

**SCOMM**

**92:5**

«data Member database»

September 17, 1993

«NAME»

«ADDRESS»

«CITY», AK «ZIP»

Dear «SALUTA»:

Thank you for agreeing to serve as a member of or participant in the Ombudsman Selection Committee. Judi Jordan of my staff has already spoken with each of you to let you know that we we will be holding our first meeting via teleconference on Friday, September 24, 1993 from 9 a.m. until 12:00 p.m. She will be serving as staff to the committee and has included in this letter a copy of the previous ad for the position of ombudsman, as well as the Alaska Statute 24.55 and Title 21 of the Alaska Administrative Code on the Ombudsman's office, an agenda for our meeting, and a list of members and participants. I hope that you will take the opportunity to review these prior to our teleconference.

At the meeting, and after brief introductory comments, I would like to take the time to hear comments and suggestions from the legislators who were previously on ombudsman selection committees as well as any comments from current committee members. Then we will be discussing the enclosed ad and any changes we wish to make to it, the schedule for running the ad and in which papers, the criteria for judging applications, the narrowing down of applications, the interview process, and the decision on the final applicant to be recommended by the committee. We will also discuss the times and locations for future meetings.

In Anchorage, the teleconference will be held in one of the LJO conference rooms at 716 W 4th. In Juneau we will be meeting in the Goldstein Building, Room 319. This will be an organizational meeting with no public testimony.

Again, thank you for taking the time to participate on this committee. I appreciate the opportunity to work with you and look forward to talking with you on Friday, the 24th.

Sincerely,

Gail Phillips  
REPRESENTATIVE

GP:jmj

ENC: (5)

**OMBUDSMAN SELECTION COMMITTEE MEMBERS  
AND GUEST PARTICIPANTS  
September 24, 1993**

Rep. Gail Phillips  
124 W Pioneer, #3  
Homer, AK 99603  
(235-2921)

Rep. Terry Martin  
716 W 4th, #650  
Anchorage, AK 99501-2133  
(258-8169)

Rep. Fran Ulmer  
Court Bldg. 601  
Juneau, AK 99801-1182  
(465-4947)

Sen. Randy Phillips  
PO Box 142  
Eagle River, AK 99577  
(694-4949)

Sen. Loren Lemman  
716 W 4th, #540  
Anchorage, AK 99501-2133  
(258-8189 or 243-2000)

Sen. Jim Duncan  
State Capitol 119  
Juneau, AK 99801-1182  
(465-4766)

Sen. Mitch Abood  
3102 Northwood  
Anchorage, AK 99517  
(248-3102)

Sen. Pat Pourchot  
Commonwealth North  
935 W 3rd  
Anchorage, AK 99501  
(338-2425)

Sen. Joe Josepheson  
880 "H" St., #205  
Anchorage, AK 99501  
(276-0151)

## **AGENDA**

**OBMUDSMAN SELECTION COMMITTEE  
SEPTEMBER 24, 1993 TELECONFERENCE  
9 A.M. TO 12:00 NOON**

**ON LINE INTRODUCTIONS**

**INTRODUCTORY COMMENTS BY  
REPRESENTATIVE GAIL PHILLIPS**

**COMMENTS FROM COMMITTEE MEMBERS AND GUESTS**

**TIME LINE FOR THE SELECTION PROCESS**  
THE NARROWING DOWN OF APPLICANTS  
THE INTERVIEW PROCESS AND INTERVIEW QUESTIONS  
DECISION ON FINALIST

**DISCUSSION OF ADVERTISEMENT FOR THE  
OMBUDSMAN'S POSITION**

**PAPERS IN WHICH TO RUN THE AD, WHEN, FOR HOW LONG,  
AND THE COST OF ADS**

**CRITERIA FOR APPLICANTS**

**BUDGET FOR THE COMMITTEE**

# OMBUDSMAN SELECTION COMMITTEE

REF. GAIL PHILLIPS  
CO-CHAIR  
SEN. RANDY PHILLIPS  
CO-CHAIR

SEN. LOREN LEMAN  
SEN. JIM DUNCAN  
REP. TERRY MARTIN  
REP. FRAN ULMER

September 29, 1993

Sen. Pat Pourchot  
Commonwealth North  
935 W 3rd  
Anchorage, AK 99501

Dear Senator Pourchot:

Thank you for attending and participating in our Ombudsman Selection Committee meeting on Friday. I was very pleased with the wealth of information you, Mitch, and Joe shared with us. I know that the work your previous committees did has certainly paved the way for a much smoother course for the current committee to follow.

