

SR

3

Use of Corporate Seal

P02.01.05

The president will be the custodian of the University of Alaska corporate seal and is authorized to delegate custody of the seal to the registrars of the University of Alaska with authority to use the seal for certification of transcripts and execution of academic diplomas.

(06-08-96)



Official Business

ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER

- Member, Senate Resources Committee
- Member, Community & Regional Affairs
- Member, World Trade

Session: January - May
State Capitol, #423
Juneau, AK 99801
Phone: 907-465-2828 Fax: 907-465-4779

Interim: May - December
145 Main Street Loop; Suite 226
Kenai, AK 99611
Phone: 907-283-7996 Fax 907-283-8127

February 26, 2007

MEMORANDUM

To: Senator Bettye Davis, Chair
Senate Health, Education and Social Services Committee

From: Senator Tom Wagoner *Tom*

Subject: Senate Resolution 3 Committee Hearing

I would like to request a hearing be scheduled in the Senate Health, Education and Social Services Committee and your earliest convenience.

I am attaching back up information with this hearing request.

The issue of the impeachment of Regent Hayes should be addressed speedily. The Board of Regents needs a member that is able to put their time and energy into University issues; Jim Hayes needs to put his time and energy into defending himself.

If you should have any questions, please contact Amy Seitz, 2828.

Thank you



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Sponsor Statement Senate Resolution 3

Ethical standards for public officials have been a central focus of recent political discussions. Members of the Alaska Legislature are under investigation, and members of the executive branch have been under scrutiny regarding their ethical practices for the past few years. The Legislature is considering several ethics bills this session in the hope that tighter restrictions will compel public officials to conduct themselves in a more ethical fashion.

With public officials under heightened scrutiny, it is important to do what we can to remove even the appearance of questionable behavior. James C. Hayes was indicted in January on federal fraud and money laundering charges. If a public official is under investigation for a major offense, such as Regent Hayes, that person should voluntarily step down from office until the matter is resolved.

Senate Resolution 3 is not an indication that the Legislature believes Mr. Hayes is guilty, only that he should step down and remove the appearance of unethical behavior from his public office and also take the time he needs to defend himself in this case. This would allow a person who can commit time to the Board of Regents; time which Regent Hayes has demonstrated he does not have.

The Board of Regents for the University of Alaska is a crucial and distinguished body of the State of Alaska, and members of the public should be able to trust that regents are not in a position to abuse that position of authority.



April 28, 2001

Office of Juvenile Justice and Delinquency Prevention
810 Seventh Street, NW
Washington, DC 20531

Mr. Eric Stansbury
Program Director
Office of Juvenile Justice and Delinquency Prevention

As former Mayor of the City of Fairbanks, I am aware of the importance of having a meeting place for our youth. As a member of the Board of Directors for the LOVE Social Services Center, Inc. and as a Board of Regents for the University of Alaska, I can think of nothing but praise for the organization.

As students leave high school, we find that they are ill prepared for university life and academics. It is my hope and the hope of others in this community that an organization such as LOVE Social Services Center, Inc. will help prepare young people to succeed. The remedial assistance that the organization gives is invaluable.

What a wonderful opportunity the youth of our community have to be able to have a place such as LOVE Social Services to go and receive help in the basic education steps as reading, writing and mathematics. In addition, it is beneficial to have after school activities available to teach them socialization skills.

It is without hesitation that I offer my support to this organization.

Best regards,

James C. Hayes

James C. Hayes,

Board of Regents
University of Alaska

FAIRBANKS
Daily News - Miner

Hayes used UA seal to back grant proposal

By Robinson Duffy
 Published January 20, 2007

Jim Hayes used his title of University of Alaska regent as well as the university's official seal on a document to help secure federal grant money for LOVE Social Services, the nonprofit organization run by his wife, Chris Hayes, that is at the center of a federal case. This week, the Hayeses were indicted on multiple charges of theft, conspiracy and money laundering.

Alaska law and university policy prohibit public officials from using their positions for personal gain or the gain of their family.

In 2003, when LOVE Social Services was trying to secure a \$745,000 grant from the U.S. Office of Juvenile Justice and Delinquency Prevention, Jim Hayes, who serves on LOVE Social Services' board of directors, supplied a letter of support for the agency.

In the letter, which was included among several documents obtained by the Daily News-Miner last year through a federal Freedom of Information Act request, Hayes lists his credentials as a former mayor of Fairbanks and as a member of the Board of Regents.

"As a member of the Board of Directors for the LOVE Social Services Center, Inc. and as a Board of Regents [sic] for the University of Alaska, I can think of nothing but praise for the organization," Hayes wrote in the letter.

The letter is signed "James C. Hayes, Board of Regents, University of Alaska." In the top left hand corner of the single-page letter is the official seal of the University of Alaska.

"The seal is supposed to be used for official university business. That is in our policy and in our regulations," university spokeswoman Kate Ripley said.

The university's seal is typically used to designate that something is an official university document. It also appears on T-shirts and mugs but only those authorized by the president's office. "Unauthorized use or reproduction of the university seal is prohibited," the regulations state.

The process of obtaining permission to use the official seal is an informal one, Ripley said. It is not uncommon for people to create their own letterhead using the seal and then get it approved by the president's office, she said. No paperwork is required, so there would be no record showing that Hayes obtained permission to use the seal in this case.

Ripley would not comment on Hayes' use of the seal on this particular document or whether or not it was appropriate, only noting that the letter does not appear to be on official university letterhead. She again emphasized that the university seal is only to be used for official university business.

Jim Hayes, in the letter, does not mention his relationship to Chris Hayes, who serves as the director of LOVE Social Services. As director, Chris Hayes earns a salary, which records indicated would have been paid by the grant for which Jim Hayes had provided the letter of support. According to the grant application accompanying Jim Hayes' letter, the LOVE Social Service's director's yearly salary is \$60,000.

State law holds that "a public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person."

Hayes is not being investigated by the university for his actions, Ripley said.

"At this point I don't know what we would be investigating," she said.

When asked if Hayes' use of the seal or his position as a regent to help obtain funds for LOVE Social Services would be something the university would investigate, Ripley said, "If that came forward as a complaint, we would have to evaluate it at that point."

Mark Morones, spokesman for the state Department of Law, would not comment on the case or the letter in question as to whether or not Hayes violated the state law, known as the Executive Branch Ethics Act. He would only say that Hayes, as a public official, is subject to the ethics act and that his department would only investigate such matters if a formal complaint were submitted.

Hayes' term as a regent expires in 2011. Regents are appointed by the governor for eight-year terms and, according to Ripley, may only be removed by an act of the governor ratified by the Legislature.

Gov. Sarah Palin's office has not been in contact with Hayes, Deputy Press Secretary Charles Fedullo said, but has been talking with officials at the university about the issue and what steps, if any, the university would be taking in the matter. University officials, Fedullo said, were interested in knowing if the governor's office would be pursuing any action. The governor had not yet made any decisions on the matter, he said.

"It is something that is of concern and we are watching the legal process," Fedullo said.

Attempts to reach Hayes were unsuccessful Friday.

Contact staff writer Robinson Duffy at 459-7523 or rduffy@newsminer.com.

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CITY OF FAIRBANKS

James C. Hayes, Mayor
800 CUSHMAN STREET
FAIRBANKS, ALASKA 99701-4615
OFFICE: 907-459-6793

March 03, 2001

Don Thomas, President
LOVE Social Services Center
2316 South Barnette St.
Fairbanks, Alaska 99701

Dear Mr. Thomas:

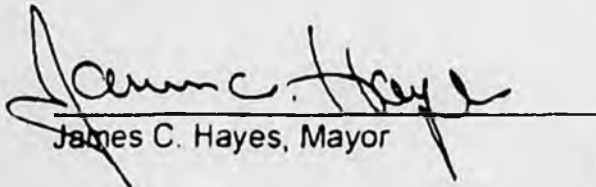
On behalf of the city of Fairbanks, and as the mayor of the city, I wholeheartedly extend my support and endorsement of the LOVE Social Services Center. The LOVE Social Services Center's programs and services will be an invaluable addition to our cities growing social needs.

With the induction of Alaska's new High School Graduation Exit Exam laws, a law that tests our students' educational fitness and graduation competency, the need for your services are quite evident and somewhat overwhelming.

I am positive that the LOVE Social Services Center will do a remarkable job for the children of the Fairbanks community. Therefore, I fully endorse your attempts and endeavors in making our youths that much more better off and prepared to achieve and acquire those necessary educationally, fundamental life-skills.

Sincerely,

CITY OF FAIRBANKS


James C. Hayes, Mayor

COPY

FAIRBANKS
Daily News - Miner

Hayes used mayor's office, city stationery to back center

By Chris Eshleman
 Published January 25, 2007

Former city Mayor Jim Hayes wrote an official letter of support in 2001 for LOVE Social Services Center that the center later included in an application for one of a series of federal grants. The federal government now alleges Hayes and his family misused the grants for personal gain and to help build a new church for a congregation led by the former mayor.

Hayes did not identify himself in the letter as a member of the center's board of directors or identify the letter's recipient, Don Thomas, as his nephew. Neither did he note that the center was run by his wife, Chris Hayes.

City officials said they did not know about the letter until it was shown to them this week by the Daily News-Miner. They said that had they been aware of the letter and the Hayes family's involvement in LOVE Social Services, they would have asked questions about whether it was being written for the family's benefit and whether it was appropriate for the letter to suggest the support of the entire city for the service center's social programs.

The Fairbanks City Council had not approved an official city endorsement of the center at the time Hayes wrote the letter, which was written on official city stationery, in March 2001.

"I think there would have been a substantial 'time out,'" city attorney Herb Kuss said. "Had we known the facts, we would have at least advised the mayor to give pause and consideration. By using city stationery to communicate officially with a family member where the communication purports to be an arm's-length communication We'd certainly ask why."

Hayes did not respond to messages left at his home and office. Thomas also did not respond to calls.

