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TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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April 16, 2001

The Honorable Vic Kohring, Chair
and Members, House Transportation Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

RE: SB 88 – An Act relating to metropolitan planning organizations and to establishment of a metropolitan planning organization for the Anchorage metropolitan area; and providing for an effective date.

Dear Representative Kohring and Committee Members:

Your committee is scheduled to consider SB 88 – Relating to metropolitan planning areas during its hearing on Tuesday, April 17. In previous hearings on this bill, and its predecessors, the Department of Law has expressed its serious concerns about the provision that calls for the appointment of two legislators to the Anchorage Metropolitan Area Transportation Study (AMATS) board. We feel that this provision violates the dual office holding prohibition in the Alaska Constitution.

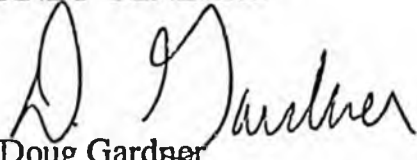
For your information, I have enclosed a recent letter from Assistant Attorney General William F. Cummings to Senator Jerry Ward in which he discusses this concern more fully. Attached to Mr. Cummings' letter are three Attorney General opinions that also discuss the Alaska Constitution's prohibition on dual office holding.

The Honorable Vic Kohring
Members, House Transportation Committee
April 16, 2001
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Although I will not be able to attend the hearing on Tuesday, April 17, because of a prior commitment related to ongoing litigation, I will be happy to answer questions that you may have about this issue. You may call me at 907-465-6712 or Assistant Attorney General Jim Cantor at 907-269-5160.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Doug Gardner
Assistant Attorney General

Enclosures

cc: Senator Randy Phillips
Michael Abbott, Legislative Director, Office of the Governor
Dennis Poshard, Legislative Liaison, Department of Transportation
and Public Facilities
Deborah Behr, Legislation Attorney, Department of Law
Crystal Stillings Smith, Legislative Liaison, Department of Law

STATE OF ALASKA

DEPARTMENT OF LAW

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March 14, 2001

The Honorable Jerry Ward
Alaska State Senate
State Capitol, Room 423
Juneau, AK 99811

Re: SB 88 relating to metropolitan planning organizations and the metropolitan planning organization for the Anchorage metropolitan area

Dear Senator Ward:

On February 20, 2001, I testified before the Senate Transportation Committee that the provisions of SB 88 that appoint a senator and a representative to sit on the Anchorage area metropolitan Transportation Study board violate the dual office holding provisions of the Alaska Constitution. At the end of my testimony you asked that I put my conclusion in writing.

Art. II, § 2 of the Alaska Constitution provides:

SECTION 5. DISQUALIFICATIONS. No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

(Emphasis added). Under these provisions a member of the legislature may not hold any other office during the member's term. Similar provisions prohibiting dual office holding exist for the governor in Art. III, § 6, and for justices of the supreme court and judges under Art. IV, § 14.

The Department of Law has issued three formal attorney general's opinions regarding dual office holding, which I have enclosed with this letter. In the past inter-branch task forces, have been formed to assemble and disseminate information, but did not assume any

The Honorable Jerry Ward
Re: SB 88

March 14, 2001
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duties assigned any branch of government. These sorts of bodies have not been seen to violate the constitution's prohibitions against dual office holding. On the other hand, if a legislator, or a judge, holds a position in an executive branch agency or a political subdivision, and the duties of the position require the office holder to take action regarding the management of the agency, the prohibition against dual office holding is violated.

Under SB 88, a senator and a representative will be appointed to sit on the board that allocates federal surface transportation money in the Anchorage area. (At the present time there are three voting members of the board appointed by the mayor of Anchorage and two state employees, who sit in an advisory capacity.) Under the bill, the board's composition and functioning change. Three members voting members will still be appointed by the mayor. In addition, two voting members would be appointed by the governor, and two voting members by the presiding officers of the Senate and the House of Representatives, a senator and a member of the House of Representatives whose districts include at least a portion of the Municipality of Anchorage. A quorum of the board is a majority of the voting members.

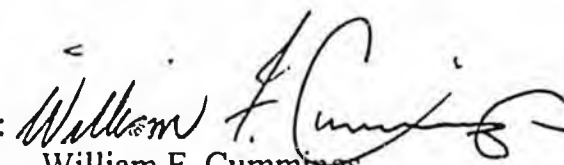
5 voting
4 DEC
2 govt DOT
2 assoc'd
members
1 mayor

We believe that the prohibition against dual office holding by legislators would be violated. The board would be making decisions on which projects will receive allocated federal money, when they will receive it, and in what order specific projects will be built. These functions are clearly more than collection or dissemination of information and under current practice, these functions are clearly municipal managerial responsibilities.

