

Confirm.
Buckalew &
Andrews
Personnel
Board



Alaska State Legislature

HOUSE OF REPRESENTATIVES

House State Affairs Committee

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

May 13, 1991

The Honorable Ben Grussendorf
Speaker of the House of Representatives
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

The House State Affairs Committee has considered the appointment of Eleanor Andrews to the Personnel Board.

The following members were present and recommend as follows:

Do Recommend

Other Recommendations

Gene Kubina

Tom Miller

E. Bruchman

Mark Huntley

David Weisbe NR

Jerry Babin NR

Sincerely:

Gene Kubina
Representative Gene Kubina, Chair
House State Affairs Committee



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

August 6, 1990

Ms. Eleanor Andrews
P.O. Box 201947
Anchorage, AK 99520-1947

Dear Eleanor,

I am pleased to appoint you to the Personnel Board for a term ending June 20, 1992. Please know that as you accept this official position with my administration you will contribute to the citizens of Alaska in an important way.

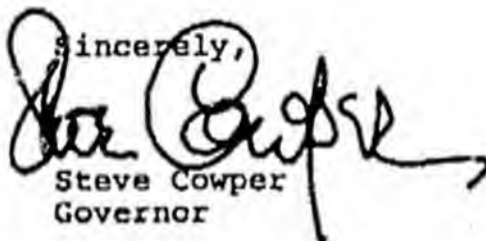
As required by Alaska statute, the enclosed oath of office form must be notarized, signed, and returned. Please send it to Ponny Forsmo, Special Staff Assistant, Boards and Commissions, P.O. Box A, Juneau, AK 99811. Upon receipt of the completed form, you will be authorized to exercise the powers and perform the duties of your office pending confirmation by the Legislature.

The Alaska Public Offices Commission will send you a Conflict of Interest Statement, which must be completed and filed within 30 days of your appointment.

In addition, we have enclosed an optional Equal Opportunity Survey that we would appreciate having returned with the oath of office if you choose to fill it out. This information is kept confidential and used for statistical analysis of boards and commissions appointments.

Enclosed is an identification card to facilitate your travel as a board member. Please use these card privileges only during official state business. If you should resign your appointment before your term expires, please return the card to my Boards and Commissions Office.

In advance, thanks for your time, effort, and good work. We Alaskans appreciate your forthcoming and important contribution.

Sincerely,

Steve Cowper
Governor

Enclosures

STATE OF ALASKA

OATH OF OFFICE

I, Eleanor Andrews, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as a member of the Personnel Board to the best of my ability.

Eleanor Andrews
Signature

Subscribed and sworn to before me this 7th day of September 1990
19__.

Archie L Miller
Notary Public, State of Alaska
My Commission expires: 4-16-92

(SEAL)

NOTE: Pursuant to AS 09.63.010, this oath may be administered by a justice, judge, or magistrate of a court; a clerk or deputy clerk of a court; a notary public; a U.S. postmaster; or a commissioned officer under AS 09.63.050.

AUG 20 1990

NAME: S. J. Buckalew, Jr.

HOME ADDRESS: 3124 Antioch Circle
Anchorage, Alaska 99508

DATE AND PLACE OF BIRTH: December 6, 1920 -- Dallas, Texas

Alaska resident since April, 1950

MARRIED: Spouse: Marcy Buckalew. Children: Seaborn J. Buckalew, III
and Robert J. Buckalew

EDUCATION:

1938-1942 Texas A&M College, now Texas A&M University - BA Degree
John B. Stetson University - JD Degree - June 6, 1949
Air War College - 1972

EMPLOYMENT BACKGROUND:

1952-1953 Assistant U.S. Attorney; United States Attorney, Third
Judicial District, Anchorage, Alaska
November 1953-January 1971 - Private practice of law, Anchorage,
Alaska
January 1971-July 1973 - District Attorney, Third Judicial District,
Anchorage, Alaska
July 9, 1973-July 31, 1988 - Superior Court Judge, Anchorage, Alaska
(Retired July 31, 1988)

ELECTED OFFICES HELD:

1955-1957 - Member, Territorial House of Representatives
1956 - Delegate, Alaska Constitutional Convention
1960 - Member of the First State Senate

Fraternal or service organization membership: American Bar Association
Florida Bar
Alaska Bar