The letter from Hayes is the second to surface in which he used a public office to officially endorse LOVE Social Services. Hayes also used his title of University of Alaska regent in 2003 to support federal grant funding for the center from the same Department of Justice office. A university spokeswoman said the university's seal, which appeared on the letter, is to be used only for official university business.

Both letters were included among federal documents obtained by the Daily News-Miner in 2005 through a federal Freedom of Information Act request.

The city lacks its own official policy regarding the use of public office for personal gain and defers to state law, city chief of staff Pat Cole said.

The city does, however, forbid the use of "political endorsement to influence an appointment or employment advantage," which Cole said might apply to efforts to obtain employment for an official's family.

He also suggested that public knowledge of the letter, given Hayes' family connection with LOVE Social Services Center, could have led to talk of a recall effort against Hayes.

Alaska law prohibits public officials from using their positions for personal gain or the gain of their families.

A grand jury last week indicted Hayes and his wife, Chris Hayes, on multiple charges of theft, conspiracy and money laundering. Agents from several federal agencies served search warrants on the Hayeses' Fairbanks home, LOVE Social Services, and Lily of the Valley Church of God in Christ in January 2006. An arraignment is set for Feb. 1 in Fairbanks.

Hayes' letter to LOVE Social Services was included by the nonprofit organization when it applied in March 2002 to receive money granted to it through a congressional earmark.

The application for the \$485,000 earmark, received through the Department of Justice's Office of Juvenile Justice and Delinquency Prevention at the direction of Congress, includes a reference to spending \$42,328 for LOVE Social Services Center's "manager/director," a position held at the time by Chris Hayes. Another reference in the application, however, listed the pay as \$50,328 for each of the two years to be covered by the grant funds.

"On behalf of the city of Fairbanks," the letter reads, "and as the mayor of the city, I wholeheartedly extend my support and endorsement of the LOVE Social Services Center. The LOVE Social Services Center's programs and services will be an invaluable addition to our city's growing social needs."

The federal indictment notes that applications for similar grants received by the center through the Department of Housing and Urban Development also failed to describe the Hayeses' involvement in both the social services center and the church. Jim Hayes serves as pastor at the Lily of the Valley Church of God in Christ, which the government claims received a new building on South Barnette Street partly through money from the grants.

Jim Hayes wrote the letter to Thomas eight months before a congressional conference committee completed work on a spending bill that included the \$485,000 earmark for the Department of Justice grant.

The committee's bill was completed one month after Hayes' term as mayor expired. The application was submitted after the congressional committee had approved the earmark.

Staff writer Chris Eshleman may be reached at 459-7582 or ceshleman@newsminer.com.

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LEGAL SERVICES

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

MEMORANDUM

February 5, 2007

SUBJECT: Impeachment of a Member of the University Board of Regents
(Work Order No. 25-LS0499\A)

TO: Senator Tom Wagoner

FROM: Jean M. Mischel
Legislative Counsel 

Enclosed is a draft Senate Resolution to initiate impeachment proceedings to remove James C. Hayes from the University Board of Regents before the expiration of his term in 2011. Since art. II, sec. 20 of the Alaska Constitution specifies that a motion be made containing the grounds for impeachment, this resolution serves as that motion based on the information I have available. I anticipate that this resolution would be referred to a committee for consideration and possible amendment before it is passed by 2/3 vote of the Senate.

Although it is the opinion of this office that impeachment is available to remove a regent, I describe here the possible issues involved and the anticipated procedure. In 1985, the Senate Rules committee conducted a preliminary hearing on impeachment of Governor Sheffield based upon a motion to consider impeachment. Senate Resolution 7 from the Fourteenth Legislature was introduced *after* the committee hearing and failed to pass the Senate. Since there is no statutory implementation of art. II, sec. 20, the Sheffield hearings answered some preliminary questions as to what constitutes an impeachable offense; what standard of proof is required; whether the impeachment was reviewable by the courts; and what procedures were followed.

If this resolution passes the Senate, a trial must be conducted by the House of Representatives with the Chief Supreme Court Justice of the Alaska Supreme Court presiding.

1. Whether the legislature may impeach a regent.

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

SECTION 20. Impeachment. 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. The motion for impeachment shall list fully the basis for the proceeding. Trial

on impeachment shall be conducted by the house of representatives. A supreme court justice designated by the court shall preside at the trial. Concurrence of two-thirds of the members of the house is required for a judgment of impeachment. The judgment may not extend beyond removal from office, but shall not prevent proceedings in the courts on the same or related charges.

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."¹

¹ 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).)

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 also 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 and clarified in the Sheffield hearings, lengthy and involved.

2. Grounds for Impeachment and Impeachment Procedure.

The procedure under art. II, sec. 20, was debated at some length by delegates to the constitutional convention. It was specifically decided that the impeachment should originate in the Senate as a result of careful consideration and that the case should be tried in the other house. The grounds for impeachment were specifically left undefined as a matter to be determined by the legislature.

It is clear from the debate that the delegates felt that the requirement that the motion list fully the basis for the proceeding made it unnecessary to establish constitutional grounds for impeachment. It is also clear that the delegates expected the Senate, in considering a motion for impeachment, to perform a function analogous to that performed by the grand jury, with trial of the case reserved to a body that had not participated in originating the motion.

Therefore, if the Senate elects to conduct an investigation into the question of impeachment, due process constraints upon the conduct of a grand jury should apply to the Senate investigation. The regent, through his counsel, should be given an opportunity to present his version of the facts for consideration by the Senate. Nothing demands that the investigation be conducted by the full Senate, so a committee could be appointed to handle

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).)

the matter. However, the final motion for impeachment must be approved by two-thirds of the Senate members.

There are no requirements set out for the conduct of the impeachment trial in the House except that a Supreme Court justice shall preside. While some state constitutions require that an impeachment trial be held within a specific period of time after an impeachment motion is approved, for example, in Nebraska the trial must begin within 10 days after the impeachment vote, there is no such requirement in Alaska. However, a reasonable period will be necessary to prepare the case for the legislature and to allow the person to be impeached to prepare a defense. While in some situations the Chief Justice of the Supreme Court has been authorized by law to appoint special prosecutors (see AS 15.13.122), since a justice must preside in an impeachment trial it seems more reasonable for the legislature to designate a special counsel who has no ties with government to conduct its case. The conduct of the trial must comply with basic due process requirements. The same approach could be used in this situation. Final judgment of impeachment must be approved by two-thirds of the members of the House of Representatives.

With respect to what constitutes an impeachable offense, early drafts of the state constitution included both an impeachment section and a section permitting removal of civil officers, except the governor, by concurrent resolution. This form of removal was called "joint address," and is used by some states as a lower standard applied to removal of state officials. Although joint address was ultimately rejected during the constitutional convention proceedings, impeachment was compared to joint address and provides some insight into the meaning of an impeachable offense.

It (joint address) permits the removal of officers for causes less severe than the high crimes that are usually the basis for impeachment proceedings; for example, removal on joint address permits removal for negligence, senility, or other inability. *Alaska Constitutional Convention Report of the Committee on the Legislative Branch, Constitutional Convention, Committee Proposal 5, December 14, 1955, Alaska Constitutional Convention files, folder 310.5, Commentary, page 6.*

The delegates noted that impeachment is a "serious matter" and one delegate, Mr. Buckalew, noted:

impeachment is not like a criminal trial; there is not imprisonment or anything, it just provides a method of getting rid of a corrupt official. *Alaska Constitutional Proceedings, January 10, 1955, page 1711.*

Another delegate, Mr. Rivers, noted:

I don't think members of either house are interested in protecting somebody who is not properly performing their duties and who should be

subject to impeachment under whatever grounds might be established. This section establishes no special grounds, they shall be established by the legislature. . . . I don't feel though . . . that there would be any tendency of any large group of people like that to protect any malfeasance or misfeasance in office. *Id.* at page 1718.

The legislature has never, as a whole, defined an impeachable offense but the Senate had an opportunity to consider the question during the 1985 Sheffield impeachment hearings. At that time, the Senate Rules Committee in conducting the impeachment proceedings for the Senate, engaged in much discussion on the topic. The Rules Committee then determined that even the federal standard of "high crimes and misdemeanors" for impeachment did not necessarily involve the commission of a crime. A motion on the issue before the committee by Senator V. Fischer, later amended, stated:

I move that the Committee rule that for purposes of the present proceeding before the Committee, an impeachable offense be defined as a high crime in office, such as treason, malfeasance, misfeasance, corruption or bribery. *Transcript, Senate Rules Committee July 23, 1985, page 241.*

A discussion of whether criminal conduct was necessary for impeachment ensued.

SENATOR JOSEPHSON: A concern has been expressed that this definition would permit impeachment only in the case of a high crime. Is that your intent, or do you acknowledge that malfeasance or misfeasance could occur, which would be short of criminal conduct but still be impeachable?

SENATOR V. FISCHER: Mr. Chairman, if I may respond. I would think that impeachment would be only for a high crime. Misfeasance, I guess, could be a very broad spectrum, or even malfeasance. Maybe my terminology is wrong, but from my standpoint, impeachment is so serious, and it's so important and has such grave consequences that only the **most serious types** of malfeasance and misfeasance ought to be the basis for impeachment.

CHAIRMAN KELLY. Senator Josephson.

SENATOR JOSEPHSON. Mr. Chairman, the problem with that is that I think the research done for the Committee indicates that there are instances where conduct that does not constitute a crime could be impeachable; and as I remember, that was in the material from Mr. Berrier and other authorities. I, therefore, could [NOT] support a definition that is so narrow that you would have to prove that there was a criminal conduct. In fact, if I might, here is what Mr. Berrier says about the Constitutional Convention of Alaska, page 15. "From his discussion, it seems apparent

that while the Alaska Constitution did not adopt a specific standard for impeachment, there was some expectation that the Federal standard of impeachment for treason, bribery, and other high crimes and misdemeanors would shape the understanding of the State impeachment section. Impeachment was characterized as a high crime and a serious matter to be used in aggravated cases. It could be used to get rid of a corrupt official for malfeasance or misfeasance in office or for, quote, 'neglect of office,' close quote. However, impeachment would require some standard, could not be used simply for senility, ineptness, or gross negligence. . . ."

