to practice medicine in Washington. He also had pending an application for a Washington State midwifery license.

In October of 1975, Mr. and Mrs. Kenneth Solheim, who were expecting a child and wanted a home delivery, were referred by a licensed midwife to Dr. Johnston's clinic. They met with Peralta, whom they assumed to be a licensed physician. Peralta examined Mrs. Solheim and told the couple he would deliver their child. Approximately 1 week later, Peralta delivered the child without undue complications, performing such surgical procedures as cutting the child's umbilical cord. Despite never having met the Solheims, respondent signed the child's birth certificate as the attending physician.

The board was created by the Medical Disciplinary Board Act, RCW 18.72. The declaration of purpose of the act is set forth in RCW 18.72.010, as follows:

> This chapter is passed:
>
> (1) In the exercise of the police power of the state to protect public health, to promote the welfare of the state, and to provide an adequate public agency to act as a disciplinary body for the members of the medical profession licensed to practice medicine and surgery in this state;
>
> (2) Because the health and well-being of the people of this state are of paramount importance;
>
> (3) Because the conduct of members of the medical profession licensed to practice medicine and surgery in this state plays a vital role in preserving the health and well-being of the people of the state; and
>
> (4) Because the agency which now exists to handle disciplinary proceedings for members of the medical profession licensed to practice medicine and surgery in this state is ineffective and very infrequently employed, and consequently there is no effective means of handling such disciplinary proceedings when they are necessary for the protection of the public health.

At the time of the hearing now in issue, the board consisted of seven physicians. Each board member was elected by other licensed physicians in each of the then-existing congressional districts. RCW 18.72.040. The board is empowered to investigate complaints of unprofessional conduct; to conduct hearings on such complaints; and to reprimand, suspend, or revoke the licenses of physicians guilty of such conduct. RCW 18.72.150.

In September of 1976, the board received a letter from Dr. Robert Mack, complaining of respondent's treatment of Mr. Hendrickson. Dr. Mack was Hendrickson's attending physician at the time of his death. Action was commenced on the complaint on or about September 21, 1976. The board had a preliminary investigation conducted by five investigators from the Division of Professional Licensing. The board then instructed Mr. John Keith, the assistant attorney general assigned to it as legal counsel, to draw up a statement of charges against the respondent. At some point prior to the hearings, the chairman of the board, Dr. Richard Diefendorf, initiated a telephone conversation with Dr. Mack in which the two men briefly discussed the complaint.

On December 3, 1976, the board received a complaint from Dr. Sandstrom, Marcella Moore's attending physician at the time of her death, regarding the respondent's treatment of Moore. Dr. Diefendorf, who was ill at the time, contacted the board's co-chairman, Dr. Iverson, who on December 7, 1976, issued an order of summary suspension of respondent's medical license. On December 11, 1976, the board ratified the action and set a hearing date of January 15, 1977, to hear the respondent's case.

At a hearing on February 11, 1977, counsel for the respondent questioned the three members of the board then present, and eventually challenged their abilities to act impartially in the matter because of their alleged prosecutorial involvement in the case, the chairman's relationship with Dr. Mack, and the members' possible prejudgment of the case. After consultation between the board's counsel and respondent's counsel, a stipulation was prepared whereby a hearing examiner would preside over the hearing and prepare findings of fact. The full board rejected this proposal and instead determined to hear the matter itself. On April 15, 1977, a hearing was held before the full board. Despite respondent's request for a continuance because his new counsel was unfamiliar with the entire case, the board heard prosecution witnesses against the respondent, and respondent's counsel cross-examined those witnesses. The case was continued to June 17, 1977, for the presentation of respondent's defense. At that time, Dr. Johnston testified on his own behalf. The board entered findings of fact and conclusions of law and on July 6, 1977, ordered that Dr. Johnston's license to practice medicine be revoked.

Respondent petitioned for review in superior court, and in a memorandum opinion the court affirmed the board. Appeal was then taken to the Court of Appeals, Division Two. The Court of Appeals found that there was no violation of the due process clause or of the administrative procedure act, RCW 34.04. The court did hold, however, that the involvement of the same board members as investigators and adjudicators violated the appearance of fairness doctrine. The case was thus reversed and remanded for a new hearing.

