

**CONFIRMA-  
TION -  
ATTORNEY  
GENERAL,  
TALIS  
COLBERG  
2007**



Official Business

# Alaska State Legislature

House of Representatives


Office of the Chief Clerk

State Capitol, Room 216  
Juneau, AK 99801-1182  
Phone: (907) 465-3725  
Fax: (907) 465-5334

## MEMORANDUM

Date: February 9, 2007

To: Representative Ramras, Chair  
Judiciary Committee

From: Suzi Lowell   
Chief Clerk

Subject: Governor's Appointment

The Speaker referred the following Governor's appointment to the Judiciary Committee:

**Attorney General - Department of Law**  
Mr. Talis Colberg

Committee report and resume are attached for your use.

Attachments as noted

## CONFIRMATION COMMITTEE REPORT

Action date: March 14, 2007

The Judiciary Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

**Attorney General - Department of Law**  
Mr. Talis Colberg

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	Gruenberg
	LYNN
	Coghill
	Dehlsstrom
	SAMUELS
	Holmes
Chair:	RAMRAS
Chair:	

Please return to the Chief Clerk's office.

Resume

**TALIS JAMES COLBERG**  
P.O. Box 4004  
Palmer, Alaska 99645  
907-746-3143

**EMPLOYMENT HISTORY**

**TALIS J. COLBERG, ATTORNEY AT LAW**

Licensed attorney in Alaska since November 20, 1984

Sole practitioner in Palmer 1992 - present

21 years workers compensation law experience.

**MATANUSKA-SUSITNA COLLEGE**

Adjunct History Instructor (Eastern & Western Civilization)

1992 - present

Nominated for Outstanding Teaching 1998.

Awarded Honorable Mention by the University of Alaska,  
Anchorage.

**THE TRAVELERS INSURANCE COMPANIES**

1985 - 1992

Associate Attorney - Staff Counsel

**KOPPERUD & HEFFERAN**

1984 - 1985

Associate Attorney - Wasilla, Alaska

**LAW OFFICE OF J.R. SNODGRASS, JR.** summers of 1981 - 1983

Law Clerk - Palmer, Alaska

**COMMUNITY ACTIVITIES**

**PALMER ROTARY CLUB**

1992 - present

Past President

**GREATER PALMER CHAMBER OF COMMERCE**

Member

1992 - present

**ALASKA STATE FAIR, INC.**

Director and Secretary

1995 - 2001.

President of Board

1999 - 2001.

**MATANUSKA-SUSITNA VALLEYS STATE PARK CITIZEN ADVISORY BOARD**

Board Member

1998 - 2001.

**MATANUSKA-SUSITNA BOROUGH ASSEMBLY**

Elected to two 3 year terms

2000 - 2006.

**ALASKA HUMANITIES FORUM**

Board of Directors (3 year term)

2002 - 2006.

Chairman of the Board

2004 - 2005.

**EDUCATION**

High School 1976 Palmer High School.

BA 1979 Oriental History, Pacific Lutheran University.

JD 1983 Pepperdine University School of Law.

Currently enrolled in the Northern Studies Ph.D. program at University of Alaska Fairbanks. 9 thesis credits left to complete, currently being worked on. Planned graduation: May 2008.

# Alaska State Legislature

**Senator Hollis French, Chair**  
State Capitol, Room 417  
Juneau, Alaska 99801  
Phone: (907) 465-3892  
Fax: (907) 465-6595



**Committee Members:**  
Senator Charlie Huggins  
Senator Bill Wielechowski  
Senator Lesil McGuire  
Senator Gene Therriault

## Senate Judiciary Committee

1. Describe your law school experience. Where and when did you attend law school? Did you receive any honors? Did you participate in your school's law review? Moot court? Legal aid clinic? Any other details about that time in your life?
2. Describe your legal employment after law school. What subject areas have you practiced in? How many other lawyers did you practice with? How many jury trials have you completed? How many appearances have you made before the Alaska Supreme Court? Before the Ninth Circuit Court of Appeals? Have you published in any legal journals?
3. Which US Supreme Court Justice do you admire most? Why?
4. Which US President do you admire most? Why?
5. What do you see as the primary mission of the Attorney General?
6. What is the biggest challenge facing the civil division? What actions do you plan to take in reaction to that challenge? Have you had time to meet with senior attorneys in each of the sections?
7. What is the biggest challenge facing the criminal division? What actions do you plan to take in reaction to that challenge? Have you had time to meet with each of the District Attorneys?
8. Are you satisfied with the turnover rates in the criminal division? If not, what actions do you plan to take to lower the turnover rates?
9. What is the current salary disparity between a state attorney and a private one? Compare attorneys at 3, 5, and 10 years of practice.
10. Alaska suffers from some of the highest sex assault and sex abuse rates in the nation. Are prosecutions of this crime increasing? Are trials on these charges increasing? Please provide some statistics on this subject. What actions do you plan to take in this area?

11. Last year the Legislature provided funding for six new Superior Court judges. Will there be an increase in either civil or criminal attorneys in response to those new judges?
12. The Alaska Constitution states that "the power of taxation shall never be surrendered." How do you interpret this phrase? Can the State legally enter into a long term tax freeze with the Producers? If yes, what case or precedent supports your view? If no, then how can we address the "tax stability" concerns of the Producers?
13. You have filed a notice with the TAPS owners that the state may opt out of the 1985 and 1986 settlement agreements. Have negotiations begun? What are the financial implications of this step?
14. What will be your Department's approach to the issue of tribes and tribal sovereignty in Alaska?