I think I would have to allow, in all propriety, an opportunity for impeachment conceivably in an area where no criminal law has been violated but where there has been misfeasance." *Id.* at 242-243. (emphasis added)

The motion that passed the Senate Rules Committee, as amended by Senator Josephson, was that an impeachable offense was to be defined as "**serious misconduct in office, such as treason, malfeasance, misfeasance, corruption or perjury.**" Transcript at page 260.

The statutes do not define malfeasance or misfeasance but do contain for criminal purposes, standards for official misconduct. AS 11.56.850 provides that:

(a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant

(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or

(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

(b) Official misconduct is a class A misdemeanor.

For a definition of malfeasance and misfeasance, Black's Law Dictionary provides the following:

Malfeasance. Evil doing; ill conduct; the commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful.

Misfeasance. A misdeed or trespass. The improper performance of some act which a man may lawfully do.

Senator Tom Wagoner

February 5, 2007

Page 7

Returning to the specific question of the impeachability of a University regent it seems to me that under the historical interpretation of what constitutes an impeachable offense, either as serious official misconduct or misfeasance in office, allegations involving the intentional violation of a fiduciary duty and a 92 count federal indictment involving misuse of public funds provide sufficient grounds for the Senate to hold an impeachment hearing.

I have attached the procedures adopted by the Senate Rules Committee in 1985 for inquiry by the Senate of impeachability and for trial by the House.

If I may be of further assistance, please advise.

JMM:med
07-062.med

Enclosure

ALASKA STATE SENATE



SENATOR TIM KELLY
ANCHORAGE/EAGLE RIVER
CHAIRMAN

SENATOR JACK COGHILL
NENANA
VICE CHAIRMAN

RULES COMMITTEE

FOR IMMEDIATE RELEASE

July 18, 1985

MEMBERS
SENATOR DON BENNETT
FAIRBANKS
SENATOR JAN FAIKS
ANCHORAGE
SENATOR JOE JOSEPHSON
ANCHORAGE

Attached are the proposed Impeachment Inquiry Procedures for the Senate Rules Committee's inquiry into the report of the Grand Jury concerning the Governor's involvement in the State's award of the lease to the Fifth Avenue Center in Fairbanks.

These proposed procedures will be presented to the Rules Committee for adoption at its first session on Monday, July 22, 1985. They may be amended by the committee.

The Governor's counsel has been given the opportunity to comment upon these proposed procedures and propose changes during the drafting process. While there has not been complete agreement among Senate chief counsel, the Governor's counsel and counsel for the Rules Committee on the precise wording used, I believe, and hope that there is general agreement, that these procedures will assure procedural fairness to all persons involved in the inquiry.

Sincerely yours,

A handwritten signature in black ink that reads "Tim Kelly".

Tim Kelly, Chairman
Senate Rules Committee

ALASKA STATE SENATE

SENATOR TIM KELLY
ANCHORAGE/EAGLE RIVER
CHAIRMAN

SENATOR JACK COGHILL
NENANA
VICE CHAIRMAN



RULES COMMITTEE

MEMBERS
SENATOR DON BENNETT
FAIRBANKS

SENATOR JAN FAIKS
ANCHORAGE

SENATOR JOE JOSEPHSON
ANCHORAGE

IMPEACHMENT INQUIRY PROCEDURES

A. The committee shall receive from Senate chief counsel at the initial hearing (i) an explanation or recommendation as to the legal principles that should govern this proceeding, (ii) a recommendation as to the scope of this proceeding, (iii) a general description of the manner of the presentation of evidence, and (iv) a detailed presentation of the evidentiary material, other than the testimony of witnesses. Objections relating to the scope and manner of the presentation of the evidence may be raised only by a member of the Senate or the Governor's counsel and shall be ruled upon by the chair or presiding member. Such ruling shall be final, unless overruled by a majority of the committee members present. The chair, presiding member or committee shall make other initial rulings as appropriate.

1. On the commencement of the presentation, each member of the Senate shall be given access to and the opportunity to examine all testimony, papers and things that are to be used in the presentation by Senate chief counsel.

2. The Governor's counsel shall be furnished a copy of all testimony, papers and things that are to be used in the

ALASKA STATE SENATE
RULES COMMITTEE
IMPEACHMENT
INQUIRY PROCEDURES

presentation by Senate chief counsel at the time that those materials are furnished to the members, and the Governor and his counsel shall be invited to attend and observe the presentation.

B. Following the presentation the committee shall determine whether it desires additional evidence, after opportunity for the following has been provided:

1. The Governor's counsel is invited to respond to the presentation.

2. Any Senate member is allowed to bring additional relevant evidence to the committee's attention.

C. Should the Governor's counsel wish the committee to receive additional testimony or other evidence, he shall be invited to submit written requests and a precise summary of what he would propose to show, and in the case of a witness what it is expected the testimony of the witness would be, if called. On the basis of such requests and summaries and of the record then before it, the committee shall determine whether the suggested evidence is necessary or desirable to a full and fair record in the inquiry, and, if so, whether the summaries shall be accepted

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as part of the record or additional testimony or evidence in some other form shall be received.

D. If and when witnesses are to be called, the following additional procedures shall be applicable to hearings held for that purpose:

1. The Governor and his counsel shall be invited to attend all such hearings.

2. Objections relating to the examination of witnesses or to the admissibility of testimony and evidence may be raised only by a witness or his counsel, a member of the committee, Senate chief counsel or his designee, or the Governor's counsel, and shall be ruled upon by the chair or presiding member. Such rulings shall be final, unless overruled by a vote of a majority of the committee members present.

3. Senate chief counsel or his designee shall commence the questioning of each witness and may also be permitted by the chair or presiding member to question a witness at any point during the appearance of the witness. Notwithstanding the above, the Governor's counsel shall be allowed to commence the

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questioning of any witness called at the Governor's request and to conclude his initial examination without interruption.

4. The Governor's counsel may question any witness called before the committee, subject to instructions from the chair or presiding member respecting the time, scope and duration of the examination.

E. Any portion of the hearings open to the public may be covered by television broadcast, radio broadcast, still photography, or by any of such methods of media coverage in accord with the uniform rules, these procedures and rulings of the chair or presiding member concerning decorum.

F. The chair shall make public announcement of the date, time, place and subject matter of any committee hearing.

G. The chair is authorized to promulgate additional procedures as is deemed necessary for the fair and efficient conduct of committee hearings, provided that the additional procedures are not inconsistent with these procedures. These procedures and those promulgated by the chair shall govern the conduct of the hearings, unless overruled by a vote of a majority of the committee members present.

COPY

PROPOSED RULES OF PROCEDURE FOR THE HOUSE OF REPRESENTATIVES
WHEN SITTING ON IMPEACHMENT TRIALS

RULE 1. Upon receipt of notice from the Senate that a motion for impeachment has been approved by two-thirds vote of its members together with the approved Articles of Impeachment the clerk shall read the articles and they shall be spread upon the journal. The presiding officer shall deliver a copy of the Articles of Impeachment to the Chief Justice of the Supreme Court and request that a justice be designated by the court to preside at the impeachment trial.

RULE 2. Within ten days after receipt of Articles of Impeachment the House of Representatives shall organize as a Court of Impeachment. The court shall be presided over by the justice designated by the Supreme Court. The Clerk of the House of Representatives shall act as the Clerk of the Court of Impeachment. The case for impeachment shall be presented by the person or persons, other than a member of the House of Representatives, designated by the Senate.

RULE 3. The Speaker of the House of Representatives is authorized to employ legal counsel, court reporters, stenographers and other personnel necessary to carry out the functions of the Court of Impeachment.

RULE 4. The Presiding Justice shall have the power to make and enforce orders authorized by these rules or by the Court of Impeachment. The court shall have the power, when approved by a majority vote, to compel the attendance of witnesses, to enforce obedience to its orders, to preserve order during the trial, and make orders or adopt supplementary rules that it considers to be conducive to the ends of justice. The Sergeant at Arms, under the direction of the court, may employ the assistance necessary to enforce the orders and rules.

RULE 5. When the House of Representatives is organized as a Court of Impeachment the following oath shall be administered to the members sitting in the trial:

I do solemnly swear (or affirm), that I will faithfully and impartially try the impeachment against

RULE 10. All proceedings of the Court of Impeachment shall be open to the public, including deliberations on the final outcome by members of the court. The court shall decide by a majority vote whether to permit coverage of the proceedings by television or the use of flash bulbs, lights, or other equipment that might disturb the decorum of the court. If any person disrupts the court or demonstrates disrespect of or contempt toward the court, that person may be expelled upon the order of the Presiding Justice.

RULE 11. Counsel for the parties shall be admitted to appear and be heard upon an impeachment as in a trial in the courts of the state. In the trial of impeachment the rules governing the admissibility of evidence, and the order of trial, commencing with the opening statement of counsel, shall be the same as is prescribed and recognized by the courts in the trial of criminal proceedings in the state, except as otherwise provided by these rules or as modified by the Presiding Justice in the interests of efficiency and justice. However, the court may by specific ruling in accordance with Rule 8 receive as evidence any matter it considers to be germane and material to the proceedings or make alterations in the procedure of the trial. The accused may not be required to be present during an impeachment proceeding.

RULE 12. Witnesses shall be sworn in the following form:

Do you solemnly swear (or affirm) that the evidence you shall give in the impeachment trial now pending shall be the truth, the whole truth, and nothing but the truth?

RULE 13. Any member of the Court of Impeachment may address a question to a witness, offer a motion or offer an order. Except for a motion to recess or adjourn or a challenge by a member of the court to a ruling of the Presiding Justice, each question, motion, or order shall be submitted in writing to the Presiding Justice and the Presiding Justice shall present the matter at the appropriate time.

