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SENATE COMMITTEE REPORT

DATE: 2/12/92

FURTHER:

DATE TURNED INTO OFFICE: March 31, 1992

Resources Committee considered

SENATE BILL NO. 375

"An Act prohibiting certain law enforcement officers from holding big game guide-outfitting licenses."

and recommends:

replace with _____ CS _____ (~~STA~~)
or adopt previous _____ CS SB 375 (STA)
 attaches amendment(s) (new title)

same title
 new title
 technical
title change
(HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes Public Safety 2/11/92

fiscal notes _____

DO PASS:

Sus Gt
[Signature]
[Signature]
[Signature]
[Signature]

OTHER RECOMMENDATIONS:

[Signature]
Chair, Signature and Recommendation

A M E N D M E N T

OFFERED IN THE SENATE

BY THE SENATE RESOURCES COMMITTEE

TO: CSSB 375 (STATE AFFAIRS)

Page 1, line 2, after "licenses":

Insert "; and providing for an effective date"

Page 2, line 1:

Delete "suspended"

Insert "subject to suspension"

Page 2, following line 19:

Insert a new bill section to read:

"* Sec. 2. This Act takes effect immediately under AS 01.10.070(c)."



TELECOPY COVER SHEET

Anchorage Legislative Information Office
Office - (907) 561-7007 Fax - (907) 562-4376

TO: Sen Jones - Sen Resource Committee

ATTN: _____ FAX: 465-3922 PHONE: _____

FROM: Rec/Arch PHONE: _____

INSTRUCTIONS: Inf from Bruno Zedler

SENT: Date 3-30-92 Time _____

DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____

NUMBER OF PAGES: _____ (counting cover sheet)

TRANSMITTED BY: AMR

Anchorage, March 29th 1991

Dear Legislator!

Dear Committeemember!

Ask you to support SB 375 in essence and ask you to supplement the bill with a provision to include Fish and Wildlife Biologists, many of whom are deputized enforcement officers and some of whom are licensed guides, like Kevin Delany who accompanied Gov. Hinkel to Bethel to impress upon the substance users. No good impression was achieved!

As far as Fish and Wildlife Law Enforcement officers working as Big Game Guides is concerned, that is not tolerable, especially by our well supported contention that in some cases guides are 'crooks' and in 'bed' with cops. See Daily News for 25th 1992!!!

If guiding of cops is allowed it should be overseen by trustworthy superiors without criminal records. Especially the top supervisor should be clean, the director of that division of law enforcement.

Page 1 of 2

Not passing FS 375 would continue a double standard of allowing to be guided by 'policy', which the can violate, as in this case was done, and not by statute like anyone else. In this scenario it becomes evident that a 'policy' did not work. In fact the violation of it was approved of by the supervisors at hand, who may even have criminal records themselves.

Please once and for all safeguard for abuse of office and against corruption by passing this bill and please expand it as asked in the beginning of the letter.

It is also evident that the enforcement of any 'policy' in the Dept. of Public Safety is in question by and through the attitude as displayed by Commissioner Turtan, who is tired of hearing about such things. See Daily News Jan. 25th 1998.

Sincerely

Thomas E. Pedler

Officers' conduct panned

Daily News
Game guides, troopers too cozy, audit says

By CRAIG MEDRED

Daily News outdoors editor

1-25-92

Cozy relationships between Alaska big game guides and some Fish and Wildlife Protection troopers have tainted the agency charged with enforcing laws against poaching, according to a study conducted by the Division of Legislative Audit. To preserve the integrity of wildlife troopers, investigators said, Fish and Wildlife Protection must "emphasize and strictly enforce its policies prohibiting participation in the guiding industry."

Public Safety Commissioner Richard Burton said Friday that Fish and Wildlife will do exactly that. "I think the issue is done and over with," he said. "I don't know why you guys are even bringing it up again. I'm



getting tired of hearing about this. It's something I inherited. We've done what can be done."

Wildlife troopers involved in questionable associations with guides in the past, however, remain on the job, and the fraternization among guides and some troopers continues. Burton said he would strictly enforce rules barring fish and wildlife troopers from spending annual leave working as big game guides. But he refused to comment on whether it was proper for troopers to fraternize with guides or stay in their camps.

The audit report, completed last September but not released until this month, also notes Fish and Wildlife's weak efforts to enforce anti-guiding policies in the past. The agency has had a policy against guiding since 1984, but it has been inconsistently enforced, according to the report, which also said the agency should:

- Develop criteria on how it decides who it will investigate.
- Examine its Wildlife Safeguard pay.

EXIBIT
#1

RECEIVED

FEB 12 1992

Office of Special Prosecutions and Appeals

RECEIVED

FEB 12 1992

Clerk of Appellate Courts
Anchorage, Alaska

GUIDES: Relationships challenged

Continued from Page A-1

ment program, which pays informants in a way that's similar to the local Crime Stoppers program.

The Division of Legislative Audit cannot, however, require changes.

"In the past, supervisory management did not believe that guiding was necessarily a conflict with enforcement. Accordingly, there appears to have been little effort to enforce the policy, and it has been reported that supervisors actually encouraged officers to work in the guiding industry," the report said.

"Although one officer was widely known to work as an assistant guide, his evaluations did not reflect any concerns over this activity, and the individual was even promoted from sergeant to lieutenant during this period."

The officer is not named in the report, but Burton confirmed that he is Lt. Bob Boutang, now the detachment commander in Fairbanks.

Boutang at one time headed statewide investigations for Fish and Wildlife Protection. He spent his vacation time working as an assistant guide for Merlin and Ed Grasser of Palmer.

Merlin is a longtime Alaska guide. Ed, his son, has been the lobbyist for the Alaska Professional Hunters Association, an organization of big-game guides.

As head of statewide investigations, Boutang was in a position to determine which guides were investigated.

Neither Boutang nor the Grassers returned phone calls

Wildlife) acknowledges that there is a great deal of discretion allowed over who to target for an undercover operation," according to the audit report.

"At a minimum, these circumstances give the appearance that this individual could suppress information regarding the activities of licensed guides with which he was associated while at the same time making decisions to target others who were competitors of his guides associates."

That appearance has only become stronger in recent days.

After Boutang's replacement as director of statewide investigations in 1989, Merlin Grasser became the target of a directed undercover investigation.

Earlier this month the 63-year-old guide was judged guilty of many hunting violations — including wanton waste of a caribou, taking wildlife during a closed season and waste of a fur-bearing animal.

Fish and Wildlife trooper Roger Aulabaugh of Kodiak said investigators there decided to go after Grasser when they learned the guide, who had won a drawing for a Kodiak brown bear permit, planned to go hunting on Kodiak with non-resident hunter John Boatman of Kalamazoo, Wash., in the fall of 1990.

Troopers suspected that Grasser planned to let Boatman shoot a bear, which Grasser would then illegally claim as his own. A guide can collect \$5,000 to \$10,000 for leading such a hunt.

The two men never found a bear, Aulabaugh said, but

from a camp nearby. Aulabaugh said the investigation techniques were not particularly sophisticated. Troopers introduced themselves to Boatman and Grasser as hunters camped down the beach. Then the troopers watched the two men commit wildlife crimes one after another.

"They had no idea we were with the state," Aulabaugh said, "and, more important, they just didn't seem to care."

Among the crimes troopers witnessed was the shooting of a caribou left to rot. Grasser and Boatman took only the head and cape, Aulabaugh said.

For that, a Kodiak judge eventually sentenced them to seven days in jail, ordered them to pay fines of about \$4,000 each, suspended their hunting privileges and put them on probation.

Aulabaugh said that in 15 years on Kodiak Island he had seen few cases so blatant as this. It left him with the impression Grasser had little respect for fish and game laws.

"This was probably not the first time (he did this)," Aulabaugh said.

Boatman was a one-time employee in Grasser's guide camp — the same kind of role filled by Boutang from 1984 to 1987. The Alaska State Troopers once investigated that relationship. Burton would not say what they found.

"There's never been anything to support firing him (Boutang)," he added.

He refused to release the Boutang investigation report because it might subject the department to a lawsuit

TIMELINE

■ 1983: Alaska big game Mel Gillis recommends Fish and Wildlife Protection Trooper Bob Boutang be licensed by the state Division of Commerce and Economic Development as an assistant guide.

■ 1984: Boutang begins working as an assistant guide for registered guide Merlin Grasser at Grasser's Brooks Range sheep hunting camp.

■ 1986: As head of Fish and Wildlife Protection's Office of Statewide Investigations, Boutang writes an article for the Alaska Professional Hunter magazine praising the state's big game guides as providers of "an outstanding service to clientele from all over the world."

■ 1987: Boutang applies for a registered guide license. Edward Grasser, son of Merlin and a guide in the family business, certifies that Boutang has served a three-year apprenticeship with the Grassers. The state licensing office sends Boutang the trooper the licensing form of Boutang the guide, so the former can certify that the latter has committed no crimes.

■ 1988: A two-part series in the Daily News details relationships between the state's big game guides and Fish and Wildlife troopers. Boutang, under oath in court, is asked whether he ever intended to become a big-game guide. "I've got an assistant guide license," he answers, "but I'm not really working for any kind of a guide license. . . . I don't have any future intention on going to be a guide."

■ 1989: After Daily News stories detail relationships between the state's big game guides and Fish and Wildlife troopers, the Alaska State Troopers launch an investigation of Boutang's association with guides. The report is never made public. Boutang is transferred from the post at the head of statewide investigations to the head of Interior detachment in Fairbanks.

■ 1990: The state Department of Public Safety, which had allowed fish and wildlife troopers to guide so long as they do not receive payment, decides that troopers shouldn't guide under any circumstances.

■ 1991: The Division of Legislative Budget and Audit begins investigating Fish and Wildlife Protection and the state guide board. A report completed by fall is withheld from the public at the request of the Department of Public Safety.

■ 1992: The report is released. Commissioner of Public Safety Richard Burton says all the problems noted by investigators have been resolved, but he refuses to release the troopers' report on Boutang. Boutang remains at his post in Fairbanks. A legislative budget spokesman says two more investigations are planned.

he didn't think any of the problems noted in Fish and Wildlife have harmed the agency's public image. And he criticized one-time outfitter Brno Zedler of Anchorage for keeping the issue in the public eye for years.

Zedler was a small-time outfitter targeted for an undercover investigation because some guides didn't like him. He was eventually convicted of guiding without

The case is on appeal. Zedler said Friday he feels vindicated by the audit. Fish and Wildlife has many upright and honest troopers, he said, but the agency has been compromised by a few.

"They lie," he said. "They're a pack of liars."

□ Daily News reporter Ralph Thomas contributed to this story.

Enough on Hamel

Referencing your article on page A1, A7, A8 and half of A9(!!) of the Feb. 2 Daily News, titled "Is oil-pipeline critic Hamel a criminal?" I have but one comment. Hamel and the Daily News doth protest too much: Didn't we have a president who said, ad nauseam, "I am not a crook!"

Nuff said.

— Laura Green

Stop whining

So Public Safety Commissioner Richard Burton is getting tired of hearing about this. He doesn't know "why you guys are even bringing it up again" ("Game guides, troopers too cozy," audit says, Jan. 25). The issue is another example of the good old boy system at work to the detriment of the citizens and the top good old boys, allowing their minions to protect their friends from investigation and prosecution.

If the system was working for the citizens, the public safety commissioner would not have been allowing his investigators to be in the employ of people they were supposed to be investigating. And the current commissioner wouldn't be whining about the watchdogs finding out about it.

Bureaucratic egotists are mismanaging and doing wrong at the top of many federal, state, city and other local agencies. But the absolute worst is when our law enforcement leadership is such that it protects officers and staff who violate the law. Such "leadership" leads to an unarmed

teen-ager, getting "accidentally" shot five times by a law officer. And it seems that it leads to guides feeling they can flagrantly abuse our wildlife resources. And we suspect it leads to certain law enforcement officers violating game laws as well as protecting the bandit guides they are supposed to be investigating.

The real issue is not the few outlaws in Burton's agency. The real issue is his whining about the citizens expecting him to do his job.

— William H. Mattice

Adopt a pet

Recently, my husband and I had the pleasure of adopting two cats from Animal Control.

We picked out the cat we wanted and signed an agreement promising to take good care of the animal and to get it spayed or neutered within 30 days. The adoption fee was only \$10. We did have to pay a deposit because our cats' names had been fixed for \$10 for a cat and \$20 for a dog. If we will get that back when we submit proof that the cat was sterilized, we will get that back when we submit proof that the cat was sterilized. We received all the information and their price for sterilization, a rabies vaccination certificate and tag, and a coupon for a free exam by the vet of our choice.

The hardest part was picking out the cat. There were over a dozen cats available for adoption, including a beautiful grey and black tabby, two beautiful black cats, and an adorable white kitten. There was even a rabbit! I was smitten with a black-and-white tom; my husband by a brown-and-

EX 1818 #1

Illegal Commercial Operations Affecting the Alaska Professional Guide

by Robert Boutang
 Alaska Department of Public Safety
 Fish and Wildlife Protection
 Statewide Investigations

In 1973 the Guide Licensing and Control Board was formulated as the regulatory body for the guiding industry. In the mid 1960's to the mid 1970's, drastic regulation changes in seasons, bag limits and methods of taking game had a direct impact on many of the guiding operations.

These ten years of regulation changes had the most direct impact on the guiding industry. During these ten years, the brown bear season on the Alaska Peninsula was cut from nine months per year to four weeks every two years. The use of aircraft was also severely limited by regulation. It was understandable with the numerous statute and regulation changes that did occur in such a short period of time, that some guides found it difficult at best to adapt their guiding operations to meet the changing times. What were legal methods of hunting

one day were all of a sudden illegal the next.

In many cases, however, some guides did operate as though there were no restrictions on the methods and means of taking big game. We did, in fact, have guides who operated with little fear of being apprehended in the commission of a crime.

In 1972, one of the enforcement priorities established within the Division of Fish and Wildlife Protection was the illegal guides who persisted in continually taking big game animals unlawfully.

Through the efforts of the Guide Licensing and Control Board in establishing standards, regulations and exclusive and joint use areas, in conjunction with a concerted enforcement effort taken by the Division of Fish and Wildlife Protection in the 1970's, we have seen a dramatic decline of the flagrant illegal guide operations.

The State of Alaska can take pride in the fact that we now have a professional guiding industry that provides an outstanding service to a clientele from all

over the world and the revenue that is generated from the guiding industry is one that benefits many people and businesses inside the State of Alaska.

Today, we face a new problem that concerns and affects the professional Alaskan guides, the public and State of Alaska. This concern is the unlicensed individuals who are in fact booking clients and acting as guides. It is now known that there is more illegal unlicensed guiding activity than anyone thought existed.

This is one concept of illegal guiding which virtually has never before been worked by Alaska Fish and Wildlife Protection. The investigative section of Fish and Wildlife Protection is now developing intelligence regarding this problem. The Division has established unlicensed guiding operations as one of our main enforcement priorities.