Respondent's appeal basically questions the procedures followed by the Disciplinary Board on the basis of violations of the (1) due process clause; (2) Washington administrative procedure act, RCW 34.04; and (3) appearance of fairness doctrine. Additionally, respondent challenges the sufficiency of the evidence relied upon by the board to revoke his license.

I

DUE PROCESS

[1, 2] Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the due process clauses of the fifth and fourteenth amendments to the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 901, 47 L.Ed.2d 18 (1976); *Wolff v. McDonnell* 418 U.S. 539, 557-58, 94 S.Ct. 2963, 2975-76, 41

L.Ed.2d 935 (1974). "[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 168, 71 S.Ct. 624, 646–47, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring). A professional license revocation proceeding has been determined to be "quasi-criminal" in nature and, accordingly, entitled to the protections of due process. *In re Ruffalo*, 390 U.S. 544, 551, 88 S.Ct. 1222, 1226, 20 L.Ed.2d 117 (1968); *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238–39, 77 S.Ct. 752, 755–56, 1 L.Ed.2d 796 (1957); *In re Kindschi*, 52 Wash.2d 8, 11–12, 319 P.2d 824 (1958). Respondent raises two distinct issues of potential due process violations, each of which will be dealt with separately.

First, he contends that there was an element of prejudgment bias which deprived him of due process. In *Ritter v. Board of Comm'rs*, 96 Wash.2d 503, 512, 637 P.2d 940 (1981), this court recognized three types of bias which call for disqualification in quasi-judicial proceedings:

> "These are [1] prejudgment concerning issues of fact about parties in a particular case; [2] partiality evidencing a personal bias or personal prejudice signifying an attitude for or against a party as distinguished from issues of law or policy; and, [3] . . . an interest whereby one stands to gain or lose by a decision either way." (Footnote omitted.) *Buell v. Bremerton*, 80 Wash.2d 518, 524, 495 P.2d 1358 (1972); *See* 3 K. Davis, *Administrative Law* § 19.1, at 371 (2d ed. 1980).

Respondent recites the following language which, he contends, demonstrates the first two types of bias as recognized in *Ritter:*

> DOCTOR DIEFENDORF: . . . It was my judgment, I'm speaking for myself, and the others can speak for themselves, that the handling of this case was so unheard of in my opinion and the approach to the handling of the case was so poor, that I thought that if there are other people that might be involved in a similar case, that this was a very dangerous thing and that's what I think now, speaking about myself personally, and I think the rest of the group feels the same way.
>
> Now, to get into the specifics of this thing, if you want to do it, we would naturally want to have all the appropriate witnesses here to prove what we think is correct. It's true that we don't use a summary suspension very often, but when we do, we feel that there is a real grave danger to the public and that's why we did it in this case.

Report of Proceedings, January 15, 1977, at 6.

[3, 4] Not only is a biased decisionmaker constitutionally unacceptable, but "our system of law has always endeavored to prevent even the probability of unfairness." *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). Where there is merely a general predilection toward a given result which does not prevent the agency members from deciding the particular case fairly, however, there is no deprivation of due process. *See Federal Trade Comm'n v. Cement Inst.*, 333 U.S. 683, 68 S.Ct. 793, 92 L.Ed. 1010 (1948); *Franklin County Sheriff's Office v. Sellers*, 97 Wash.2d 317, 333, 646 P.2d 113 (1982). *See generally* 3 K. Davis, *Administrative Law* § 19.1, at 371 (2d ed. 1980). It would seem that, given the board's duty to take emergency action to summarily suspend a physician's license if necessary to protect the public, its general predilection toward respondent's case is understandable and defensible. The above language, when read in an isolated context, tends to demonstrate a possible prejudgment bias against respondent and his unorthodox medical practices. When read in light of the board's duties to the public, however, Dr. Diefendorf's comments can be explained as an elaboration on why respondent's license had to be suspended summarily for the protection of the public. *See* RCW 18.72.150(6). We find that no prejudgment bias was demonstrated to exist against respondent in this case.