RULE 14. On the final question whether the impeachment is sustained, the vote shall be taken separately on each Article of Impeachment. If an article is not sustained by a vote of two-thirds of the members of the Court of Impeachment, a judgment of not guilty shall be entered as to that article and if it is sustained by the required vote, a

judgment of guilty shall be entered as to that article. The impeachment is not sustained unless at least one article is sustained by two-thirds of the members of the court.

RULE 15. To the extent that they do not conflict with these rules and can be made applicable to an impeachment proceeding, the Uniform Rules of the Alaska State Legislature shall apply to impeachment proceedings, except a call of the house may not be ordered while the body is sitting as a Court of Impeachment.

TBC:ojb
J16/025

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

Fax: (907) 465-2520

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

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

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.¹

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

¹ 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).

became sections 25 and 26 of Article III,² 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:

² 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.

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.

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.³ *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.⁴

Nowhere in the convention minutes is there any discussion regarding removal of a regent.⁵ 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

³ 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.

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

⁵ 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.

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 years⁶ 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

⁶ 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
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February 2, 2007
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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.⁷

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

⁷ 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.

**Official Minutes
Board of Regents
Emergency Meeting of the Full Board
Tuesday, January 23, 2007
VIA AUDIOCONFERENCE**

Regents Present:

Mary K. Hughes, Chair
Cynthia Henry, Vice Chair
Michael Snowden, Secretary
Jacob Gondek
Robert Martin
Brian D. Rogers
Joseph E. Usibelli, Jr.

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Regents Absent:

Timothy C. Brady
James Hayes
Carl Marrs, Treasurer
Frances H. Rose

Others Present:

Jeannie D. Phillips, Executive Officer, Board of Regents

I. Call to Order

Regent Hughes called the meeting to order at 2:05 p.m.

II. Adoption of Agenda

Regent Rogers moved, seconded by Regent Martin, and unanimously approved that:

PASSED

"The Board of Regents adopts the agenda as presented.

- I. Call to Order**
- II. Adoption of Agenda**
- III. Executive Session regarding Personnel Matters**
- IV. Adjourn**

This motion is effective January 23, 2007."

**Official Minutes
Board of Regents
Annual Retreat
January 19-20, 2007
Anchorage, Alaska**

Regents Present:

Mary K. Hughes, Chair
Cynthia Henry, Vice Chair
Michael Snowden, Secretary
Carl Marrs, Treasurer
Timothy C. Brady
Jacob Gondek
Robert Martin
Brian D. Rogers
Frances H. Rose
Joseph E. Usibelli, Jr.

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Regents Absent:

James Hayes

Others Present:

Jeannie D. Phillips, Executive Officer, Board of Regents

I. Call to Order

Chair Hughes called the meeting to order at 9:09 a.m. on Friday, January 19, 2007.

II. Adoption of Agenda

Regent Martin moved, seconded by Regent Rogers, and passed unanimously that:

PASSED

"The Board of Regents adopts the agenda as presented.

- I. Call to Order**
- II. Adoption of Agenda**
- III. Formal Approval for the UAF College of Rural & Community Development (CRCD) Campus Master Plans**
- IV. Retreat Discussion**
- V. Adjourn**

This motion is effective January 19, 2007."

**Official Minutes
Board of Regents
Annual Meeting of the Full Board
December 6-7, 2006
Fairbanks, Alaska**

Regents Present:

Mary K. Hughes, Chair
Joseph E. Usibelli, Jr., Vice Chair
Cynthia Henry, Secretary
Timothy C. Brady – attended on December 7, 2006
Jacob Gondek
James C. Hayes
Brian D. Rogers
Frances H. Rose
Michael Snowden

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Regents Absent:

Carl Marrs, Treasurer
Robert Martin

Others Present:

Steve Jones, Chancellor, University of Alaska Fairbanks
Elaine Maimon, Chancellor, University of Alaska Anchorage
John Pugh, Chancellor, University of Alaska Southeast
Roger Brunner, General Counsel
Craig Dorman, Vice President for Academic Affairs & Research
Jim Johnsen, Vice President for Administration
Wendy Redman, Vice President for University Relations
Beth Behner, Associate Vice President for Human Resources
Pat Pitney, Associate Vice President for Planning and Budget Development
Richard Schointuch, Associate Vice President for Facilities
Michelle Rizk, Director, Budget Development
Kate Ripley, Director, Public Affairs
Dave Read, Director, Internal Audit
Jeannie D. Phillips, Executive Officer, Board of Regents
Barbara A. Nilsen, Coordinator, Board of Regents

I. Call to Order

Chair Hughes called the meeting to order at 8:10 a.m. on December 6, 2006.

II. Adoption of Agenda

Regent Rose moved, seconded by Regent Rogers, and unanimously passed as amended that:

**Official Minutes
Board of Regents
Meeting of the Full Board
November 1, 2006
Anchorage, Alaska**

Regents Present:

Mary K. Hughes, Chair
Cynthia Henry, Secretary
Carl Marrs, Treasurer
Timothy C. Brady – via audioconference
James C. Hayes
Robert Martin – arrived at 10:18 a.m.
Brian D. Rogers – via audioconference
Frances H. Rose
Michael Snowden

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Regents Absent:

Joseph E. Usibelli, Jr., Vice Chair
Jacob Gondek

Others Present:

Steve Jones, Chancellor, University of Alaska Fairbanks
Elaine Maimon, Chancellor, University of Alaska Anchorage
John Pugh, Chancellor, University of Alaska Southeast
Roger Brunner, General Counsel
Craig Dorman, Vice President for Academic Affairs & Research
Jim Johnsen, Vice President for Administration
Wendy Redman, Vice President for University Relations
Beth Behner, Associate Vice President for Human Resources
Pat Pitney, Associate Vice President for Planning and Budget Development
Richard Schointuch, Associate Vice President for Facilities
Michelle Rizk, Director, Budget Development
Kate Ripley, Director, Public Affairs
Dave Read, Director, Internal Audit
Myron Dosch, Controller
Jeannie D. Phillips, Executive Officer, Board of Regents
Barbara A. Nilsen, Coordinator, Board of Regents

I. Call to Order

Chair Hughes called the meeting to order at 8:06 a.m.

**Official Minutes
Board of Regents
Emergency Meeting of the Full Board
October 6, 2006
VIA AUDIOCONFERENCE**

Regents Present:

Mary K. Hughes, Chair
Joseph E. Usibelli, Jr., Vice Chair
Cynthia Henry, Secretary
Carl Marrs, Treasurer
Timothy C. Brady
James C. Hayes
Brian D. Rogers
Frances H. Rose
Michael Snowden

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Regents Absent:

Jacob Gondek
Robert Martin

Others Present:

Roger Brunner, General Counsel
Michael Hostina, Associate General Counsel
Wendy Redman, Vice President for University Relations
Beth Behner, Associate Vice President for Human Resources
Jeannie D. Phillips, Executive Officer, Board of Regents

I. Call to Order

Chair Hughes called the meeting to order at 1:30 p.m.

II. Adoption of Agenda

Regent Rogers moved, seconded by Regent Usibelli, and unanimously passed that:

PASSED

"The Board of Regents adopts the agenda as presented.

- I. Call to Order**
- II. Adoption of Agenda**
- III. Executive Session – Status Report/Notification**
- IV. Adjourn**

This motion is effective October 6, 2006."

**Official Minutes
Board of Regents
Meeting of the Full Board
September 21-22, 2006
Anchorage, Alaska**

Regents Present:

Mary K. Hughes, Chair
Joseph E. Usibelli, Jr.
Cynthia Henry, Secretary
Carl Marrs, Treasurer -- arrived 1:20 p.m.
Timothy C. Brady
Jacob Gondek
James C. Hayes
Robert Martin -- arrived 9:44 a.m.
Brian D. Rogers
Frances H. Rose
Michael Snowden

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Others Present:

Steve Jones, Chancellor, University of Alaska Fairbanks
Elaine Maimon, Chancellor, University of Alaska Anchorage
John Pugh, Chancellor, University of Alaska Southeast
Roger Brunner, General Counsel
Craig Dorman, Vice President for Academic Affairs & Research
Jim Johnsen, Vice President for Administration
Wendy Redman, Vice President for University Relations
Pat Pitney, Associate Vice President for Planning and Budget Development
Richard Schointuch, Associate Vice President for Facilities
Michelle Rizk, Director, Budget Development
Kate Ripley, Director, Public Affairs
Jeannie D. Phillips, Executive Officer, Board of Regents
Barbara A. Nilsen, Coordinator, Board of Regents

I. Call to Order

Chair Hughes called the meeting to order at 8:10 a.m. on Thursday, September 21, 2006.

II. Adoption of Agenda

Regent Rogers moved, seconded by Regent Usibelli, and passed as amended that:

**Official Minutes
Board of Regents
Special Meeting of the Full Board
Tuesday, August 8, 2006; 1:30 p.m. – 3:30 p.m.**

VIA AUDIOCONFERENCE

Regents Present:

Mary K. Hughes, Chair
Joseph E. Usibelli, Jr., Vice Chair
Cynthia Henry, Secretary
Timothy C. Brady
Jacob Gondek
Robert Martin
Brian D. Rogers
Frances H. Rose
Michael Snowden

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Regents Absent:

James C. Hayes
Carl Marrs, Treasurer

Others Present:

Steve Jones, Chancellor, UAF
Elaine Maimon, Chancellor, UAA
John Pugh, Chancellor, UAS
Roger Brunner, General Counsel
Jim Johnsen, Vice President for Administration
Pat Pitney, Associate Vice President for Planning and Budget Development
Richard Schointuch, Associate Vice President for Facilities
Kate Ripley, Director, Public Affairs
Jeannie D. Phillips, Executive Officer, Board of Regents
Barbara A. Nilsen, Coordinator, Board of Regents

I. Call to Order

Regent Hughes called the meeting to order at 1:30 p.m.