We found some of these so-called outfitters (unlicensed guides), who provided drop-off type hunts, were actually going so far as to personally accompany the clients in the field, calling in

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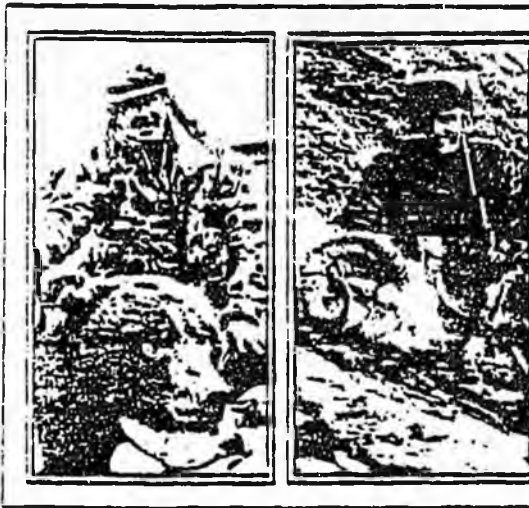
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moose, using aircraft to drive and herd animals and using radio communications to aid and take animals.

Once such unlicensed guide showed a client undercover hunter a check which was two times the amount of a regular hunt and he said, "This is what I get for my hunts and I produce more record book animals than anyone in Alaska and I don't even have a guide license."

Another unlicensed guide, who recently pled guilty, took a client undercover hunter in Game Management Unit 7, Katmai National Park, during the off season and killed a brown bear the same day he was airborne. He also tried to solicit our hunter into getting him more clients. This is the type of people we are dealing with; they have no respect for the legal guides or the resources.

This year our investigative section investigated two outfitters (unlicensed guides) who took approximately 40-50 moose each in a two-year period. That is putting a serious dent in someone's exclusive guiding area and in Alaska's moose population. These illegal non-licensed guides are going into honest hard-working professional guides' areas and stealing the resources and giving hunting and the professional guides, through the publicity, a bad name. The licensed guides, hunters, the general



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public and the wildlife are all the victims.

These types of illegal operations have a direct effect on the licensed professional guide whereas the licensed guide must adhere to statutes and regulations which affect his operations.

While we do have the problem of unlicensed guides in Alaska, we first have to identify the people involved. To do this, we need all the help we can get from the Guide Board, professional guides and the concerned citizens.

In addition, it is extremely important that the Guide Board, professional guides, concerned public, and our Division continue to mutually cooperate in identifying individuals who are unlicensed and are acting in the capacity of licensed guides.

The unlicensed guides do not have to follow any laws. They are not bound by restrictions or ethics and in many cases, may have a total disregard for the resources and other guides. They take game anytime and place and use any methods they want to.

Only through the continuing cooperation of all of us working together can we hope to reduce the illegal unlicensed guiding operations that exist in the State of Alaska.

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Charter Life Sustaining membership's final issuance was December 31, 1984. However, another classification was created which is referred to as Life Sustaining membership offered for \$250.00 instead of the \$200.00 Charter Life Sustaining offer. The following person has joined as a Life Sustaining member:

Charles Folkman of Oconomowoc, Wisconsin

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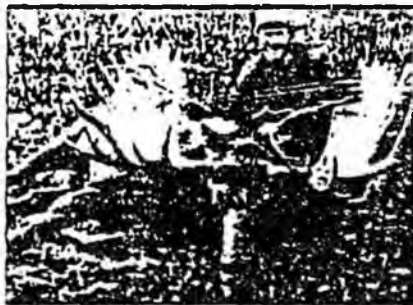


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DIVISION OF FISH & WILDLIFE PROTECTION

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PHONE (907)

269-5509

February 28, 1991

Mr. Bruno E. Zedler
4803 White Birch Lane
Anchorage AK 99517

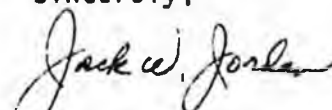
Mr. Zedler,

In response to your telephone call the other day, I did find out that we had sent your check to a previous address rather than the one you are currently using. As soon as that letter comes back, we will immediately send the check to your current address on White Birch Lane. If the previous letter is forwarded to you, please advise me when you have received it.

When you told me that you had information that your backpack had been opened, contrary to what was in my letter to the Ombudsman, I immediately checked with Trooper Campbell. My letter said that the pack was stored unopened and returned to you unopened. Upon my inquiry, Trooper Campbell clarified events for me. The backpack was stored unopened. He never opened the pack to inventory the contents or to see what was inside. However, your sharpening steel, knife, and binoculars had been stored separately in evidence. After getting these items out of evidence, Trooper Campbell did slide an outside pocket open just far enough to put in the other items so there would be less chance of losing them.

He had not told me of that before when he said the pack was returned unopened, because the thrust of my question was whether we could have removed some items from the pack. In that very real sense, the pack was never opened. One pocket was cracked open far enough to insert your other property. To me, that is not a falsehood. To characterize our comments that the pack was unopened as a lie and proof that this division is full of untrustworthy people is stretching, to say the least. When talking to you while returning the pack, Trooper Campbell was very clear about the pack not having been opened except to slip in your belongings that morning. He very explicitly admitted to you that the pack had never been opened until that very morning when he put in your other property. He did not try to deceive you nor hold back any of the facts. He told you the whole truth; you tried to use that against my statement to make it appear as a lie. I believe that the record is clear on what happened and what was said, and that you are fully cognizant of that fact.

Sincerely,

Jack W. Jordan
Directorcc: Commissioner Richard L. Burton
Ombudsman's Office

Stock (Lauri Jones) RE: U.S. 11/20
7/8 - 89

Alaska troopers linked to crime

The cruel and illegal slaughter of fish and wildlife is a multimillion-dollar industry in the state of Alaska which law enforcement appears to protect.

Behind Alaska's sportsmen for years, big game hunting industry operates a good-old-boy network that wraps the guides, the board that regulates them, and some officials of the Alaska Division of Fish and Wildlife Protection in a cocoon of political and economic cooperation, according to an investigation by the Anchorage Daily News, reported by Craig McCreed, the Daily News outdoors editor.

Following is a sample of the widespread conflicts of interest:

Chuck Weir is vice chairman of the Guide Board, the regulatory board that is supposed to regulate and police the guide industry. Weir also is a former guide and one of the few insurance salesmen in the state specializing in insurance for guides. Robert Boulanger is a sergeant with Alaska Fish and Wildlife Protection and is also licensed assistant guide, working toward his registered guide's license. Phil Driver, a guide and president of the professional hunter's association, was dismissed from his job as guide board chairman in 1985 after being charged with hunting illegally. It was the second time Driver had been indicted on illegal hunting charges.

Investigating this apparent multi-level statewide corruption has proved dangerous. Two guides who had been arrested on poaching charges died in plane crashes in which the banking cables of both their planes had been reversed. One of the two poachers had agreed to cooperate with prosecutors and was due to appear in court the day after his death. Alaska State Troopers found the deaths to be coincidental.

The efforts by one whistle-blower to expose the statewide poaching monopoly has ruined his life, forced him into poverty, and left him in jail on murder charges. Ken Hunter, Ph.D., is a former college professor who left Montana to pursue a commercial fishing career in Alaska. On

his arrival in Alaska, he discovered what many already knew about the poaching industry and vowed to expose it.

For long he hunted for clients who would join resistance to the Alaska State Troopers (AST) and eventually a contract was signed with the AST by trying the guide industry. Hunter's plan was to use the guide industry to help him. He received none. During the third attempt, in 1994, he shot and killed two hit-men whose bodies were never found.

In an effort to draw attention to his plight, Hunter contested to the murders even though no bodies were found. His strategy did not work since no charges were brought against Hunter and he left Alaska.

Then, in 1998, Hunter filed a \$600-million lawsuit against 75 prominent Alaskans he believes to be implicated in the state-wide corruption. Shortly after the suit was filed, the state of Alaska indicted Hunter on charges of murdering the two alleged hit-men four years earlier.

Ken Hunter now sits in an Alaskan jail awaiting judgment by those he is suing. In a letter to *Project Censored*, Hunter wrote "My family and I are now being sacrificed in order to conceal the involvement of Alaska State Troopers (ASTs) in conservation crime with Alaska's big game hunting guides. I ask you, as an American and as a human being, to help us fight and expose the corruption, the oppression, and the inhumanity that weigh so heavily upon us."

Source: U.S. Anchorage Daily News, May 2, 1994, "Game's guides are under fire," by Craig McCreed, p. 1. Reported also in the Daily News and Anchorage Times, then printed later by Ken Hunter, Oct. 20, 1998.

Corrections and clarifications

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11
SJR

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SEP 11 1989

Public Defender Agency
Anchorage

Alvin Sa has been called "the world's biggest heroin dealer."

Rogan used questionable results from CIO/Ga'up polls to build support for the Nicaraguan contras.

248-4716



State of Alaska
ombudsman

Duncan C. Fowler

January 9, 1989

Bruno Zedler
2804 Klamath Drive
Anchorage, Alaska 99517

RE: Ombudsman Complaint A88-1084 (Closed)

Dear Mr. Zedler:

On December 23, 1988, Assistant Ombudsman Ruth DeCamp of my Anchorage office sent me a copy of the letter you brought to her in which you objected to the preliminary finding issued on your complaint. I have reviewed the letter, and Ms. DeCamp has read the other materials. We have also received the official response from Colonel Jack Jordan, Director of the Division of Fish and Wildlife Protection. Colonel Jordan made no objection or comments on the preliminary finding.

Ombudsman regulations provide that the preliminary finding be sent to the agency for response. There is no provision for the complainant to receive this document in Ombudsman regulations or statutes. The finding of record, which is provided to the complainant, is not issued until the agency has an opportunity to comment on the initial report. This process allows the agency to object to the finding and recommendations, and an opportunity to request modification before the record becomes permanent.

This case has been unusual for us in terms of your premature involvement as recipient of the preliminary finding. You requested that report to use at a task force meeting, and because of the agency's formal approval of your request, you received a document which is normally exclusively reserved for preview by agency staff.

Routinely, when an agency answers a preliminary finding, and does not object to it, we are at liberty to issue a summary of the investigation and the finding of record to the complainant. If the agency does object to the preliminary finding, we must decide whether to approve the request to modify, or to retain our initial finding and recommendations. While our office and the agency negotiate the finding and recommendations of record, the complainant is not given specific information about the case. When a complainant receives the summary, the case has already been closed.

In this complaint, the agency did not object to the preliminary finding. Because you were made privy to that document by courtesy of the department, you were given an opportunity to review its contents at the same time department officials did. You did not agree with the preliminary finding, and you submitted a letter requesting modification and further investigation. You also provided new information which you had not made available to us during the course of the original investigation.

Reply to:

P. O. Box 102636
Anchorage, AK 99510-2636
(907) 563-3673
(800) 478-2624

P. O. Box WO
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970

P. O. Box 74358
Fairbanks, AK 99707
(907) 452-4001
(800) 478-3257

Bruno Zedler

- 2 -

January 9, 1989

DISCUSSION OF NEW INFORMATION YOU PROVIDED

You gave Ms. DeCamp copies of transcripts from your meeting with Lt. Boutang, and copies of Lt. Boutang's guide license application file. The transcripts were apparently important in the charges against you and the court action which resulted in your recent conviction for illegal guiding. However, Ms. DeCamp could find nothing in the transcripts pertinent to your claim that Lt. Boutang had been a guide in violation of departmental policy, nor the allegation that he was incompetent and unworthy of promotion.

The guide license application file contains some very comprehensive statements by clients of master guide Grasser for whom Lt. Boutang worked. Those statements detail the kind of services Lt. Boutang performed as an assistant guide. However, there is no evidence in the statements that Lt. Boutang worked for pay; that is essentially what Colonel Jordan reported in his investigative summary.

The policy letter dated December 21, 1984 from Robert Sundberg to Colonels Michael Kolivosky and Robert Henderson (enclosed) does indicate that the policy of the department from that date was to prohibit outside employment for any state troopers (including fish and wildlife protection officers) in beverage dispensary businesses or guiding businesses. The policy, however, does not specify whether uncompensated service in those businesses would be considered "employment." A review of the existing Department of Public Safety policies and procedures does not answer that question, either. This makes the policy update proposed as part of the resolution of this case by Colonel Jordan even more important.

FINAL ANALYSIS

You have based your objection to the finding on what you allege is "misinformation" provided by Colonel Jordan. A summary of this information was included in the preliminary finding. You have explained to Ms. DeCamp and to me that Colonel Jordan's finding that "no real conflict exists because Lt. Boutang will allow his assistant guide license to expire this year" is not factual. You believe this is not a proper application of the spirit and letter of the Executive Ethics Act regarding outside employment.

You allege that the real conflict in Lt. Boutang's work as an assistant guide will not be realized until he retires. You assert that upon retirement, Lt. Boutang can and will reactivate his assistant guide time (allegedly acquired improperly while he was employed by the division as a fish and wildlife protection officer) and apply it toward his application for a master guide license.

It is altogether possible that this may happen. It is also possible that it will never happen. We can only know for certain what Lt. Boutang will do when he retires when that time comes. I cannot and will not make a guess about Lt. Boutang's future behavior. I cannot hold a case open for years, waiting for a potential conflict of interest to emerge in the form of Lt. Boutang's application for a master guide license.

If, and when, Lt. Boutang does apply for the master guide license, the use of his assistant guide time will be a factual issue. With your keen interest in Lt. Boutang's activities, it is reasonable to expect you to submit testimony to the guide board if that event occurs in the future. Today, it is a speculative issue. My office has neither the resources nor the mandate to speculate on the "possible events of the future."

You were given copies of the Ombudsman regulations and statutes. I had hoped you would read those with a view to the mandate of this office. The complaint you gave us was one in which personal misconduct was alleged. You also alleged that you had taken the complaints to the Director of the Division of Fish and Wildlife Protection and the Commissioner of Public Safety. You told us that those officials had refused to take action on your complaints.

According to our regulations, we presented those allegations to the director of the division for investigation. The director, Colonel Jordan, explained that he had commenced an internal investigation, and said he would share his findings with the ombudsman investigator. Colonel Jordan concluded his own investigation and sent his findings to Ms. DeCamp in writing.

The essence of Colonel Jordan's findings were: (a) that Lt. Boutang had failed to submit proper documentation on his guiding activities, although his supervisor had approved of them, and was aware of them; (b) that in order to rectify any conflict which Lt. Boutang may have had in acquiring hours for his assistant guide license, Lt. Boutang would allow his assistant guide license to expire at the end of this year; (c) that the division had failed in its responsibility to require Lt. Boutang to submit proper reports on his guiding activities; and (d) that the division was in the process of formalizing its articulated and currently practiced policy of prohibiting any form of guiding by its fish and wildlife protection officers.

Lt. Boutang nor Colonel Jordan denied that Lt. Boutang had worked in the Grasser camp as an assistant guide. They contended that the work was not compensated, and Colonel Jordan was satisfied from his own investigation that Lt. Boutang's assertions were true. According to Colonel Jordan, the work in Grasser's camp was known to and approved in advance by Lt. Boutang's supervisor. The supervisor and Lt. Boutang failed policy only because Lt. Boutang did not report the work on appropriate departmental forms.

On the side of resolving the problem, Jordan explained that Lt. Boutang was not to work in Grasser's or any other guide's camp in the future; he stated the department was formalizing its prohibition on guiding by fish and wildlife protection officers to include unpaid as well as paid guiding. Additionally, Lt. Boutang agreed to let his assistant guide license expire naturally at the end of the calendar year to avoid even the appearance of impropriety.