The second due process contention of the respondent concerns the concentration of investigatory, prosecutory, and adjudicatory functions in one body. Respondent contends the combination of these potentially contradictory functions is, in itself, a violation of due process. The dangers inherent in combining such functions in a single entity have been noted by the United States Supreme Court:

> "A genuinely impartial hearing, conducted with critical detachment, is psychologically improbable if not impossible, when the presiding officer has at once the responsibility of appraising the strength of the case and of seeking to make it as strong as possible."

Wong Yang Sung v. McGrath, 339 U.S. 33, 44, 70 S.Ct. 445, 451, 94 L.Ed. 616 (1950). *Accord, Huber Pontiac, Inc. v. Allphin*, 431 F.Supp. 1160, 1172 (S.D.Ill.1977), *vacated on other grounds, Huber Pontiac, Inc. v. Whitler*, 582 F.2d 817 (7th Cir.1978). The same concerns were expressed by Justice Brennan, then a New Jersey State judge, when he said the concern with concentration

> springs from the fear that the agency official adjudicating upon private rights cannot wholly free himself from the influences toward partiality inherent in his identification with the investigative and prosecuting aspects of the case; in other words, that the atmosphere in which he must make his judgments is not conducive to the critical detachment toward the case expected of the judge. In a sense the combination of functions violates the ancient tenet of Anglo-American justice that "No man shall be a judge in his own cause." . . . *"The litigant often feels that in this combination of functions within a single tribunal or agency, he has lost all opportunity to argue his case to an unbiased official and that he has been deprived of safeguards he has been taught to revere."*

(Citations omitted and italics ours.) *In re Larsen*, 17 N.J.Super. 564, 574, 86 A.2d 430 (1952) (Brennan, J., concurring).

[5] In the present case, the board, superior court, and Court of Appeals all relied upon the case of *Withrow v. Larkin*, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975), as dispositive of the combination of functions issue. In that case, the Supreme Court noted the potential problems with a combination of functions, but went on to state:

> The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.

Withrow, at 47, 95 S.Ct. at 1465. The concentration of functions in a single agency may be unfortunate and subject to much criticism, but where it has been designed by the legislature and generally comports with notions of fairness and due process, it is almost uniformly upheld. *See Withrow v. Larkin, supra; Kennecott Copper Corp. v. FTC*, 467 F.2d 67, 79 (10th Cir.1972), *cert. denied*, 416 U.S. 909, 94 S.Ct. 1617, 40 L.Ed.2d 114 (1974). *See generally* B. Schwartz, *Administrative Law* § 111 (1976). We find *Withrow* to be the controlling authority with regard to the combination of functions issue on federal due process grounds. Therefore, we find no violation of the federal due process clauses.

[6] Respondent contends, however, that Washington is free to provide greater due process protections to its citizens under the Washington constitution's due process clause, Const. art. 1, § 3.[1] We have recent-

1. Const. art. 1, § 3 provides:
"No person shall be deprived of life, liberty, or property, without due process of law."

ly interpreted some provisions of our state constitution more expansively than parallel federal constitutional provisions. *See, e.g., State v. White*, 97 Wash.2d 92, 640 P.2d 1061 (1982) (Const. art. 1, § 7 broader than Fourth Amendment); *Alderwood Associates v. Washington Environmental Council*, 96 Wash.2d 230, 635 P.2d 108 (1981) (Const. art. 1, § 5 broader than First Amendment); *State v. Fain*, 94 Wash.2d 387, 617 P.2d 720 (1980) (Const. art. 1, § 14 broader than Eighth Amendment); *Darrin v. Gould*, 85 Wash.2d 859, 540 P.2d 882 (1975) (Const. art. 1, § 12 broader than Fourteenth Amendment equal protection clause). Respondent cites *State ex rel. Beam v. Fulwiler*, 76 Wash.2d 313, 456 P.2d 322 (1969), as establishing such an increased level of protection under the Washington due process clause. While we have interpreted our state constitution to provide greater protections than the federal constitution under some circumstances, and will continue to do so if the need arises, we decline respondent's invitation to do so in this case. Since the appearance of fairness doctrine already provides procedural protections beyond the minimum requirements of the federal due process clauses, *see* Vache, *Appearance of Fairness: Doctrine or Delusion?*, 13 Will. L.J. 479 (1977), we find it unnecessary to expansively read the parallel state constitutional provision.