II. Adoption of Agenda

Regent Rogers moved, seconded by Regent Henry, and passed that:

**Official Minutes
Board of Regents
Meeting of the Full Board
June 7-8, 2006
Kodiak College
Kodiak, Alaska**

Regents Present:

Mary K. Hughes, Chair
Joseph E. Usibelli, Jr., Vice Chair
Cynthia Henry, Secretary
Carl Marrs., Treasurer
Timothy C. Brady
Jacob Gondek
Robert Martin
Brian D. Rogers
Frances H. Rose
Michael Snowden

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Regents Absent:

James C. Hayes

Others Present:

Steve Jones, Chancellor, UAF
Elaine Maimon, Chancellor, UAA
John Pugh, Chancellor, UAS
Roger Brunner, General Counsel
Craig Dorman, Vice President for Academic Affairs and Research
Jim Johnsen, Vice President for Administration
Wendy Redman, Vice President for University Relations
Pat Pitney, Associate Vice President for Planning and Budget Development
Richard Schointuch, Associate Vice President for Facilities
Kate Ripley, Director, Public Affairs
Jeannie D. Phillips, Executive Officer, Board of Regents
Barbara A. Nilsen, Coordinator, Board of Regents

I. Call to Order

Chair Hughes called the meeting to order at 8:05 a.m. on Wednesday, June 7, 2006.

II. Adoption of Agenda

Regent Marrs moved, seconded by Regent Rogers, and approved as amended that:

**Official Minutes
Board of Regents
Meeting of the Full Board
April 11, 2006; Kotzebue, Alaska
April 12-13, 2006; Nome, Alaska**

Regents Present:

Mary K. Hughes, Chair
Cynthia Henry, Secretary
Carl Marrs., Treasurer
Jacob Gondek
Robert Martin – via audioconference
Brian D. Rogers
Michael Snowden

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Regents Absent:

Joseph E. Usibelli, Jr., Vice Chair
Timothy C. Brady
James C. Hayes
Frances H. Rose

Others Present:

Steve Jones, Chancellor, UAF
Elaine Maimon, Chancellor, UAA
John Pugh, Chancellor UAS
Roger Brunner, General Counsel
Joseph M. Beedle, Vice President for Finance – via audioconference
Craig Dorman, Vice President for Academic Affairs and Research
Jim Johnsen, Vice President for Faculty and Staff Relations
Steve Smith, Chief Information Technology Officer
Richard Schointuch, Associate Vice President for Facilities
Mari Montgomery, Director, Land Management
Kate Ripley, Director, Public Affairs
Jeannie D. Phillips, Executive Officer, Board of Regents
Barbara A. Nilsen, Coordinator, Board of Regents

I. Call to Order

Chair Hughes called the meeting to order at 1:30 p.m. on Tuesday, April 11, 2006, in the Northwest Arctic Borough Assembly Chambers, Kotzebue, Alaska.

II. Adoption of Agenda

Regent Rogers moved, seconded by Regent Marrs, and passed that:

**Official Minutes
Board of Regents
Meeting of the Full Board
February 15-16, 2006
Juneau, Alaska**

Regents Present:

Mary K. Hughes, Chair
Joseph E. Usibelli, Jr., Vice Chair
Cynthia Henry, Secretary
Carl Marrs., Treasurer
Timothy C. Brady
Jacob Gondek
James C. Hayes
Robert Martin
Brian D. Rogers
Michael Snowden

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Regents Absent:

Frances H. Rose

Others Present:

Steve Jones, Chancellor, UAF
Elaine Maimon, Chancellor, UAA
John Pugh, Chancellor UAS
Roger Brunner, General Counsel
Joseph Beedle, Vice President for Finance
Jim Johnsen, Vice President for Faculty and Staff Relations
Wendy Redman, Vice President for University Relations
Pat Pitney, Associate Vice President for Budget and Planning
Richard Schointuch, Associate Vice President for Facilities
Pete Kelly, Director, Government Relations
Kate Ripley, Director, Public Affairs
Jeannie D. Phillips, Executive Officer, Board of Regents
Barbara A. Nilsen, Coordinator, Board of Regents

I. Call to Order

Chair Hughes called the meeting to order at 8:03 a.m. on Wednesday, February 15, 2006.

II. Adoption of Agenda

Regent Snowden moved, seconded by Regent Rogers, and approved that:

**Official Minutes
Board of Regents
Annual Retreat of the Full Board
January 20-21, 2006
Anchorage, Alaska**

Regents Present:

Mary K. Hughes, Chair
Joseph E. Usibelli, Jr., Vice Chair
Cynthia Henry, Secretary
Carl Marrs, Treasurer
Timothy C. Brady
Jacob Gondek
Robert Martin
Brian D. Rogers
Frances H. Rose
Michael Snowden

Mark R. Hamilton, Chief Executive Officer and President, University of Alaska

Regents Absent:

James Hayes

Others Present:

Jeannie D. Phillips, Executive Officer, Board of Regents

I. Call to Order

Chair Hughes called the meeting to order at 1:15 p.m. on Friday, January 20, 2006.

II. Adoption of Agenda

PASSED

"The Board of Regents adopts the agenda as presented.

- I. Call to Order**
- II. Adoption of Agenda**
- III. Retreat Discussion**
- IV. Adjourn**

This motion is effective January 20, 2006."

III. Retreat Discussion

Members of the Board of Regents discussed matters of importance and interest regarding the University of Alaska.

IV. Adjourn

Chair Hughes adjourned the meeting at 2:00 p.m. on Saturday, January 21, 2006.

FAIRBANKS
Daily News - Miner

FOIA requests integral to Hayes investigation

By Staff Report
 Published March 25, 2007

With Part 1 of 4

Much of the material used as the basis for this series of stories on the government's funding of LOVE Social Services was obtained through several requests made under the federal Freedom of Information Act from 2005 through 2007.

[\(View selected documents here\)](#)

The News-Miner made its first FOIA request about LOVE Social Services on Feb. 10, 2005, to the U.S. Department of Housing and Urban Development. The request was for records associated with any HUD funding of the nonprofit for all years. HUD replied on Feb. 24 with a letter saying that the department had a backlog of FOIA requests and that it was, as the law allows, extending the time period under which it had to respond. The letter estimated the department may need up to 60 days to process the News-Miner's request. HUD sent a packet of material on Sept. 23, 2005. Additional information and material was obtained from HUD later, outside of the FOIA process.

A HUD spokesman in Washington, D.C. said on Dec. 13, 2005, that the News-Miner was "in possession of all that we have" on the department's two grants to Love Social Services.

The News-Miner, on July 19, 2005, sent a Freedom of Information Act request to the Department of Justice seeking copies of "all" documents regarding three congressional earmarks through that department's Office of Justice Programs to LOVE Social Services. A follow-up request for further supporting documentation was sent to the department on Nov. 30, 2005. The department responded with material in August 2005 and with more material in December 2005 and January 2006.

A letter accompanying the Justice Department material in January 2006 informed the newspaper that the information constituted the department's final response to the newspaper's first FOIA request and that it had completed the release of "all documents maintained by the Office of Justice Program" regarding the funding of LOVE Social Services.

A second January letter, in response to the News-Miner's second request for information, was accompanied by more material and said "No other documents were located in response to your request."

The News-Miner submitted a third FOIA request to the Justice Department in January of this year to obtain information about how LOVE Social Services was spending grant funds in the months since January 2006. The department provided several documents in late February.

The newspaper also obtained documents, outside of the Freedom of Information Act, from the Internal Revenue Service, the city of Fairbanks, and several agencies of the state of Alaska.

—Rod Boyce

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Daily News - Miner

Nonprofit leaders express dismay at lack of federal oversight

By Sam Bishop

Published March 25, 2007

With Part 1 of 4

WASHINGTON — Leaders in several Fairbanks nonprofit groups say recordkeeping rules for federal grants are stringent, but some also say that federal oversight of compliance with those rules is not fail-safe.

The sometimes spotty oversight may have left an opening through which, if federal prosecutors are correct, managers of the LOVE Social Services mentoring program poured at least \$450,000 into personal and church expenses. The money came from about \$2.9 million that Sen. Ted Stevens earmarked for the after-school mentoring and tutoring program between 2000 and 2004.

Leaders of several nonprofits who run their operations at least in part on federal grants say they are amazed and appalled that the alleged misuse of the LOVE Social Services money went undetected for so long.

"When a nonprofit is highlighted like that, the rest of us cringe," said Coleen Turner, executive director of the Resource Center for Parents and Children, which uses about \$1.5 million annually of mostly federal money passed through the

Views of oversight

Some critics of earmarking have said federal agencies do not police congressionally directed grants as tightly as the grants the agencies distribute using their own competitive procedures. An "earmark," in this case, is language in a congressional act or committee report that directs money to a specific organization rather than a government agency or general area of government enterprise.

Congress, even when it earmarks money, leaves it to the federal agencies to deliver the money. Whether the money is earmarked money or not, people in the nonprofit industry say the accompanying federal agency rules do not vary. Some add, though, that federal program officers don't, or can't, always watch closely. In addition, if the federal agency isn't involved in selecting the grantee, as occurs with earmarked funds, fundamental problems may escape the agency's notice, they say.

"It's not competitive, so they can't rank and score you compared to someone sitting next to you," said Chuck Barber of Grant Results Alaska in Eagle River. He has worked on both earmarked and non-earmarked grants in Alaska for the past decade.

Ultimately, the Resource Center's Turner said, the nonprofit groups themselves must create transparent, financially responsible operations.

"It starts with internal control," she said. "It's not just from the federal level down."

Documents show that LOVE Social Services complied with many of the reporting requirements as it received five grants, two routed through the Department of Housing and Urban Development and three through the U.S. Department

of Justice's Office of Juvenile Justice and Delinquency Prevention.