Because of the department's admitted failure to properly require Lt. Boutang to submit the appropriate reports on his guide activities, we found the complaint to be partially justified. We also found the complaint rectified because the division was in the process of formally adopting its stricter policy prohibiting all forms of guiding for its employees.

FINDING OF RECORD AND CLOSURE

The actions proposed by the Division of Fish and Wildlife Protection were consistent with our recommendations. Further, since the director was satisfied that the expiration of Lt. Boutang's assistant guide license would rectify any real or apparent conflict of interest, we believe the investigation has been properly concluded.

The following will be retained as the finding of record in this case:

Bruno Zedler

- 4 -

January 9, 1989

I find the allegation that the Division of Fish and Wildlife Protection allowed its officers to serve as guides in violation of agency policy partially justified because Lt. Boutang failed to file proper forms to report his work when the law required him to do so.

I find the allegation that the Division of Fish and Wildlife Protection acted capriciously when it promoted officer Boutang is not supported by the facts. I find that decision was an appropriate exercise of discretion and that departmental policies and procedures were properly followed when the decision was made.

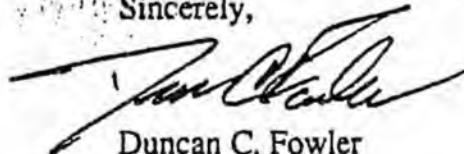
Because the agency has changed its practice of allowing its officers to do any kind of guiding, and has mitigated its own oversight in having Lt. Boutang report his assistant guide activities consistent with the requirements of new legislation, I find the complaint resolved.

* * * * *

With the transmission of this letter, I am closing the complaint. You are free to file a new complaint if and when Lt. Boutang reactivates his assistant guide time in an application for a master guide license. You may also file a written complaint under the auspices of the Executive Ethics Act if you wish to press that issue further.

A simultaneous copy of this letter will be sent to Colonel Jordan and Public Safety Commissioner Arthur English to notify them that the case has been closed. Since the agency made its response to the preliminary finding and recommendations with the reasonable expectation that all investigative work had been completed. I am sending them a copy of this report so they will know about the supplemental materials we considered and our conclusions regarding their relevance to the complaint.

Sincerely,



Duncan C. Fowler
Ombudsman

RAD:PJC

cc: Colonel Jack Jordan, Director
Division of Fish and Wildlife Protection, Anchorage
Commissioner Arthur English, Department of Public Safety
Enclosure: 1984 Sundberg Memorandum

EXHIBIT #2

Legislative Report

Guides vs Outfitters

by Ed Grasser

Hunting is a great American tradition and an important part of a heritage rich in individual freedoms. Many American sportsmen dream of the day when they can make that long-awaited hunt for a trophy animal in some other part of the country that will add to his or her outdoor experiences. Many of us choose to undertake this great adventure solely on our own, pitting our skills against unknown terrain and animals that require new learning experiences and techniques. There are those, however, that seek the assistance of experienced guides who know the territory and the game. These men make every effort to provide an enjoyable hunt while greatly increasing your chances of success.

In most of the Rocky Mountain states, the hunter books with an individual known as an outfitter. This person will provide all of the logistical and support activities necessary for a successful hunt, as well as experienced guides to accompany the client into the field in pursuit of game.

Alaska, like her sister states and Canada's western provinces, has a legally sanctioned system regulating guides who offer their services to the sportsman. However, unlike the other systems established throughout North America, Alaska sanctioned a system of guides that has three categories: Master and registered guides who are responsible for outfitting and directing your trip, and assistant guides who most often are the ones accompanying you in the field. In recent years, this departure has swerved from an established system to that of outfitters hiring assistants as guides. It's a scenario that has begun to create problems for both legitimate guides and the client who often has saved for several years to take that dream hunt in Alaska.

Not long after statehood, when Alaska began licensing persons wishing to pursue guiding as a profession, there was a group of individuals that became known for exploiting Alaska's big game populations, along with the sportsmen who came to Alaska to fulfill a life-

long dream. These "outlaw guides" have called themselves many things over the past couple decades. However, due to loopholes in the law, they are now calling themselves "outfitters." The confusion created by these individuals is creating two very undesirable effects.

First and foremost, these "outfitters" are operating outside of any regulatory controls and as such have no responsibility to the resource or the client. Since they are gaining their clientele with cut-rate prices, they are selling many more hunts than legitimate guides in order to make a profit. Although many non-residents of Alaska may see this as a desirable situation, they fail to recognize Alaska's unique subsistence law. By taking advantage of wholesale hunts with bargain prices, sportsmen can and will place enough pressure on the resource to cause Alaska's priority subsistence law to rear its ugly head. Simply stated, the subsistence law excludes non-residents from hunting in Alaska first, then if game populations so dictate, urban Alaskans are precluded from participating. This is done to ensure rural Alaskans access to necessary game resources for their subsistence lifestyle.

The second problem created by these illegitimate guides is one of name recognition. As most sportsmen recognize Western outfitters as the person who puts on and assists in hunting efforts, many hunters who have booked trips to Alaska have erroneously assumed they were going on a guided hunt. The actual experience they had at the hands of these "outfitters" has soured them on Alaska and the entire guiding industry, thereby creating an atmosphere of doubt and suspicion over hunting excursions to the 49th State. Both legitimate guides and the hunting public have suffered.

The question arises, "What may be done to alleviate this situation?" The solution, although perhaps bitter for the Alaska pseudo-outfitter, is relatively simple. Alaska's lawmakers should move swiftly to close loopholes that allow this activity to take place, thereby bringing all indi-

viduals wishing to participate in commercial activities involving Alaska's big game resources under uniform and consistent regulatory authority. Until this happens, non-residents wishing to journey north for a chance to hunt Alaska's wild game should make an effort to establish their guide's credentials. Ask for items such as the state-assigned licensing number given to master and registered guides. Check the information with state game enforcement officials. The little time and effort it takes to accomplish this could make the difference between an enjoyable trip and major disappointments. *

APHA-SCI Awards Program is now receiving entries for the 1987 hunting season. Please send inquiries and entries to:

APHA
Box 91932
Anchorage, AK 99509

ALASKAN TROPHY HUNTING

IN
THE BROOKS RANGE
AND ON
THE ALASKA PENINSULA
WITH

RICHARD A. GUTHRIE

Registered Guide and Outfitter

P.O. Box 24-0163

Anchorage, AK 99524

(907) 243-7766

Member:

FNAWS • SCI • NRA • APHA



Plaintiff

JACK W. JORDAN

Defendant(s)

Complainant
COUNTY
No. 65-186

MAKE A FALSE STATEMENT
IN APPLICATION FOR A
RESIDENT LICENSE

Complainant, DON TETZLAFF PROTECTION OFFICER ADF-6

personally appearing before me and being duly sworn, states that on or about the

AUGUST 10 1965, at or near GLENN ALLEN in the THIRD day of

Judicial District State of Alaska approximately JACK W. JORDAN DID PURCHASE
A RESIDENT CLASS 5-A LICENSE AND CLAIMED
RESIDENCY, WHEN IN REALITY HE HAD ONLY
RESIDED IN ALASKA APPROXIMATELY FIVE
(5) MONTHS

All of which is contrary to and in violation of TITLE 5, ALASKA
ADMINISTRATIVE CODE, SECTION 309.21. and against

the peace and dignity of the State of Alaska

Don Tetzlaff

Sworn to and subscribed before me this 18th day of

OCTOBER 1965

Donald L. Lusk

THIRD Judicial District, GLENN ALLEN, Alaska

JACK W. JORDAN

Defendant(s)

TAKING GAME DURING
A CLOSED SEASON

Complainant, DON TETELAFF PROTECTION OFFICER ADFEG

personally appearing before me and being duly sworn, states that on or about the

11th

OCTOBER 10 65 in the Copper Valley Borough in the THIRD

Judicial District State of Alaska

JACK W. JORDAN DID UNLAWFULLY

TAKE GAME DURING A CLOSED PERIOD, TO WIT: THAT
HE DID SHOOT AND KILL ONE COW MOOSE DURING
THE CLOSED SEASON THEREOF

All of which is contrary to and in violation of TITLE 5, ALASKA
ADMINISTRATIVE CODE, SECTION 502.02 (B)

the peace and dignity of the State of Alaska

Don Tetelaff

Sworn to and subscribed before me this

18th

OCTOBER

1965

Lucretia L. Luelle

Magistrate

000787

HEARING RECORD SHEET

ARRAIGNMENT:

Type of charge WV. 17-1-1

10/19/1965 Counsel for Defendant _____
Counsel for State _____

On this date the Defendant appeared, a copy of the Complaint was received by the Defendant, the Complaint was read, and the Defendant was advised of his rights.

FOR MISDEMEANOR:

Thereafter, the Defendant entered a Plea of Not Guilty

On Plea of "Not Guilty"

Defendant _____ waive trial by jury.
Trial set for _____ M., ___/___/19___.
Bail set in the amount of \$ _____.

Magistrate

Case continued from above date to _____ M.,
___/___/19___, _____ Magistrate

Case continued from above date to _____ M.,
___/___/19___, _____ Magistrate

Case continued from above date to _____ M.,
___/___/19___, _____ Magistrate

On Plea of "Guilty" Based upon the plea of "Guilty", the Court hereby enters its judgment of "Guilty".

Defendant sentenced to jail for 30 days with
\$300 suspended, and to pay a fine of
\$300 with \$ _____ suspended, and the
Court recommends that his driver's license be suspended for
_____. The payment of the unsuspended
portion of the fine is due on or before ___/___/19___.

Magistrate

FOR FELONY:

Defendant _____ waive Preliminary Hearing.
Preliminary Hearing set for _____ M.,
___/___/19___.
Bond set in the amount of \$ _____.

Magistrate

Bond reduced to \$ _____
Magistrate

Preliminary Hearing continued from above date to _____ M.,
___/___/19___, _____ Magistrate

Preliminary Hearing continued from above date to _____ M.,
___/___/19___, _____ Magistrate

Preliminary Hearing continued from above date to _____ M.,
___/___/19___, _____ Magistrate

Original Action Number 5-17-49 (Blum). Defendant's name WV. 17-1-1

HUNTING REPORTS

EDITOR'S NOTE: When specific locations are cited in Hunting Reports as the site of collecting unusually large trophies don't count on them being accurate. For obvious reasons we will not specify exact drainages, canyons, etc. and when they are specified in a report they are subject to editorial camouflage.

Africa



Keith Bates of Chicago, Illinois reports Mountain Nyala hunting in Ethiopia to be more like sheep hunting than antelope hunting.



Keith Bates collected this white rhino in South Africa with a .44 mag. He says this may be a first for the .44 mag as other rhinos are collected with Thompson contenders chambered for .375.



Alaska



Nine year old Forrest Boutang of Eagle River, Alaska harvested his trophy black bear this spring in the Taikeetna Mountains with guide Marlin Grasser. Forrest received a FNAWS rifle, Winchester 70, for signing up 15 members.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/29/92

FURTHER: Resources

Date of 5-Day Notice: 1/30/92
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-11-92

State Affairs Committee considered SB 375

"An Act prohibiting certain law enforcement officers from holding big game guide-outfitting licenses."

and recommends: with a majority of the committee recommends it be replaced with

replace with CS SB-375 (STA)

attaches amendment(s)

and do pass

- same title
- new title
- technical title change (HB only)

adopts Letter of Intent

further referral to the

do pass

do not pass

no recommendation

individual recommendations

Handwritten initials/signature

NEW FISCAL NOTES: Dept/Date
 zero fiscal notes

fiscal notes

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date
 Governor's bill with fiscal notes:
zero fiscal notes

fiscal notes *DPS / 2/1/92*
ASIS

DO PASS

OTHER RECOMMENDATIONS:

Handwritten signatures and recommendations:
Dunn
Luh
Pau
M. J. Kelly do pass

Chair: Signature and Recommendation

CS FOR SENATE BILL NO. 375 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 2/12/92
Referred: Resources

Sponsor(s): SENATORS HOFFMAN, Rodey

A BILL

FOR AN ACT ENTITLED

1 "An Act prohibiting certain law enforcement officers from holding big game guide-outfitting
2 licenses."

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

4 * Section 1. AS 08.54 is amended by adding a new section to read:

5 Sec. 08.54.393. CERTAIN LAW ENFORCEMENT OFFICERS MAY NOT HOLD
6 GUIDE-OUTFITTER LICENSE. (a) Notwithstanding AS 08.54.350 - 08.54.390, a person who
7 is employed by the Department of Public Safety as a state trooper or a law enforcement officer
8 engaged in fish and wildlife protection may not hold a guide-outfitter license, marine mammal
9 guide-outfitter license, class-A assistant guide-outfitter license, or assistant guide-outfitter license
10 under this chapter.

11 (b) A guide-outfitter license, marine mammal guide-outfitter license, class-A assistant
12 guide-outfitter license, or assistant guide-outfitter license issued under this chapter after the
13 effective date of this section is suspended, if the person to whom the license is issued is
14 subsequently employed by the Department of Public Safety as a state trooper or a law

1 enforcement officer engaged in fish and wildlife protection. A person whose license is suspended
2 under this subsection shall notify the Department of Commerce and Economic Development that
3 the person is employed by the Department of Public Safety as a state trooper or law enforcement
4 officer engaged in fish and wildlife protection within 30 days after beginning the employment.
5 The suspension of a license under this subsection remains in effect until the licensee is no longer
6 employed by the Department of Public Safety as a state trooper or a law enforcement officer
7 engaged in fish and wildlife protection and the licensee provides written notification to the
8 department of the fact that the person is no longer employed by the Department of Public Safety
9 as a state trooper or a state law enforcement officer engaged in fish and wildlife protection. A
10 person whose license is suspended under this subsection is not required to renew the license or
11 pay license renewal fees for the period of suspension. Once a suspension of a license is
12 terminated, the licensee may provide, without further payment of a guide-outfitter license fee, the
13 services described in AS 08.54.350(c) for the remainder of the licensing period in which the
14 suspension is terminated. Notwithstanding other provisions of this subsection, if a person whose
15 license is suspended under this subsection fails to notify the Department of Commerce and
16 Economic Development within one year after leaving employment with the Department of Public
17 Safety as a state trooper or law enforcement officer engaged in fish and wildlife protection, the
18 person's license lapses and the person is eligible for reissuance of the license only as provided
19 in AS 08.54.440. The board may adopt regulations to implement this subsection.

SENATE BILL NO. 375

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATORS HOFFMAN, Rodey

Introduced: 1/29/92
Referred: STA, Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act prohibiting certain law enforcement officers from holding big game guide-outfitting
2 licenses."

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8 engaged in fish and wildlife protection may not hold a guide-outfitter license, marine mammal
9 guide-outfitter license, class-A assistant guide-outfitter license, or assistant guide-outfitter license
10 under this chapter.