II

APPEARANCE OF FAIRNESS

[7] Under the appearance of fairness doctrine, proceedings before a quasi-judicial tribunal are valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing. *Swift v. Island County*, 87 Wash.2d 348, 361, 552 P.2d 175 (1976). Although this doctrine originated in the land use area, *see Smith v. Skagit County*, 75 Wash.2d 715, 453 P.2d 832 (1969), it has been extended to other types of quasi-judicial administrative proceedings, *see Chicago, M., St. P. & Pac. R.R. v. State Human Rights Comm'n*, 87 Wash.2d 802, 557 P.2d 307 (1976).

[8, 9] The Court of Appeals in the present case concluded that an appearance of unfairness is created by the same tribunal combining investigative and adjudicative functions. *State Med. Disciplinary Bd. v. Johnston*, 29 Wash.App. 613, 626, 630 P.2d 1354 (1981). The court cited to the following language from *State ex rel. Beam v. Fulwiler*, *supra* 76 Wash.2d at 315–16, 456 P.2d 322, in support of its analysis:

> *Inescapably the commission members became the investigators, the accusers, the prosecutors, mayhaps the witnesses, and if allowed to sit as an appellate tribunal, the judges upon the merits of the charges.* Despite the integrity of the respective members of the commission, and their undoubted desire to be objective in their appellate disposition of the matter, *it is highly unlikely, under the unusual circumstances prevailing, that the respondent or anyone in a like situation could approach or leave a hearing presided over by a tribunal so composed with any feeling that fairness and impartiality inhered in the procedure.*

(Italics ours.) *Beam*, however, can be read as involving not merely a combination of functions, but also prejudgment bias, since several members of the tribunal had taken a public stance on the case beforehand. It appears the Court of Appeals' concern that combining investigative and adjudicative functions in one agency is well founded, since even the United States Supreme Court has characterized the issue as "substantial". *Withrow v. Larkin*, *supra* 421 U.S. at 51, 95 S.Ct. at 1466. Nevertheless, we detect no inherent unfairness in the mere combination of investigative and adjudicative functions, without more, that would prompt invocation of the appearance of fairness doctrine. The bare fact that the same administrative adjudicators also are clothed with investigative powers does not mean the case will be decided on an improper basis or that there will arise a prejudgment on the ultimate issues. We must presume the board members acted properly and legally performed their duties until the contrary is shown. *Hoquiam v. PERC*, 97 Wash.2d 481, 646 P.2d 129 (1982); *Rosso v. State Personnel Bd.*, 68 Wash.2d 16, 20, 411 P.2d 138 (1966). We are convinced the mere combination of adjudicative and investigative powers in one agency, without more, would not be viewed by a reasonably prudent and disinterested observer as denying any party a fair, impartial, and neutral hearing.

The opinion of the Court of Appeals also questioned the practice of assigning a single assistant attorney general to serve as both the board's legal advisor and prosecutor, but considered this matter "not . . . dispositive, yet worthy of comment, [and] rais[ing] the specter of unfairness." *State Med. Disciplinary Bd. v. Johnston*, *supra* 29 Wash. App. at 626, 630 P.2d 1354. The court noted that although this dual capacity is authorized by RCW 18.72.040,[2] it believed the performance of both roles by the same individual was inherently inconsistent and created the potential for disproportionate influence with the board.