# 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

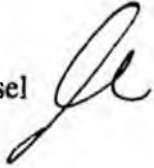
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 31, 2007

**SUBJECT:** Removal of Member of the University of Alaska Board of Regents  
(Work Order No. 25-LS0502)

**TO:** Senator Joe Thomas  
Attn: Joe Hardenbrook

**FROM:** Jean M. Mischel  
Legislative Counsel 

You ask whether the University of Alaska Board of Regents enjoys such a degree of independence under the state constitution that the governor is precluded from removing a regent and that a regent may only be removed by impeachment proceedings conducted by the legislature. The answer is no. You also ask about the procedure for removal. The governor may remove regents who serve at the pleasure of the governor by notifying the regent and appointing a replacement for confirmation by the legislature. While the legislature confirms regents by a majority vote after appointment by the governor, nothing in the state constitution or law requires a 2/3 vote for removal unless the legislature elects to exercise its impeachment authority.

1. The governor may remove a University Regent without the concurrence of the legislature.

The University of Alaska is created under art. VII, sec. 2 of the state constitution as a "body corporate." While it is granted title to its real and personal property, that property is administered and disposed of "according to law." Under art. VII, sec. 3, the university is governed by a board of regents.

Article VII, sec. 3 provides:

The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the member of the legislature in joint session . . . .

The governor's appointing authority, including the authority to appoint to positions that require legislative confirmation, carries with it the correlative power to remove (1975

Opinion of the Attorney General No. 2), unless that authority has, by statute, been otherwise expressly limited or restricted.<sup>1</sup>

Unlike boards and commissions controlled by art. III, sec. 26 of the constitution, nothing in art. VII, sec. 3 provides for legislative control over removal of University Regents.<sup>2</sup>

Even with the additional legislative authority over sec. 26 boards, the Alaska Supreme Court interpreted that authority very narrowly. When the court was faced with the question of the extent of legislative authority over sec. 26 boards and commissions, the court found that the confirmation power of the legislature provided in art. III, secs. 25 (principal department heads) and 26, is merely a limited delegation of the executive appointment power to the legislature and stated:

As to this issue, we think the provision of Sections 25 and 26 of Article III are clear and unambiguous. Thus, we conclude that Sections 25 and 26

---

<sup>1</sup> A limitation on removal may be interposed by law, but only as to persons who hold appointment under article III, sec. 26 of the state constitution. Art. III, sec. 26 states:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, *and may be removed as provided by law . . .*

The constitutional convention proceedings lead to the inescapable conclusion that the Board of Regents was not considered to be controlled under sec. 26 and resulted in a separate article to require legislative confirmation without legislative removal authority. While there is a possible argument that the eight year term specified in AS 14.40.140 is a limit on the removal power, the court's recognition of strong executive power in Bradner v. Hammond, *supra*, makes it unlikely that the court would accept that argument.

<sup>2</sup> In a conversation with the University's general counsel, he stated that the "main case" that supports his position that the governor lacks removal authority over University Regents is Cook v. Botelho, 921 P.2d 1126 (Alaska 1996). But that case stands for a very different proposition. The court held that once a member of a sec. 26 board was appointed by the governor, the governor could not *withdraw* the appointment before confirmation by the legislature since the appointment itself took immediate effect. The court stated:

Because Cook had already been placed in office, Governor Knowles could not remove him *without complying with the removal statutes*, and the legislature could confirm him. (*Id.* at 1137).

Removal by the governor of a regent from the Board of Regents has not been legislatively restricted, and it's unclear that the legislature could do so.

mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government. (Bradner v. Hammond, 553 P.2d 1, 7 (Alaska 1976).

The University's status as a "body corporate" does not imply a legislative role in removal of a regent (apart from the impeachment process available to the legislature as to all civil officers). Though the University, alone in the constitution, expressly holds corporate status, the Alaska Supreme Court has said that members of other public corporations established by law serve at the pleasure of the governor. (Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966). The court stated:

The Association's three board members from the Board of Commissioners of the Alaska Housing Authority are appointed by the governor and serve at his pleasure. Therefore, the governor is empowered to remove any member of the governing board of the Association at his pleasure. Id. at 240 (citations omitted).

Under AS 39.05.060(d), the legislature has confirmed that each board member holds office at the pleasure of the governor notwithstanding the member's term. There is nothing to suggest the University's constitutional status would alter that conclusion. Even when it recognized that the University had a certain degree of institutional autonomy, Alaska's Supreme Court also recognized that the University was subject to executive and legislative control, including the appointment power. University of Alaska v. National Aircraft Leasing, LTD., 536 P.2d 121, 124 (Alaska 1975).

Under AS 14.40.140, each regent serves a set term "until a successor is appointed and qualifies." The procedure for removal involves notice to the regent and appointment of a successor by the governor for confirmation by a majority of the legislature.

## 2. The legislature may impeach a regent.

If, for some reason, the governor declines to exercise her removal authority, the legislature could take steps to impeach a regent.