Again, I appreciate you taking the time to help us out. I hope you will be able to continue to offer your excellent suggestions.

Sincerely,

Representative Gail Phillips  
Co-Chair,  
Ombudsman Selection Committee

Senator Randy Phillips  
Co-Chair,  
Ombudsman Selection Committee

# OMBUDSMAN SELECTION COMMITTEE

REP. GAIL PHILLIPS  
CO-CHAIR  
SEN. RANDY PHILLIPS  
CO-CHAIR

SEN. LOREN LEMAN  
SEN. JIM DUNCAN  
REP. TERRY MARTIN  
REP. FRAN ULMER

September 29, 1993

Sen. Mitch Abood  
3102 Northwood  
Anchorage, AK 99517

Dear Senator Abood:

Thank you for attending and participating in our Ombudsman Selection Committee meeting on Friday. I was very pleased with the wealth of information you, Pat, and Joe shared with us. I know that the work your previous committees did has certainly paved the way for a much smoother course for the current committee to follow.

Again, I appreciate you taking the time to help us out. I hope you will be able to continue to offer your excellent suggestions.

Sincerely,

Representative Gail Phillips  
Co-Chair,  
Ombudsman Selection Committee

Senator Randy Phillips  
Co-Chair,  
Ombudsman Selection Committee

# OMBUDSMAN SELECTION COMMITTEE

REP. GAIL PHILLIPS  
CO-CHAIR  
SEN. RANDY PHILLIPS  
CO-CHAIR

SEN. LOREN LEMAN  
SEN. JIM DUNCAN  
REP. TERRY MARTIN  
REP. FRAN ULMER

September 29, 1993

Senator Joe Josephson  
880 "H" Street, #205  
Anchorage, AK 99501

Dear Senator Josephson:

Thank you for attending and participating in our Ombudsman Selection Committee meeting on Friday. I was very pleased with the wealth of information you, Mitch, and Pat shared with us. I know that the work your previous committees did has certainly paved the way for a much smoother course for the current committee to follow.

Again, I appreciate you taking the time to help us out. I hope you will be able to continue to offer your excellent suggestions.

Sincerely,

Representative Gail Phillips  
Co-Chair,  
Ombudsman Selection Committee

Senator Randy Phillips  
Co-Chair,  
Ombudsman Selection Committee

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

### InterOffice Memo

To: Rep. Gail Phillips  
From: Rep. Fran Ulmer  
Date: September 30, 1993  
Subj: Constitution Revision Task Force  
Ombudsman Selection Committee

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The Constitutional Revision Subcommittee on the legislative process met and discussed the memo I shared with you regarding procedural reform. We came up with some recommendations and asked Tam Cook to draft them into a proposed rule change. It will be available by the time the full committee meets on the 14th, and we can discuss it at that time. I think we were able to make some progress and will have some ideas for the full group to consider.

On another matter, let me ask about your intention for public hearings on the ombudsman selection proceedings. I have received a couple of inquiries from individuals who are not interested in applying themselves, but do want to make comments to the committee about the ombudsman's office. Is your intention to set aside some time for public participation when the committee meets again, or should people submit their comments in writing? Please advise so that I might let others know.

Thanks.

FU/bvh



# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

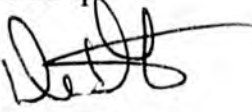
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

November 3, 1993

**SUBJECT:** Meetings of the Ombudsman Selection Committee (AS 24.55-020) (Work Order No. 8-LS1313)

**TO:** Representative Gail Phillips

**FROM:** David R. Dierdorff   
Revisor of Statutes

You have asked three questions about meetings of the Ombudsman Selection Committee. First, does the committee have to permit public participation in meetings? Second, may candidates be reviewed in executive session? And third, what limitations apply to executive sessions?

Public Participation. There is nothing in the law that requires the committee to permit public participation in its meetings. That does not mean that the committee may exclude the public from attendance (unless the committee goes into executive session), as the open meetings laws applicable to legislative committees (Uniform Rule 22 and AS 44.62.310(a))<sup>1/</sup> apply to the committee. However, a requirement that the public be notified of a meeting and allowed to attend public sessions of a committee meeting does not carry with it a right to participate in the meeting other than as a spectator.