[10, 11] In *State ex rel. State Bd. of Med. Examiners v. Clausen*, 84 Wash. 279, 284–85, 146 P. 630 (1915), this court examined the meaning of RCW 43.10.067, which pertains to the employment of attorneys other than the attorney general.[3] The court found the state board of medical examiners had no express or implied power to employ private counsel at state expense since the attorney general was, by statute, made the exclusive legal representative of the board. While *Clausen* remains the law in this area, we do not read that case to mean RCW 43.10.067 restricts the number of assistant attorneys general that can be assigned to any one agency. When the performance of any legal duties required of the attorney general presents actual conflicts of interest, a different assistant attorney general can, and should, be assigned to handle those inconsistent functions. The Georgia Court of Appeals in *Schaffer v. State Bd. of Veterinary Medicine*, 143 Ga. App. 68, 237 S.E.2d 510 (1977), recently held the position of a single attorney as both legal advisor and prosecutor was prejudicial when the position actually permitted him to prevail upon the board in its decisions. We find that no actual prejudice has been demonstrated in the present case, but when the dual roles of the attorney general present such a conflict, two separate attorneys should handle those functions. *See also* CPR DR 7–110 (prohibiting *ex parte* communications with the decisionmaker while the case is pending). In sum, we do not believe under the facts of this case that a reasonably prudent and disinterested observer would be left with the feeling that a fair, impartial, and neutral hearing was denied to any party in this action.

III

WASHINGTON ADMINISTRATIVE PROCEDURE ACT

Respondent contends the board violated three provisions of the Washington administrative procedure act, RCW 34.04: (1) RCW 34.04.115, prohibiting *ex parte* consultations by agency members with parties or witnesses during the proceeding; (2) RCW 34.04.100(2), requiring all evidence used to be offered into evidence on the record; and (3) RCW 34.04.090(7), requiring findings to be based exclusively on the record and on matters officially noticed by the board.

[12] As to the first asserted violation concerning the board's consultation with its investigators and a telephone conversation between Dr. Diefendorf and a witness, Dr. Mack, we find no violation of the statute. The board's actions were entirely in accordance with its investigatory powers, as pro-

2. RCW 18.72.040 provides, in part:
"... The attorney general shall be the advisor of the board and shall represent it in all legal proceedings."

3. RCW 43.10.067 provides, in pertinent part:
"No officer, director, administrative agency, board, or commission of the state, other than the attorney general, shall employ, appoint or retain in employment any attorney for any administrative body, department, commission, agency, or tribunal or any other person to act as attorney in any legal or quasi legal capacity in the exercise of any of the powers or performance of any of the duties specified by law to be performed by the attorney general ..."

vided in RCW 18.72.150(2). We must construe RCW 34.04.115 to prohibit *ex parte* consultations during the pendency of the proceedings—not prior to such hearings—or else the board would be without power to carry out its investigatory functions.

[13] We likewise find no violation of RCW 34.04.100(2), since the board apparently did not consider the reports prepared by the investigators while making its decision. Without consideration of those documents in the decisionmaking process, no need arises to place the investigative reports on the record.

[14] The asserted violation of RCW 34.04.090(7) arises from the board's conclusion that the respondent violated "accepted surgical standards" without specifically placing evidence on the record of such standards. Since the board is composed strictly of licensed physicians, RCW 18.72.040, and since RCW 34.04.100(4) permits agencies to utilize the specialized knowledge of their members in evaluating evidence presented to them, we believe it is logical and proper for the State Medical Disciplinary Board to draw its own conclusions as to acceptable surgical standards. As to such specialized matters, we give deference to administrative expertise. *See English Bay Enterprises, Ltd. v. Island County*, 89 Wash.2d 16, 21, 568 P.2d 783 (1977). Additionally, we note that some testimony on acceptable surgical standards in this area was elicited and placed on the record. We find respondent's contention that the board's conclusions were not based on the evidence to be devoid of merit.

IV

SUFFICIENCY OF EVIDENCE

Finally, respondent argues the evidence was insufficient to support the board's factual findings and conclusion that his license to practice medicine should be revoked. The Court of Appeals did not pass on the sufficiency of the evidence because it reversed on the appearance of fairness grounds. We have evaluated the large quantity of evidence before us, and have set out a great deal of that evidence in reciting the facts of this case. We find the evidence was sufficient to support the board's revocation of respondent's medical license.