11 (b) A guide-outfitter license, marine mammal guide-outfitter license, class-A assistant
12 guide-outfitter license, or assistant guide-outfitter license issued under this chapter after the
13 effective date of this section is suspended, if the person to whom the license is issued is
14 subsequently employed by the Department of Public Safety as a state trooper or a law

1 enforcement officer engaged in fish and wildlife protection. The suspension of a license under
2 this subsection remains in effect until the licensee is no longer employed by the Department of
3 Public Safety as a state trooper or a law enforcement officer engaged in fish and wildlife
4 protection and the licensee provides written notification to the department of the fact that the
5 person is no longer employed by the Department of Public Safety as a state trooper or a state law
6 enforcement officer engaged in fish and wildlife protection. A person whose license is suspended
7 under this subsection is not required to renew the license or pay license renewal fees for the
8 period of suspension. Once a suspension of a license is terminated, the licensee may provide,
9 without further payment of a guide-outfitter license fee, the services described in AS 08.54.350(c)
10 for the remainder of the licensing period in which the suspension is terminated. The board may
11 adopt regulations to implement this subsection.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

January 24, 1992

SUBJECT: Sectional Summary: Draft bill prohibiting state troopers and fish and wildlife protection personnel from holding big game guide-outfitting licenses (Work Order No. 7-LS1809)

TO: Representative Lyman Hoffman

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is a sectional summary of a draft bill that prohibits state troopers and fish and wildlife protection personnel from concurrently holding active big game guide-outfitting licenses.

The bill adds a new section to AS 08.54, the big game guide-outfitting statutes. Subsection (a) prohibits state troopers and fish and wildlife protection personnel of the Department of Public Safety from holding an active guide-outfitter license, marine mammal guide-outfitter license, class-A assistant guide-outfitter license, or assistant guide-outfitter license. This subsection would prevent all state troopers and fish and wildlife protection personnel from acquiring guide-outfitter licenses after the effective date of the bill.

Subsection (b) suspends any guide-outfitter license held by a person who becomes employed by the Department of Public Safety as a state trooper and fish and wildlife protection officer after the effective date of the bill. Many persons who become guide-outfitters are also well-suited for employment as state troopers and fish and wildlife protection officers and can provide valuable services to the Department of Public Safety and the state as law enforcement officers. This provision allows the Department of Public Safety to hire such persons as state troopers and fish and wildlife protection personnel while preventing these persons from being actively engaged in guide-outfitting by suspending their guide-outfitting licenses.

If I may be of further assistance, please advise.

GU:pl:gc
92-038.plm
Enclosure

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 375

Revision Date: _____ Department Affected: Public Safety
 Title: "An Act prohibiting certain law enforcement officers from holding...licenses" BRU: Fish & Wildlife Protection
 Sponsor: Senator Hoffman Component: Enforcement & ISU
 Requestor: Senate State Affairs COMPONENT SERIAL NO.

4	9	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
-------------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Captain Conrad G. Seibel Phone: 269-5509

Division: Fish & Wildlife Protection Date: 2/1/92

Approved by Commissioner: *Boyle Hoff* for Richard L. Burton

Agency: Department of Public Safety Date: 2/3/92

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box W
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

October 11, 1991

Summary of: A Report on the Department of Commerce and Economic Development, and the Department of Public Safety, Big Game Commercial Services Board. Consistency of Disciplinary Penalties, October 1, 1991.

PURPOSE OF THE REPORT

In accordance with Title 24 of the Alaska Statutes, and a special request of the Legislative Budget and Audit Committee, we conducted an audit of the Big Game Commercial Services Board (BGCSB). Our audit had two objectives:

1. Determine if the board has been consistent in applying sanctions such as license suspensions and revocations for similar violations of professional standards as set out in statute and regulations.
2. Review the role and impact that the Division of Fish and Wildlife Protection within the Department of Public Safety has had on the license disciplinary process, and assess if that agency has acted consistently and objectively.

REPORT CONCLUSIONS

Penalties involving an individual's guide license may be imposed by the courts prior to any sanction imposed by BGCSB. When this happens, the board's disciplinary action essentially ratifies the decision of the courts. Because of differing circumstances involved with each case, the penalties imposed by the courts for similar offenses may vary. Such differences, while within the latitude granted the courts in imposing sentences, often makes BGCSB appear inconsistent in the actions it takes against licensees. Aside from these apparent differing sanctions, we found that, with one minor exception, BGCSB has been consistent in the penalties and sanctions it has imposed on various license holders.

FINDINGS AND RECOMMENDATIONS

1. The Division of Fish and Wildlife Protection (FWP) should emphasize and strictly enforce its policies prohibiting participation in the guiding industry.

In December 1984, then Department of Public Safety Commissioner Sundberg first issued a policy prohibiting outside employment as guides for all departmental personnel. Since that time, the department's policy has not always been effectively enforced. In the past, supervisory management did not believe that guiding was necessarily a conflict with enforcement despite the policy set by upper management. Accordingly, there appears to have been little effort to enforce the policy, and it has been reported that supervisors actually encouraged officers to work in the guiding industry.

By failing to be sure that the policy was effectively enforced, the department allowed its investigatory methods and approaches to be called into question. Recently, the department redoubled its efforts to enforce the policy, and has clarified the policy to be consistent with the requirements of the Executive Branch Ethics Act.

2. DPS should conduct an internal review regarding the basis and procedures involved in developing undercover law enforcement actions on guiding and game violations.

According to the director of FWP, most game law violations are detected and prosecuted through the use of undercover police operations. The director acknowledged that there is a great deal of discretion allowed over who to "target" for an undercover operation. The officer most prominently involved working as an assistant guide was in the position to influence and use his discretion over who would and would not be subject to an undercover operation.

At a minimum, these circumstances give the appearance that this individual could have suppressed information regarding the activities of licensed guides with which he was associated, while at the same time making decisions to target others who were competitors of his guide associates. We believe it is important that FWP satisfy the guiding public that undercover operations are appropriately directed and are carried out on the basis of sufficient and reliable criteria.

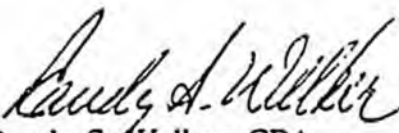
AUDITOR'S COMMENTS

In our view, BGCSB should be made aware of the situation involving FWP officers and their guiding activities in violation of departmental policy. In one particular case, an officer testified in court that he had acted as an unpaid assistant guide. Since a key part of the statutory definition of guiding involves compensation, BGCSB should carefully scrutinize any assistant guiding experience claimed by this individual if, and when, he applies to be licensed as a guide.

not have been acting unreasonably in asserting that he had not received "compensation," while at the same time seeking to rely on that experience as an assistant guide in attempting to become qualified as a registered guide . . .

The primary purpose of raising the point in the audit report was to more fully substantiate our audit evidence that the Fish and Wildlife Protection officer was on record as serving as an assistant guide. The issue of compensation and the apparent contradiction with court testimony was a secondary issue that had been raised by the investigator at the Division of Occupational Licensing at the time of the original internal investigation. In our review of the records and documents related to that investigation, we found no evidence that this particular issue had been satisfactorily resolved or analyzed. In view of DOLaw's response this issue has now been formally addressed.

The central point of our discussion remains unaffected. To restate, the Big Game Commercial Services Board (BGCSB) has a vital interest in maintaining the integrity and independence of the investigations involved in the licensing disciplinary process. The board should do all it can within its statutory powers to strengthen and improve that process. Accordingly, BGCSB should carefully consider granting guide licenses to individuals who gained necessary, qualifying experience when they were employed in positions involving either real or apparent conflicts of interest.


Randy S. Welker, CPA
Legislative Auditor

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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Juneau, AK 99811-3300
(907) 465-3830
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October 8, 1991

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DEPARTMENT OF PUBLIC SAFETY
BIG GAME COMMERCIAL SERVICES BOARD
CONSISTENCY OF DISCIPLINARY PENALTIES

October 1, 1991

08-4402-91

This report reviews the disciplinary actions taken by the Big Game Commercial Services Board since its first meeting in December 1989. The board was created as part of a comprehensive 1989 revision of the statutes related to the licensing of professional hunting guides. The board's primary disciplinary sanction is the authority to suspend or revoke a guide's license.

The audit was conducted in accordance with generally accepted government auditing standards. In this report we discuss our analysis and review of the board's consistency in assessing licensing sanctions. We also discuss the large role that the Division of Fish and Wildlife Protection within the Department of Public Safety plays in the investigations and hearings involved in the disciplinary process.

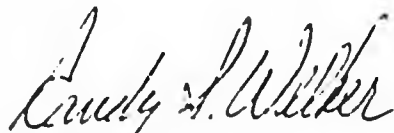

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

In accordance with Title 24 of the Alaska Statutes, and a special request of the Legislative Budget and Audit Committee, we conducted an audit of the Big Game Commercial Services Board (BGCSB). Our audit had two objectives:

1. Determine if the board has been consistent in applying sanctions such as license suspensions and revocations for similar violations of professional standards as set out in statute and regulations.
2. Review the role and impact that the Division of Fish and Wildlife Protection within the Department of Public Safety has had on the license disciplinary process, and assess if that agency has acted consistently and objectively.

Scope and Methodology

The period covered by our audit review involves disciplinary actions taken by BGCSB since its inception in December 1989. Many of the licensing sanctions taken by the board involved cases and allegations that happened as long ago as 1988.

In order to evaluate the consistency of the board's licensing sanctions, we reviewed and considered the following documents:

1. Minutes of all BGCSB meetings, with particular emphasis on the discussion and voting involving proposed hearing officer decisions regarding sanctions against licensees.
2. All hearing officer rulings and proposed decisions submitted to BGCSB.
3. Investigative files at the Division of Occupation Licensing related to the cases that resulted in license sanctions.
4. Transcripts of court testimony of selected disciplinary cases that were adjudicated prior to being considered by BGCSB.
5. Documents provided by individuals disciplined by BGCSB related to their cases.
6. Ombudsman investigation reports and correspondence with the Department of Public Safety and the Department of Commerce and Economic Development.
7. Guide licensing files and files of applicants for guide licenses maintained by the Division of Occupational Licensing.

We also interviewed individuals involved in the disciplinary process including the following:

1. Individual guides or assistant guides that had their licenses suspended or revoked.
2. Division of Occupational Licensing officials and personnel responsible for assisting BGCSB in administering its responsibilities.
3. The director of the Division of Fish and Wildlife Protection, in addition to other officials in the Department of Public Safety.

ORGANIZATION AND FUNCTION

In 1989 the Legislature extensively revised the statutes (Chapter 37, SLA 1989) related to the licensing and regulation of guiding, outfitting, transportation, and other commercial services provided to big game hunters. These extensive revisions were brought on by conflict and confusion within the guiding industry. Guides complained that individuals, calling themselves either "outfitters" or "transporters" were providing unregulated guiding services. Outfitters and transporters claimed that they were not guiding, that their activities were legal, and that the guides were acting to protect their exclusivity and control rather than out of concern for providing better regulation of the industry.

The legislature acted to restore stability and provide comprehensive regulation of all of the professions. The legislature broadened the scope of the pertinent statutes to provide regulatory oversight of both outfitters and transporters in addition to guides. Part of this extensive restructuring was the establishment of the Big Game Commercial Services Board (BGCSB), which replaced its forerunner, the Guide Licensing and Control Board and its more circumscribed regulatory scope.

Big Game Commercial Services Board

The new nine member BGCSB is made up of two licensed guide-outfitters (the new, broader classification for guides and outfitters set out under the revised statutes), two licensed transporters, a commercial use permit holder, a representative from the Board of Game, a representative of Native landholders, and two members from the general public.

The board is responsible for:

1. Administering the licensing examinations for the various licenses it issues.
2. Establishing qualifications necessary for the various licenses it issues.
3. Establishing performance standards for providers of big game commercial services, and regulating the activities of those providers.
4. Compiling and publishing an annual register of service providers in good standing.
5. Prohibiting big game commercial service activities that are "unsportsmanlike, unethical, unsafe, against principles of game conservation, degrading to a profession [regulated by the board], or that adversely affect natural resources."
6. Revoking, suspending, or denying renewal of various licenses or permits it issues, following the requirements of due process.
7. Issuing transporter licenses.

8. Issuing commercial use permits.
9. Registering base camps and facilities used by individuals regulated by the board.

The statutes require BGCSB to meet at least twice annually, specifying that one of the meetings must be in Anchorage and the other "in another municipality."

Division of Occupational Licensing

The Division of Occupational Licensing within the Department of Commerce and Economic Development (DCED) provides administrative assistance and coordination to 21 boards and commissions. These boards and commissions are responsible for establishing qualifications for entry into various professions, proposing legislative amendments, adopting regulations, developing examinations, and disciplining licensed professionals for incompetent, unethical, or illegal behavior.

The division also has a staff of investigators who are responsible for investigating complaints and allegations of license holders violating the standards, ethics, or prohibitions established for the various professions licensed by the State.

DCED employs hearing officers who are responsible for conducting the formal hearings required by the Administrative Procedures Act. These hearings, necessary to the provision of due process, are a central aspect of the license sanctioning process.

Fish and Wildlife Protection

The Division of Fish and Wildlife Protection (FWP) is within the Department of Public Safety. The division is responsible for enforcing various statutes and regulations adopted to protect fish and game resources. FWP officers patrol the State by road, air, and waterway. They have the authority to issue citations, make arrests, seize fish and game taken illegally, and seize equipment used to commit violations.

BACKGROUND INFORMATION

This section discusses three aspects of guiding and licensing which relate to the issues discussed in other sections of this report. The three aspects discussed are: (1) the statutory requirements to be licensed as a guide, (2) the role that the Fish and Wildlife Protection (FWP) Division plays in investigating and disciplining guides, and (3) the investigation and hearing process followed by the Big Game Commercial Services Board (BGCSB) in disciplining guides.

GUIDE LICENSING REQUIREMENTS

To be a guide, an individual must work as an assistant

Under AS 08.54.350(a) an individual must meet 12 statutory requirements in order to receive a guide license. In addition to passing the qualification examinations prepared and administered by the board, two other key requirements are that:

1. the individual has been licensed and active as an assistant guide in three separate years; and
2. the individual has obtained written recommendations from six big game hunters, two for each year of the three most recent years that the individual was active as an assistant guide.

To be an assistant guide, the requirements are less numerous and demanding. Essentially, an applicant must be at least 18 years old, pass a required examination, have been a hunter two of the last five years, be in sound physical condition, and demonstrate a practical knowledge of first aid.

LAW ENFORCEMENT AND COURTS AFFECT GUIDE PENALTIES

There is a close relationship between law enforcement and the disciplinary process of guiding licensees. Disciplinary actions against licensees have historically involved either violation of game laws or guiding without a license. Up until the early 1980s this close relationship was administratively recognized when the Department of Public Safety (DPS) was responsible for administering the guide licensing system.

This relationship is also reflected in the guide licensing statutes. The statutes related to penalties for licensees specifically list four game violations that can result in license revocation: (1) waste of a wild food animal, (2) hunting on the same day airborne, (3) hunting during a closed hunting season, and (4) hunting in areas closed by state or federal regulation.

Because of this close relationship, the licensing board, when taking disciplinary action against license holders, is often in a situation of essentially ratifying a decision made by the courts. The courts often direct that action be taken against an individual's license as part of sentencing. Both BGCSB and its predecessor, the Guide Licensing and Control Board, have disciplined licensees following their arrest and conviction (although conviction is not always required, see inset at right) for game offenses.