Art. II sec. 20 of the Constitution of the State of Alaska provides that:

All civil officers of the State are subject to impeachment by the legislature. Impeachment shall originate in the senate and must be approved by a two-thirds vote of its members" after motion and a trial is conducted and "may not extend beyond removal from office.

Article II, sec. 20 grants a broad power of impeachment to the legislature, in that it applies to all civil officers. This fact was recognized by one of the delegates to the state constitutional convention who observed:

Most of the state constitutions do not set up the removal of all civil officers by impeachment as is done here. It is generally limited to the principal elective and appointive officers, generally the governor, the lieutenant governor, and various other elective department and appointive department heads. The principal officers are the ones that they generally limit impeachment to. (Alaska Constitutional Convention Proceedings, V. Rivers, page 1719.)

The language of art. II, sec 20, has not been construed by the Alaska Supreme Court. However, the court has declared, "Unless the context suggests otherwise, words are to be given their natural, obvious, and ordinary meaning." (Hammond v. Hoffbeck, 627 P.2d 1052, 1056 n. 7 (Alaska 1981), quoted in Hickel v. Halford, 872 P.2d 171, 177 (Alaska 1994).)

The term "civil office" is defined to be, "a non-military public office; one which pertains to the exercise of the powers or authority of government." (Black's Law Dictionary, sixth ed., 1990.) Under the definition of "officer," Black's Law Dictionary states, "the word 'civil,' as regards civil officers, is commonly used to distinguish those officers who are in public service but not of the military." The dictionary goes on to explain that a public officer is, "one occupying a public office created by law. One of the necessary characteristics of 'public officer' is that he perform public function for public benefit and in so doing he be vested with exercise of some sovereign power of state."<sup>3</sup>

---

<sup>3</sup> The court has in the past held that the University of Alaska, as an instrumentality of the state, is within the scope of statutes that govern conditional waiver of sovereign immunity. (University of Alaska v. National Aircraft Leasing, LTD., 536 P.2d 121 (Alaska 1975).) University employees are state employees subject to regulations that establish collective bargaining units for state employees. (McGrath v. University of Alaska, 813 P.2d 1370 (Alaska 1991).) The public meetings law applies to the university as it applies to other agencies. (University of Alaska v. Geistauts, 666 P.2d 424 (Alaska 1983); Alaska Community Colleges' Fed'n of Teachers, Local 2404 v. University of Alaska, 677 P.2d 886 (Alaska 1984).)

When confronted with the precise question of whether the University of Alaska is covered as an agency of the state under generally worded statutes, the court has tended to find that the university is covered. The court concluded that the legislature intended to include the university within the scope of state agencies that are subject to the public records statute. (Carter v. Alaska Public Employees Ass'n, 663 P.2d 916 (Alaska 1983).) Again, the court found that the application of the Administrative Procedure Act (AS 44.62.330-44.62.650) to the university's grievance procedure does not impermissibly circumscribe explicit and implicit constitutional and statutory grants of power to the university in the area of personnel management. (McGrath v. University of Alaska, 813 P.2d 1370 (Alaska 1991); see also, Odum v. University of Alaska, 845 P.2d 432 (Alaska 1993) and Sengubta v. University of Alaska, 21 P.3d 1240 (Alaska 2001).)

Senator Joe Thomas  
January 31, 2007  
Page 5

The Alaska Supreme Court has determined that key officials of the University of Alaska serving by appointment, presumably including the members of the Board of Regents, are "public officials." (Carter v. Alaska Public Employees Association, 663 P.2d 916, 921 (Alaska 1983).) It is likely that the court would find a public official to be a civil officer for impeachment purposes as consistent with the ordinary meaning of those terms.

It is likely that a court would find that University regents are "civil officers" subject to impeachment despite the University's public corporation status. The impeachment process is, as described in the constitution, lengthy and involved. In contrast, the governor has authority to remove a regent and to appoint a replacement for presentment to the legislature for confirmation.

JMM:med  
07-056.med

## MEMORANDUM

State of Alaska  
Department of Law

To: Talis J. Colberg  
Attorney General

Date: February 2, 2007

Thru: Craig J. Tillery  
Deputy Attorney General

File No: 663-06-0103

Tel. No.: (907) 465-3600

From: Michael A. Barnhill *MAB*  
Assistant Attorney General  
Labor and State Affairs Section

Fax: (907) 465-2520

Subject: Governor's Power to Remove  
a University of Alaska Regent

We have been asked whether the Governor has the power to remove a University of Alaska regent without cause. In our view, the answer is no.

We acknowledge that this question has been posed to different counsel and different conclusions reached. Legislative counsel has concluded in a written opinion that regents serve at the pleasure of the governor and may be removed at any time. University of Alaska counsel has concluded in a verbal opinion that a regent may be removed only through impeachment by the legislature.

For the reasons set forth below, we do not fully agree with the conclusions of either legislative counsel or university counsel. That being said, we do agree with both legislative counsel and university counsel that impeachment is an option that may be pursued in order to remove a regent. But we disagree with university counsel that it is the only option.

The basis for our views is grounded primarily in the constitution and discussions of the framers regarding the University of Alaska during the constitutional convention. We start there.

