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FILE

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/9/01

FURTHER:

REPORTED OUT  
MAR 26 2001  
SENATE FINANCE  
COMMITTEE

DATE TURNED IN TO OFFICE: 27 March 2001

Finance Committee considered **SENATE BILL NO. 88**  
**METROPOLITAN PLANNING ORGANIZATIONS**

"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."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DOT PF	2/20/01		✓	#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>		X		
<i>[Signature]</i>		X		
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>			✓	

MAR 26 2001

SENATE FINANCE  
COMMITTEE

# 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
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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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
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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



**ALASKA STATE LEGISLATURE**  
**SENATOR RANDY PHILLIPS**  
Senate District L

Session (Jan-May)  
State Capitol, Rm 103  
Juneau, AK 99801  
(907) 465-4949  
(907) 465-4979 Fax  
Toll Free Anchorage Area  
800-478-4950

Interim  
P.O. Box 142  
Eagle River, AK 99577  
(907) 694-4949  
(907) 694-4948 Fax

March 8, 2001

Honorable Dave Donley  
Honorable Pete Kelly  
Senate Finance Committee  
State Capitol  
Juneau, AK 99801

Re: SB 88 Metropolitan Planning Organization  
**Sponsor Statement**

Dear Senators Donley and Kelly,

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.

Sincerely,

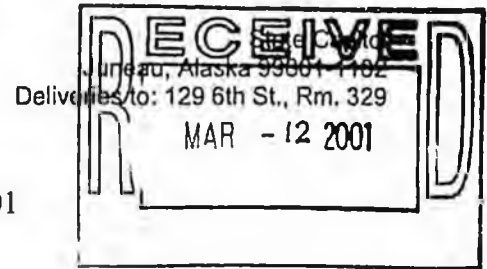
A handwritten signature in black ink, appearing to read "Randy Phillips".

Senator Randy Phillips

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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



## MEMORANDUM

March 10, 2001

**SUBJECT:** Hawaii Constitution and "dual office" holding by legislators  
(SB 88)

**TO:** Senator Randy Phillips

**FROM:** George Utermohle  
Legislative Counsel

RECEIVED

MAR 19 2001

Senate Finance  
Committee

You have asked whether the Constitution of the State of Hawaii has a provision analogous to article II, section 5 of the Constitution of the State of Alaska regarding "dual office" holding by legislators.

The answer to your question is yes.

Article II, section 5, Constitution of the State of Alaska states:

**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.

The analogous provision of the Hawaii Constitution, article III, section 8 states:

### DISQUALIFICATIONS OF MEMBERS

No member of the legislature shall hold any other public office under the State, nor shall the member, during the term for which the member is elected or appointed, be elected or appointed to any public office or employment which shall have been created, or the emoluments whereof shall have been increased, by legislative act during such term. The term "public offices," for the purposes of this section, shall not include notaries public, reserve police officers or officers of emergency organizations for civilian defense or disaster relief. The legislature may prescribe further disqualifications.

Senator Randy Phillips

March 10, 2001

Page 2

The annotations to this section of the Hawaii Constitution that are contained in the Hawaii Revised Statutes do not cite to any court cases that have construed this provision.

If you would like me to pursue this issue in greater depth, please contact me.

GU:lmb

01-081.lmb

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

P.O. BOX 110300  
DIAMOND COURT HOUSE, 6<sup>TH</sup> FLOOR  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)465-3600  
FAX: (907)465-6735

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  
Page 2

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.

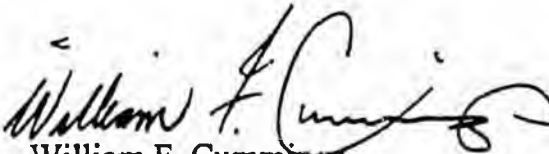
Under SB 88, a senator and a representative will be appointed to sit on the board that allocates federal surface transportation money in the Anchorage area. At the present time there are three voting members of the board appointed by the mayor of Anchorage and two state employees, who sit in an advisory 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.

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

# STATE OF ALASKA

DEPARTMENT OF LAW

OPINION NO. 26  
JAY S. HARRING, 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

June 29, 1976  
Page Two

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,

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

June 29, 1976  
Page Four

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  
Page Five

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

June 29, 1976  
Page Six

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; Segich 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:RMP

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# STATE OF ALASKA

DEPARTMENT OF LAW

JAY S. HAMMOND, GOVERNOR

OFFICE OF THE ATTORNEY GENERAL

FOUCH. R. - STATE CAPITOL  
SHELDON 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. Id. v. Jefferson, 441 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

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\*/ 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 State Judicial Council (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). \*/

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\*/ 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. \*/

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\*/ 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, 533 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,

The Honorable Christopher R. Cooke

December 27, 1976  
Page Eight

Art. II, §5 (legislators), Art. XII, §3 (general exemption), precludes us 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--under its definition--an office of the State. First, it is one of the few offices provided for by the constitution. Art. II, §1. 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).