If you have any questions on this matter, please feel free to contact me.

Sincerely yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
William F. Cummings
Assistant Attorney General

WFC:pvp

Enclosure(s)

cc: Mike Abbott, Legislative Director
Deborah Behr, Dept. of Law
Chrystal Smith, Dept. of Law
Don Smith, Senate Transportation Committee
Senator Randy Phillips, Attn: Kim Ross

THE
FOLLOWING
DOCUMENT(S)
ARE
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STATE OF ALASKA

DEPARTMENT OF LAW

OPINION NO. 26
JAY S. HAMMOND, GOVERNOR

June 29, 1976

The Honorable Lowell Thomas, Jr.
Lieutenant Governor
State of Alaska
Pouch A, State Capitol
Juneau, Alaska 99811

Re: Legality of legislators running
for other house following increase
in legislative salary.

Dear Lieutenant Governor Thomas:

You have asked whether, under Warwick v. State, 548 P.2d 384 (Alaska 1976), a member of one house of the legislature may run for a seat in the other house, when the pay for that seat in the other house has been increased by the legislature in which the candidate served. While the Alaska courts have not ruled on the issue, it is our view that the answer is yes.

The question arises from Article II, section 5 of the Alaska Constitution which provides in part:

During the term for which elected
and for one year thereafter, no legis-
lator may be nominated, elected, or
appointed to any other office or position

The Honorable Lowell Thomas, Jr.
Lieutenant Governor

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of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

The purpose of the prohibition is to remove temptation and improper motives from considerations of legislators in voting for increased salaries or the creation of new offices. Warwick v. State, supra, at 388. Because prohibitions like this are contrary to general public policy which favors eligibility for office, they are usually given a literal construction and are rarely expanded beyond their literal terms. Id. at 389. Where there is doubt as to their coverage, courts have emphasized that when the office is elective, the preference for eligibility is stronger, since voters thereby exercise a direct control. Id.

In connection with legislative office,

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Lieutenant Governor

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the relevant terms of the prohibition are as follows:

During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office . . . the salary or emoluments of which have been increased, while he was a member. Alaska Constitution. art. II, §5 (emphasis added).

Reading the prohibition purely literally, it does not apply to a legislator's running for a seat in the other house of the legislature. His office, that of a "legislator," remains the same. While the term of office differs (four years for members of the senate, two years for members of the house) and the constituency may differ, the "office" of "legislator" is constant.

This literal interpretation gives full effect to the purpose of the prohibition (to prevent improper motives in voting on a salary increase). Indeed, expanding the coverage of the provision would not further the purpose of the section but would in fact be irrational. This is so because the members of both houses receive the same salary and emoluments. There is

The Honorable Lowell Thomas, Jr.
Lieutenant Governor

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no question that, following a salary increase, a legislator may run for re-election to his own seat. No possible purpose is served then by barring a legislator from running for a seat in the other house.

The question you have raised was touched on by Judge Carlson in his opinion in Warwick but not in any detailed fashion. In his Memorandum of Decision, Judge Carlson noted that originally, the proposed section 5 contained an express provision allowing election to the other house of the legislature and that it was stricken from the final document. This, in the Judge's passing view appeared to raise questions concerning eligibility in situations like this, though as he noted, "this does not appear to have been the framers' intent". In fact, however, the exception Judge Carlson made reference to had no relation to the prohibition in issue here. It was, rather, an exception to an altogether different prohibition, and both that prohibition and that exception were deleted by the framers.

As originally proposed, section 5 provided:

No legislator or other elective or
appointive officer of this state shall

The Honorable Lowell Thomas, Jr.
Lieutenant Governor

June 29, 1976
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file or run for election to any other state office until his services have been terminated, but a member of one house of the legislature may be nominated or elected to the other house. 6 Proceedings Alaska Constitutional Convention, App. V, at 30 (emphasis added).

This is the prohibition and exception which were deleted by the framers. The purpose of that provision was not to eliminate temptation and improper motivation in voting on salary increases or creating offices but rather to "prevent any state official from using his office or expense account as a vehicle for campaigning for another office." Committee on Legislative Branch, Commentary, on file with Legislative Affairs Agency; quoted by the lower court in its Memorandum Decision, supra, at 10 and in Begich v. Jefferson, 441 P.2d 27, 30, text and n. 7 (Alaska 1968). The framers decided that this prohibition went too far in that it would, with but the single exception expressed in the provision, require any public official who sought higher office to resign. Accordingly, they deleted the prohibition, including the exception, which-- without the prohibition--was meaningless. 3 Proceedings Alaska

The Honorable Lowell Thomas, Jr.
Lietenant Governor

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Constitutional Convention 1801-1816. The distinction between the two prohibitions and their respective exceptions was noticed and described in the course of the debate. Id. at 1803 (dialogue of Taylor and Sundborg).