FWP investigations affect licensees

The relationship with law enforcement also results in DPS officers (Fish and Wildlife Protection officers, and to a lesser extent the Alaska State Troopers) playing a central part in the investigations and hearings involved in the licensing process. Likewise, the efforts of federal game officers, are also relied on in assessing penalties against licensees.

Investigators at the Division of Occupational Licensing still do play a role in developing accusations involving licensees. However, most of the sanctions taken against licensees are primarily from the arrests made by FWP and Federal game officers. As a result, the manner in which these organizations conduct investigations and develop cases has a direct impact on how effective BGCSB is, and how objective it is perceived to be, in policing its licensees.

ADMINISTRATIVE PROCEDURES ACT

The procedures followed by the Division of Occupational Licensing and BGCSB in disciplining guides are illustrated by the Investigation and Administrative Hearing flowcharts on opposite and following pages respectively. Investigation (typically started by receipt of a notice of judgment, if a guide has been convicted in court) results in an administrative hearing or case closure. Administrative hearing begins with an accusation drafted by the Division of Occupational Licensing and reviewed by the attorney general.

GUIDES COMPLAIN OF "DOUBLE JEOPARDY"

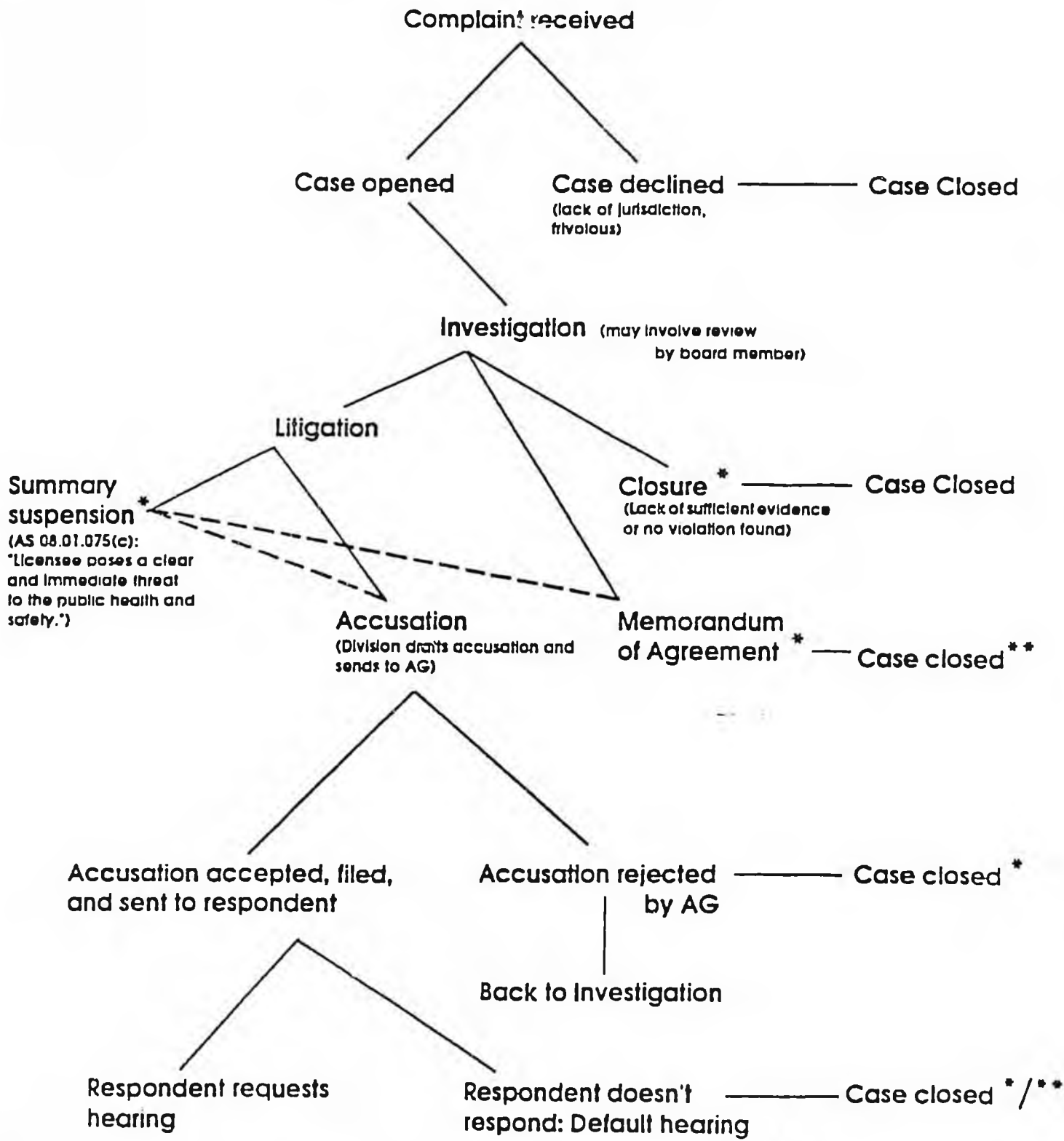
Even when guides are found not guilty by the courts, they may still be subject to licensing penalties from BGCSB. Some guides reported to us that they felt this represented "double jeopardy" that is, being tried twice for the same offense.

The Department of Law's position is that the criminal prosecution and licensing action under the administrative procedures act are two separate judicial processes. Each process requires a different standard of proof.

In a criminal action before the courts, the State must prove guilt "beyond a reasonable doubt." At an administrative hearing the State must only show that an individual is guilty of the accusation by a "preponderance of evidence."

On occasion, the State's "case" is strong enough to meet the preponderance of evidence standard, but not strong enough for the reasonable doubt standard. In those instances, guides often face the same evidence, the same testimony of FWP officers, and the same attorney arguments. As a result, they may find themselves facing a licensing penalty despite being found "not guilty" in court.

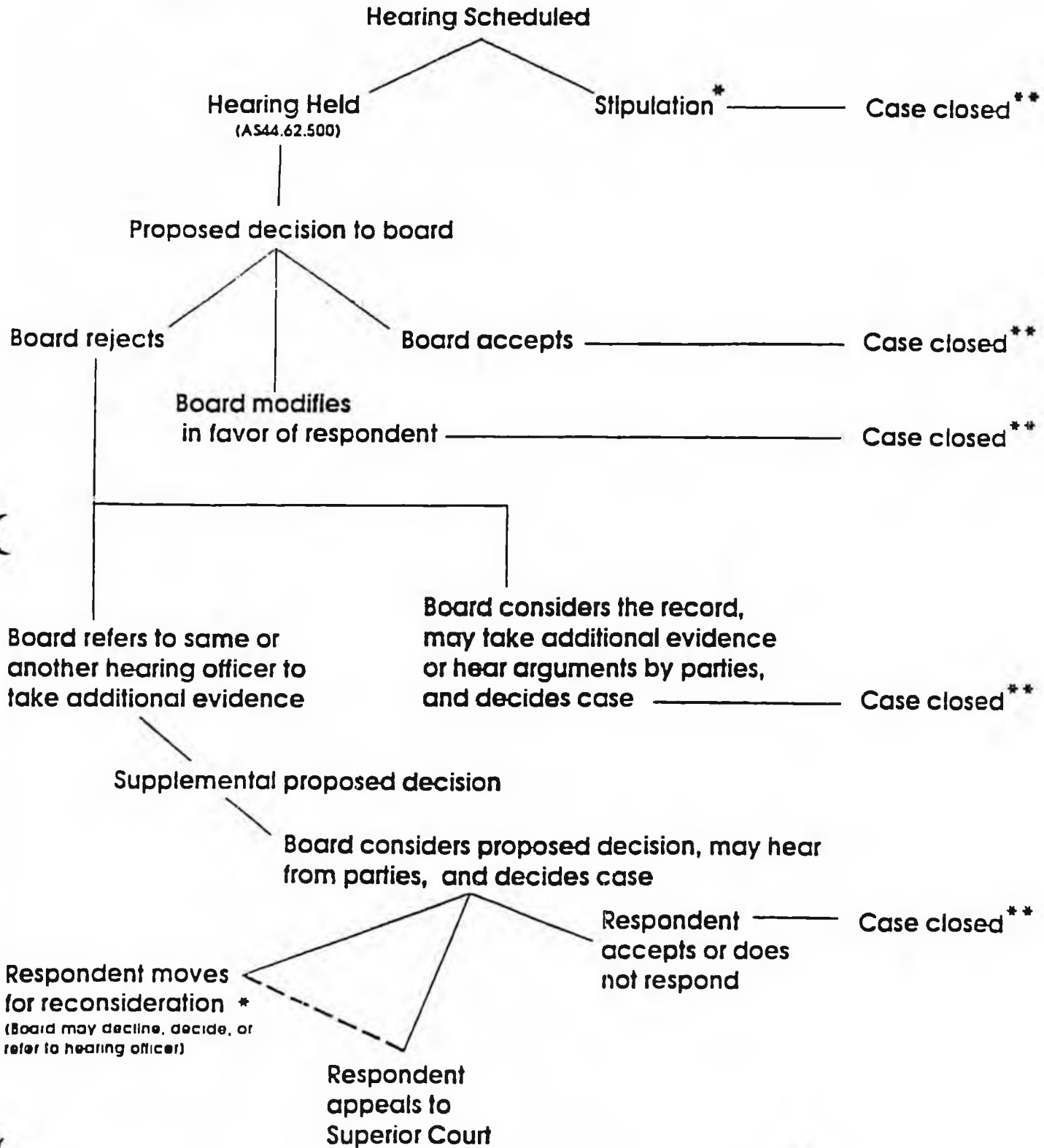
Investigation



** Respondent petitions for reinstatement or reduction of penalty after one year

* Board approval necessary

Administrative Hearing



* Respondent petitions for reinstatement or reduction of penalty after one year

* Board approval necessary

Once an accusation has been accepted by the attorney general, it is sent to the guide or "respondent" who then can request a formal hearing. If the individual does not respond to the accusation, a default hearing is held and a proposed decision is prepared for board consideration and action.

The respondent may request a hearing, but even after it is scheduled the guide may contact the Department of Law and work out an agreement. This agreement, called a stipulation, is essentially a negotiated settlement between the respondent and the Department of Law which sets out various restrictions and penalties.

If a hearing is held, the hearing officer listens to the evidence presented by both the State and the respondent. The hearing officer then issues a proposed decision to the board. The board may in turn reject, accept, or modify the decision to reduce the recommended penalties.

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REPORT CONCLUSIONS

As discussed in the Background Information section, penalties involving an individual's guide license may be imposed by the courts prior to any sanction imposed by the Big Game Commercial Services Board (BGCSB). When this happens, the board's disciplinary action essentially ratifies the decision of the courts. Because of differing circumstances involved with each case, the penalties imposed by the courts for similar offenses may vary. Such differences, while within the latitude granted the courts in imposing sentences, often makes BGCSB appear inconsistent in the actions it takes against licensees. Aside from these apparent differing sanctions, we found that, with one exception (see inset below) BGCSB has been consistent in the penalties and sanctions it has imposed on various license holders.

Results of Review

Since December 1989, BGCSB has taken 17 licensing sanction actions. Of those actions, two have gone completely through the administrative hearing process. In both instances the board adopted the hearing officer decisions unanimously.

In five of the eleven actions where licenses were revoked or suspended, the penalty imposed was directed by the courts as a condition of sentencing. In two instances the courts made recommendations regarding license sanctions, but the board chose to impose a more severe penalty. In the four remaining cases, the courts made no recommendation, but the board either suspended or revoked the license.

ONE INSTANCE WHERE BGCSB ACTED INCONSISTENTLY

Two guides both pled no contest to charges of unlawful possession or transportation of game. In both their cases, the courts recommended probation for two years. For one guide, BGCSB followed the court's recommendation. No action was taken against his license but he was put on a two-year probation period.

In contrast, the other guide was prohibited from obtaining a license for three years (his license had expired after the violation) and was placed on probation for two years if he obtained a new license when again eligible.

We found no documented evidence why these two apparently similar situations were treated differently.

Stipulated agreements contained different sanctions

Two assistant guides were both convicted of failure to salvage game. In both cases the court required each individual be denied licensure for two years. Subsequent to this court action the board reached stipulated agreements with both individuals. The board suspended one guide's license for 3½ years as part of her stipulation. The other guide, by contrast, received a 4 year suspension as part of his stipulation agreement.

It has been reported to us that when a stipulation agreement is being developed that the individual being disciplined is generally an active participant in the negotiation process. While it is unclear why there was a difference in the sanctions imposed, it would seem that the slight difference in sanctions is a result of the negotiating posture and success of the two respondents rather than any active decision on the part of BGCSB.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Fish and Wildlife Protection (FWP) should emphasize and strictly enforce its policies prohibiting participation in the guiding industry.

In December 1984, then Department of Public Safety Commissioner Sundberg issued a policy prohibiting outside employment as guides for all departmental personnel. In a January 1985 memorandum he wrote in response to a FWP officer, he discussed the reasoning behind the policy. Commissioner Sundberg wrote the officer, who had asked that the policy be reconsidered, that

. . . I am convinced that a conflict of interest exists between guiding and enforcement. . . .

Also, the probability of risk to the officer's career and of embarrassing this agency is increased if we allow our personnel to become engaged in this activity. Public perception can be as harmful as an actual occurrence. A complaint, even if unfounded, could cost the Department thousands of dollars to investigate and create unfavorable publicity. . . .

Your request for reconsideration for outside employment as a guide is denied.

Supervisors did not support, and even contradicted, policy

Since 1984, the department's policy has not always been consistently enforced. In the past, supervisory management did not believe that guiding was necessarily a conflict with enforcement. Accordingly, there appears to have been little effort to enforce the policy, and it has been reported that supervisors actually encouraged officers to work in the guiding industry.

Although one officer in particular was widely known to work as an assistant guide, his evaluations did not reflect any concerns over this activity and the individual was even promoted from sergeant to lieutenant during this period.

The clearest reflection of this past attitude on the part of supervisory management can be found in the department's response to the 1988 ombudsman investigation (see discussion in inset on the next page). In response to the ombudsman's report involving an officer's guiding activities, the department stated that the individual had not violated departmental policy because he did not receive compensation. In defending this rather narrow perspective involving the interpretation of the policy, the department wrote that:

[Guiding] is not incompatible or in conflict with the proper discharge of official duties. We have assigned other members of this division to assistant guiding activities in a guide's camp to increase their knowledge of, and familiarity with, guiding operations. It actually makes them better in their enforcement work. . . .

In the case at hand [the department does not] think that there has been a violation so [we] have not passed the complaint on to any other authority. Furthermore we have gone beyond what I think is strictly required and prohibited the activity in question just to avoid the appearance of conflict.

In our view, these statements are not consistent with the intent of the original policy. Such a position by a middle-management DPS official is indicative of a past lax attitude by departmental supervisors regarding the policy. By failing to be sure both the spirit as well as the letter of the policy was enforced, the department allowed its investigatory methods and approaches to be called into question. Since its response to the ombudsman in December 1988, the department is beginning to recognize these past practices and attitudes as a problem.

Department recognizes importance of policy

By November 1990, DPS was taking compliance of the policy much more seriously. The department emphatically reprimanded an officer regarding his unpaid guiding activities. While acknowledging that unpaid assistant guiding may comply with the letter of the policy, the department clearly felt that the activities violated its spirit.

