

Confirm. '91

Croxton

Brd. of Fish



Alaska State Legislature

Senate

Office of the Secretary

PO BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

OFFICIAL BUSINESS

Date _____

The Honorable Dick Eliason
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear President Eliason:

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:


Board of Fisheries

Croxton, Loren - Petersburg

Term began 4/4/91 expires 1/31/93

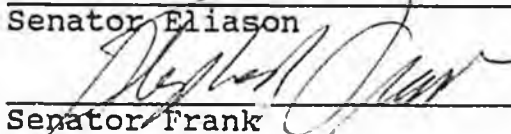
There were no stated objections to the confirmation of the named individual by committee members. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

Respectfully,



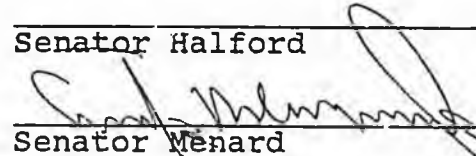
Senator Jones, Chair

Senator Cotten, Vice-Chair

Senator Eliason


Senator Frank

Senator Halford



Senator Menard

Senator Zharoff



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JUNEAU, ALASKA 99811

April 10, 1991

M E M O R A N D U M

TO: Senator Jones, Chair
Resources Committee

FROM: Nancy Quinto
Secretary of the Senate

SUBJECT: Confirmation of Governor's Appointees

Pursuant to AS 39.050.080, President Eliason has referred the position noted to your committee for a hearing, recommendation and report:

Board of Fisheries
Croxtan, Loren - Petersburg
Term began 4/4/91 expires 1/31/93

NQ/hc

w/attached resume

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

MAY 10 1991

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

May 15, 1991

The Honorable Sam Cotten
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Cotten:

The issue of a potential conflict of interest involving Mr. Loren Croxton, Board of Fisheries appointee, has come up during confirmation hearings and the recent Board of Fisheries meeting. This issue was elevated because of his involvement as a plaintiff in a lawsuit challenging the constitutionality of Title VIII of ANILCA.

Because of the importance of conflict of interest issues and the credibility of the Board of Fisheries, we requested an Attorney General opinion. The Attorney General's Office has ruled that there is no conflict of interest in this case. I am enclosing a copy of that opinion for your information as you consider the Governor's appointments for confirmation.

Sincerely,



Carl L. Rosier
Commissioner

Enclosure

MEMORANDUM

State of Alaska

Department of Law

TO: Carl Rosier, Commissioner
Department of Fish & Game

DATE: May 15, 1991

FILE NO: 663-91-0464

TEL NO: 465-3600

SUBJECT: Fishery Board member as
plaintiff in federal
subsistence lawsuit:
Executive Ethics Act
(AS 39.52)

FROM: Douglas L. Blankenship *DLB*
Deputy Attorney General
Department of Law - Juneau

CONFIDENTIAL: EXECUTIVE ETHICS ACT

You have asked whether the fact that Fisheries Board member Loren Croxton is one of the plaintiffs in a federal court lawsuit challenging the federal subsistence law would, under the Executive Branch Ethics Act, AS 39.52, constitute a conflict of interest that would preclude Mr. Croxton's participation in the recent deliberations on Cook Inlet subsistence fishing regulations.

1/ On the facts presented by this situation, it does not appear that an Ethics Act problem is presented by Mr. Croxton's position as a plaintiff.

This question arises because in the Board of Fisheries meeting on May 14, 1991, the board chairman ruled that Mr. Croxton could not be involved in the Cook Inlet subsistence fishing issue as a result of his status as a plaintiff in the federal lawsuit.

2/ Mr. Croxton is a plaintiff in McDowell v. United States, F90-34 Civil, a federal district court case challenging title VIII

1/ We note that the Executive Branch Ethics Act specifically supersedes the common law on conflicts of interest applicable to public officers. AS 39.52.910(b).

2/ A review of the tape of the board discussion after which the chairman ruled that Mr. Croxton was disqualified from being involved in the Cook Inlet subsistence fishing issues reveals that the board members, including the chairman, were concerned in large part with what they perceived as a potential public perception problem if Mr. Croxton participated on the issue before the board. For good or ill, the legislature in enacting the comprehensive Executive Branch Ethics Act chose not to prohibit acts by Alaskans as public officers because of individual beliefs or philosophies. The Ethics Act thus only prohibits the conduct specified therein as improper. As described in this memorandum, it does not appear that any action Mr. Croxton could take as a Board of Fisheries member could further his personal interest as a member of a group of plaintiffs challenging the validity of the federal subsistence law.