Accordingly, while the Supreme Court has limited the exceptions to the operation of section 5 to those expressly made by the Alaska Constitution, Warwick v. State, supra; Beigh v. Jefferson, supra, no exception is required here, because the prohibition has no application to a legislator's running for legislative office and it should not be expanded to apply to one's doing so. Cf. Warwick v. State, supra, at 389.

Sincerely yours,

Avrum M. Gross
Attorney General

AMG:db:RWP

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FOUCH. X - STATE CAPITOL
JUNEAU 99511

December 27, 1976

The Honorable Christopher R. Cooke
Judge of the Superior Court
P. O. Box 555
Bethel, Alaska 99559

Re: Prohibition against
dual office holding.

Dear Judge Cooke:

You have asked whether as a judge you may also continue to be a regent of the University of Alaska. Your situation is that you are a member of the Board of Regents and have recently been appointed to the Superior Court. Judges of the Superior Court are prohibited from holding "any other office or position of profit under the United States, the State, or its political subdivisions." Art. IV, §14 (emphasis added).

Introduction

While the answer to your question should be plain on its face, there exist in Alaska a number of commissions in the executive branch whose membership includes legislators and one commission whose membership includes two legislators and the Chief Justice of the State Supreme Court. The question is whether these memberships offend the prohibition against dual office holding, and if not, whether membership on the Board of Regents by a governor, legislator or judge

is also valid. It is our opinion that neither the prohibition against dual office holding nor the separation of powers doctrine absolutely forbids the formation of inter-branch commissions but that the Board of Regents is not an inter-branch commission, and a judge may not, therefore, sit as a regent while holding office. */

Discussion

At the outset it should be noted that the prohibition against dual office holding is literally enforced in Alaska. State v. Jefferson, 441 P.2d 7 (Alaska 1968). The purpose of the prohibition is ". . . to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise. . . of the executive, judicial, and legislative functions of our state government." Id., at 35. The Alaska Supreme Court has concluded that the very limited exceptions to the prohibition necessarily result in its very broad application. Id., at 30-33. In essence, because only service in the armed forces and election to or employment by a constitutional convention are excluded, the prohibition must include all other offices and positions of profit. Id.

Judges and justices are not only prohibited from holding any other office under the United States and the State (as are legislators) but also from holding any office

*/ By the same token, neither a legislator, art. II, §5, nor the Governor, art. III, §6, may sit as a regent.

of a political subdivision (as is the governor). Plainly, the framers of our constitution imposed a broad bar against conflicts of interest on the judiciary and the chief executive. Alaska Constitution, Art. II, §5; art. III, §6; art. IV, §14. In essence, that is the legal context in which your question arises. We turn next to the existing situation with respect to the inter-branch commissions and the board of regents.

The Alaska Commission on Postsecondary Education consists of persons who represent the University of Alaska, the SJC, the Department of Education, the general public, vocational education groups, local college advisory councils, and the legislature. AS 14.40.903(a). The commission is "advisory," on the one hand, AS 14.40.909(a), and something of a clearinghouse, on the other. AS 14.40.909(b)(2)(4). However, it does appear to exercise some sovereign, executive powers. AS 14.40.909(b)(1), (4), (5), and (6), and AS 14.40.909(c) (in part). To the extent that it does so, the presence of members of the legislature on the commission appears to violate the prohibition against dual office holding, Alaska Constitution, art. II, §5, and the separation of powers doctrine. Hampton, Jr. & Co. v. United States, 276 U.S. 394, 405-406 (1928); Book v. State Office Bldg. Comm., 149 N.E. 2d 273, 296 (Ind. 1958); Saxby v. Sonnemann, 149 N.E. 526, 528 (Ill. 1925). */

*/ Because it is not germane to your question, we do not discuss the highly questionable method employed for appointing the members of this commission under AS 14.40.903(a). Suffice to say that they are of dubious validity. Buckley v. Valeo, 424 U.S. 1 (1976). Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