[15] Our judicial review of this case is limited by the "arbitrary or capricious" standard, as set out in RCW 34.04.130(6)(f). Arbitrary and capricious action has been defined as "willful and unreasoning action, without consideration and in disregard of facts or circumstances." *Lillions v. Gibbs*, 47 Wash.2d 629, 633, 289 P.2d 203 (1955). Action taken after giving respondent ample opportunity to be heard, exercised honestly and upon due consideration, even though it may be believed an erroneous decision has been reached, is not arbitrary or capricious. *Washington State Employees Ass'n v. Cleary*, 86 Wash.2d 124, 542 P.2d 1249 (1975); *Bishop v. Houghton*, 69 Wash.2d 786, 420 P.2d 368 (1966).

[16] In the present case, the State Medical Disciplinary Board made its findings after a thorough consideration of all the evidence available to it. We cannot substitute our judgment for that of the board, even if we were to see the evidence differently than the agency. *Department of Ecology v. Ballard Elks Lodge 827*, 84 Wash.2d 551, 527 P.2d 1121 (1974). Further, we must give due deference to the knowledge and expertise of the board. *English Bay Enterprises, Ltd. v. Island County*, *supra*. Accordingly, we find the conclusions of the board fully supported by the record and not arbitrary or capricious.

We reverse the Court of Appeals and reinstate the decision of the trial court which upheld the State Medical Disciplinary Board's revocation of Dr. James C. Johnston's license to practice medicine in the State of Washington.

It is so ordered.

STAFFORD and BRACHTENBACH, JJ., concur.

UTTER, Justice (concurring).

I concur in the result reached by the majority, though I consider unnecessarily confusing its discussion of the appearance of fairness doctrine as separate from the requirements of due process. As I have stated elsewhere (*see Harris v. Hornbaker*, 98 Wash.2d 650, 658 P.2d 1219 (1982)), I think the appearance of fairness doctrine should consist of no more than importing procedural due process safeguards into quasi-judicial proceedings of legislative bodies. Here, the medical disciplinary board is unquestionably a body created for adjudicatory purposes. Its decisions must be measured against the requirements of due process.

The majority structures its argument as if there were a difference between the appearance of fairness and due process. However, its analysis of the appearance of fairness doctrine merely reiterates the requirements of due process. The conclusion is proper but involves no more than the requirements of due process. I therefore concur.

The requirement that a reasonably prudent and disinterested observer should be able to conclude all parties obtained a fair, impartial and neutral hearing is a fundamental tenet of due process. The majority examines two possible violations of the appearance of fairness doctrine under this standard: (1) the combination of adjudicative and investigative functions, and (2) the assignment of an assistant attorney general as the board's legal advisor and as the prosecutor. The majority's analysis begins with the presumption that board members will perform their adjudicative functions properly and legally "until the contrary is shown." Majority opinion, at 465. Such is the presumption accorded all judicial officers. As to the first potential violation, the majority finds "no inherent unfairness in the mere combination of investigative and adjudicative functions, *without more*" to prompt application of the appearance of fairness doctrine. (Italics mine.) Majority opinion, at 464. As to the second possible violation, the majority concedes the potential for a conflict of interest in the dual role of the assistant attorney general, but declines to apply the appearance of fairness doctrine since "no *actual* prejudice has been demonstrated in the present case . . ." (Italics mine.) Majority opinion, at 465. The majority's discussion is simply one of due process; its analysis regarding the appearance of fairness is almost verbatim that in *Withrow v. Larkin*, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975), a case analyzing the requirements of due process.

This is not to say due process involves only a concern for whether actual wrongs have occurred. Due process also concerns protecting against even "the probability of unfairness." *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). A new hearing is required in certain situations, such as where an adjudicator has a pecuniary interest in the outcome because the individual "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Withrow v. Larkin*, *supra*, 421 U.S. at 47, 95 S.Ct. at 1464. No such situation is presented here. Without more, "The processes utilized by the Board . . . do not in themselves contain an unacceptable risk of bias." *Withrow v. Larkin*, *supra* at 54, 95 S.Ct. at 1468.