Organization filed detailed budgets projecting its expenses. It filed one-page financial summaries of its total expenditures quarterly or semiannually. It filed reports about its activities and the number of youths served, also semiannually.

White House Office of Management and Budget guidelines state that independent audits are not required from grant recipients unless they spend more than \$500,000 of federal money in a year. Prior to 2003, the threshold was \$300,000.

Financial documents show that LOVE Social Services' federal grant spending exceeded the audit threshold three years. It spent \$627,000 in 2001 as it set up its program and bought a building from Lily of the Valley Church of Christ in God. It spent \$320,100 in 2002 and \$355,700 in 2003. Federal agencies do not appear to have audits from the nonprofit on file for any of those years, though. Expenditures in subsequent years apparently stayed below the thresholds.

An employee at the Fairbanks accounting firm that LOVE Social Services used for its financial reports declined to answer questions about the nonprofit, saying the firm — David Stephenson CPA — does not comment about its clients.

The quarterly federal reporting forms submitted by LOVE Social Services do not require any financial details beyond the amounts of money drawn on the grant accounts and the dates on which the draws occurred.

That's standard, said Barber, of Grant Results Alaska.

"The actual reports from OJJDP, or from pretty much any federal agency, are pretty minimal," he said.

That doesn't mean nonprofits can avoid record-keeping, though. "You're supposed to maintain the backup" to justify expenditures, he said.

The terms of the Justice Department grants require that LOVE Social Services allow the government to "examine all records, books, papers, or documents related to the grant." The OMB guidelines also state that "records must be available for review or audit" by government officials.

"You really do have to stay on top of all the requirements," said Samantha Castle-Kirstein, executive director of the Fairbanks Community Food Bank.

Doing so costs time, money and even physical space, though. The food bank receives about 600,000 pounds of material annually from the federal Commodity Supplemental Food Program, Castle-Kirstein said. The food, much of which is sent on pallets to villages, comes with a \$30,000 grant, passed through the state, for boxing and warehousing costs.

"We have to know where every can of green beans is today. It's right down to the individual can level," Castle-Kirstein said.

Taber Rehbaum, executive director of Big Brothers-Big Sisters of Fairbanks, said the federal requirements are substantial.

"I totally believe in accountability, but we had to get a whole other file cabinet" to handle the paperwork for a recent \$50,000 non-earmarked federal grant, she said.

The Food Bank, Big Brothers-Big Sisters and the Resource Center also all hire accountants to conduct annual audits.

"Our audits can cost up to \$20,000. It's significant," Turner said.

For some, the audits are required by federal and state rules. Other nonprofit groups, such as the Literacy Council of Alaska, don't hit the spending thresholds that trigger the audit requirements.

Donaldson, the Literacy Council's executive director, said his organization does them anyway but only once every two years.

"The cost of an audit has just gone up and up," he said.

Barber, with Grant Results Alaska, said that satisfying independent auditors is the best way for nonprofits to keep up with federal record-keeping. Even the audit system can be manipulated, though, he said. A nonprofit can decline to accept or acknowledge an audit if it doesn't like the results.

"You can do that three or four times until you find someone" who clears you, he said. Of course, "you have to pay for it each time," he said, so it's an expensive game to play.

Other safety steps

Nonprofit groups have other ways to make sure their money isn't misused, too. Donaldson, of the Literacy Council, and Turner, of the Resource Center, both noted that their rules don't allow bookkeepers to open the mail. That keeps a bookkeeper from doctoring or hiding bank statements, Donaldson said.

Turner said her organization requires formal purchase orders and two signers on checks. She can't sign her own paychecks or reimbursement checks. Barber and Turner also mentioned the oversight provided by local board members.

"If there's anything slightly objectionable, they'll resign from the board," Barber said.

It appears that federal agencies expected LOVE Social Services to establish these sorts of procedures.

Chris Hayes and Don Thomas, two of the founding members of LOVE Social Services, each signed, on March 26, 2002, a 16-point terms of agreement with the Justice Department to begin receiving the grant funds. No. 5 on that list said they certified that LOVE Social Services "will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties."

Barber said he believes some nonprofits linked closely with church groups are at higher risk for financial problems because clergy-directed organizations don't always have a tradition of transparency. LOVE Social Service's founders, board members and several staff members are involved with the Lily of the Valley Church, which also sold the nonprofit its building. Several staff and board members also are related.

"That's sort of a closely held corporation and functioning as a subsidiary," Barber said.

The federal indictment says Jim and Chris Hayes concealed their family relationships from the agencies, but neither the relationships nor the church purchase were any secret to Stevens and many Fairbanksans. The purchase of the old church was clearly stated in the first application to acquire the money from the earmark in the HUD budget.

"My memory is that that was part of the plan, to take that old church and use it to become the center for these children," Stevens said in a March 1 interview.

Such connections may have escaped the notice of the federal program officers overseeing the grants, though.

"The staff, the program officers, are overwhelmed," Barber said. "They tell me that they have 120, 150 grants (each)."

But program officers are good at what they do, he said. "When they actually sit down and look at reports, they offer a lot of scrutiny," he said. "But it is for short periods of time."

Sam Bishop ended his employment with the News-Miner on March 14.

Rehbaum, with Big Brothers-Big Sisters of Fairbanks, said she has been happy with her interaction with grant monitors.

"Our experience has been that we have worked very closely with the federal program officers as far as budgeting, and as far as having any budget revisions approved," she said.

The group, which helps responsible adults befriend and act as mentors for kids, received its \$50,000 grant from the federal Department of Health and Human Services. It won the grant through a competitive process. A federal program officer in Washington, D.C., oversees the grant.

"As busy as he's been, our grant officer has answered questions, planned trainings" and helped work with other organizations, Rehbaum said. "I can't say enough about the oversight."

Sam Bishop ended his employment with the News-Miner on March 14.

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Daily News - Miner

LOVE Social Services strives to maintain community outreach

By Rod Boyce

Published March 25, 2007

With Part 1 of 4

Beneath the federal investigation surrounding Jim and Chris Hayes is a program that aims to help young people from low-income families do better at school and in the job market. The charges against the Hayeses don't take issue with the work reportedly done by the tutors and other volunteers of LOVE Social Services inside the old church building that is the focal point of the government's allegations of wrongdoing.

So what is the aim of LOVE Social Services, which continues to do its work while federal investigators do theirs?

LOVE Social Services representatives declined opportunities to discuss their programs with the News-Miner, but the center's own reports to the federal government describe the center as an organization that "provides work experience and supportive services to low-income youth to enable them to continue or to resume their education. The program stresses raising the educational attainment of youth and increasing their employability through internships and job skills in the workplace."

(Read their own progress reports here)

Other forms submitted to the government by the program describe it as benefiting "African-American low-income youths" and wanting to assist the children of military families.

That aim is consistent with what U.S. Sen. Ted Stevens, the person responsible for directing federal money to LOVE Social Services for five successive years, says he had been told.

"[A]s he left the mayor's job, the one thing he said he wanted to do was try to deal with the problems of the minority kids in this one area of Fairbanks, and he pointed out that a great portion of those kids were sons and daughters of military personnel living off base," Stevens said in an interview last week.

The organization describes its services as follows:

- "Provides tutoring and mentoring for grade school, high school students and adults."
- "Provides health, cultural and educational seminars, lectures and workshops to promote job and study skills training."
- "Provides work and training experience for youth who have dropped out of school."
- "Provides short-term emergency food provisions to students/clients in need of emergency assistance."
- "Provides other agency referrals for students/clients."

Chris Hayes, in a letter as part of a mid-2001 report to the Department of Housing and Urban Development, wrote "Since the tutoring and mentoring program has begun, we have over 28 students register and attend classes regularly on Tuesdays and Thursdays."

In a January 2002 report to HUD, she wrote: "The program has 50 students with approximately 12 tutors."

And in her letter as part of a July 2002 report to HUD: "... we have over 55 students register and attend classes regularly on Tuesdays and Thursdays."

There is no mention of number of students in a January 2003 report, and no subsequent reports appear to exist, according to HUD.

A report from LOVE Social Services to the Justice Department, which provided three of the five grants to the organization, for the first half of 2004 reports a low of 284 student visits for tutoring in February and 1,701 in June, though the latter includes an unspecified number in a summer education and sports camp. Monthly tutoring in the second half of 2004, excluding the summer months, ranged from 423 student visits in October to 790 in September, according to a subsequent filing with the department. Similar numbers were reported for the first half of 2005.

And some of the center's volunteers have received honors. Two of its volunteer tutors were honored in April 2005, at the Flint Hills Golden Heart Awards ceremony, in the "Education Volunteer" category for their work at the center.

One of those volunteers helped, as part of a LOVE Social Services effort, tutor students at Fairbanks Youth Facility. The nonprofit's tutors, usually one or two at a time with two or three students, made once-a-week visits to the youth facility in the 2004-05 and 2005-06 school years, said Bernard Gatewood, superintendent of the youth facility, which houses juveniles ordered into detention by the justice system.

"They were doing basically some tutorial services," Gatewood said, "mostly in areas of mathematics, but there might have been a little bit of English."

Gatewood said he "certainly would have continued" the tutoring program had LOVE Social Services wanted to continue it. The tutoring was a supplement to the education provided by the youth facility's own school, he said.

"If there's an opportunity to get them some extra help, I'm not going to turn it down."

Contact staff writer Rod Boyce at 459-7575 or rboyce@newsminer.com

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FAIRBANKS

Daily News - Miner**How the Hayeses secured government grants, built a church and founded a social service organization, all in the name of LOVE**

By Rod Boyce
Published March 25, 2007

Part 1 of 4

In October 2001, a few days before the election that would select the next mayor of the city of Fairbanks, Jim Hayes sat for an interview with the News-Miner as he prepared to give up the office he had held for nine years. Already he had served longer as mayor than any other person in the city's history.