Use of executive sessions to review candidates. Both Rule 22(b)(2) and AS 44.62.-310(c)(2) allow the use of executive sessions to discuss subjects that might tend to

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<sup>1/</sup>Uniform Rule 22(a) provides:

(a) All meetings of a legislative body are open to all legislators, whether or not they are members of the particular legislative body that is meeting, and to the general public except as provided in (b) of this rule.

AS 44.62.310(a), which is enforced against legislators under the legislative ethics law (AS 24.60.037), provides, in relevant part:

(a) All meetings of a legislative body \* \* \* of the state \* \* \* are open to the public except as otherwise provided by this section.

Representative Gail Phillips

November 3, 1993

Page 2

prejudice the reputation or character of a person. Because a candid discussion of candidates for the position of ombudsman might prejudice the candidate's character or reputation, it would be proper for the committee to go into executive session for those discussions.

Limitations applicable to executive sessions. Before going into an executive session, the committee must meet in a public session and, after stating the justification for the executive session, vote on the question of going into executive session, which requires a majority vote. AS 44.62.310(b) and Rule 22(c). Action may not be taken in an executive session. The committee must go back into a public session to take any official action on the matter under discussion. Under Rule 22(d), any legislator may attend an executive session of the committee, but must maintain confidentiality with respect to the session's discussions.

If I can be of further assistance, please advise.

DRD:mi

93-137.mai

# OMBUDSMAN SELECTION COMMITTEE

REP. GAIL PHILLIPS  
CO-CHAIR  
SEN. RANDY PHILLIPS  
CO-CHAIR

SEN. LOREN LEMAN  
SEN. JIM DUNCAN  
REP. TERRY MARTIN  
REP. FRAN ULMER

DATE: November 10, 1993

TO: Senator Randy Phillips  
Co-Chair, Ombudsman Selection Committee

FROM: Judi Jordan, Committee Staff *jmj*

RE: Leg. Legal Memo, Ombudsman Applicant List, and two Final Applicants

I understand that the fax sent to you from the Homer office yesterday may not have been very readable; therefore, I am faxing you another copy.

Also attached is a copy of the list of applicants as they appear in my database. I am preparing a cover memo and sending this list to all committee members, and asking them to review and narrow their selections to a short list of 10 or so candidates as soon as possible. Representative Phillips has asked me to check with you to see if requiring the committee members to have their lists ready by November 20th is agreeable to you. Would you please call me as soon as you receive this so that I might begin contacting the other committee members with the appropriate date?

Once the list is narrowed to no more than 10 or so, it is my understanding that Jerry in your office will be calling the applicants' references and verifying the accuracy of the information included in their resumes as well as their meeting the statutory requirements for residency, etc.. While I was making copies for you and the Anchorage office, I made two other sets and would be glad to make one of them available to Jerry for use in the verification process.

In the last column of the enclosed applicant list, I would like to point out that this extremely brief summary of information about each applicant is intended only to aid committee members in recalling which of the applicants the name belongs to. It is not intended in any way to point out information favorable or unfavorable about the applicant. I did note on several applicants that they did not appear to meet the three year statutory residency requirement to serve as ombudsman. However, this is no assurance that the others do meet that requirement.

Staff Contact: **Judi Jordan**, State Capitol, Juneau, AK 99801-1182  
Phone: (907) 465-2689 FAX: (907) 465-3472

# OMBUDSMAN SELECTION COMMITTEE

REP. GAIL PHILLIPS  
CO-CHAIR  
SEN. RANDY PHILLIPS  
CO-CHAIR

SEN. LOREN LEMAN  
SEN. JIM DUNCAN  
REP. TERRY MARTIN  
REP. FRAN ULMER

December 8, 1993

Duncan C. Fowler  
3207 Tongass Boulevard  
Juneau, Alaska 99801

Dear Mr. Fowler,

The Ombudsman Selection Committee has asked me to do back ground and reference checks on each of the five individuals that have been selected for interview. In doing this, I will be contacting references that you have provided the Committee, former employers, colleges and universities listed in your resume.