#### I. Historical Background

The University of Alaska was created by the territorial legislature in 1935. ch. 49, SLA 1935. The Board of Regents was created at that time as well, with the governor empowered to appoint regents subject to confirmation by a joint session of the legislature. *Id.* at sec. 3. The term of a regent was eight years and a regent was to serve "until their successors are appointed and have qualified." *Id.* The original statute made no mention

Attorney General Colberg  
Re: Removal of University Regent

February 2, 2007  
Page 2

of how a regent should be removed. This law has essentially remained unchanged through today, though the number of regents was increased to eleven in 1975. See AS 14.40.120; 14.40.140; AS 14.40.150.

From the University's inception through statehood we are aware of no instance of a governor removing a regent prior to the end of a regent's term. We recognize that it is possible such could have happened, but it would take further historical research to determine this.

The constitutional convention considered the University of Alaska several times during the course of the convention. Before considering these passages, however, it is important to understand that the territory of Alaska had suffered from a fragmented executive branch with several elected officials and multiple governing boards designed to erode the power of the federally appointed governor. A fundamental goal of the convention was to establish a strong governor who was completely in control of the executive branch of government.<sup>1</sup>

During the consideration of the executive branch article, however, concerns were raised regarding the appropriate place for the University of Alaska within the constitutional design for the new government. These concerns were often expressed in terms of the need to insulate education from politics. Alaska Constitutional Convention Proceedings at 2043, 2246. During the discussions of the provisions that ultimately

<sup>1</sup> Delegate Fischer later wrote, "[Territorial] government was neither responsible nor responsive to the people. As a result, convention delegates were ready to make basic structural changes so the people could hold the governor wholly responsible for the conduct of state administration." V. Fischer, Alaska's Constitutional Convention at 106 (1975).

Attorney General Colberg  
Re: Removal of University Regent

February 2, 2007  
Page 3

became sections 25 and 26 of Article III,<sup>2</sup> questions were raised concerning the extent to which these sections governed appointments to the Board of Regents. The chair of the Executive Branch Committee, Victor Rivers, and a member of that Committee, Katherine Nordale, both responded that section 26 of Article III only applied to "principal departments" and that the University of Alaska was not a principal department. Alaska Constitutional Convention Proceedings at 2034, 2037, 2246. Therefore, in their mind, the University of Alaska did not fall under section 26 of Article III.

Other delegates, however, remained concerned that in order to insulate the University from politics it needed to be made explicit that the University was not subject to section 26 of Article III. In particular, certain delegates were concerned that if section 26 did apply to the University, that the Board of Regents' appointment of a president would be subject to approval by the governor. Accordingly, these delegates sought to amend section 26 to state that the provision did not apply to the University of Alaska. Alaska Constitutional Convention Proceedings at 2245-2258. Ultimately, these attempts failed because the members of the Executive Branch committee persuaded the convention that section 26 simply did not apply to the University of Alaska. Alaska Constitutional Convention Proceedings at 2246, 2257. Moreover, several delegates noted that a separate article was being drafted to govern the University of Alaska. *Id.* at 2247-48, 2250, 2255.

During the debate, some delegates expressed observations as to the status of the University. The chair of the Executive Committee, Victor Rivers, stated that the Executive Branch article would have no impact on the University:

---

<sup>2</sup> Section 25. Department Heads. The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state.

Section 26. Boards and Commissions. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Attorney General Colberg  
Re: Removal of University Regent

February 2, 2007  
Page 4

Walsh: May I ask a question, Mr. Rivers? I think to clarify in the minds of several people here it might be well for me, that [as] one of those serving on the Board of Regents of the University of Alaska, composed of eight members, and the Board of Regents select the President of the University. The governor, as I understand it, does not have the power of the removal of the president of the University. It is a matter for the Board. Would this situation change that, Mr. Rivers?

Rivers: No, in regard to the University, this would not affect their present setup. They are a private corporation, or rather a nonprofit corporation, and under the specific law providing for their make-up, and you would still have a board of regents appointed by the governor and confirmed by the legislature, and the powers as you now have them would be identical to what they now are as I visualize them.

*Id.* at 2033-34. Delegate Taylor stated that the "University is not a part of the Territorial government whatsoever; it is an independent agency." *Id.* at 2253. Notably, Delegate Nordale expressed the view that by explicitly putting the University in a separate article it would "make it very clear that it can never be dissolved and that it is not part of the executive branch of government." *Id.* at 2256.

Later in the convention, the Executive Branch committee proposed language regarding the University. Chair Rivers introduced the language as follows:

Mr. President, you have heard the reading of this article and it was considered important that in the constitution there be included an article of this type. It gives the University, as a corporate body, the authority to receive and hold property which will be granted to them under the enabling act. It also gives them the authority for administering and disposing of that according to law. It sets up the board of regents and the governing body of the University, and I think the main point of this article has is that constitutionally the University of Alaska shall be the only state university in Alaska.