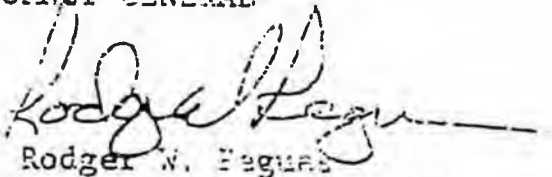
The Honorable Christopher R. Cooke

December 27, 1976  
Page Nine

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. Fegus  
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 Rohman  
Senator  
Pouch V  
Juneau, Alaska 99311

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

Dear Senator Rohman:

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 Commission.

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); Laage v. Martin, 379 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. 394 (1928). Nor may one branch intrude into the functions of another. Mahury v.

Senator Hohman  
November 16, 1977  
Page 12

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, 548 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., Booz v. State Office Bldg. Comm., 169 N.E. 2d 273 (Ind. 1958); Opinion of the Justices, 17 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  
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553 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 Hoffman  
November 15, 1977  
Page 4

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,

AVRIL M. GROSS  
ATTORNEY GENERAL

cc: Rodger W. Pague  
Assistant Attorney General

RWP:jeh



U.S. Department  
of Transportation

Federal Highway  
Administration

Alaska Division

[www.fhwa.dot.gov/akdiv](http://www.fhwa.dot.gov/akdiv)

P.O. Box 21648  
Juneau, Alaska 99802-1648  
907-586-7418

February 22, 2001

HDA-AK  
Adm-Gen 11

Senator Randy Phillips  
State Capitol, Room 103  
Juneau, AK 99801-1182

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MAR 19 2001

Senate Finance  
Committee

Dear Senator Phillips:

Thank you for your phone call of February 22. You specifically asked "Is there anything in Federal law precluding participation of State Legislators on the AMATS Policy Board." We offer the following for your consideration:

The Federal regulations on MPO membership are contained in Title 23 CFR Section 450.306. In general, they provide considerable flexibility in recognition of the variation in local government authority across the United States and the need to give each State and its local officials the flexibility to determine the institutional form of each MPO. Providing the provisions of Title 23 CFR Section 450 are followed, Federal regulations do not preclude the participation of State legislators on the AMATS Policy Board.

Sincerely,

David C. Miller  
Division Administrator

**§450.214 Phase-in of new requirements.**

The State shall, by January 1, 1996, identify the official statewide transportation plan, described under §450.214, to be used as a basis for subsequently approved STIPs. Until such a plan is identified, but no later than January 1, 1996, the State may identify existing plans and policies which can serve as the official interim plan. STIP development shall be based upon a transportation plan which serves as the official plan (including an interim plan, if appropriate, prior to January 1, 1995, provided that all factors identified in §450.208 are considered).

**Subpart C—Metropolitan Transportation Planning and Programming**

**§450.200 Purpose.**

The purpose of this subpart is to implement 23 U.S.C. 134 and section 8 of the Federal Transit Act, as amended, which require that a Metropolitan Planning Organization (MPO) be designated for each urbanized area and that the metropolitan area has a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and supports metropolitan community development and social goals. These plans and programs shall lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient, economic movement of people and goods.

**§450.202 Applicability.**

The provisions of this subpart are applicable to agencies involved in the transportation planning, program development, and project selection processes in metropolitan planning areas.

**§450.204 Definitions.**

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

**§450.208 Metropolitan planning organization: Designations and redesignation.**

(a) Designations of metropolitan planning organizations (MPOs) made after December 18, 1991, shall be by agreement among the Governor(s) and units of general purpose local governments representing 75 percent of the affected metropolitan population (including the central city or cities as defined by the Bureau of the Census), or in accordance with procedures established by applicable State or local law. To the extent possible, only one MPO shall be designated for each UZA or group of contiguousUZAs. More than one MPO may be designated within an UZA only if the Governor(s) determines that the size and complexity of the UZA make designation of more than one MPO appropriate.

(b) The designation shall clearly identify the policy body that is the forum for cooperative decisionmaking that will be taking the required approval actions as the MPO.

(c) To the extent possible, the MPO designated should be established under specific State legislation, State enabling legislation, or by interstate compact, and shall have authority to carry out metropolitan transportation planning.

(d) Redesignation (designation of a new MPO(s) to replace an existing MPO) shall occur by agreement of the Governor and affected local units of government representing 75 percent of the population in the entire metropolitan area. The central city(ies) must be among the units of local government agreeing to the redesignation.

(e) Nothing in this subpart shall be deemed to prohibit the MPO from utilizing the staff resources of other agencies to carry out selected elements of the planning process.