In addition, the Committee has asked that I obtain the following from you:

1. A signed release authorizing the Alaska Department of Public Safety to release your criminal record to the Committee. (enclosed)
2. A letter from you disclosing any "close economic associations" as provided for in AS 24.60.070.
3. A "financial disclosure" letter from you that provides substantially the information that is required under AS 24.60.200.

If possible, please send the above requested information to the following address so that it is received prior to your interview on December 15.

Senator Randy Phillips  
State Capitol  
Juneau, AK 99801  
ATTN: Jerry Burnett

If you have any questions, please feel free to call (907) 465-4949.

Sincerely,

Jerry Burnett  
Legislative Assistant

Note: ↑  
Federal Law  
now precludes  
this release  
JB

Staff Contact: **Judi Jordan**, State Capitol, Juneau, AK 99801-1182  
Phone: (907) 465-2689 FAX: (907) 465-3472

## ALASKA STATE LEGISLATURE OMBUDSMAN SELECTION COMMITTEE



### COMMITTEE SELECTS OMBUDSMAN NOMINEE

12/15/93

FOR IMMEDIATE RELEASE

CONTACT: REP. GAIL PHILLIPS, 258-8164 OR  
SEN. RANDY PHILLIPS, 694-4949

The six member Ombudsman Selection Committee tonight chose Stuart Hall to fill a five-year term as Ombudsman. Hall will replace Duncan Fowler, whose term has expired.

"We had over a hundred applicants, many of them highly qualified," said committee co-chair Rep. Gail Phillips (R) Homer. "The five finalists, including Fowler, had excellent credentials," said co-chair Sen. Randy Phillips (R) Eagle River, "but in the end, we had to select one and Hall got the most support from committee members." Hall, an Alaska resident, presently is Deputy Director of Legislative Affairs for the California Transportation Commission.

Each of the finalists was interviewed in person this afternoon, and the committee met tonight to discuss the applicants qualifications, and vote. Besides Hall and Fowler, the finalists were Scott Brandt-Erichsen, Gwen Byington Prewitt and Elizabeth Vasquez. The co-chairs said they will recommend to Senate President Rick Halford and Speaker Ramona Barnes that the nomination be considered by the legislature during the first week of the session.

The Ombudsman is an independent, impartial official of the legislative branch and is empowered to investigate the acts of State administrative agencies and recommend changes. Responsibilities include safeguarding the rights of citizens and improving the delivery of State services. The office of the Ombudsman acts as a clearinghouse for citizen complaints and produces an annual report. The position pays \$5650 a month, plus benefits.

Besides Representative Phillips and Senator Phillips, committee members include Representative Terry Martin (R) Anchorage, Senator Loren Leman (R) Anchorage, Representative Fran Ulmer (D) Juneau, and Senator Jim Duncan (D) Juneau.



# Alaska State Legislature

Chair  
Legislative Budget and Audit  
Community and Regional Affairs

Vice-Chair  
Transportation

Randy Phillips  
State Senator  
District L

Session  
State Capital  
Juneau, AK 99801  
(907) 463-4949

Interim  
P.O. Box 142  
Eagle River AK 99577  
(907) 694-4949

## Phillips' Fax

DATE: 12-15-93

TO: Senator Randy Phillips Fax# 258-4051

FROM: Jerry Burnett Fax# (907) 465-4979  
Tel: (907) 465-4949  
Toll Free: (800) 478-4950

Comments: The Department of Public Safety  
appears to be prohibited by Federal  
Regulation from releasing criminal  
records for employment related  
purposes unless the individual is  
being employed in law enforcement.  
They have been allowed to do this in  
the past but no longer. This from  
Public Safety Commissioner's office.



# Alaska State Legislature

**Chair**  
Legislative Budget and Audit  
Community and Regional Affairs  
**Vice-Chair**  
Transportation

**Randy Phillips**  
State Senator  
District L

Session  
State Capitol  
Juneau, AK 99801  
(907) 465-4949

Interim  
P.O. Box 142  
Eagle River AK 99577  
(907) 694-4949

## Phillips' Fax

DATE: 12-15-93

TO: Senator Randy Phillips Fax# 258-1261

FROM: Jerry Burnett Fax# (907) 465-4979  
Tel: (907) 465-4949  
Toll Free: (800) 478-4950

Comments: Following Memo speaks  
to residency.