The Governor's Commission on the Administration of Justice, AS 44.19.746--758, is essentially an intra-governmental, inter-branch clearinghouse. It is a means for providing advice and exchanges of information and recommendations between the branches on matters of criminal justice. While this commission may incidentally exercise some administrative power, AS 44.19.756, there is nothing to indicate that this exercise is not in furtherance of each branch's separate powers or that any branch encroaches upon or tries to exercise the powers of another. The executive functions of the commission's staff are expressly under the executive branch. AS 44.19.758. Were the legislative or judicial members of this commission to exercise powers of the executive branch, the validity of their membership would be much in doubt. Since all laws are presumed to be constitutional, and there is nothing to show that the law establishing the governor's Commission on the Administration of Justice is being applied in an unconstitutional manner, it is proper to view the membership of the legislators and the Chief Justice as additional to their other duties, i.e., as legislative and judicial functions, representing their respective branches of the government. */

*/ We do not comment on the apparent disparity between the state and federal laws on how this representation should be achieved. Compare AS 44.19.748 and 754 with 42 U.S.C.A. §3723. Suffice to say that there is nothing wrong per se with such representation qua representation.

Again, we emphasize that, were the legislators or the chief justice to exercise the administrative or law enforcement powers of the executive branch through their membership on this commission, then the prohibition against dual office holding, Alaska Constitution, art. II, §5, and art. IV, §14, and the separation of powers doctrine would be violated.

The Commission on the Conference of the Law of the Sea, AS 44.19.789, also in the office of the governor and also with members from the legislature, is essentially an advisory group. It gathers and disseminates information. Since both the executive and legislative branches may perform such functions, no reason appears why they may not do them together. Cf., Buckley v. Valeo, 424 U.S. 1 (1976). The legislators appointed to this commission may in no way exercise or encroach on the powers of the executive branch. They serve on it merely as representatives of the legislative branch in furtherance of its law making functions.

The Alaska International Development Commission, AS 44.19.400, is also in the office of the governor. Its members include, inter alia, the State's congressional delegation and a state senator and representative. AS 44.19.410. The Governor is chairman. AS 44.19.430. Its functions are almost purely advisory and informational, i.e., it has no power to execute. AS 44.19.440. The presence of legislators on this commission is plainly in a representative capacity and violates neither the prohibition against dual office holding nor the separation of powers doctrine.

The Rural Affairs Commission is also in the office of the governor, AS 44.19.720, and legislators may be appointed to it. AS 44.19.722(b). This commission's sole functions are to gather and to disseminate information and make recommendations. As with similar bodies discussed above, no reason occurs why legislators may not serve on such a body in a representative capacity.

Again, we emphasize that we are observing--as we must--the presumption that a statute is constitutional. Nothing on the face of the several statutes examined here--with the exception of AS 14.40.909(b)(1), (4)--(6) and AS 14.40.909(c) (in part)--requires the members of one branch to exercise the powers of another branch or to exercise the powers of another office, i.e., each merely performs additional duties in his capacity as legislator, governor, administrator, and, in one instance, as chief justice. Accordingly, absent a factual showing of encroachment--or of acting in another capacity--we find no other constitutional offense. See, e.g., State v. Powell, 142 N.E. 401, 403 (Ohio 1924). If--in fact--an encroachment or dual office holding were to exist, then the presumption of constitutionality would be rebutted, and our opinion would be different.

The Board of Regents of the University of Alaska is altogether different from these advisory and clearinghouse commissions. "The University of Alaska shall be governed by a board of regents." Alaska Constitution, Art. VII, §3. Its function is to ". . . formulate policy and appoint the president of the university." Id. The latter is ". . . the

executive officer of the board." Id. Governing, formulating university policies, and appointing university presidents are executive functions. Compare, Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). At any event, it seems rather obvious that they are not functions of the judicial branch. Compare, Alaska State-Operated School System v. Mueller, 536 P.2d 99, 103 (Alaska 1975).

In establishing the Alaska Commission on Post-secondary Education, the Alaska Legislature expressly affirmed . . . the legal authority for the operation and management of the statewide university system remains with the Board of Regents of the University of Alaska" AS 14.40.901(b). This authority over the "operation and management" of the university arises from the Alaska Constitution, Art. VII, §3, and is more particularly provided for by statute. AS 14.40.170, 250, 280, 350, and 360. 'All the powers devolved upon the board are essentially administrative, i.e., to execute in accordance with law.

It simply is not within the province of the office of a judge of the Superior Court to manage and control the university's property and invest its money, execute its leases, select its lands, hire and fire its presidents, set salaries, and otherwise manage the university. These are not judicial functions.