"I'm going to do some things that have needed to be done for a long time around the house," he said. "I'll be busy with the church, and I'll be doing things with my wife."

About his future, he said, "My steps are ordered by the Lord. I'll get guidance from him."

Hayes' immediate future at the time would see his continued involvement with the new 22,000-square-foot home of the Lily of the Valley Church of God in Christ, of which he became pastor in June 1997.

He would also be involved with LOVE Social Services, a nonprofit tutoring and mentoring center founded in 2000 by Hayes, his wife — who was also the new center's paid executive director — and others, including some family members. Lily of the Valley's old building would become home to the new nonprofit.

Now, however, the former mayor is spending time fending off the federal government's charges that the nonprofit he helped found was an enterprise laced with fraud and deception.

A federal grand jury has issued a lengthy indictment against Hayes and his wife, Murilda "Chris" Hayes, allowing the government to proceed with its claim that the couple misused, through a conspiracy, more than \$450,000 of the nearly \$3 million in federal grants directed to LOVE Social Services Center from 2001 through December 2005.

The indictment, issued one year after more than two dozen federal agents served search warrants at several Fairbanks locations, says the Hayeses misused the funds for personal enrichment and to help pay for construction and operation of the new church building.

The government is seeking the return of up to \$825,000 in cash or property it says is traceable to the alleged crimes.

A review of the record

The dozens of criminal charges — 92 against Chris Hayes, 23 against Jim Hayes — include fraud, theft, conspiracy and money laundering.

If proved true, it would mark a precipitous fall for a prominent Fairbanks couple. Jim Hayes is the former three-term mayor, current member of the University of Alaska Board of Regents, pastor, recipient of the Distinguished Alumnus Award from the University of Alaska Fairbanks Alumni Association, and former consumer fraud investigator

for the state. Chris Hayes is a member of the Alaska Commission on Human Rights and in 2005 was named one of the Women of Distinction in Fairbanks by the Farthest North Girl Scouts Council.

Hayeses pleaded not guilty to the charges last month in U.S. District Court in Fairbanks and have asked that their trial be delayed until September or October due to the complexity of the charges against them.

The indictment is blunt: "The purpose of the conspiracy was to illegally misapply government funds awarded to LSSC for programs to benefit underprivileged youth for the personal benefit of Chris Hayes and James Hayes; and for the construction, furnishing and operation of LOVCOGIC's new church and other LOVCOGIC related religious entities."

It says the Hayeses, among several actions, used the grant money to help pay the \$200,000 shortfall in the \$1.75 million cost of the new church, located at 24th Avenue and South Barnette Street; wrote checks payable to "cash" for the purpose of paying personal bills and bills of the church; altered documents to conceal the grant as the source of those funds; and created false invoices.

And while the full detail of the case has yet to unfold in court, the Daily News-Miner has obtained hundreds of pages of documents from a variety of federal agencies under the federal Freedom of Information Act and from other sources over the past 18 months. The documents show years of problems and potential problems with what LOVE Social Services, chiefly through Chris Hayes, reported to the federal government about its plans for the grants, which constituted virtually all of the nonprofit's income, and with how the government monitored the spending of that money.

(See some of those documents here.)

The review also shows no mention, in any of the documents, of the relationship of Jim and Chris Hayes, their daughter, and Chris Hayes' nephew — all of them repeatedly named in the government paperwork about the grants and all of involved with LOVE Social Services and on the staff of Lily of the Valley Church.

Jim Hayes' attorney, John Murtagh of Anchorage, and Chris Hayes' attorney, federal public defender MJ Haden, declined to comment on the case. Both attorneys were told the general content of the News-Miner's review. Assistant U.S. Attorney Karen Loeffler also declined to comment, citing ethics rules.

What follows today and in the coming days is a look at what the newspaper's review of the public record shows and how that record relates to some of what is mentioned in the grand jury indictment against the Hayeses.

LeeRoy's old church

The weathered 50-by-145-foot building at the corner of 24th Avenue and Barnette Street in South Fairbanks doesn't look like much from the outside. Its white siding walls rise from the ground and are punctuated at regular intervals by a few slender vertical windows. Gone now from its simple, utilitarian architecture is the steeple that had long topped this house of worship that minister LeeRoy Parham and others built in the late 1960s.

The old building, which for so many years vibrated with the singing of the Lily of the Valley Church choir, now is a central point in the federal government's case against Jim Hayes and his wife, Chris. Chris Hayes is the youngest daughter of Parham and his wife, Mazie, the church mother at the time.

First, the government says that the Hayeses inflated the sale price of the old church, which Lily of the Valley Church was selling to LOVE Social Services. The government says the Hayeses, as part of a broad conspiracy with "others known and unknown to the grand jury," overstated the sale price so as to divert enough of the nonprofit's federal funds to complete the initial \$1.4 million financing package for construction of the new and vastly larger Lily of the Valley Church building across the street.

The indictment says Chris Hayes, shortly after receiving word that LOVE Social Services would receive a \$1 million grant from the U.S. Department of Housing and Urban Development, wrote a letter to "Pastor Hayes" — her husband — offering to buy the old Lily of the Valley Church building for \$375,000. The government notes that neither the grant application submitted to HUD nor the sales agreement for the building mentioned the marital relationship between the Hayeses.

As work on the new church progressed, the cost continued to rise. In the end, the total reached \$1.75 million — well more than the expected \$1.4 million cost. Lily of the Valley's total funds — in bank loans, from its assets in a minor account and from the sale of the old church — were more than \$200,000 short.

That's where the old church building, in new life as the home of LOVE Social Services Center, comes in again.

The government alleges that the Hayeses misstated and double-listed projected budget expenses of LOVE Social Services to divert even more of the \$2.9 million in federal money to the new church to cover that shortfall. The renovation of the old church figures prominently in three of the five grants obtained by the nonprofit.

The indictment doesn't mention the proposed renovation. Rather, it includes a general observation that the grant application to the Department of Justice "for the most part, mirrored the activities and programs listed in support of" a previously approved grant from the Department of Housing and Urban Development, the indictment states. "Similarly, the budget request contained in the DOJ grant applications requested funding to cover many expenses already provided for in the HUD grant."

But the public record provides scant indication of what work was done on the old church and shows no government verification that work was completed or even undertaken as proposed. Two people associated with LOVE Social Services declined to answer the News-Miner's questions about the proposed renovation.

Big ideas

Paperwork submitted to HUD in November 2000 by Chris Hayes and Don Thomas — Chris Hayes' nephew and board president of LOVE Social Services at the time — states that \$375,000 of the \$1 million appropriated by Congress just weeks earlier at the direction of U.S. Sen. Ted Stevens would be used to purchase the old Lily of the Valley Church building and that \$150,000 would be used to renovate it.

"The building is a church, which has been in existence since 1969 and now [sic] building a new facility and relocating to another building," reads the cover page of LOVE Social Services' application to HUD. "The LOVE Social Services center will then be able to provide more than the tutoring and mentoring program now in operation to grade school and high school students."

In July 2001, LOVE Social Services submitted an update to HUD that included a letter from Chris Hayes mentioning that a fence would be installed and that the center had plans to repair "a minor foundation problem in the near future. Next year the plan is to renovate the building for functions geared to the LSSC clients."

Another update, from January 2002, says the center "has been in the process of renovation since the center purchased the building it now resides [in] from the Lily of the Valley Church ..." It says the work included the partial renovation of the former church's sanctuary into a classroom and that the next phase of the renovation would include the repair of "some floor structural damage."

In March 2002, Hayes and Thomas submitted paperwork to acquire funds from a second Stevens-generated earmark, this time from the Department of Justice's Office of Juvenile Justice and Delinquency Prevention.

The paperwork listed \$44,100 for building maintenance that was to include roof and foundation repairs, painting and \$20,000 for an elevator lift. A budget notation lists the items as "Necessary repairs to a building which was built in 1959. Safety issue for roof and foundation. Elevator/lift is ADA requirement for disabled children and visitors to have access to reading and recreation area."

Three years later, on May 30, 2005, repairs and renovations — including a different request for elevator funds — appeared again, this time in paperwork submitted by Chris Hayes to the Department of Housing and Urban Development to obtain money under a supplemental earmark obtained by Stevens for fiscal 2005. The paperwork includes a budget sheet that lists several repairs and renovations, including \$13,000 to "Add handicap lift"; \$6,000 to "Paint interior and exterior"; and \$14,600 to "Renovate plumbing, electrical, kitchen, study room."

About two-thirds of that additional \$173,600 grant remained as of mid-January this year, HUD spokesman Brian Sullivan said.

Neither HUD nor the Department of Justice has records showing how much money was actually spent on renovation work. And neither has conducted a review to determine if the money was spent as proposed.

What about ...

What about the elevator, first proposed five years ago, for example?

The LOVE Social Services building still doesn't have one, despite it being noted by the nonprofit as a requirement of the federal Americans with Disabilities Act. The building does have a ramp for use by people with disabilities but has no elevator or lift, said Howard Hornbuckle, who works at LOVE Social Services and who took the News-Miner on a brief tour of the building last month.

Some interior remodeling clearly has occurred, however. The tour of the building did show the center's interior, both the upper and lower levels, to be well-maintained. It includes a small administrative office, an upstairs kitchen area that featured newer white appliances and a downstairs study area — the former church's sanctuary — filled with chairs and long tables and a separate recreation area that includes a pool table.

What about the proposed roof and foundation work and the plumbing and electrical renovations?

The city of Fairbanks has no building permits on file for that or any other work at the old church building for the period covered by all of the federal grants, said Steve Shuttleworth, the head of the city's building department.

"Permits are required anytime you alter a building," he said. "The only time permits aren't required is if you're doing finish work — papering, painting, those types of finishing elements."

"But when you are changing wiring, permits are required. New outlets, new lights — permit required," he said. "Foundation repairs — absolutely required to have a permit."

Shuttleworth said the scope of work outlined by LOVE Social Services in its filings with the federal government would require a permit "anywhere that I am aware of, certainly in Fairbanks. That doesn't fall under any exemption."