\_\_\_\_\_  
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§ 01.10.055

ALASKA STATUTES

§ 01.10.060

**Sec. 01.10.055. Residency.** (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state. (§ 1 ch 67 SLA 1983)

NOTES TO DECISIONS

**Jurisdiction over divorce action.** — This section does not affect the common-law rule that Alaska courts have jurisdiction over a divorce action when one of the parties is domiciled in Alaska, where "do-

micile" is defined as physical presence plus an intent to remain permanently. *Perito v. Perito*, 756 P.2d 895 (Alaska 1988).

**Sec. 01.10.060. Definitions.** In the laws of the state, unless the context otherwise requires,

(1) "action" includes any matter or proceeding in a court, civil or criminal;

(2) "daytime" means the period between sunrise and sunset;

(3) "month" means a calendar month unless otherwise expressed;

(4) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

(5) "nighttime" means the period between sunset and sunrise;

(6) "oath" includes affirmation or declaration;

(7) "peace officer" means

(A) an officer of the state troopers;

(B) a member of the police force of a municipality;

(C) a village public safety officer;

(D) a United States marshal or deputy marshal; and

(E) an officer whose duty it is to enforce and preserve the public peace;

(8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

§ 01.10.060

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# **OMBUDSMAN SELECTION** **COMMITTEE**

REP. GAIL PHILLIPS  
CO-CHAIR  
SEN. RANDY PHILLIPS  
CO-CHAIR

SEN. LOREN LEMAN  
SEN. JIM DUNCAN  
REP. TERRY MARTIN  
REP. FRAN ULMER

December 20, 1993

Senator Rick Halford, Speaker  
Alaska State Senate  
716 W. 4th., Suite 500  
Anchorage, Alaska 99501

Dear President Halford,

The Ombudsman Selection Committee is pleased to forward the name of Stuart C. Hall to the full Legislature for consideration as the next State Ombudsman.

Stuart Hall was chosen by the Committee from a field of 112 candidates who applied for the position. The selection process included a review of all resumes by each of the Committee Members, a ranking of the top candidates by each member and then interviews and reference checks of the top five candidates. Mr Hall was chosen by the Committee on a five to one vote.

Stuart Hall has been a resident of Alaska since 1971, when he was employed by the Legislative Legal Services Division as a Senior Legislative Counsel. In that position he was one of the drafters of the legislation that established the Ombudsman in Alaska. Since that time he has served a Commissioner on the Alaska Public Utilities Commission, has been an attorney in private practice, and is the owner operator of a travel consulting business in Anchorage. A personal tragedy, the illness and death of both his parents caused him to be absent from the state for the past three years. During this time, Mr. Hall has been employed by the California Transportation Commission as their Deputy Director for Legislative Affairs. He has kept his ties to Alaska, continuing as a member of the Alaska Bar Association, and has continued to vote in his home precinct in Anchorage. The Committee is comfortable that Mr. Hall meets all the qualifications to be our next Ombudsman and is the best candidate available.

The Committee requests that the Senate and House meet in joint session to consider Stuart Hall's confirmation as State Ombudsman at the earliest possible opportunity during the 1994 session. Please feel free to contact Senator Randy Phillips at 694-4949 or Representative Gail Phillips at 235-2891 if you have any questions.

Sincerely,

Senator Randy Phillips  
Co-Chair

Representative Gail Phillips  
Co-Chair

Staff Contact: **Judi Jordan**, State Capitol, Juneau, AK 99801-1182  
Phone: (907) 465-2689 FAX: (907) 465-3472

# Alaska State Legislature

## House of Representatives



P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3718

Official Business

House Majority Leader

DATE: January 21, 1994

TO: Representative Ramona Barnes *Ramona*  
Speaker of the House

FROM: Representative Gail Phillips *Gail*  
Co-Chair, Ombudsman Selection Committee

RE: Joint Session to Nominate Stuart Hall for Ombudsman

I would like to request that we schedule a Joint Session to present the Ombudsman Selection Committee's nomination of Stuart C. Hall as Ombudsman as soon as possible.

Thank you for your consideration of my request.