You suggest that the position of regent is neither an office nor a position of profit as those terms are used in the constitution. The very limited exceptions from the application of those terms expressly made in the constitution,

Art. II, §5 (legislators), Art. XII, §3 (general exemption), precludes our arriving at that conclusion. While not a position of profit, i.e., non-salaried employment, the position of regent of the University of Alaska is--by definition--an office of the State. First, it is one of the few offices provided for by the constitution, Art. IV, §13. Second, regents are appointed to their positions by the Governor, subject to confirmation by the legislature, *Id.* They have fixed terms of office. AS 14.40.140. They exercise a specific and significant share of the sovereign power of the State which is expressly provided for by constitution and statute. These factors are those which characterize an office of government. See, Beigich v. Jefferson, 441 P.2d 27, 31 n. 10 (Alaska 1968). Both Black's and Words and Phrases so thoroughly confirm this view that further citation would be wastefully redundant.

A judge does not sit on the Board of Regents in a representative capacity of the judicial branch. When he sits as a regent he is not exercising judicial power but rather certain executive powers of control vested in the regents over the State's sole institution of higher learning. This he may not do. Alaska Constitution, Art. IV, §14. The University of Alaska is an instrumentality of the State, and membership on its Board of Regents is necessarily an office under the State. Compare, University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121 (Alaska 1975) with, Beigich v. Jefferson, 441 P.2d 27 (Alaska 1968).

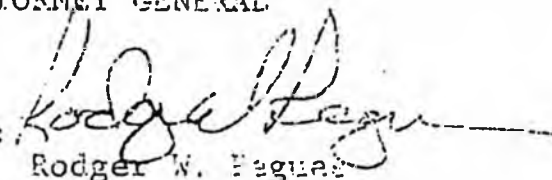
The Honorable Christopher R. Cooke

December 27, 1976
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Accordingly, it is our view that it would be improper for you to continue to serve as a regent of the University of Alaska. We would appreciate your resignation from that office at your earliest convenience.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Rodger W. Fegues
Assistant Attorney General

cc: Hon. Jay Hammond, Governor
Hon. Robert Boochever, Chief Justice
Mr. Robert Hiatt, President, University of Alaska
Mr. Arthur H. Snowden, Administrative Director,
Alaska Court System

November 16, 1977

The Honorable George Holman
Senator
Pouch V
Juneau, Alaska 99811

Re: constitutionality of
legislators serving on
state bond committee -
Our file J-66-265-78

Dear Senator Holman:

You have asked whether it would be constitutional for the chairman of the House and Senate Finance committees to be members of the State Bond Committee.

The short answer is no.

The Alaska Constitution provides for the separation of powers between the legislative, judicial, and executive branches of the government. Wardner v. Hammond, 553 P.2d 1 (Alaska 1976); Laege v. Martin, 372 P.2d 447 (Alaska 1963). The doctrine of the separation of powers precludes one branch from exercising the power of another. Hampton Jr. & Co v. United States, 276 U.S. 594 (1928). Nor may one branch intrude into the functions of another. Mahury v.

Senator Hohman
November 16, 1977
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Madison 5 U.S. (1 Cranch) 137, 170-171 (1803); Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). The State Bond Committee is within the executive branch and performs executive functions. AS 37.15.101 - 160; cf., Walker v. Alaska State Mtg. Ass'n., 416 P.2d 245 (Alaska 1966). Accordingly, membership on the committee by members of the legislature would violate the separation of powers doctrine.

Additionally, the Alaska Constitution prohibits members of the legislature from holding any other office. Alaska Const., art. II, §5; Begich v. Jefferson, 441 P.2d 27 (Alaska 1968). While some jurisdictions allow inter-branch committees for financial matters, e.g., Woodward v. Riley, 152 So 2d 41 (La. 1963), the prohibitions contained in art. II, §5 are literally and strictly enforced in Alaska. Warwick v. State ex rel. Chance, 540 P.2d 384 (Alaska 1976); Begich v. Jefferson, 441 P.2d 27 (Alaska 1968). Membership on the state bond committee would constitute dual-office holding for legislators and violate the prohibition. Cf., Book v. State Office Bldg. Comm., 149 N.E. 2d 273 (Ind. 1958); Cainion of the Justices, 1 N.E. 2d 307, 310-317 (Mass. 1939).