ADDITIONAL COMMENTS OR INFORMATION

Member of Army of The United States - 1942-1946
Active Duty - Korean conflict
Retired Alaska National Guard July 7, 1973 after 31 years total service,
active, reserve and National Guard
Graduate Officer Candidate School - Air War College

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 25, 1991

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

The name of Seaborn Buckalew is hereby withdrawn from the February 19, 1991 request for legislative confirmation to the position noted below:

Personnel Board:

Buckalew, Judge Seaborn - Anchorage
Term began 7/11/90 expires 6/20/96

Sincerely,


Walter J. Hickel
Governor

cc: House Judiciary Committee

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 25, 1991

The Honorable Patrick M. Rodey
Alaska State Senator
P.O. Box V
Juneau, AK 99811

Dear Senator Rodey:

Governor Hickel has withdrawn his request for legislative confirmation of Seaborn Buckalew to the Personnel Board.

Our past assessment of Judge Buckalew still stands, however, prevailing circumstances necessitate this change.

We appreciate our previous communications with you and wanted to let you know personally.

Best regards,

A handwritten signature in cursive script that reads "Don Tanner".

Don Tanner
Director

Patrick M. Rodey
Senator

Alaska State Legislature

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7613



Senate

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

March 6, 1991

Representative Gene Kubina
State Capitol
Juneau, Alaska 99811

Dear Representative Kubina:

Thank you for providing a copy of your letter to Governor Hickel expressing concern regarding the screening protocol for selecting appointees to various state boards and commissions.

I appreciate your desire to be reasonably informed as to a nominee's qualifications to serve on a particular board or commission. While I do not know Mr. John Alleman, appointed to the Human Rights Commission, and referenced in your letter, I am very well acquainted with Mr. Seaborn J. Buckalew, Jr., nominated to the State Personnel Board, also mentioned in your letter to the Governor.

I've known Seaborn Buckalew personally for many years and by reputation for the more than 40 years he and his family have lived in Alaska. My parents spoke of Mr. Buckalew in a manner one's parents often use when trying to identify community role models for their children.

Buckalew is highly regarded by people from all walks of life. He served two terms in the Territorial Legislature, 1955-1958, and was appointed to fill a senate vacancy in the First State Legislature, 1959-1960. He is a distinguished attorney and enjoyed an excellent reputation during his tenure on the bench. His life has been one of great public service.

I believe Alaskans are very fortunate to have a person of Seaborn Buckalew's stature willing to serve on the State Personnel Board.

Warm regards,

A handwritten signature in cursive script that reads "Pat".

PATRICK M. RODEY

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 29, 1991

SUBJECT: Appointments by Governor Cowper not submitted for confirmation by Governor Hickel
(Work Order No. 7-LS1299)

TO: Senator Dick Eliason
Attn: Sheila Peterson

FROM: Jerry Luckhaupt *JEL*
Legislative Counsel

QUESTIONS PRESENTED:

Governor Cowper made appointments to positions on various boards and commissions during his last year in office, Governor Hickel by recent letter stated that he intentionally omitted those appointees from request for legislative confirmation.

I. What can the legislature do if they wish to confirm some or all of Governor Cowper's appointments?

ANSWER: The legislature may by majority vote in joint session confirm some or all of Governor Cowper's appointments (that have not already legally been removed from office) without communication from Governor Hickel requesting their confirmation. See discussion I.

II. What happens if the legislature does nothing regarding these appointments?

ANSWER: To the extent the appointees have not already legally been removed from office they will be removed from office by operation of law (AS 39.05-080(3)), for a failure to be confirmed. See discussion II.

FACTUAL BACKGROUND

In 1990, during his last year in office, Governor Cowper made appointments to various boards and commissions of the state. The names of these appointees have not been transmitted to the legislature by Governor Hickel for confirmation.

Senator Dick Eliason
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Governor Hickel recently provided a letter to you in which he identifies these appointees and states their names "were intentionally omitted" from Governor Hickel's February 19, 1991, confirmation transmittal and that their names "are hereby withdrawn from request for legislative confirmation of appointment".

Of the appointees whose names are not being transmitted for confirmation, I am only aware of one who has been purportedly removed from office by Governor Hickel. Peter Sokolov was reappointed to an engineering seat on the Public Utilities Commission by Governor Cowper in November of 1990. The other appointees may still occupy their positions or memberships.