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

*F*  
*Ombudsman*

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

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

March 8, 1994

**SUBJECT:** Compensation for the Ombudsman

**TO:** Representative Gail Phillips  
Majority Leader

**FROM:** Tamara Brandt Cook  
Director *TBC*

If the appointment to the office of the ombudsman is confirmed by the legislature, you have asked whether the person appointed must be offered the job. The process for the selection of an ombudsman does not include an offer of the job as such. AS 24.55.020(c) provides

(c) The appointment of the ombudsman becomes effective if, while the legislature is in session, the governor neither approves nor vetoes it within 15 days, Sundays excepted, after its delivery to the governor. If the legislature is not in session and the governor neither approves nor vetoes the appointment within 20 days, Sundays excepted, after its delivery to the governor, the appointment becomes effective.

While this subsection does not specifically provide that the term of office begins when the appointment becomes effective, that appears to be the implication. This conclusion is bolstered by AS 24.55.040(b) which permits an incumbent ombudsman to remain in office ". . . until a successor is appointed." Note that the statute ensures that the office will never be vacant, because the incumbent holds over automatically until an expired terms is actually filled.

You have also asked whether the ombudsman could be offered a one year contract. Aside from the obvious question of who would have the authority to execute such a contract on behalf of the state, it appears that such a contract would not be in compliance with statute and, therefore, void. AS 24.55.040 sets out the term of office of the ombudsman at 5 years. AS 24.55.050 sets out a method whereby the ombudsman may be removed from office (only for neglect of duty, misconduct, or disability). AS 24.55.060 sets out the compensation for the office (Step A, Range 26).

• Representative Gail Phillips  
• March 8, 1994  
Page 2

There have been cases in other jurisdictions involving the modification through contract of employment terms set out in statute for public officers. The prevailing view seems to be that these terms may not be modified because to do so vitiates the intent of the legislative body in establishing them by statute. (Glavey v. United States, 182 U.S. 595 (1901); State ex rel Bass v. Oakdale, 16 S.2d 527 (La. 1944); Crutch v. Johnson County, 79 S.W.2d 932 (Tex. Civ. App. 1935)) The courts have shown a willingness to depart from the general rule in certain cases by characterizing the person as a public employee, whose tenure was subject to will of the employing public body, rather than as a public officer. (168 ALR 492 at 494) There is also a minority view that recognizes the validity of a contract by a public officer to render services for compensation less than fixed by statute. (70 ALR 972 at 976) But this minority view seems to be losing ground and, even in those jurisdictions that follow it, the cases supporting these contracts usually concern after-the-fact claims for full compensation by officers who assented at the time to less compensation. Regardless of questions regarding the particular remedy that may be realized by an individual who objects to a contract modifying terms of employment set by statute, it is clear that the agreement itself is vulnerable to being found illegal by the court.

Lastly, you have asked whether, upon an appointment taking effect, the ombudsman has a right to the salary set out in statute. If money is appropriated for the salary, there can be no doubt that the ombudsman would be entitled to receive it. However, it is at least possible that a court would determine that payment of the salary, like payment of a benefit or lease payment, is subject to an implied condition that money be appropriated for the purpose based upon article IX, section 13 of the state constitution. (But see also Municipality of Anchorage v. Police Dept., 839 P.2d 1080, 1091, (Alaska 1982), footnote 28, where the court states that the decision in Local 71 that legislative approval of monetary terms of collective bargaining agreement is mandated by the constitution is overboard dictum) Bear in mind that even payment of a judgment against the state is subject to the appropriation requirement. (Chevron U.S.A., Inc. v. Hammond, (A77-195 Civ.), (Alaska 1978) (unreported District Court case))

TBC:gc  
94-188.glc

Alaska State House of Representatives  
Eighteenth Legislature  
\*\*Second Session\*\*

RCS# 354  
Item 11

03-09-94  
11:06:41

*F*  
*Ombudsman*

Ombudsman  
Confirm Stuart C. Hall

Yeas:	25	Barnes, Brice, Brown, Carney, Davidson, Davies, B.Davis, G.Davis, Finkelstein, Grussendorf, Hudson, James, Larson, Mulder, Navarre, Nicholia, Nordlund, Olberg, Phillips, Porter, Sitton, Therriault, Vezey, Williams, Willis
Nays:	12	Bunde, Foster, Green, Hanley, Kott, MacLean, Martin, Menard, Moses, Parnell, Sanders, Toohey
Excused:	3	Hoffman, Mackie, Ulmer
Absent:	0	