Finally, the appointing authority for offices in the executive branch is the governor. Bradner v. Hammond,

Senator Rohman
November 16, 1977
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513 P.2d 1 (Alaska 1976); Alaska Const., art. III, §§25, 26. He appoints the heads of the principal departments, and therefore, no problem arises from a statute which provides for several of them to serve, *ex officio*, as members of the bond committee, *i.e.*, they are, in fact, appointed by the governor. But if the law were to designate legislative committee chairmen, *i.e.*, persons appointed by the legislature or its officers, to hold an office in the executive branch, then there would be a serious constitutional problem. Buckley v. Valeo, 424 U.S. 1 (1976); *cf.*, Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

It is not our opinion that either the separation of powers doctrine or the prohibition against dual-office holding absolutely forbids the formation of inter-branch committees. Those inter-branch committees which are established as clearinghouses for an exchange of ideas and advice on a given subject and which do not exercise sovereign power, *i.e.*, which do not make, execute, or declare the law, do not offend either prohibition. (*cf.*, Buckley v. Valeo, 424 U.S. 1 (1976); State v. Powell, 142 N.E. 401 (Ohio 1924). But acting for the State to carry out the laws which authorize the issuance of bonds is, by definition, executing law, and that function does fall within the terms of the

Senator Mohman
November 13, 1977
Page 24

prohibition. Put another way, discussing and advising on the matter may be done by an inter-branch committee; deciding upon and acting on the matter may not.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Rodger W. Pagues
Assistant Attorney General

RWP:jeh



ALASKA STATE LEGISLATURE
SENATOR RANDY PHILLIPS
Senate District L

Session (Jan-May)
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April 24, 2001

Representatives Carl Morgan and
Kevin Meyer
House C&RA Committee
State Capitol
Juneau, AK 99801

Re: SB 88 Metropolitan Planning Organization
Request for Hearing

Dear Representatives Morgan and Meyer,

As sponsor of SB88, "An Act relating to metropolitan planning organizations and to establishment of a metropolitan planning organization for the Anchorage metropolitan area," I respectfully request a hearing in the House Transportation Committee as soon as possible.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Phillips".

Senator Randy Phillips



ALASKA STATE LEGISLATURE
SENATOR RANDY PHILLIPS
Senate District L

Session (Jan-May)
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SB 88 METROPOLITAN PLANNING ORGANIZATION
Sponsor Statement

SB88, "An Act relating to metropolitan planning organizations and to establishment of a metropolitan planning organization for the Anchorage metropolitan area," would add two legislators on certain metropolitan planning organizations.

The purpose of SB88 is to assist in making the Anchorage Metropolitan Area Transportation Study, (AMATS), more responsive to the needs of communities. Many legislators feel that they are asked to approve state funding for the development of a multi-modal transportation system--including those projects that have not been established as local community priorities. Legislators have a direct link to constituents and community councils where many of the needs are initiated, and therefore, should have more input into the AMATS Policy Committee.

SB88 adds two legislators from the Anchorage Caucus to the AMATS Committee, increasing the voting Policy Committee from five to seven representatives, and will provide a more adequate level of citizen representation.



ALASKA STATE LEGISLATURE
SENATOR RANDY PHILLIPS
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MEMORANDUM

TO: Members of the House C&RA Committee
FROM: Senator Randy Phillips *RP*
SUBJECT: SB88 Metropolitan Planning Organizations (AMATS)
DATE: April 24, 2001

I realize some members of the committee may not be familiar with AMATS so I am providing the following basic information.

What is AMATS?

AMATS is the acronym for the Anchorage Metropolitan Area Transportation Study. The AMATS mission is "To develop and implement a multi-modal transportation system." It was created in 1976 so that our local area could receive federal highway funds, in compliance with the Federal Highway Act of 1962. Transportation planning in the Municipality of Anchorage is conducted under the auspices of AMATS. AMATS is a cooperative, comprehensive, and continuing process in which the State of Alaska and the Municipality of Anchorage jointly plan improvement of local roadway, transit, and trail systems.

Where is the AMATS area?

The AMATS Study Area encompasses a major portion of the political boundaries of the Municipality of Anchorage, the urbanized areas of Eagle River, Chugiak, Birchwood, Eklutna and the Anchorage Bowl, plus Girdwood, Bird Creek, and Indian.

What are the duties of the AMATS Policy Committee?

The AMATS Policy Committee consists of five equal voting members: the Regional Director of DOT&PF, the Commissioner of DEC, the Mayor of Anchorage, and two Municipal Assembly members. The Policy Committee has the authority to act on all matters relating to the continuing, comprehensive and cooperative transportation and air quality planning process for the area. Their duties are to:

- ◆ Establish the needs and priorities of transportation,
- ◆ Direct the preparation and implementation of transportation plans, programs and studies,
- ◆ Manage and secure funding to implement the Transportation Program,
- ◆ Provide overall direction to the AMATS Technical Advisory Committee and staff
- ◆ Ensure public involvement throughout the AMATS process.