(f) Existing MPO designations remain valid until a new MPO is redesignated, unless revoked by the Governor and local units of government representing 75 percent of the population in the area served by the existing MPO (the central city(ies) must be among those desiring to revoke the MPO designation), or as otherwise provided under State or local procedures. If the Governor and

local officials decide to redesignate an existing MPO, but do not formally revoke the existing MPO designation, the existing MPO remains in effect until a new MPO is formally designated.

(g) Redesignation of an MPO in a multistate metropolitan area requires the approval of the Governor of each State and local officials representing 75 percent of the population in the entire metropolitan planning area. The local officials in the central city(ies) must be among those agreeing to the redesignation.

(h) Redesignation of an MPO covering more than one UZA requires the approval of the Governor and local officials representing 75 percent of the population in the metropolitan planning area covered by the current MPO; the local officials in the central city(ies) in each urbanized area must be among those agreeing to the redesignation.

(i) The voting membership of an MPO policy body designated/re-designated subsequent to December 18, 1991, and serving a TMA, must include representation of local elected officials, officials of agencies that administer or operate major modes or systems of transportation, e.g., transit operators, sponsors of major local airports, maritime ports, rail operators, etc. (including all transportation agencies that were included in the MPO on June 1, 1991), and appropriate State officials. Where agencies that operate other major modes of transportation do not already have a voice on existing MPOs, the MPOs (in cooperation with the States) are encouraged to provide such agencies a voice in the decisionmaking process, including representation/membership on the policy body and/or other appropriate committees. Further, where appropriate, existing MPOs should increase the representation of local elected officials on the policy board and other committees as a means for encouraging their greater involvement in MPO processes. Adding such representation to an MPO will not, in itself, constitute a redesignation action.

(j) Where the metropolitan planning area boundaries for a previously designated MPO need to be expanded, the membership on the MPO policy body

and other committees, should be viewed to ensure that the added area has appropriate representation.

(k) Adding membership (e.g., local elected officials and operators of modes or systems of transportation, representatives of newly urbanized areas) to the policy body or expansion of the metropolitan planning area do not automatically require redesignation of the MPO. To the extent possible, it is encouraged that this be done without a formal redesignation. The Governor and MPO shall review previous MPO designation, State or local law, MPO bylaws, etc., to determine if this can be accomplished without a formal redesignation. If redesignation is considered necessary, the existing MPO will remain in effect until a new MPO is formally designated. The existing designation is formally revoked in accordance with the procedures of this section.

**§450.208 Metropolitan planning organization: Metropolitan planning area boundaries.**

(a) The metropolitan planning area boundary shall, as a minimum, coincide with the UZA(s) graphic area fixed within period cover plan described. The boundary metropolitan consolidated area, as defined Census. For designated as a finance area Air Act Amendment for transportation under the O. metropolitan include at least nonattainment except as otherwise provided in §450.210(f) of a formal Governor metropolitan less than the attainment entire nonattainment

03-07-2001 10:31 AM From: ENVA ALASKA DIV

0075867420 T-524 P.001/001 F-980

OPTIONAL FORM NO. 10 (7-90)

FAX TRANSMITTAL

To: Kim Pass

Department: [unclear]

From: [unclear]

465 4979

RECEIVED

GENERAL SERVICES ADMINISTRATION

# SENATE COMMITTEE REPORT

DATE: 2/21/01

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: 3-8-01

Community and Regional Affairs Committee considered

SENATE BILL NO. 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."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
ADOT	2/21		✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
CHAIR: <i>[Signature]</i>	✓			

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 2/13/01

FURTHER: CRA  
Finance

Date of 5-Day Notice: 2-15-01  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 2-21-01

Transportation Committee considered      SENATE BILL NO. 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."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

- Senate Bill:**  
 same title  
 new title  
**House Bill:**  
 same title  
 technical title  
 new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DOTPF	2/2/01		✓	1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>		✓		
Adrian L. Taylor				
<i>[Signature]</i>	✓			
<del><i>[Signature]</i></del>	<del> </del>			
CHAIR: John J. Concedery	✓			

*✓ To let  
legislators out  
of Anch. To sit  
on PMATS*

SENATE FINANCE COMMITTEE

SIGN-IN

SB 88-METROPOLITAN PLANNING ORGANIZATIONS

NAME: Bill Cummings Subject/Bill No: SB-88  
Co./Dept./Title: Dep of Law/Assistant AG Phone: 6711  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 88-METROPOLITAN PLANNING ORGA

Scheduled  
but not  
heard

3/22/01

NAME: Bill Cummings Subject/Bill No: SB 88  
 Co./Dept./Title: Law / Assistant Atty Gen Phone: 465-6711  
 Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: Tom BRIGHAM Subject/Bill No: SB 88  
 Co./Dept./Title: DOT:PF PLANNING DIR. Phone: 465-4070  
 Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
 Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
 Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