Additionally, DPS acknowledged that the requirements of the Executive Branch Ethics Act of 1986 made it clear that no employee may work in a situation that presents a conflict of interest, irrespective of whether or not they are paid for the work. The department acknowledged that the guiding activities caused the very accusations and allegations that the

FWP OFFICER CONTINUED TO GUIDE DESPITE DENIAL

The officer who was denied continued outside employment as a guide by Commissioner Sundberg, continued his guiding activities. According to records filed with the Division of Occupational Licensing, the officer guided during 1985, 1986, and 1987. His file included recommendations from hunters he accompanied in the field and evidence that he intended to apply for, and take, the guide licensing examination to be certified as a guide.

1988 Ombudsman Investigation

In September 1988, the Ombudsman investigated a complaint alleging that the officer involved had violated both departmental policy and Executive Branch Ethics Act prohibitions against outside employment that present a conflict of interest with official duties. In a December 1988 finding the ombudsman made a determination that the complaints lodged against the officer were partially justified.

policy was designed to avoid and was a source of embarrassment to DPS.

The tone and emphasis of this position represented a different attitude, that is consistent with the intent and philosophy behind the department's original policy. The department should reevaluate the current policy within the context of the Executive Branch Ethics Act, and clearly communicate both the letter and spirit of the prohibition on guiding to all affected personnel.

Recommendation No. 2

DPS should conduct an internal review regarding the basis and procedures involved in developing undercover law enforcement actions on guiding and game violations.

According to the director of FWP, most game law violations are detected and prosecuted through the use of undercover police operations. Our review of disciplinary actions taken against guides by the Big Game Commercial Services Board, tend to confirm this observation. Seven of the ten disciplinary actions reviewed used undercover operations to make the original arrest. The director acknowledged that there is a great deal of discretion allowed over who to "target" for an undercover operation. The officer most prominently involved working as an assistant guide was in the position to influence and use his discretion over who would and would not be subject to an undercover operation.

At a minimum, these circumstances give the appearance that this individual could suppress information regarding the activities of licensed guides with which he was associated, while at the same time making decisions to target others who were competitors of his guide associates. We believe it is important that FWP satisfy the guiding public that undercover operations are appropriately directed and are carried out on the basis of sufficient and reliable criteria.

COMPENSATION A KEY PART OF THE STATUTE'S DEFINITION OF GUIDING

It late 1988 it was DPS' position that the officer involved in allegations of guiding did not violate departmental policy because he did not receive compensation. If the officer did not receive compensation, it appears that he may have misled the Division of Occupational Licensing.

On application forms filed with that agency, the officer attested that he was indeed acting as an assistant guide, and submitted written documentation that he guided hunters under the supervision of a licensed guide. The officer also testified in court that he was not paid as an assistant guide.

AS 08.54.240 (3) defines guiding as:

accompanying or directing a hunter in the field, personally or through an assistant, for compensation, while the hunter or the person accompanying or directing the hunter spots, stalks, pursues, tracks, kills, or attempts to kill big game. . .

Under this definition, if the officer did not receive compensation, then it appears that representations made to the Division of Occupational Licensing were inaccurate.

As discussed in the Auditor's Comment section of this report, BGCSB should scrutinize any assistant guiding experience claimed by this individual, in the context of the statutory definition, if in the future he should apply for licensure as a guide.

OMBUDSMAN DISCUSSES POSSIBILITY OF FUTURE BENEFIT

In response to the complainant who initiated his agency's 1988 investigation, the Ombudsman replied that

You allege that the real conflict in [the FWP officer's] work as an assistant guide will not be realized until he retires. You assert upon retirement, [the officer] can and will reactivate his assistant guide time (allegedly acquired improperly while he was employed by the division as a fish and wildlife protection officer) and apply it toward his application for a master guide license.

It is altogether possible that this may happen. It is also possible that it will never happen. We can only know for certain what [the officer] will do when he retires when that time comes. I cannot and will not make a guess about [the officer's] future behavior. I cannot hold a case open for years, waiting for a potential conflict of interest to emerge in the form of [the officer's] application for a master guide license.

If, and when, [the officer] does apply for the master guide license, the use of his assistant guide time will be a factual issue. With your keen interest in [the officer's] activities, it is reasonable to expect you to submit testimony to the [BGCSB] if that event occurs in the future. Today, it is a speculative issue....

With the transmission of this letter, I am closing the complaint. You are free to file a new complaint if and when [the officer] reactivates his assistant guide time in an application for a master guide license. You may also file a written complaint under the auspices of the Executive Ethics Act if you wish to press that issue further.

The Ombudsman's response suggests that the only avenue to resolve the complainant's issues lies in how the licensing board will view the "experience" of the FWP officer, if and when he attempts to use it in applying for his guide license.

AUDITOR'S COMMENTS

Former Commissioner Sundberg warned in 1985 about the dangers of allowing Department of Public Safety personnel to participate in the guiding industry. As cited in Recommendation No. 1, his concerns over embarrassment to the agency, negative public perceptions, and the cost of investigating and dealing with even unfounded complaints all proved to be prophetic.

BGCSB should scrutinize any future guide application

As observed by the Ombudsman, (see inset on the opposite page) the real possible incentive or compensation for the FWP officer-assistant guide, is in the future at the time of his retirement or separation from an FWP.

In our view, the Big Game Commercial Services Board (BGCSB), may offer the best opportunity to provide some equitable, objective resolution of the situation. The board can do this by carefully scrutinizing any assistant guiding experience accumulated while an individual served as an FWP officer.

As discussed in the inset on page 15, accompanying individuals on a guided hunt is not necessarily guiding. The statute requires that an individual receive compensation for guiding a hunter in order for the experience to be relevant to the licensing process. An FWP officer has submitted an application for licensure as a guide, (an application that subsequently has been withdrawn) with documentation substantiating his assistant guiding activities. However, if he was unpaid, as he testified to in court, BGCSB should carefully consider whether or not this experience meets the statutory definition of guiding.

Such scrutiny would nullify any advantage or "indirect" compensation that the FWP officer gained by acting as an assistant guide. Leaving aside the legal discussion of whether uncompensated assistant guiding is qualifying experience in the strictest sense of the law, such scrutiny and consideration would enhance the integrity of the regulatory process.

BGCSB relies in large part on the efforts of FWP to effectively meet its statutory mandate. Any flaw in the integrity of that enforcement effort, either real or perceived, reflects to some degree on the board. By carefully scrutinizing the circumstances and documentation supporting any former FWP officer's application for a guiding license, the board can enhance the integrity of the investigatory efforts of both FWP and itself.

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ISSUES NEEDING FURTHER STUDY

Department of Public Safety (DPS), Fish and Wildlife Protection (FWP) officers have testified in court that decisions regarding investigations and development of possible undercover operations often have been developed from "tips" received through a program known as the Wildlife Safeguard Program.

The Wildlife Safeguard Program encourages the public to phone a toll-free "800" number and report any observations or information they may have about possible game law violations. If these tips are used in the successful prosecution of an individual, then rewards are paid to the hotline informants. The program is run by a private nonprofit organization, and does not receive any direct state funding. DPS does provide support services to the organization such as answering the hotline, selling fund-raising posters, and arranging for the organization to raffle off a hunting permit to raise funds.

As discussed in Recommendation No. 2 in the Findings and Recommendations section, we suggest that DPS reevaluate the criteria it uses to develop undercover operations. In addition, we suggest that the Legislative Budget and Audit Committee may want to consider reviewing the information received over the Wildlife Safeguard hotline and determine if it is being used in a consistent, objective, and unbiased manner.

The conflict of interest discussed at length in this report may be reflected not only in what cases and reported violators that FWP have elected to pursue, but also in the tips and information that may have been ignored. If the agency has received numerous complaints regarding possible violations by a professional guide, the fact that no investigatory action was taken may be significant.

Controls over reward payments may also be possible area of concern

Although state funds are not being directly used, FWP protection officers have, in the past, been involved in passing rewards to informants. Reportedly the rewards are paid in cash, and have been as much as \$2,000. Payouts of these amounts in cash, with the involvement of state employees, provides another possible area or issue that may warrant further study or review.

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**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

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OFFICE OF THE COMMISSIONER

November 21, 1991

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LEGISLATIVE AUDIT

Mr. Randy Welker
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box W
Juneau, AK 99811

Dear Mr. Welker:

Thank you for the opportunity to review the preliminary audit report regarding consistency of disciplinary penalties of the Big Game Commercial Services Board.

The department concurs with Recommendation No. 1, The Division of Fish and Wildlife Protection (FWP) should emphasize and strictly enforce its policies prohibiting participation in the guiding industry. We believe a state policy should go a step further and include Division of Occupational Licensing staff involved in licensing and investigations of guide-outfitters, as well as Department of Fish and Game employees/biologists who are involved in game management/harvest decisions. During the time period of Commissioner Sundberg's policy on prohibiting outside employment as a guide for FWP employees, the Division of Occupational Licensing requested its employees who were, at the time, licensed as assistant guides, but not employed or associated with any guides, to voluntarily not renew their assistant licenses. This request was made on the basis of possible public perception of impropriety rather than actual complaints. Most recently, it has been brought to our attention that the activities of the Department of Fish and Game employee(s) who are licensed guides and conducting guiding activities may be causing some concern within the guiding industry and public. We believe that employees should be allowed to place their licenses in a suspended status for reactivation at the same level when they leave employment in the job which creates the conflict.

Mr. Randy Welker

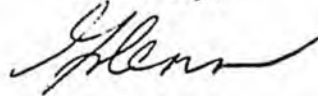
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November 21, 1991

With regard to Recommendation No 2, DPS should conduct an internal review regarding the basis and procedures involved in developing undercover law enforcement actions on guiding and game violations. the department agrees that there should be a system in place which ensures some degree of uniformity and consistency in developing undercover operations.

Again, thank you for this opportunity to comment.

Sincerely,



Glenn A. Olds
Commissioner

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DEPARTMENT OF PUBLIC SAFETY
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P.O. BOX 111200
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PHONE: (907) 465-4322

LEGISLATIVE AUDIT

December 5, 1991

Mr. Randy S. Welker
Legislative Auditor
Alaska State Legislature
P. O. Box W
Juneau, AK 99811

Dear Mr. Welker:

Re: Audit No. 08-4402-91

I am writing in response to your letter and preliminary audit report of October 28, 1991. Thank you for the opportunity to review and comment on the preliminary report, and for your courtesy in allowing us an extension of time. My comments are as follows:

Recommendation No. 1: "The Division of Fish and Wildlife Protection (FWP) should emphasize and strictly enforce its policies prohibiting participation in the guiding industry."

I agree, and we are doing just that. Under the Executive Branch Ethics Act, all requests for outside employment (paid or unpaid) must be submitted to and approved by me. I assure you that I will not approve any requests for involvement in the guiding industry while I am Commissioner. F&WP personnel are well aware of this.

Recommendation No. 2: "DPS should conduct an internal review regarding the basis and procedures involved in developing undercover law enforcement actions on guiding and game violations."

I agree, and we are doing this. The FWP Director and his staff are drafting a policy statement for my review. I anticipate that a final policy will be in place by early next year. For your information, since being appointed Commissioner I have reestablished an Office of Planning and Research within the Department. My staff are reviewing all existing DPS policies and procedures and suggesting revisions for my consideration.

Mr. Randy S. Welker
December 5, 1991
Page 2

On page 15 of your report, in the first paragraph under Recommendation No. 2, I suggest the following changes to the present language: "According to the director of FWP, [most game law violations] most serious guiding violations are detected and prosecuted through the use of undercover police operations." I believe this is a more accurate summary of Col. Jordan's comments, in the context in which they were made. Also: "At one time, the officer most prominently involved working as an assistant guide..." This additional language would make it clear that the situation being described is not the current one, but refers to the past.

Other comments:-- On page 15 of your preliminary report there is a colored block of text which discusses your office's interpretation of the statutory definition of "guiding" as it relates to licensure requirements. I asked the Alaska Department of Law to review the relevant language, and found that they do not agree with your legal interpretation. In light of this, I do not agree with your conclusion that "if the officer did not receive compensation, then it appears that representations made to the Division of Occupational Licensing were inaccurate." I have attached a copy of the memorandum which we received from the Department of Law on this issue.

On page 19 of your report, you suggest that the Legislative Budget and Audit Committee may want to consider reviewing the information received over the Wildlife Safeguard hotline. We certainly have no objection to such a review, and we are confident that information received over the hotline is being handled appropriately, with no bias or special interests involved.

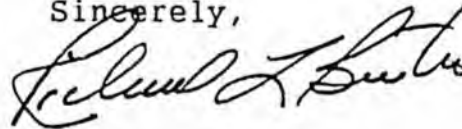
Regarding your comments on controls over reward payments, we would welcome suggestions about the best way to get rewards to informants, while still protecting confidentiality. As you undoubtedly know, no rewards are paid out unless authorized by the Safeguard Boards, which are made up entirely of volunteer private citizens. Contrary to the impression left by your report, the majority of rewards are paid by check. If the informant insists upon anonymity, however, obviously a check cannot be issued. On those occasions when cash must be used, Wildlife Safeguard considers using commissioned officers to deliver it as the safest procedure. The one \$2,000 payment to which you refer was delivered personally to the informant

Mr. Randy S. Welker
December 5, 1991
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by the Director of FWP. If you can think of a safer or more reliable way to handle these payouts to sources who wish to remain anonymous, please let us know.

Thanks again for the opportunity to comment on your preliminary report. I would be glad to discuss my responses with you further, if you would like.

Sincerely,



Richard L. Burton
Commissioner

Attachment

MEMORANDUM

State of Alaska

Department of Law

Gayle Horetski
Deputy Commissioner
Department of Public Safety

DATE: December 4, 1991

FILE NO.: 663-92-027.

TEL. NO.: 465-3428

SUBJECT: Assistant guiding under
former AS 08.54.110

FROM

Dean J. Guaneli *DJG*
Assistant Attorney General
Criminal Division Central Office

This is in response to your request for our opinion whether one of the qualifications for becoming a registered guide, under former AS 08.54.110 (repealed in 1989), was that a person have received compensation for acting as an assistant guide. After reviewing the applicable statutes, it is my opinion that, prior to July 1, 1986, it was not necessary to have received compensation in order to have accumulated the necessary level of experience as an assistant guide to become a registered guide, and that after that date a person would not have been acting unreasonably in coming to that same conclusion.

The genesis of your question is an ombudsman's draft report which concludes that to have "performed the services of an assistant guide" under former AS 08.54.110 meant "being employed by a registered guide."¹ The draft report therefore proposes to find that a departmental employee "improperly made conflicting statements" by saying he was qualified to be a registered guide, while at the same time asserting that he had not received compensation for being an assistant guide. For the reasons set out in this memorandum, the ombudsman's conclusion is incorrect.²

Prior to 1989, in order to have been qualified to become a registered guide, a person must have previously "performed the services of an assistant guide." Former AS 08.54.110(a)(7) (prior to 1986 numbered AS 08.54.110(a)(8)). There was no definition of

¹ A preliminary audit report by the Legislative Budget and Audit Committee reviewed an earlier version of the ombudsman's report and came to the same conclusion. Neither the ombudsman's report nor the auditor's report contains any detailed analysis of the statutes involved.