Municipality of Anchorage



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4431
Fax: (907) 343-4499
<http://www.ci.anchorage.ak.us>

George P. Wuerch, Mayor

OFFICE OF THE MAYOR

April 27, 2001

The Honorable Randy Phillips
Alaska State Senate
State Capitol
Juneau, AK 99801

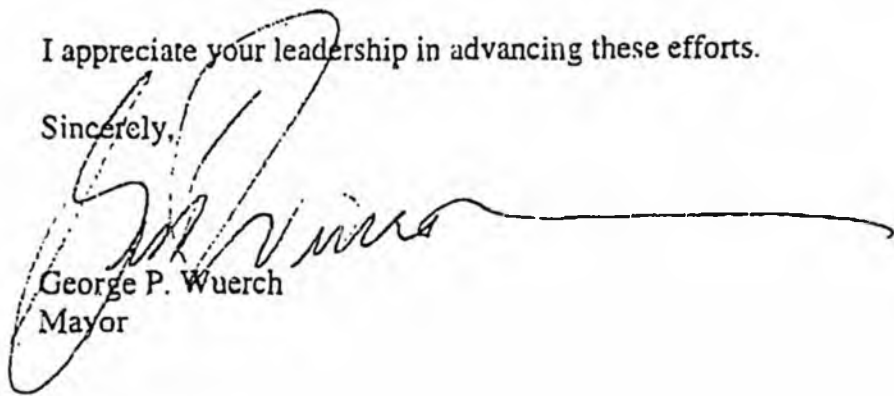
Dear Senator Phillips:

I write in support of Senate Bill 88, which proposes changes to the membership on the Anchorage metropolitan planning organization (AMATS).

As both a member of the Anchorage Assembly and now as Mayor, I greatly appreciate the interest you and many of your colleagues have in how we can improve the process that governs major transportation improvements in the Municipality. While improvement suggestions vary widely, I believe the change in membership proposed by SB 88 to include two legislators on the AMATS Policy Committee can only help reinforce the team approach that is necessary to achieve the transportation goals we all share.

I appreciate your leadership in advancing these efforts.

Sincerely,



George P. Wuerch
Mayor



U.S. Department
of Transportation
**Federal Highway
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

April 5, 2001

Refer to: HEPM

Mr. Tom Brigham
Director, Division of Statewide Planning
Transportation and Public Facilities
3132 Channel Drive Room 200
Juneau, AK 9801

Dear Mr. Brigham:

You have solicited our review of SB 88 in terms of its consistency with current Federal statute and regulations regarding the metropolitan transportation planning process.

We have reviewed the draft you provided and offer the following: Redesignation as defined by 23 USC 134 is based on a process of agreement between the Governor and local officials. This legislation would substantially restructure the governing board of the existing MPO. It has been the position of this agency that changes to MPO governing boards made consistent with existing by-laws would not be construed as a redesignation. This change, however, would be made under newly adopted state legislation without the direct input of the MPO or local officials and not based on the existing by-laws of the MPO. In our view, this would be an imposition of structure on the MPO and would constitute a restructuring of the Board and redesignation of the MPO as a result.

In our view, it is clearly congressional intent to give local officials a role in redesignating MPOs. The apparent rationale is simply that if the MPO is to serve as an effective forum for making local decisions that it would be wise to give local governments ownership in the entity. The action contemplated by this legislation would seemingly substitute State legislative judgments for local actions.

We have been asked to comment on similar legislative proposals in other States. In each case we have made the same general observation. An action by the legislature without the consent and support of local officials and the Governor would appear to be inconsistent with the intent of 23 USC 134.

If you have any further questions, please contact Sheldon Edner of my staff at (202) 366-4066.

Sincerely,

George Schoener, Director
Office of Metropolitan Planning and Programs

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1
 Bill Version: SB 88
 (S) Publish Date: 2/21/01

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title: An act relating to metropolitan planning BRU: Central Region Planning
organizations and to establishment... Component: Central Region Planning
 Sponsor: Senator Phillips
 Requester: Senate Transportation Component Number: 557

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Dennis R. Poshard Phone 465-3904
 Division: Commissioner's Office Date/Time 2/20/01 11:11 AM
 Approved by: Joseph L. Perkins, P.E. Date 2/20/01
 Agency: Commissioner

For distribution information, call the Governor's Legislative Office

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

December 6, 2000

The Honorable Dave Donley
Alaska State Senate
716 West 4th Street, Suite 430
Anchorage, AK 99501

Dear Senator Donley: *Dave*

Thank you for your letter of November 7 concerning the relative amount of transportation funding Anchorage has received over the past few years. There is no question that Anchorage has significant, pressing transportation needs. We are and will continue to address those needs as this response will describe. But we will also stand by the STIP process we have used; it is the fairest and most equitable statewide system yet devised.