Carl Rosier, Commissioner
 Department of Fish & Game
 Our file #663-91-0464

May 15, 1991
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CONFIDENTIAL: EXECUTIVE ETHICS ACT

of the Alaska National Interest Lands Conservation Act, the federal law giving a priority to rural residents' subsistence uses on federal public land in Alaska. 16 U.S.C. § 3111 -- 16 U.S.C. § 3126. The State of Alaska is not a party to the lawsuit. The federal subsistence priority applies to the "taking on public lands of fish and wildlife for nonwasteful subsistence uses," and defines "public lands" in general as "land situated in Alaska which . . . are Federal lands." 16 U.S.C. § 3114; 16 U.S.C. § 3102.

The Alaska Board of Fisheries, of which Mr. Croxton is a member, is established in state law for "purposes of the conservation and development of the fishery resources of the state." AS 16.05.221. The board's responsibilities include implementing the state subsistence statute, AS 16.05.258. Since the Alaska Supreme Court decision in McDowell v. State, 785 P.2d 1 (Alaska 1989), the state subsistence protections do not include a rural component in the definition of "subsistence uses." AS 16.05.940. As a consequence of the fact that Alaska no longer defines "subsistence uses" in terms of "rural Alaska residents," the Board of Fisheries no longer implements the provisions of the federal subsistence law on federal lands in the state. This is because the federal law provides for state implementation only if the state provides, among other things, the "rural" component in the definition of "subsistence uses." 16 U.S.C. § 3115.

To summarize, then, Mr. Croxton is a plaintiff in a lawsuit in federal court challenging a federal law which applies to subsistence uses occurring on federal lands in Alaska. As a member of the Alaska Board of Fisheries, Mr. Croxton would not be involved in implementing that federal law. As discussed below, his position as a plaintiff does not appear to conflict with his board duties under the terms of the Executive Branch Ethics Act.

There is no doubt that Mr. Croxton is a "public officer," governed by the Ethics Act AS 39.52.960(21). The only provision of the act that could conceivably be implicated by the situation presented here is a section that prohibits public officers from taking or withholding "official action in order to affect a matter in which the public officer has a personal or financial interest." 3/

3/ The Ethics Act defines "personal interest" as "an interest held or involvement by a public officer . . . including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a
 (continued...)

Carl Rosier, Commissioner
Department of Fish & Game
Our file #563-91-0464

May 15, 1991
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CONFIDENTIAL: EXECUTIVE ETHICS ACT

As 39.52.120(b)(4). In this instance, it is not at all apparent that any action Mr. Croxton, as a Board of Fisheries member, would take in implementing the state subsistence statutes would in any way affect the outcome of the lawsuit filed in federal court challenging the federal subsistence law, which applies only to federal public lands in Alaska.

Based on the facts presented by this situation, including the scope of the federal lawsuit and the scope of the duties and powers of the Alaska Board of Fisheries, we do not believe that the Executive Branch Ethics Act would preclude Mr. Croxton's involvement in the Cook Inlet subsistence fishing issue.

DLB:nml

cc: Bruce Botelho
John Gissberg
Steve White
Assistant Attorneys General
Juneau AGO

Bonnie Harris
Assistant Attorney General
Anchorage AGO

3/ (...continued)

person or organization receives a benefit." As 39.52.960(18). The act defines "benefit" as "anything that is to a person's advantages or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value." As 39.52.960(3).



Alaska Native Brotherhood

Camp Number 2

320 West Willoughby Avenue, Suite 100
(907) 586-2049

Juneau, Alaska 99801

April 29, 1991

The Honorable Lloyd Jones
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Lloyd:

Please oppose the confirmation of Loren Croxten to the Board of Fish and Game because he is one of the plaintiffs who want to repeal Section VIII of ANILCA (McDowell vs. U.S.).

Thank you.

With best regards,

Al McKinley, Sr.
President

cc: Robert Willard