Attorney General Colberg  
Re: Removal of University Regent

February 2, 2007  
Page 5

*Id.* at 2792. Perhaps notably, the Executive Branch committee saw fit to clear the language of the proposed article with the President of the University prior to bringing it to the floor of the convention.<sup>3</sup> *Id.*

## II. Analysis

With this summary of the constitutional history of the University in mind, we think it is fair to draw the following conclusions. First, the convention intended to create a very strong governor with full appointive power. Second, despite the strong governor model, the convention nevertheless intended to insulate the University from politics, including the governor. Third, the convention intended that the University would not be subject to section 26 of Article III of the Alaska Constitution. Fourth, the convention intended to constitutionalize the existence of the University. Finally, some members of the convention believed that the University resided outside the executive branch of government in 1955 and that the constitution preserved that status.<sup>4</sup>

Nowhere in the convention minutes is there any discussion regarding removal of a regent.<sup>5</sup> But the above conclusions are sufficient to give us pause that the governor's power to remove certain executive branch appointees without cause extends to the University Board of Regents. This view is consistent with the views previously expressed by this office. In 1979, we opined:

Under the state constitution, the University of Alaska is 'governed' by the Board of Regents. Alaska Const., art. VII, § 3. The regents are appointed by the governor, subject to confirmation by the legislature. *Id.* They serve for terms of eight years. Thus, while the regents are appointed by and are responsible to the governor, they do not serve at his pleasure but rather for fixed terms, and they may, therefore, be

<sup>3</sup> In other words, it is doubtful that President Patty, the University president at the time, would have approved this language if he thought it allowed the governor to remove a regent without cause.

<sup>4</sup> By observing this latter point, we do not conclude that in fact the convention succeeded in fully removing the University from the executive branch.

<sup>5</sup> Though at one point, Chair Rivers states that "[t]he law could provide no doubt for means of removal . . ." *Id.* at 2255-56. He appears to be referring to the chief executive of the University, not the regents, however.

Attorney General Colberg  
Re: Removal of University Regent

February 2, 2007  
Page 6

removed from office solely for cause. 67 C.J.S. Officers § 120 (1978); 63 Am. Jur.2d Public Officers and Employees § 189 (1972). As a result, the governor's supervision over the university is made distinctly indirect. Unless the members of the Board of Regents commit acts of malfeasance, misfeasance, or nonfeasance sufficient to constitute cause for their removal, the governor possesses no check upon them and no power to direct their activities.

1979 Inf. Op. Att'y Gen. 1 (Jan. 23; J-66-103-79). We have reiterated this view over the years<sup>6</sup> and see no reason to stray from it today.

For the reasons expressed above, the University is accorded unique constitutional status. We must be mindful of these reasons when considering the applicability of Alaska Supreme Court precedents. A number of these cases have been cited by other counsel, but we doubt that a court would find them controlling on the issue of whether the governor may remove a regent without cause. For instance, *Walker v. Alaska State Mortgage Assoc.*, 416 P.2d 245 (Alaska 1966) does not involve the University of Alaska, but rather pertains to a board of a public corporation that does not have a unique constitutional status. The cases involving the University do not have issues that directly implicate the political independence of the University, one of the reasons for the University's unique constitutional status. See, e.g., *University of Alaska v. Nat'l Aircraft Leasing*, 536 P.2d 121 (Alaska 1975) (University is instrumentality of state for purposes of sovereign immunity); *McGrath v. University of Alaska*, 813 P.2d 1370 (Alaska 1991) (legislature may subject University to Administrative Procedures Act). Instead, we think a court if faced with the issue of whether the governor may remove a regent without cause would be more likely to focus on the constitutional history of the University set forth above.

Finally, legislative counsel contends that under AS 39.05.060(d) regents serve at the pleasure of the governor and may be removed at any time. This interpretation is at odds with the express intention of the constitutional convention that the University be insulated from politics. Moreover, review of the fairly lengthy legislative history of this statute demonstrates that the legislature never intended AS 39.05.060(d) to reach the

<sup>6</sup> In 1998, an assistant attorney general stated that, "Regents are considered to be sort of in a class by themselves. We've always advised the governor that it's inadvisable to remove the regents at a change of an administration. Legal complications may ensue." 1998 Anchorage Daily News (quoting AAG James Baldwin).

Attorney General Colberg  
Re: Removal of University Regent

February 2, 2007  
Page 7

Board of Regents. This statute was originally enacted as part of the State Organization Act of 1959, under which the executive branch of the new State of Alaska was formed. See ch. 64, SLA 1959. The University of Alaska is not within the scope of this Act—it was not mentioned in the Act and was left out of the organization of the executive branch accomplished by this Act. *Id.* When initially enacted, AS 39.05.060 only referred to boards that were explicitly mentioned in the State Organization Act of 1959. While the scope of AS 39.05.060 has both expanded and contracted over the years, it has never been broadened to include the Board of Regents.<sup>7</sup>

In summary, we conclude that the Governor may only remove a regent if cause is established, preferably at a hearing prior to removal. We would be happy to address in another memo the evidence necessary to establish cause, and the criteria for an appropriate hearing process.

MAB:ajh

---

<sup>7</sup> We note, however, that it may be possible for the legislature to provide for removal of a regent through enactment of a statute consistent with the constitution. Such a statute would have to preserve the University's politically independent constitutional status and probably could only provide for removal if it were for some cause that was established at a hearing prior to removal.