Work in Anchorage is moving ahead on several fronts. As you know, we are writing the environmental document for the Glenn Highway widening by Merrill Field. This part of the Glenn Highway is responsible for more total delay than is any other problem spot in Anchorage. This summer we will see construction on Arctic Blvd, the Old Seward Highway, portions of C Street and Boniface Parkway. The improvement of Dowling Road will be ready for bid soon. We are also increasing the funding for pavement replacement to deal with the problem of rutting. With a number of large projects in development, the total dollars spent in Anchorage *will* be increasing. But the basic issue is striking a fair balance.

Apart from the significant investment in the Anchorage International Airport, I believe your analysis loses sight of the many projects lumped into other areas of the state that are of direct benefit to Anchorage residents. Improvements to the Seward, Glenn and Parks Highways make it easier for residents of other communities to travel to Anchorage for shopping, work or entertainment, or for Anchorage residents to drive out of town for business or recreation. As an example, we will within two years have under construction an interchange at the Parks and Glenn Highway junction that will cost more than \$40 million and will benefit commuters from the Mat-Su Borough traveling predominantly to Anchorage. Other projects, such as the improvements on the Seward Highway between Bird Point and Girdwood, the major widening of the Parks Highway or the Whittier Project, serve predominantly Anchorage residents, commuters and visitors. These projects and others, which should have been included in your Anchorage numbers, increase both the Anchorage totals and percentages. We will also propose a significant amount of GARVEE bond-funded projects during the next legislative session to specifically accelerate the volume of roadwork done in Anchorage over the next few years.

Senator Donley

Page 2

December 6, 2000

Again, Alaska is a rural, mostly unpopulated state. Transportation investments in our state must be spent in many areas with low traffic volumes and few inhabitants. When our delegation and we press for federal highway and aviation funding with each program reauthorization, we stress the need to link far-flung residents of our state. This inherently costs more per capita than in urban states. This point has been a hallmark of Alaska's transportation policy for more than four decades. To then reverse ourselves and allocate such hard won federal funds within Alaska purely on the basis of population would undermine the state's argument calling for disproportionate funding to flow to Alaska because of our unique geographic setting.

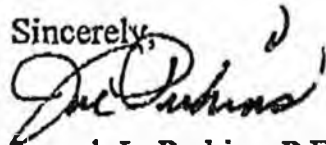
Over the past 45 years, if the US gas tax receipts were apportioned on a strict ratio based on taxes collected, we would have received only 15% of the funds actually used in Alaska. Even today we receive a return of approximately five dollars to every one dollar generated in federal gas and related taxes. Our current \$400 million allocation of federal funds would shrink to about \$80 million if your logic were used against us in Congress. Both our urban and rural highways would be in disarray under such a limited capital budget.

In addition, some of the rural project needs are very, very basic. These projects typically support and make functional and maintainable first-level water, sewer and solid waste facilities, or connect the community to its airport or dock. Comparable roads were built in urban Alaska during the first quarter of the last century.

Finally, Legislative Finance must have misunderstood FHWA's response to their question of what would happen to funding if Alaska had no exemption to the requirement to include at least 25 percent of surface transportation (STP) funds to urbanized areas under 23 USC 133. Alaska's STP allocation for FFY2001 will be about \$67.7 million. This is only a portion of the Federal Highway funds that Alaska receives. The FHWA estimates that the portion of the STP allocation that would be distributed to Anchorage would equal about \$13.4 million, significantly less than provided in the current AMATS allocation which averages approximately \$40 million annually in the AMATS FY 01-03 TIP for non-NHS projects alone.

Again, thank you for your letter. I look forward to discussing these important concerns with you in the near future.

Sincerely,



Joseph L. Perkins, P.E.
Commissioner

cc: Mayor George Wuerch, Municipality of Anchorage
Assemblymember Anna Fairclough, Anchorage Assembly Legislative Chair
Anchorage Legislative Caucus
Frank Dillon, Anchorage Chamber of Commerce Transportation Committee Co-Chair
Bob Bailey, Anchorage Chamber of Commerce Transportation Committee Co-Chair
Ray Smith, President Anchorage Building Trades