SENATE ROLL CALL

3-9, 1994

Confirm Hall as Ombudsman

	YEAS	NAYS	EX.	AB.
ADAMS		X		
DONLEY	X			
DUNCAN	X			
ELLIS	X			
FRANK	X			
JACKO				
KELLY	X			
KERTTULA	X			
LEMAN	X			
LINCOLN	X			
LITTLE	X			
MILLER	X			
PEARCE	X			
PHILLIPS	X			
RIEGER	X			
SALO	X			
SHARP		X		
TAYLOR	X			
ZHAROFF	X			
HALFORD	X			
Senate Total	17	2	0	1
House Total	25	12	3	0
TOTAL	42	14	3	
Changed Senate				
Changed House				
TOTAL	42	14	3	1

\*REMEMBER NOT TO STORE & PRINT House Voting Machine so we can tally vote changes\*

# Alaska State Legislature



## House of Representatives House Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990

MEMO: Jan. 28, 1986

TO: Ombudsman Selection Committee

Senator Abood, Co-Chairman  
Senator Josephson  
Senator Kerttula

Rep. Clocksin  
Rep. Uehling

FROM: Rep. M. Mike Miller  
Co-Chairman

RE: Confidentiality question of applications  
Position of Ombudsman

Because of a recent question from a member of the press, I requested Tam Cook to draft an opinion in regard to the question of whether applications for the position of ombudsman should be made public or whether they could be held confidential.

Enclosed, for your information, is a copy of her opinion.

Based on press interest in the application process, recent court decisions (specifically Carter v. APEA (1983) and City of Kenai v. Kenai Peninsula Newspapers (1982)) and my general attitude in favor of disclosure, it is my recommendation that applications be:

Public Info

- 1) made a matter of public record; and
- 2) that applicants be made aware that their applications may be made public.

My staff is in process of drafting a proposed advertisement, and the ad will contain language to this effect for consideration by the committee. In the meantime, my office has already received a number of applications, and -- assuming that we take the stance that applications are to be made public -- these applicants as well as any applicants who have submitted resumes to you should be contacted and provided this information.

This, obviously, represents my opinion as to how we should proceed. Please read the attached memo from Ms. Cook. If your opinions differ, we should schedule a meeting to resolve the issue as quickly as possible.

Bob Speed of my office is handling ombudsman selection issues for me, and will be glad to work with your staff on this or any other aspect of the ombudsman selection process. Feel free to contact me personally at any time.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 998  
907 465-2800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 25, 1986

SUBJECT: Confidentiality of Applications for the  
Position of Ombudsman.

TO: Rep. Mike M. Miller, Co-Chair  
Ombudsman Selection Committee

FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

You have asked whether applications for the position of ombudsman may be kept confidential or must be made available for inspection as public records. For the reasons that follow it is my opinion that the applications should be made public and that potential applicants should be informed of that.

It is clear from the statutes that records of legislative committees and records of floor sessions are public records. (AS 44.62.310, AS 24.05.135) It is also clear that certain records generated by legislative staff are confidential (AS 24.20.100). No statute specifically addresses the status of applications for the position of ombudsman. Nevertheless, AS 44.62.312 recognizes as the general policy of the state the strong public interest in the disclosure of the affairs of government. Application of this principal implies that most records of the legislature ought to be made available to the public. However, there is also the general public records laws to consider, AS 09.25.110 and AS 29.25.120. AS 09.25.110 states in part:

Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours.

The Alaska Supreme Court has construed AS 09.25.110 Broadly in holding that "agencies and departments" includes the

University of Alaska and municipalities. Carter v. Alaska Public Employees Association, 663 P.2d 916 (Alaska 1983); City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1316 (Alaska 1982). In both cases the court concluded that in enacting AS 09.25.110 the legislature intended to codify the common law rule permitting access to public records, only expanding upon it by eliminating the common law requirement that the person seeking access have an interest in the record. Since the court stresses the public interest in free access to governmental records, it might be that AS 09.25.110 and its companion AS 09.25.120 would be found to apply to the legislature.