**PROPOSED QUESTIONS FOR**  
**ALASKA ATTORNEY GENERAL NOMINEE**

- 1) Why did you decide to become an attorney?
- 2) Describe your legal education.
  - A. Were you a member of the law review?  
(If the answer is yes, what articles did you author?)
  - B. Were you a member of the Order of the Coif?  
(Note: This is the national law school honor society for individuals in the top 10 percent of their class)
  - C. What was your class ranking?
- 3) Describe your trial experience. *Admiral law*
  - A. In State court.
  - B. In federal court.
- 4) Describe your appellate experience.
  - A. In state court.
  - B. In federal court.
- 5) In private practice, what were your legal specialties?
- 6) Have you practiced in the area of oil and gas law? Natural resources law? Indian law? Tax law?
- 7) The Alaska Department of Law is a large agency that contains hundreds of employees, operates on an annual budget of tens of millions, and has diverse responsibilities. Describe your prior administrative experience that you believe qualifies you to supervise such a large and important bureaucracy.
- 8) What specific parts of your education, legal experience, and life experiences do you believe best qualify you to be Alaska's Attorney general and to provide legal advice to Governor Palin?
- 9) Rule 1.3 of the Alaska Rules of Professional Conduct requires an attorney to "act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."

If you are confirmed, who do you believe will be your "client" for the purposes of Rule 1.3? Governor Palin? The people of Alaska? The public interest?

(If the answer involves the "public interest", ask how he determines what the public's particular "interest" in a particular matter is?)

**10)** Another question related to Rule 1.3: If you are confirmed, when you assign an Assistant Attorney General to advise the Alaska Board of Fisheries or Board of Game, who do you believe will be that Assistant Attorney General's "client" for the purposes of Rule 1.3? The Board? Governor Palin? The people of Alaska? Please explain your answer.

**11)** During the Hickel administration, Attorney General Charlie Cole resigned his position when he concluded that Governor Hickel had decided to disregard his legal advice. If you are confirmed, what are the circumstances in which you would have an ethical obligation to resign, as well as the circumstances in which – regardless of ethical obligation – you would resign?

**12)** For reasons that many members of the Alaska Legislature believed at the time were related principally to improving his chances for reelection, in 1995 Governor Tony Knowles directed Attorney General Bruce Botelho to change the State of Alaska's litigation position in Native Village of Venetie Tribal Government v. State of Alaska regarding the existence of "federally recognized tribes" in Alaska. And Attorney General Botelho did so.

What are the circumstances in which you believe it is appropriate for Governor Palin to decide your and the Department of Law's litigation position? Particularly in a situation in which, after exercising your best legal judgment, you have concluded that Governor Palin's position is incorrect, or that Governor Palin has based her position on factors unrelated to the legal merits?

**13) SUBSISTENCE**—In 1986 the Alaska Legislature amended the subsistence statute that it had enacted in 1978. The amendment required the Alaska Board of Fisheries and Board of Game to adopt regulations that afforded residents of "rural" Alaska a priority for the taking of fish and wildlife for "subsistence uses" over nonrural residents. As you know, in 1989 in McDowell v. State of Alaska the Alaska Supreme Court decided that sections 3, 15 and 17 of article VIII of the Alaska Constitution prohibited the Alaska Legislature from enacting its 1986 rural subsistence priority.

In McDowell, the late Justice Jay Rabinowitz filed a dissenting opinion in which he described why he believed that sections 3, 15 and 17 of article VIII did not prohibit the Alaska Legislature from enacting its 1986 rural subsistence priority.

In your view, was the McDowell decision correctly decided? Or was Justice Rabinowitz correct that the Court's majority made a mistake? Please explain your answer with specificity.

**14) SUBSISTENCE**—Please explain your understanding of the legal choices that are available to the Alaska Legislature and to Congress whose implementation would allow the State of Alaska to regain authority to regulate the taking of fish and wildlife throughout the entire State of Alaska.

**15) SUBSISTENCE**—It is the position of the State of Alaska that the Federal Subsistence Board's finding that the residents of Ninilchik have a history of 'customary and traditional' use of salmon on the upper Kenai River is incorrect - among other reasons because the Board based its finding on insufficient data. It also is the State's position that Congress did not intend the priority for "subsistence uses" of fish and wildlife in section 804 of ANILCA to apply to the taking of fish on the Kenai and Kasilof Rivers (among other reasons because in 1980 Congress decided that the Kenai National Wildlife Refuge would be the only refuge established or enlarged in ANILCA in which providing "the opportunity for continued subsistence uses by local residents" would not be a purpose of the refuge.)

If the Federal Subsistence Board denies the State of Alaska's request that the Board reconsider its finding regarding the Kenai River, if you are confirmed, will you recommend to Governor Palin that the State of Alaska seek judicial review of the Board's finding? [If no answer, when can you provide the Committee with an answer and your rationale therefor?]

**16) ALASKA NATIVE TRIBAL STATUS**—In 1988 in Native Village of Stevens v. Alaska Management & Planning, the Alaska Supreme Court reviewed the history of Congress's Alaska Native-related enactments from 1867 to 1988 and then concluded that for the previous 121 years Congress had not intended to confer on Alaska Natives the legal status of being "federally recognized tribes" whose governing bodies possess governmental authority and sovereign immunity. Do you agree with that legal conclusion of the Alaska Supreme Court? [If the answer is no, explain your answer.]

**17) ALASKA NATIVE TRIBAL STATUS**—In 1993 Assistant Secretary of the Interior for Indian Affairs Ada Deer intended her publication in the Federal Register of a list of more than 200 Alaska Native "entities" to have the legal consequence of transforming the Alaska Native residents and members of those entities into members of "federally recognized tribes". And in 1994 Congress enacted a statute called the Federally Recognized Indian Tribe List Act.