To label what are really due process concerns as the appearance of fairness doctrine is unnecessarily confusing to lawyers who must attempt in some way to give meaning to an unfathomable phrase. If we wish to maintain the continuing vitality of concerns over procedural due process, its constitutional basis and scope must be acknowledged.

DOLLIVER and DIMMICK, JJ., concur.

ROSELLINI, Justice (dissenting).

The majority asserts that a reasonably prudent and disinterested observer would not be left with the feeling that a fair and neutral hearing is denied when, as here, the same tribunal combines investigative, prosecutorial and adjudicative functions. Majority Opinion, at 465. I disagree. I believe the unanimous panel of the Court of Appeals correctly found an appearance of fairness violation. For the reasons set out in the lower court opinion, as well as those discussed below, I would therefore affirm.

The appearance of fairness doctrine was first enunciated in *Smith v. Skagit Cy.*, 75 Wash.2d 715, 741, 453 P.2d 832 (1969). The principles embodied in the doctrine, however, date back to our earliest reported cases. The passage cited by the Court of Appeals demonstrates this point and is worth repeating here. Justice Dunbar, writing in 1898, comments on the importance of the appearance of fairness.

> The principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts; in fact, the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea, running through and pervading the whole system of judicature, and it is the popular acknowledgment of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals. Actions of courts which disregard this safeguard to litigants would more appropriately be termed the administration of injustice, and their proceedings would be as shocking to our private sense of justice as they would be injurious to the public interest.

State ex rel. Barnard v. Board of Educ., 19 Wash. 8, 17–18, 52 P. 317 (1898).

In *State ex rel. Beam v. Fulwiler*, 76 Wash.2d 313, 456 P.2d 322 (1969), the court applied these principles. In that case, like here, the same board performed investigatory, prosecutorial and adjudicatory functions. The court observed:

> It is clear from the recited background fac[t] that four of the five members of the civil service commission which, by virtue of charter provisions constitute the appellate tribunal before which respondent's appeal w[ou]ld normally be heard, personally investigated respondent's administration of his office, formed their conclusions, promulgated the charges against him, transmitted these accusations over their signatures to the city manager, and recommended his discharge. *Inescapably the commission members became the investigators, the accusers, the prosecutors, mayhaps the witnesses, and if allowed to sit as an appellate tribunal, the judges upon the merits of the charges.* Despite the integrity of the respective members of the commission, and their undoubted desire to be objective in their appellate disposition of the matter, it is highly unlikely, under the unusual circumstances prevailing, that the respondent or anyone in a like situation could approach or leave a hearing presided over by a tribunal so composed with any feeling that fairness and impartiality inhered in the procedure.

(Italics mine.) *Beam*, at 315–16, 456 P.2d 322. Relying on *Beam*, the Court of Appeals concluded that it was "compelled" to hold that a disinterested person would be reasonably justified in thinking that partiality may have existed. *State Med. Disciplinary Bd. v. Johnston*, 29 Wash.App. 613, 625–26, 630 P.2d 1354 (1981). I agree. The same procedures disapproved in *Beam* exist here. The majority attempts to distinguish *Beam* by urging that that case involved "not merely a combination of functions, but also prejudgment bias, since several members of the tribunal had taken a public stance on the case beforehand." Majority Opinion, at 464. The majority's analysis, however, undercuts the appearance of fairness doctrine. If, as the majority asserts, *Beam* can be read as a prejudgment bias case, the court objections could and should be couched in terms of a due process analysis. If prejudgment bias is a necessary element of an appearance of fairness violation, no need exists for a doctrine separate and distinct from due process analysis. We, as a court, should then adopt the concurrence and abolish the doctrine. The majority has not done so, however, nor should it.

The appearance of fairness doctrine fills a void between actual bias and total impartiality. That intermediate position, I suggest, is critical to our maintaining public confidence in the fairness of adjudicatory functions. As noted in the passage quoted from *Barnard*, it is the popular acknowledgement of the inviolability of this principle which gives credit *or even tolerance* to our system of justice. Thus, "'[n]ext in importance to the duty of rendering a righteous judgment, is that of doing it in such a manner as will beget *no* suspicion of the fairness and integrity of the judge.'" (Italics mine.) *Barnard*, 19 Wash. at 18, 52 P. 317.