DISCUSSION

I

Legislative Notice

In answer to your first question, I direct your attention to my memorandum to you of January 25, 1991 (copy attached). In that memorandum, I discuss the authority of the legislature to hold confirmation proceedings for an appointment to a position that requires legislative confirmation. If the governor refuses to transmit a request for confirmation, the legislature may act to confirm or reject the appointee on their own. This conclusion is based upon the notion of legislative notice (akin to judicial notice) and that imposing a requirement of a communication or request for confirmation would make the legislature's constitutional duty to confirm gubernatorial appointment subject to the whim, caprice, or indiscretion of the executive. This conclusion is supported in the decisions of other states that have confronted this issue and is consistent with the decisions of our supreme court in similar situations.

There is one group of appointments that this conclusion would not apply to and that could not be confirmed by the legislature. That group would consist of appointees who have legally been removed from office by the governor. For example, if one of the individuals appointed by Governor Cowper was appointed to a board or commission whose members serve at the pleasure of the governor and may be removed at any time for any reason, and the Governor removed that appointee, "as provided by law,"^{1/} then the appointee would not be holding office and his appointment would not properly be before the legislature. A purported removal, not "as provided by law,"^{2/} is ineffective and I believe the legislature still would have the authority to consider the confirmation of the appointee who has been removed from office contrary to statute.

^{1/}Article III, section 26 of the Alaska Constitution provides that members of boards or commissions that are "at the head of a principal department or a regulatory or quasi-judicial agency" may only "be removed as provided by law."

^{2/}"Provided by law" means as provided by the legislature. Article XII, section 11, Alaska Constitution.

II

Article III, section 26 of the Alaska Constitution provides:

SECTION 26. BOARDS AND COMMISSIONS. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Only members of boards or commissions that are at "the head of a principal department or a regulatory or quasi-judicial agency" are subject to confirmation. Bradner v. Hammond, 553 P.2d 1 (1976).

AS 39.05.080 implements this constitutional requirement and requires the governor to submit to the legislature the names of those

(A) persons appointed to a position or membership who have not previously been confirmed by the legislature or either house of it; (B) persons appointed subject to confirmation to fill an existing position or membership. . . .

AS 39.05.080(3) provides that the

[F]ailure of the legislature to act to confirm an appointment during the session in which the appointment was presented is tantamount to a declination of confirmation on the day the session adjourns.

Failure to act to confirm same as declining confirmation

This provision clearly provides that if an appointee is not confirmed or rejected by the legislature that the inaction is a rejection and the appointee loses his office on the day the legislature adjourns that session of the legislature. See e.g. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

But what if the appointee's name is not forwarded by the governor and presented to the legislature? Article III, section 26 of the Alaska Constitution requires that appointments made by the governor be confirmed by the legislature. The constitution does not limit the confirmation requirement to situations where the governor has transmitted the appointee's name to the legislature for confirmation.

Legislature confirms regardless of whether gov. transmits name or not.

[I]n acting upon an appointment, [the legislature] is not exercising a prerogative granted it in its own interest or that of its members; there

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can be no waiver of that duty so that inaction would be the equivalent of a tacit approval of an appointment.

State ex rel McCarthy v. Watson, 132 Conn. 518, 45 A.2d 716, 724 (1946).

Although, AS 39.05.080(3) does anticipate an orderly procedure for confirmation or rejection of all appointments by providing that all appointments will be presented to the legislature (and if not confirmed they are rejected by operation of law), it does not anticipate the situation where an appointment has been made and a request for confirmation is not communicated to the legislature. But, just as the legislature may take notice of an appointment for the purpose of confirming an appointee, as discussed in the January 25, 1991 memorandum to you (attached) so too, is the legislature charged with notice when it fails to confirm a gubernatorial appointee even without communication from the governor. Shawver, supra; Bell v. Sampson, supra. Therefore, if the legislature does not act to confirm any of the individuals appointed by Governor Cowper whose names have been withheld by Governor Hickel, their appointments will have been rejected by the legislature on the day the legislature adjourns this session. At that time, there will be vacancies on each of the boards and commissions listed in Governor Hickel's letter and Governor Hickel will be free to appoint someone else to the seat.^{3/}

GPL:lmb:pl
91-148.lmb

Enclosure

^{3/} These new appointments will, of course, be subject to confirmation at the next regular session of the legislature.