² There also exists an opinion, written by a private attorney representing the subject of the ombudsman's report, concluding that the ombudsman is incorrect. While I have agreed as a general matter with the private attorney's conclusion, I disagree with his analysis and reasoning.

the phrase "performed the services of an assistant guide," although the verbs "guide" and "guiding" were defined in former AS 08.54.240 to include the requirement of compensation.

Under this definition, if you were assisting or directing a hunter in the field for compensation you were "guiding."³ This definition appears, however, to have been inclusive, rather than exclusive, that is, it established that anyone assisting hunters for compensation had to be licensed as a guide, rather than establishing that one who did not receive compensation could not be considered to have performed as a guide.⁴

This definition does not, therefore, answer the question of whether a person must have accepted compensation to have been acting as an assistant guide for purposes of qualifying to become a registered guide. To answer that question, other statutes must be analyzed.

Former AS 08.54.130 required that a "class-A assistant guide" be "under the supervision" of a registered or master guide. There was no requirement of compensation, nor was there a requirement of an employment relationship. Perhaps it was an oversight, but there was no similar requirement that non-class-A assistant guides be supervised by a registered guide, much less employed or compensated. Former AS 08.54.140. In addition, prior to July 1, 1986, AS 08.54.210(a)(6) made it unlawful for a registered or master guide "to employ or supervise" more than three assistant guides at the same time, thus indicating a difference between the concepts of employment and supervision. (Emphasis added.) Again, there was no requirement of compensation.

Moreover, in former AS 08.54.110(a) the legislature used the phrase "performed the services of an assistant guide," rather than the simpler phrase "employed as an assistant guide." The obvious purpose of AS 08.54.110(a) was to assure that, before someone became a registered guide, he had obtained sufficient experience as an assistant guide. There is no indication the legislature intended to require that an assistant guide have accepted compensation.

Based on this statutory scheme, prior to July 1, 1986, a person could have "performed the services of an assistant guide" under former AS 08.54.110, and have been qualified to become a registered guide, without having accepted compensation.

³ The definition of "guiding" changed somewhat in 1986, but that change does not affect this opinion. Sec. 23, ch. 71, SLA 1986.

⁴ The definition of "guide" was used to determine whether a person had committed the offense of "guiding without a license". Former AS 08.54.210.

July 1, 1986, was the effective date of amendments to some of the statutes in AS 08.54. Ch. 71, SLA 1986. In particular, former AS 08.54.210 was amended to make it unlawful for an assistant guide to be along on a guided hunt "except while employed and supervised by a registered or master guide." Former AS 08.54.210(a)(8). (Emphasis added.) Despite this new statute which seemingly required that assistant guides be both employed and supervised by a registered or master guide, there was no change made to former AS 08.54.130, which required class-A assistant guides merely to be under the "supervision" of a licensed guide, with no requirement of either "employment" or "compensation." There was, however, a new statute enacted that required non-class-A assistant guides to be employed and supervised by a registered guide. Former AS 08.54.141.

This ambiguity is difficult to resolve, however a definitive resolution is not necessary. In my opinion, even after July 1, 1986, a reasonable person could have concluded that a person "performed the services of an assistant guide" under former AS 08.54.110, and was qualified to become a registered guide, without having accepted compensation.

Even if there was a requirement of both employment and supervision, the statutes made no mention of "compensation" for assistant guides. The ombudsman's draft report seems to refer to employment and compensation interchangeably, but it appears that in AS 08.54 the legislature treated them differently and recognized three types of master-servant relationships: "supervision," "employment," and "compensation."

Before 1986, the definition of "guide" in AS 08.54.240 included the concept of "monetary or material remuneration." In 1986 that definition was modified to refer to "compensation or with the intent to receive compensation." Neither version of the definition referred to "employment." If the legislature had simply intended to refer to the concept of being "employed," it could have more easily done so than using the complicated phrases necessary to convey the concept of money changing hands.

It is not necessary at this point to try to fully explain the differences between "supervision," "employment," and "compensation." Suffice to say that, even after July 1, 1986, a person, who had waived payment or received only transportation and food while acting as an

Gayle Horetski, Deputy Commissioner
Department of Public Safety
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assistant guide on a hunt, would not have been acting unreasonably in asserting that he had not received "compensation," while at the same time seeking to rely on that experience as an assistant guide in attempting to become qualified as a registered guide under AS 08.54.110.⁵

Please contact me if you have questions.

DJG:jf

cc: Division of Occupational Licensing
Department of Commerce and Economic Development

⁵ It should be noted that the current definition of "compensation" in AS 08.54.590 excludes "reimbursement for actual expenses incurred", which suggests that an assistant guide who obtains transportation and food has not accepted "compensation". It should also be noted that the current guide-outfitter statutes in AS 08.54.350 -- 590 contain the same ambiguity as past statutes, by continuing to refer to the concepts of "supervision", "employment" and "compensation". As a practical matter, the division of occupational licensing did not previously, and does not now, inquire whether assistant guides have been paid in determining their qualifications to become a registered guide.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box W
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

January 2, 1992

Members of the Legislative Budget and Audit Committee:

A formal legal review of the language in the guide licensing statutes is included in the response of the Department of Public Safety. The analysis addresses the issue raised in the inset on page 15 regarding the concept of compensation and how it relates to the statutory definition of guiding. From a layman's reading of the statute it appears that if an individual serves as an assistant guide but is not paid for their services, then perhaps that experience does not qualify as assistant guiding experience.

The Department of Law's (DOLaw) analysis concluded that

...prior to July 1, 1986, it was not necessary to have received compensation in order to have accumulated the necessary level of experience as an assistant guide to become a registered guide, and that after that date a person would not have been acting unreasonably in coming to that same conclusion.

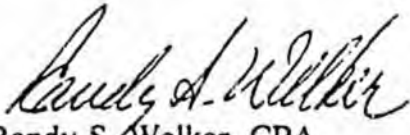
The analysis is developed from DOLaw's review of the history of the changes in statutory language, especially with the amendments made in 1986. After concluding that the concept of compensation was absent from the statutes prior to July 1, 1986, DOLaw feels the changes made created some ambiguity by introducing the concept of compensation. The analysis goes on to conclude

This ambiguity is difficult to resolve, however a definitive resolution is not necessary. In my opinion, even after July 1, 1986, a reasonable person could have concluded that a person "performed the services of an assistant guide" under former AS 08.54.110, and was qualified to become a registered guide, without having accepted compensation. ... Suffice to say that, even after July 1, 1986, a person, who had waived payment or received only transportation and food while acting as an assistant guide on a hunt, would

not have been acting unreasonably in asserting that he had not received "compensation," while at the same time seeking to rely on that experience as an assistant guide in attempting to become qualified as a registered guide . . .

The primary purpose of raising the point in the audit report was to more fully substantiate our audit evidence that the Fish and Wildlife Protection officer was on record as serving as an assistant guide. The issue of compensation and the apparent contradiction with court testimony was a secondary issue that had been raised by the investigator at the Division of Occupational Licensing at the time of the original internal investigation. In our review of the records and documents related to that investigation, we found no evidence that this particular issue had been satisfactorily resolved or analyzed. In view of DOLaw's response this issue has now been formally addressed.

The central point of our discussion remains unaffected. To restate, the Big Game Commercial Services Board (BGCSB) has a vital interest in maintaining the integrity and independence of the investigations involved in the licensing disciplinary process. The board should do all it can within its statutory powers to strengthen and improve that process. Accordingly, BGCSB should carefully consider granting guide licenses to individuals who gained necessary, qualifying experience when they were employed in positions involving either real or apparent conflicts of interest.


Randy S. Welker, CPA
Legislative Auditor

STATE OF ALASKA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF FISH AND WILDLIFE PROTECTION

OFFICER'S INFORMATION MANUAL

APPROVAL: <u>Jack W. Jordan</u>	Policy No.: <u>C-9</u>
PAGE <u>1</u> of <u>2</u>	Date: <u>July 16, 1990</u>
	SUBJECT: <u>OUTSIDE EMPLOYMENT</u>

All requests for employment outside the Department are reviewed by the Commissioner's Office on a case by case basis. However, the following guidelines have been previously established concerning certain types of work which will not be approved.

1. Alcohol dispensary business
2. Guiding profession
3. Commercial fishing or sport fish guiding

The permission may be withdrawn if a conflict or the appearance of a conflict, with the discharge of the employee's official duties arises.

In the Ethics Law governing outside employment (AS 39.52.170), there is further clarification stating; no public employee may work for (paid or unpaid) an organization other than the employee's own department if that work is incompatible, or in conflict with the proper discharge of official duties.

Please note two important points above:

1. The work is paid or unpaid.
2. Appearance of a conflict is sufficient grounds for disapproval.

Permission for outside employment must be renewed annually.

Requests for outside employment should be made in memo form and must be accompanied by a blue Ethics Disclosure Form. An example of the form follows this policy. Forms are available from the Commissioner's Office and the Department of Public Safety Personnel Office.

Please note that under the Executive Branch Ethics Act, the only person authorized to sign the Ethics Disclosure Form for this Department on behalf of the Commissioner is the "Designated Ethics Supervisor", Special Assistant Gretchen Pence.

Ethics Disclosure Form

Outside Employment or Services Notification

To: Designated Supervisor

Subject: Certification of Outside Employment or Services (AS 39.52.170)

In accordance with AS 39.52.170(b), I hereby officially report my employment or provision of services outside the Department of _____

These outside duties will in no way affect my usual State duties or duty hours in this Department. This employment or service consists of the following:

Hours and days of the week _____

I understand that for any employment outside State service, no State owned/operated facilities, supplies, equipment and/or vehicles (including personnel time and effort) shall be utilized in any manner whatsoever.

(Signature)

(Date)

(Printed Name)

(PCN)

(Job Title)

(Location)

Designated Supervisor's Acknowledgement

Your notification of engagement in outside employment or service has been received.

Acknowledgement of your outside employment or service is made with the understanding that your outside work will not in any way detract from or be in conflict with the proper discharge of your official duties as an employee of this Department.

Please note that any change in your outside service or employment must be reported when it occurs.

(Signature-Designated Supervisor)

(Date)

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SUBJECT ETHICS/STANDARDS OF PROFESSIONAL CONDUCT

CHAPTER DEPARTMENT POLICIES

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PURPOSE

This policy shall be known as the departmental ethics code or Standards of Professional Conduct. Its intent is to establish uniform standards of conduct for employees of the Alaska Department of Fish and Game (ADF&G). The policy is adopted pursuant to AS 39.52.920 which states:

Subject to the review and approval of the attorney general, an agency may adopt a written policy that, in addition to the requirements of this chapter, limits the extent to which a public officer in the agency or an administrative unit of the agency may

- (1) acquire a personal interest in an organization or a financial interest in a business or undertaking that may benefit from official action taken or withheld by the agency or unit;
- (2) have a personal or financial interest in a state grant, contract, lease, or loan administered by the agency or unit; or
- (3) accept a gift.

OBJECTIVE

The objective of establishing Standards of Professional Conduct is to recognize and ensure the legal rights, privileges, and personal beliefs and activities of departmental employees are protected while providing guidance regarding activities which might substantially and materially call into question an employee's integrity. It is the intent of this policy to protect the rights and reputations of departmental employees by providing standards of conduct that will apply to all similarly situated employees of the department. Employees who engage in activities appearing to be outside the bounds of these standards may request a review of such activities by the designated supervisor as defined in AS 39.52.960(8)(A) and (G). Decisions regarding the activities of department employees will be made based on AS 39.52, applicable Personnel Rules, and the following Standards of Professional Conduct. Acceptance of employment with ADF&G is an affirmation of acceptance on the part of the employee that the rights and obligations established in the Standards of Professional Conduct are necessary for both the employee and the department.

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DISTRIBUTION

All SOP manual holders.

RATIONALE

ADF&G is mandated to "manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state . . ." [AS 16.05.020(2)]. The people of Alaska have thus placed in the hands of the employees of the department their faith and trust in the department's ability to meet its obligations of professional resource stewardship. Public acceptance of the department's programs depends, to a great degree, on how the public perceives the activities of employees, both in the workplace and to an extent in their personal lives. This high degree of public trust carries an obligation to maintain high standards of professional conduct. If the public recognizes employees of the department as impartial and unbiased, regardless of their position within the department, the management programs developed by professional employees have a far better chance of being approved and publicly accepted. As professional resource managers, employees of the department must accept that the public expects higher standards of them in conducting certain activities than is expected of other public employees. While some might see this as burdensome, it can better be seen as an indication of the public's high expectations and high degree of interest in the work of the department.

Employees generally recognize that it is difficult for many citizens of the state to see a department representative on one occasion as a professional manager of a resource, and another time that same employee is seen engaged in a commercial activity involving the same resource. However, the extent and degree of this public perception varies widely. The department recognizes that substantial and material conflicts that call into question the integrity of the employee or the department must be prevented. Instances of perceived conflict will be individually evaluated pursuant to AS 39.52, pertinent Alaska Personnel Rules, and the Standards of Professional Conduct, including the following considerations:

1. The extent of management jurisdiction an employee may have over a departmentally managed resource and the extent to which

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an employee may have access to information not generally distributed to the public.

2. The potential an individual employee may have by virtue of his or her position in the department to affect or influence management decisions.
3. The extent to which a conflict is real or immediate or whether it is significant, conjectural, or contrived.
4. The extent to which a perceived conflict will adversely affect the credibility of the employee and the department. If the conflict is found to be genuine in nature and perception, the department and the employee will be called upon to determine a remedy that will remove or acceptably minimize questions regarding the credibility of either.

DEFINITIONS

Commercial Activities: Activities for which an employee receives compensation, as defined in AS 39.52.960(7).

Commercial Guiding: Accompanying or being present with a hunter or fisherman in the field, personally or through an assistant, for direct financial compensation. "Commercial guiding" does not include:

1. Accompanying or being present with a hunter or fisherman guided by another person if the employee has also engaged the services of a guide.
2. Providing transportation to or from the field, if the persons providing transportation and the persons being transported do not stalk, pursue, track, kill, or attempt to harvest fish and wildlife resources.
3. Engaging in personal, lawful recreational or subsistence hunting or fishing, either alone or with friends or relatives, when such activities are not conducted for the purpose of, or with the intent of, receiving compensation. (Inconsequential compensation, such as sharing expenses, is not guiding. Also see AS 39.52.130.)

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Commercial Harvest: An activity which involves the taking or harvest of a resource managed by the department for compensation from a commercial processor, fur buyer, guide client, or retailer. (Also see ethics policy, department findings on exclusions to this definition.)

Benefit: As defined in AS 39.52.960(3).

Department Employee: A person with official status, holding a position control number, and receiving compensation for work performed, but does not include the employee's spouse, children, siblings, or other family members for the purposes of this ethics policy. (Note: Certain additional prohibitions extend to an employee's spouse, blood relation to the second degree of kindred, and members of the employee's household under the Executive Branch Ethics Act. See AS 39.52).

Designated Supervisor: The commissioner or the commissioner's designee.