However, it is not certain that the general public records law would be held to apply to the legislature. If the court concludes that the legislature is not encompassed within the term "agencies and departments", the provision would have no application. Such a conclusion was, in fact, reached by a court regarding a public records statute that applied to an "agency, executive office, department, board, commission, bureau, division or authority." Westinghouse Broadcasting Co. v. Sergeant-at-arms, 375 NE2d 1205 (Mass. 1978). The reasoning behind holding that a general public records statute does not apply to the legislature is based on the fact that the legislature is constitutionally required to determine rules for its own proceedings and it may not do so by statute because this would bind itself in the future since the legislature would be beholden to the governor to approve the repeal of the statute. For this reason, the United States Congress exempted itself from the Freedom of Information Act. Our Supreme Court has already demonstrated its unwillingness to interfere in matters of procedure involving the legislature. Malone v. Meekins, 650 P.2d 351 (Alaska 1982). If AS 09.25.110 and AS 09.25.120 do not apply to the legislature, there is no statutory authority under which applications for ombudsman would have to be considered public records.

Even if the general public records statutes apply to the legislature, the court has essentially construed them to require that public records be made public, without defining what records are public. In the Kenai case, the court held that, despite the broad language in the statutes not all records of a municipality had to be made public. In determining whether a given record is public a balance must be struck

. . . between the public interest in disclosure on the one hand and the privacy and reputation interests of the affected individuals and the government's interest in confidentiality, on the other. (Page 1323)

Somewhat unhelpfully, the court points out:

The initial decision as to whether inspection will be permitted, must, of course, rest with the custodian of the records. And since the justification for a refusal to permit inspection will depend upon the circumstances of the particular case, we can offer no specific guide for that administrative decision . . . . Ultimately, of course, it is for the courts to decide whether the explanation is reasonable and to weigh the benefits accruing to the agency from non-disclosure against the harm which may result to the public if such records are not made available for inspection. (Page 1323)

The court, however, does admit to a preference in the law for public disclosure. "Doubtful cases should be resolved by permitting public inspection." (Page 1323)

In applying these principals and holding that employment applications should be disclosed, the court in the Kenai case found . . . "a strong public interest . . . in an open selection process for high public officials in particular." (Page 1323) The offices at issue in that case were those of city manager and chief of police. The office of ombudsman is even more significant to the public, since the ombudsman directly represents the interests of members of the public in their dealings with state government agencies.

Despite the fact that legal argument could be made to support a decision to keep the applications confidential, because the importance of the public's right to know who is applying for a position that directly effects the public interest outweighs the benefits of protecting the identity of applicants, it is my opinion that applications for the position of ombudsman should be made public. If a decision is made to keep the applications confidential and this is challenged, there is a distinct risk that the court would apply the precedent of the Kenai case to find that the applications are public records.

To protect the privacy interests of potential applicants, they should be informed before applying that these

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Representative M.M. Miller  
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January 25, 1986

applications will be made public and given the opportunity  
of deciding whether or not to apply under that condition.

TBC;ml  
mel/039

# STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 9, 1987

SUBJECT: Selection of an ombudsman

TO: Senator Mitch Abood

FROM: Tamara Brandt Cook <sup>ABC</sup>  
Director  
Division of Legal Services

You have asked how the ombudsman is selected and what the role of the ombudsman selection committee is in that process. You are particularly interested in whether the individual selected by the committee may assume the ombudsman position during the interim before the full legislature acts on the selection. The subject is dealt with in AS 24.55.020 which provides in pertinent part:

(a) A candidate for appointment as the ombudsman shall be nominated by the ombudsman selection committee . . . .

(b) The ombudsman selection committee shall examine persons to serve as ombudsman regarding their qualifications and ability and shall place the name of the person selected in nomination. The appointment is effective if the nomination is approved by a roll call vote of two-thirds of the members of the legislature in joint session and approved by the governor. . .

It is clear from these provisions that the person selected by the ombudsman selection committee is only a nominee for the position of ombudsman and does not assume office until actually appointed by the full legislature. This conclusion is supported by AS 24.55.040(b).

If the term of an ombudsman expires without the appointment of a successor under this chapter, the incumbent ombudsman may continue in office until a successor is appointed. If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or

Senator Abood  
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suspended from office, the deputy ombudsman becomes acting ombudsman until a new ombudsman is appointed for a full term.

In case of a vacancy in the office of the ombudsman, the vacancy is temporarily filled by the incumbent ombudsman or the deputy ombudsman. There is no provision for a nominee to serve during a vacancy in the office of ombudsman. While the situation of an acting ombudsman resigning is not specifically addressed, I believe this statute still applies and that the deputy ombudsman would become the new acting ombudsman.

TBC:mkr  
m12/063