In the Native Village of Venetie Tribal Government v. State of Alaska lawsuit in federal court, Attorney General Bruce Botelho's initial litigation position was that Assistant Secretary Deer's publication of her list and Congress's enactment of the List Act did not have the legal consequence of creating "federally recognized tribes" in Alaska.

In 1995 Governor Tony Knowles ordered Attorney General Botelho to abandon his litigation position and henceforth concede that the State of Alaska agreed that Assistant Secretary Deer's publication of her list and Congress's enactment of the List Act did have the legal consequence of creating "federally recognized tribes" in Alaska. Attorney General Botelho then changed the State of Alaska's litigation in the manner that Governor Knowles had directed.

Do you agree with Attorney General Botelho's initial litigation position regarding Alaska Native tribal status? Or with the litigation position he adopted at Governor Knowles' direction? Please explain your answer.

**18) ALASKA NATIVE TRIBAL STATUS**—In 1999 in its decision in John v. Baker I the Alaska Supreme Court announced that, in its view, Alaska Native residents and members of the entities on the list that Assistant Secretary of the Interior for Indian Affairs Ada Deer published in 1993 in the Federal Register became members of "federally recognized tribes" because Assistant Secretary Deer said they were. The Alaska Supreme Court also announced that, again in its view, Congress intended its '994 enactment of the Federally Recognized Indian Tribe List Act to ratify Assistant Secretary Deer's action.

Do you agree that whether Assistant Secretary Deer's publication in 1993 in the Federal Register of her list of Alaska Native entities had the legal consequence of creating more than 200 "federally recognized tribes in Alaska is a question of federal law, rather than of state law?

Do you also agree that whether Congress intended its enactment of the List Act to ratify Assistant Secretary Deer's action also is a question of federal law, rather than of state law?

And finally, do you agree that while the Alaska Supreme Court may express its views regarding questions of federal law as it did in its John v. Baker I decision, only the federal courts - and ultimately the U.S. Supreme Court - can decide questions of federal law definitively?

[If the answer to the last question is yes], if you are confirmed, will you advise Governor Palin to seek judicial review of those two federal questions in federal court? Explain your answer.

**19) ALASKA NATIVE TRIBAL STATUS**-In 2001 Senator Rick Halford, the president of the Alaska Senate, and Representative Brian Porter, the speaker of the Alaska House of Representatives, sent Secretary of the Interior Gale Norton a letter in which, on behalf of a majority of the members of the Alaska Legislature, they asked her to direct the Solicitor of the U.S. Department of the Interior to conduct a de novo legal and policy review of the Alaska Native tribal status situation. At that time,

Alaska Senators Ted Stevens and Frank Murkowski and Congressman Don Young publicly supported President Halford and Speaker Porter's request.

If you are confirmed, will you recommend to Governor Palin that she ask Secretary of the Interior Dirk Kempthorne to direct his Solicitor to conduct the de novo legal and policy review that President Halford and Speaker Porter requested? Please explain your answer.

**20) INDIAN GAMING REGULATORY ACT** - Are you aware that in August 2008 an initiative to create an Alaska Gaming Commission empowered to authorize Las Vegas-style casino gambling to be conducted in Alaska will appear on the primary election ballot?

Are you also familiar with the Indian Gaming Regulatory Act, the statute Congress enacted in 1988 that establishes the legal terms and conditions pursuant to which an "Indian tribe" may conduct gaming - including Las Vegas-style casino gambling - on the tribe's "Indian lands"?

Are you also aware that in the Indian Gaming Regulatory Act Congress defined the terms "Indian tribe" and "Indian lands" as legal terms of art?

In your legal opinion, are there any Alaska Native groups in Alaska that are members of an "Indian tribe" as the Indian Gaming Regulatory Act defines that term? Explain your answer.

In your legal opinion, are there any lands in Alaska that are "Indian lands" as the Indian Gaming Regulatory Act defines that term? Explain your answer.

**21) INDIAN GAMING REGULATORY ACT** - Are you aware that - with no prior notice to the State of Alaska - the chairman of the National Indian Gaming Commission - acting pursuant to the Indian Gaming Regulatory Act - some years ago approved class II gaming ordinances for the communities of Kake, Klawock, and Metlakatla?

If you are confirmed, will you recommend to Governor Palin that she urge Secretary of the Interior Dirk Kempthorne and the chairman of the National Indian Gaming Commission to review whether the former chairman acted lawfully when he approved class II gaming ordinances for the communities of Kake, Klawock, and Metlakatla?

**22) INDIAN GAMING REGULATORY ACT** - Neither the text of the Indian Gaming Regulatory Act nor the regulations of the National Indian Gaming Commission that implement the Act require the Commission to provide public notice when the Commission receives a proposed class II or class III gaming ordinance.

(Which is why the State of Alaska did not find out that Kake, Klawock, and Metlakatla had submitted proposed class II ordinances to the Commission until after the chairman of the Commission had approved the ordinances.)

If you are confirmed, will you recommend to Governor Palin that she petition the National Indian Gaming Commission to amend its regulations implementing the Indian Gaming Regulatory Act to require the Commission to notify the State of Alaska and other interested parties when the Commission receives a proposed class II or class III gaming ordinance, and afford such interested parties a reasonable opportunity to present their views regarding the ordinance, and to have those views considered by the chairman, before the chairman decides whether the ordinance should be approved or disapproved?