PROFESSIONAL CODE OF CONDUCT

In an effort to maintain high professional standards of the department and to retain the public trust necessary for the department and its employees to meet statutory obligations, each department employee shall:

1. Use sound biological information in an unbiased manner in recommending and making management decisions.
2. Present information to the public and to peers factually and impartially, and not let personal preference or bias interfere with this obligation.
3. Recognize that some activities and actions may be perceived by the public as inappropriate for an employee of the department.
4. Recognize that employee activities associated with natural resource use, particularly commercial uses, are often viewed unfavorably by the public and peers.
5. Refrain from commercial harvest activities unless specifically approved by this policy or the division director and the designated supervisor.

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6. Use discretion expected of professional employees when conducting activities which might tend to call into question personal or departmental credibility, and consult with supervisors if there is any such doubt in an employee's mind.
7. Obey fish and game laws and regulations.
8. Not use their positions for personal financial gain or to give unwarranted benefit or treatment to any person or group, or to coerce subordinates for his or her personal or financial benefit.
9. Recognize that off-duty activities of many department employees substantially benefit their job performance, public acceptance, and confidence expressed in the department. Fishing, hunting, trapping, photography, camping, and other similar activities provide employees the opportunity to obtain personal awareness and understanding of the public's involvement in the resources managed by the department. Membership in professional societies and community clubs and organizations, to the extent suggested by the standards, provides benefits to both the individual and the department.

INTERPRETATION

This policy will be interpreted in conformity with the Executive Ethics Act (AS 39.52). All employees are urged to read "Ethics--A Handbook for Public Employees," available through personnel officers or from the designated supervisor. Provisions of the Standards of Professional Conduct will apply to all employees of ADF&G.

Any departmental employee convicted of violating a state or federal fish and game law or regulation is subject to disciplinary action by the department. The violation will be reviewed by the appropriate division director, the designated supervisor, and the commissioner.

Disciplinary action taken as a result of a violation of these standards may range from a verbal warning, to a written reprimand, to termination, depending upon the severity of the violation and any extenuating circumstances.

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Decisions regarding outside employment, possible conflicts with these standards, and remedial actions taken to relieve conflict with the standards will be rendered only by the designated supervisor in consultation with the division directors.

All employees of the department, subject to provisions of the ethics policy, may not participate in commercial fishing, commercial game or fish guiding, trapping, mariculture, or aquaculture activities unless specifically approved by the division director and the designated supervisor. Provisions in the ethics policy do not apply to seasonal or temporary employees when they are on leave without pay status.

Employees may participate in secondary outside employment related to fish and game, providing the annual disclosure form has been completed, approved, and signed by the designated supervisor.

ETHICS POLICY

A. Commercial Activities

Exclusions

The department finds that no substantial and material conflict exists, but prior approval by the appropriate division director and designated supervisor is required if:

1. Employees participate in the commercial take of fish and game if those resources are not regulated by the department or the Board of Fisheries and Game.
2. Employees acting as a commercial guide for purposes other than fish or game harvest, such as photography or recreational camping, if no harvest or attempted harvest by the employee or the client of fish or game is involved in such guiding activities.
3. Employees trap, and their total annual compensation for sale of furs obtained from trapping does not exceed \$2,500.

Except for the above exclusionary findings, the prohibitions for commercial activities which relate to fish and game shall be based on divisional jurisdiction and region of employment.

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Divisional Prohibitions (all employees)

Divisions of FRED, Commercial Fisheries, Sport Fish, External and International Fisheries Affairs, and Commissioner's Office: No commercial harvest of fishery resources except as identified in number 1 under Exclusions.

Division of Wildlife Conservation and Commissioner's Office: No commercial harvest of game resources, including the sale of furs of more than \$2,500 annually.

All other divisions: Commercial harvest approved subject to disclosure and prior approval.

Geographical Prohibitions (all employees)

In addition to jurisdictional (divisional) prohibitions, the following geographical prohibitions also apply.

Regional restrictions: No commercial harvest of fish or game resources within the region of employment, as defined by divisional geographic boundaries.

Headquarters staff and staff located outside of Juneau with statewide responsibilities shall assume a regional prohibition of where they are stationed and/or where they primarily work.

B. Use of Information and Materials

1. Employees are encouraged to prepare job-related, general interest, and technical papers on official and personal time. Employees may not, however, accept any compensation for an article, paper, or photograph produced on state time or with state equipment.
2. Department employees appearing as speakers at meetings where they are representing only themselves and not the department shall not use department materials that are not generally available to the public unless they have obtained the approval of their supervisor. Department materials that are broadly distributed and of common access may be used by employees in the same manner as they might be by a citizen who is not an employee. In instances where the presentation might directly benefit

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an employee's personal or financial interest, the employee should carefully review the provisions of this policy and the Executive Ethics Act (AS 39.52), and consult with an immediate supervisor or the department's designated supervisor.

C. Use of State Equipment and Facilities

1. Department employees shall not use state equipment or facilities in the pursuit of personal activities, other than those uses which are minor and inconsequential, under that distinction in AS 39.52.110(a)(3). A factor indicating that a use is minor and inconsequential is that no additional cost will be incurred by the state. Activities which result in the employee receiving compensation, as defined in AS 39.52.960, are not minor and inconsequential. In field situations, at the discretion of the relevant division director, normal living activities of division employees will not constitute personal time for purposes of use of state equipment and facilities:
 - a. No additional costs will be incurred by the state.
 - b. The activities will not occur when the employee is on state time.
 - c. The activities do not result in the employee's receiving compensation, as defined in AS 39.52.960.

D. Use of Photographs

1. Employment with the department may provide employees with unique photographic opportunities. Consequently, a significant potential exists for both real and perceived conflicts of interest. The department's policy is to allow employees to pursue an interest in photography while clearly distinguishing between ethical and unethical personal gain that may come from photographs taken while working for the department.
2. When photography occurs during normal or assigned working hours and with the use of state equipment or film, the products of all such photography shall be considered

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property of the state. If personal equipment or film is used, the photos may be kept for personal use, but shall not be commercially used.

3. Photography at times other than normal or assigned working hours shall be considered a personal activity. If personal film and equipment are used, the photos shall be considered personal property and may be commercially sold or given to the state. However, if state equipment or film are used, the photos are state property and may not be used for personal gain.

E. Advisory Committees and Private Organizations

1. Department employees shall assist advisory committee and regional councils of the Boards of Fisheries and Game, but shall not participate in nominating or voting on candidates for office nor vote on items before the committee or council while attending such meetings representing the department. An employee is considered to be representing the department when he or she has: (a) been specifically requested to appear by a board or council member to comment on a proposal before the body; (b) is appearing, while on duty during his or her normal working day, as a member of a group of departmental employees; or (c) has been directed to appear by a supervisor to represent the department. In the event none of the above apply and an employee is asked to comment on a proposal before the committee or council, the employee must clearly convey that, in this instance, he or she is not speaking in an official capacity for the department. Employees of the department, who by job title or designated duties, are assigned management authority may not serve as members or officers of advisory committees to the Boards of Fisheries and Game, or as members or officers of regional councils. Management authority for purposes of this section includes the ability to take "official action" as defined in AS 39.52.920(14).
2. Department employees are encouraged to participate in private organizations with purposes related to fish and game resource use or conservation and to make public statements, as long as the employee does not purport, or

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appear to purport, that he or she is speaking or acting in an official department capacity. All employees must recognize that in circumstances when their outside activities conflict with department positions or policies, the employee's credibility and/or job effectiveness may be jeopardized. Accordingly, employees should consult their regional supervisor for guidance to reduce potential conflicts.

Example 1: Ernie is a fisheries biologist working on the Kenai Peninsula. He has been asked by a local sport fishing club (of which he is a member) to testify at a public hearing about the need to allocate more fish for sport use. After consulting with his regional supervisor, Ernie determines that it would be professionally unethical for him to testify as a private person since the public's trust in his credibility as an unbiased department management biologist would likely be significantly reduced.

Example 2: Ann is a habitat biologist in interior Alaska. She has been asked by a professional society (The Ecological Society of America) to testify before a House Agricultural Subcommittee in Washington, D.C., about the effects of a newly developed wastewater treatment system for placer mining on aquatic organisms (her area of expertise). Although the State of Alaska has endorsed this technology, after discussion of the request with her regional supervisor, Ann decides to testify but limit her testimony to the biological tradeoffs associated with this treatment technology. Ann's testimony is presented as a professional scientist, not as a representative of the state, and further, carefully avoids addressing the political or economic aspects of the issue.

Example 3: Bill is a Division of Wildlife Conservation area management biologist who attends an advisory committee meeting where officers will be elected and regulations will be discussed. Because area biologists speak on proposals and are commonly viewed by the public to represent the department, Bill does not vote in the committee elections.

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3. The department specifically encourages employee participation in professional societies and recognizes such organizations (e.g., The Wildlife Society, American Fisheries Society, Ecological Society of America, American Statistical Association, Professional Secretaries International, etc.) as distinctly different from other special interest groups. In some situations it may be beneficial to the department for individuals to participate in activities of such societies on state time, and requests to do so shall be made through the division director and the designated supervisor.

4. Department employees may not accept payment or reimbursement for travel or other expenses from any source other than as provided for in AS 39.52.130.

F. Patent/Copyright

The department will reserve all rights to any invention, discovery, material, equipment, or intellectual property designed, developed, and produced by department employees:

1. During working hours.
2. With a contribution by the department or the state of facilities, equipment, material funds, or of time and services or other state or department employees on official duty.
3. Which bears a direct relation to, or is made in consequence of, official duties of the inventory.

DISCLOSURE

One of the best ways to avoid even the semblance of impropriety is for all department employees to provide full and detailed prior disclosure, in writing, of the precise nature of any association, relationship, business arrangement, or circumstance which suggests that decisions may be made contrary to the best interest of the general public, resources, or the department; for the employee's personal financial gain; or for reasons contrary to the department's statutory responsibilities. All such prior disclosures shall be done through division directors to the designated supervisor.

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Example 1: Carol is a clerk typist who wants extra money for the holidays and takes an after-hours waitress job October through December. Disclosure is necessary.

Example 2: Sid is a permanent full-time technician working at the Fin Perfect Hatchery who builds and sells crab pots in his spare time. Disclosure is necessary.

REQUEST FOR AUTHORIZATION FOR EXEMPTION

A. Department employees shall submit written requests for authorization to participate in commercial activities, or to conduct other activities identified in this policy, through their director to the designated supervisor at least thirty working days before participating in the activity. Expedited requests will be considered by the designated supervisor in instances where the employee could not reasonably provide the thirty-working-day advance notice. Such requests must be accompanied by a written explanation of the factors which prohibited advance notice. The written request shall include:

1. Type of activity.
2. Duration or dates of activity.
3. Approximate location of activity.
4. Justification for authorization or exception.
5. Name, division, address, and phone number of the employee.

Detailed and complete answers on the "Ethics Disclosure Form" shall satisfy this requirement.

B. The designated supervisor shall indicate if an ethical problem exists with a request for authorization because of an employee's specific employment responsibilities, and shall recommend appropriate action in a memorandum to the employee, with a copy to the division director within twenty working days upon receipt of a request.

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APPEAL PROCESS

Department employees may utilize the grievance procedure in the Personnel Rules (2 AAC 07.435) if they disagree with the designated supervisor's decision. However, it is recognized that in all cases, provisions of AS 39.52.910(b) apply.

DIVESTITURE PERIOD

Employees of the department who hold an interest or are otherwise involved in an activity precluded by this policy have until January 1, 1992 to divest themselves of that interest or activity. The effective date, January 1, 1992, applies only to those items precluded by the departmental policy. The Ethics Act (AS 39.52) is in effect and its prohibitions and requirements presently apply to all departmental employees.

CORRECTIVE ACTION

Violation of the Executive Branch Ethics Act (AS 39.52) includes not only a conflict of interest, but also failure to file a disclosure form or inadequately or falsely filing a disclosure form.

If a department employee is found to have violated the Executive Branch Ethics Act (AS 39.52), the State Personnel Rules (2 AAC 07), or these standards, the commissioner or designated supervisor may, by written memorandum: Order the employee to stop engaging in the prohibited activity; temporarily or permanently reassign job responsibilities to eliminate the potential conflict; order divestiture, establishment of a blind trust, restitution, or forfeiture; or take administrative disciplinary action against that employee. Disciplinary action, depending on severity, will range from: A verbal reprimand; a written reprimand placed in the employee's personnel file; suspension without pay; or termination of employment with the department [see AS 39.52.410(a)].

PUBLIC COMPLAINT PROCESS

Complaints will be handled according to the provisions of AS 39.52.210 and AS 39.52.230.



State of Alaska
Ombudsman

Duncan C. Fowler

February 7, 1992

Patrick Rodey, Chairman
Senate State Affairs Committee
Alaska State Legislature
Capitol Building
Juneau, Alaska 99801-1182

RE: SB-375

Dear Senator Rodey:

The Office of the Ombudsman supports the purposes of SB-375. I believe that law enforcement officers with involvement in areas they have responsibility for enforcing are in an unfortunate conflict of interest. Any person charged with the responsibility of enforcing laws faces a challenge of not only having to be, but needing to appear even handed in the performance of their duties.

SB-375 helps set out the state policy that it is inappropriate for enforcement officers to be in the position of working as a guide or an assistant guide while they are involved in enforcing state fish and wildlife protection laws. This policy makes it clear that those charged with enforcing our state laws must take an arms-length approach in their off-duty activities to ensure they maintain the necessary independence so their enforcement activities may not be questioned.

Through our investigations, I have become aware of at least one public safety employee in this situation. He volunteered to work under the tutelage of licensed guides to apparently obtain the necessary work experience which would allow him to apply for and receive a guide license after leaving law enforcement work. Although an employee in this situation may not have received monetary compensation for their work, they clearly intend to profit from their off-duty activities. Their volunteer experience will convert to dollars upon receipt of a guide license. It clearly has a long-term benefit to the employee involved.

A situation such as this also presents a potential enforcement problem. The opportunity exists to perhaps apply a different standard when enforcing state laws involving the friendly guide who is providing off-duty guiding supervision. It can

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February 7, 1992

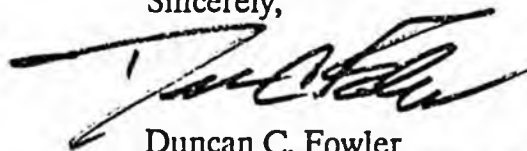
also create the appearance of being biased when he must enforce game laws against his friend's competitors.

It is my information that the Department of Public Safety has had a policy prohibiting such conflicting off-duty activities for several years. However, if a public safety employee did work and obtain guide experience credits in conflict with that policy in the past, there was no prohibition to prevent the Guide Board from acknowledging that experience and allowing it to be applied towards the licensing requirements. Ann Boudreaux, director of the Division of Occupational Licensing, told me that the board would probably accept that past experience as there was nothing which would allow them to discount either the quality or applicability of that experience.

I would propose that the committee consider modifying the "ethical conduct" standards and definitions in AS 08.54 to include a person's past non-guiding employment history. Clearly, the concept I propose needs refining and defining. However, I do believe it would be improper for guiding experience credits, which have been obtained contrary to the policies of their employer, be allowed when applying for a state license.

I am sorry I am unable to meet with the committee at its hearing this afternoon. I am committed to meet with another committee. Please let me know if you have any additional questions about this matter.

Sincerely,



Duncan C. Fowler
Ombudsman

DCF:pjc

cc: Senator Lyman Hoffman