The majority ignores the strong language of our cases and asserts that "the mere combination of adjudicative and investigative powers in one agency, without more, would not be viewed by a reasonably prudent and disinterested observer as denying . . . a fair, impartial, and neutral hearing." Majority Opinion, at 465. I disagree. The majority neglects to point out that the Court of Appeals relied on the combination of three functions, not two. The board here serves not only investigative and adjudicatory functions, it also performs the duties of prosecutor. For instance, RCW 18.72.170 provides that the board shall cause a statement of charges to be prepared. Thus the decision to prosecute rests with the very board which will decide the case on the merits. Even if the combinations of investigative and adjudicatory functions does not violate the appearance of fairness doctrine, the addition of prosecutorial functions surely taints that proceeding. The majority ignores this fact, but a disinterested observer would not.

Factors such as the issuing of formal charges against Johnston over the name of the secretary of the board who then sat in judgment of Johnston also cannot be ignored. When this identity of functions is added to the use of the same attorney general as prosecutor and advisor, one cannot doubt the truth of the Court of Appeals' statement that the "specter of unfairness" is raised. *Johnston*, 29 Wash.App. at 626, 630 P.2d 1354. Regardless of the integrity of the board members or attorney general, the confidential relationship of the board and its legal advisor cannot be reconciled with that same legal advisor also serving as prosecutor. This is what motivated three Court of Appeals judges to find an appearance of fairness violation. Likewise, these factors convince me that we must affirm that decision.

DORE, J., concurs.

99 Wash.2d 531

In the Matter of the Marriage of Deanna WOLFE, Respondent,

v.

Larry W. WOLFE, Petitioner.

No. 48856–8.

Supreme Court of Washington, En Banc.

May 12, 1983.

Appeal was taken from judgment entered by the Superior Court, Spokane County, John J. Ripple, J., in divorce proceeding. On appeal, the Court of Appeals adopted a show cause procedure, whereupon case was accepted for review by the Supreme Court. The Supreme Court, Stafford, J., held that show cause procedure was permissible under the Constitution, statutory law and court rules of state.

Affirmed.

Divorce ⇐6½

Show cause procedure adopted by Court of Appeals in divorce proceeding was permissible under the Constitution, statutory law and court rules of the state.

William J. Powell, Spokane, for petitioner.

Mark E. Vovos, Spokane, for respondent.

Malcolm Edwards, Seattle, amicus curiae.

STAFFORD, Justice.

This case was accepted for review on the limited issue of whether the show cause procedure adopted by Division III of the Court of Appeals is permissible under the constitution, statutory law and court rules of this State. We approve the show cause procedure in appropriate civil matters; we

Position Paper
CS for HB 162 (Judiciary)

The bill provides for the addition of a utility consumer representation function to the Office of Public Advocacy. The office will represent the interests of residential consumers before regulatory bodies and would have the ability to seek judicial review. Such offices in 37 other states have successfully intervened and achieved substantial savings for utility consumers.

While the current staff of the Office of Public Advocacy has little experience and no expertise in the highly complex and specialized field of utility consumer representation, the placement of this function within an existing division of the Department of Administration will allow the realization of savings from the sharing of office facilities. The Office of Public Advocacy would therefore create, as contemplated by the bill, a separate unit devoted exclusively to utility consumer representation. A serious recruiting effort would be launched in order to assure the employment of experience staff.

The bill's provision for the creation of an independent subprogram or element of the budget will help to minimize inteference with OPA's current statutory mandate.

The OPA must be fully operational on or before July 1, 1985. An effective date of October 1, 1985 would therefore be preferable in order to avoid the difficulty of meeting identical deadlines.

Brant McGee
Public Advocate

3-15-85
Date

Commissioner Lisa Rudd
Department of Administration

3-15-85
Date