**23) INDIAN GAMING REGULATORY ACT-** In 1988 Hawaii Senator Daniel Inouye was the principal sponsor of the bill that Congress enacted as the Indian Gaming Regulatory Act.

On January 17, 2007 Senator Inouye co-sponsored S. 310, a bill whose enactment by Congress will authorize Native Hawaiians to provide for their common welfare by organizing a "Native Hawaiian governing entity". Section 9(a) of S. 310 prohibits both all Native Hawaiians and the Native Hawaiian governing entity from conducting gaming within the State of Hawaii pursuant to the Indian Gaming Regulatory Act.

Senators Ted Stevens and Lisa Murkowski have joined Senator Inouye in co-sponsoring S. 310.

Since they support Congress clarifying that the Indian Gaming Regulatory Act has no application within the State of Hawaii, if you are confirmed, will you recommend to Governor Palin that she urge Senators Stevens and Murkowski to introduce legislation clarifying that the Indian Gaming Regulatory Act also has no application within the State of Alaska?

**24) RS 2477 -** Under previous administrations, the State has identified several RS 2477 rights-of-way. How aggressively and by what means will the State of Alaska seek to resolve these important access questions?

**25) ENDANGERED SPECIES ACT—**A recent decision by the federal government to list polar bears as threatened or endangered species could potentially have negative implications for oil and gas exploration and development on the North Slope. What legal position will the State have on this matter?

**26) RESERVED WATERS—**Will the State continue to pursue and fund the ongoing reserved waters litigation?

**27) RECORDABLE DISCLAIMERS—**For approximately four years, the State has been attempting to resolve title to submerged lands in Alaska through the

recordable disclaimer of interest process. Federal agencies have bogged down the process substantially, resulting in few successful disclaimers. How can the Department of Law speed up that process to ensure that Alaska retains title to these hundreds of thousands of acres of important state lands?

- 28) CRIME—Alaska's largest cities are facing alarming increases in violent crime. What, if anything, can the Department of Law do to stem the growth of violent crime in Alaska?
- 29) CRIME—Does the D.A. try enough felony criminal cases in Alaska, or are too many of them plea-bargained out of court? How can you help change that trend?
- 30) CRIMINAL DIVISION—Morale is reportedly very low and attorney turnover is high in the Department of Law's criminal division. How will you directly fulfill your responsibilities as A.G. to change this? Other A.G.'s appear to have neglected the criminal division to some extent. How will you treat the criminal division as A.G.? Will you select any future appointments in the Department or will the Governor?
- 31) ATTORNEY GENERAL—What is your position on having an elected-rather than appointed- attorney general in Alaska?
- 32) LAWSUITS—The Department of Law has requested \$12 million in supplemental funding for a lawsuit against the actuarial firm that assisted the State with its PERS/TERS allocations. Is that a reasonable amount? The firm appears to have spent in excess of \$400,000 already to assess the State's case. Can you provide the Committee some memoranda supporting the expenditure and assessing the State's case?
- 33) CONSUMER PROTECTION—Does the Department of Law have adequate staff and funding for consumer protection?

## Questions for Attorney General

1. Highly qualified new attorneys from top tier law schools are being made offers of employment with starting salaries exceeding \$140,000. A law clerk with our court system starts at around \$40,000 for a Fairbanks position. Is there a problem recruiting lawyers for the attorney general's office and, if so, what would you do about it?
2. As you have contemplated coming to the Attorney General's office I am sure you have thought of things you want to change. Could you please outline the three most important changes you would make?
3. In my Fairbanks community, the District Attorney's office has lost many high profile cases, including cases involving rape and murder, yet I see many instances of charges for misconduct involving controlled substance in the 6<sup>th</sup> degree (MICS-6). These are charges involving small amounts of marijuana. Do you feel there needs to be a reallocation of prosecutorial resources?
4. Do you believe that the advocacy section that weighs in on regulatory filing in front of the Regulatory Commission of Alaska for the consumer should be located within the Attorney General's office?
5. Do you believe that there should be a use of the Therapeutic Courts and if so for what type of charges? DUI? MICS-6? How would cases be selected for diversion into the Therapeutic Courts?
6. If you believe that a State Agency has violated the Alaska Procurement Code, should the Attorney General's office, which is charged under law to uphold the Procurement Code, defend a state agency that has violated the Code?

### Questions for Attorney General Talis Colberg

- Why do you believe that you are qualified to do this job? Please explain what in your background and experience will aid you in this position?
- What expertise do you bring to the position of Attorney General?
- How do you interpret the Alaska Constitution with regards to Federal/State control of issues such as subsistence? *tribal sovereignty.*
- What elements do you deem must be in the Alaska Gas Pipeline Contract? How do you interpret what is the maximum benefit to the people of Alaska?
- Now that you have been in Juneau for a while and have seen how things work, what goals do you have for the Department of Law?
- Do you see your position as Attorney General as one of management or one of lawyering?
- What do you see as the primary mission of the attorney general and who does he serve?
- Do you believe that the legislature has expanded the court system in such a way that it has kept pace with the growing state, and in what areas can the legislature expand the court system?
- *Deferred prosecution - Any position?*
- *Should DOL consider a person's politics when deciding whether a person should work for DOL?*
- *How*