Obtaining a permit for work isn't the end of the process; rather, it's the beginning. Permits only allow the work to get under way. Having a permit, Shuttleworth said, means a person would have had to submit plans for review by city engineers and then follow those plans. "Along with that, there's a half a dozen required inspections."

Don Thomas, one of the founding members of LOVE Social Services and who in 2006 is listed as president of the

nonprofit's board on a biennial corporation report filed with the state, said in a mid-February interview that he can't recall what work was done on the roof and foundation during the period of the grants. Thomas also is a deacon at Lily of the Valley Church.

"There was some work done," said Thomas, who owns a design and drafting service. "I'm not sure what was done."

When told the city had no permits on file, he said, "That's odd. They should have permits."

Shuttleworth, told of Thomas' claim, is adamant that the city has nothing. Further, he cites a record of Thomas being uncooperative with the city: The city does have a file on other work done on the church building years before it was transferred to LOVE Social Services, but Thomas, Shuttleworth said, rebuffed five years of phone calls and letters from the city to arrange the required final inspection on that work.

Likewise, Shuttleworth said, Thomas has not requested the required final inspection of the new church's construction, which was completed in 2001.

On to a new life

Jim Hayes began 2002 out of public service but in greater service to his church, which had at that time only recently opened the doors of its new and expansive building across 24th Avenue from the little church that LeeRoy Parham had seen built so long ago to accommodate his own growing Lily of the Valley congregation. The two buildings, and what occurred with and inside them, would occupy a great part of the lives of Jim and Chris Hayes, of several members of their family, and of many others through the ensuing years.

NEXT: What was and wasn't done?

Contact staff writer Rod Boyce at 459-7575 or rboyce@newsminer.com

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FAIRBANKS

Daily News - Miner

From high-speed computers to playground equipment to a new gym floor - - the Hayeses' grant requests covered a gamut of goods

By Rod Boyce
Published March 26, 2007

Part 2 of 4

The glass-enclosed computer lab inside the LOVE Social Services Center has 12 Dell computers, arranged in a horseshoe along three of the lab's four walls. The lab sat empty on one early February afternoon, just before the expected arrival of children at the tutoring and mentoring center in South Fairbanks.

The lab has been around for a few years, helping children and attracting little attention.

Now, however, the small computer lab is one of the more visible items that a Daily News-Miner review of government records raises questions about.

Here's why:

An early 2002 update report from LOVE Social Services to the federal agency that provided it just under \$1 million in to get started says the center "has a completed Computer Laboratory, which has 15 Dell computers ... The center also has available five other computers. Although these computers are older and slower, there are plans to upgrade them."

But other records submitted to the federal government by LOVE Social Services officials show computer purchases — many more than what exist in the lab today — appearing in three later budget proposals as justification for the addition of money already directed to it by Congress at the request of Sen. Ted Stevens.

(Read documents obtained by the News-Miner here)

Duplication of budget items and misrepresentation of budget items on the grant paperwork that LOVE Social Services provided to the government are just two of the government's many claims in its financial fraud case against Jim and Chris Hayes, two of the center's founders who, according to the indictment, worked to deceive federal employees by making "false and misleading certifications and statements" to the Department of Housing and Urban Development and the Department of Justice "to obtain more grant funds while concealing the misapplications ..."

The newspaper's review shows dozens of repeated items, from small ones such as three-hole punches — two of them in paperwork for a 2002 grant and 20 each in paperwork for 2003 and 2004 grants — to big ticket ones such as copy machines, cash registers and paper shredders. It also shows funding for new gym flooring for a building that doesn't have a gym. And the review also raises questions about the timing on the submission of some of the records.

Lab largesse?

The computer lab, one of several dozen items appearing repeatedly on the budget documents submitted to the government, first appears in a November 2000 application, signed by Chris Hayes, to HUD to obtain the \$1 million

approved by Congress just weeks earlier. The application refers to the need to provide "access to computers," with a notation for wiring and equipment. The application does not mention how many computers were being sought, but a financial update — the only one sent to HUD, according to a department official — from February 2001 says \$100,000 had been spent for the purchase of computers.

Computer purchases appear again in 2002 as part of the first grant application to the Justice Department. That application, seeking to acquire additional money approved by another action of Congress, contains two conflicting references for computer equipment purchases: one for \$6,500 for eight computers, with printers, and one for \$8,925 for 10 computers and two printers.

Computers also show up associated with two later Justice Department grant requests, in 2003 and 2004, both submitted by Chris Hayes. A budget worksheet for the 2003 grant includes a reference to \$14,300 for 10 computers and one printer. The worksheet for the 2004 grant contains a \$12,400 budget item for 10 computers and one printer. The Justice Department requests, taken together, seek at least \$33,000 for 28 to 30 computers.

Yet there is nothing in the documents provided by the Justice Department, including in the progress reports submitted by LOVE Social Services, that shows whether the money was spent as proposed.

Not all of the \$1.7 million designated for the center through the department has been spent, however, allowing for the possibility that computer purchases could be made in the future. LOVE Social Services has continued to draw on its Justice Department account, according to a report provided by the department and compiled on Jan. 23 of this year. At that time, LOVE Social Services' most recent withdrawal was for \$20,000 on Jan. 3, leaving a balance \$529,100 in total grant funds channeled to the center through the department.

No references exist, however, in the material supplied to the News-Miner by the Justice Department or HUD to say whether there existed to expand the lab beyond the 15 Dell computers Hayes mentioned in her 2002 report to HUD.

Questionable listings

Several other budget items also appear repeated times through the three Justice Department grant documents. In each of the three budgets proposals, for example, the money provided by Congress was to be used to buy a copy machine: for \$3,900 in 2002, \$2,800 in 2003 and \$2,000 in 2004. There's also a total of \$8,000 in playground equipment listed, with each request saying the money is to be spent on a sandbox, swings, slides and tether balls and poles. The 2003 and 2004 grants include money for the purchase of one van each — \$15,000 in the first grant, \$10,000 in the second one.

Just one combination play set, with two swing seats and a slide, sit outside of the building, however. Only one copy machine was visible on a recent tour of the building. LOVE Social Services has no vans at present, according to Howard Hornbuckle, a LOVE Social Services worker.

Other items among the many that are repeated among the dozens of entries in the "Budget Detail Worksheet" sent to the Justice Department for each grant: 75 clipboards per grant; one postage scale per grant; at least 20 cork bulletin boards in one grant and 10 in the two others; 15 dry erase boards in one grant and 25 boards in the two others; one shredder per grant; one cash register per grant.

The budget proposal for the first HUD grant, for \$1 million, is much less detailed than the proposals written for the Justice Department grants. Its dollar amounts fall under general categories, such as \$65,000 for "Furniture & Office Equipment." HUD provided no other budget detail documents to the News-Miner and has said that the newspaper possesses copies of all HUD material regarding LOVE Social Services.

Hornbuckle, who Jim Hayes designated as his pastoral successor at Lily of the Valley Church in April 2006 should

circumstances lead Hayes to no longer be leading the congregation, declined several times to answer questions about the budgets that the nonprofit submitted to the government. "I can't comment on anything with the case," he said as he showed the News-Miner through the building for a tour on an early February afternoon, before children were expected to arrive. Hornbuckle also has a family connection to the Hayeses — his wife, Tamara, is Chris Hayes' niece and a choir leader at Lily of the Valley.

On a follow-up visit by the News-Miner to the center, a person at the front counter of LOVE Social Services declined to answer questions about the computer lab or to allow a closer look at the lab, which at the time was occupied by two or three small children and one adult.

The person then asked the News-Miner to leave, saying the paper had been unfair in its coverage of the Hayeses and the center. She then locked the front door after the News-Miner left the building.

The mystery gym

The May 2005 grant paperwork that Chris Hayes submitted to HUD to obtain money from the fifth — and, it turns out, final — Stevens-generated grant to LOVE Social Services included one item that caught the particular attention of federal investigators. The center said it wanted to use a portion of the grant to buy some gym flooring.

LOVE Social Services doesn't have a gym.

The new Lily of the Valley Church, across the street, does.

The HUD paperwork submitted by Chris Hayes "did not disclose that the floor was to be placed in the new church rather than the LSSC building," the indictment reads, before continuing on to say that Hayes on Dec. 7, 2005 had a \$10,000 check issued from the HUD grant funds awarded to LOVE Social Services "to pay for the gym floor which had been installed in the new church building."

Nowhere in the material provided to the News-Miner in 2005 by HUD and the Justice Department does LOVE Social Services indicate it intends to build a gym in the former church building. Rather, an unsigned update statement from LOVE Social Services to the Justice Department and covering the second half of 2004 indicates the center was enjoying a satisfactory relationship with Lily of the Valley Church to use facilities there.

"... it has enabled our youth in the summer education camp to use the [outdoor] court for basketball after their academic programs," the center's statement reads. "The church also has an indoor gym; we use [it] for physical education activities."

Two days after the check was reportedly written to pay for the gym floor, a plaque went up in the church's gym, according to the indictment. It reads "The Pastor James C. Hayes, Fellowship Hall" and, according to the indictment, carries the following words: "Thank You For Your Contributions towards the Gymnasium Floor!"

NEXT: The pay at the top

Contact staff writer Rod Boyce at 459-7575 or rboyce@newsminer.com

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Daily News - Miner

The pay at the top: Chris Hayes as executive director of LOVE Social Services and in the midst of a federal criminal case

By Rod Boyce
Published March 27, 2007

Part 3 of 4

As the year 2000 closed, little more than 10 months would remain before Jim Hayes would give up the \$75,000 annual salary he was drawing as mayor of the city of Fairbanks. His nine years as mayor, six of them with that full-time salary, would be coming to an end. He would be 55 when he walked out from behind the mayor's desk for the last time.

Hayes' wife, Chris, had worked as secretary to the Fairbanks schools superintendent for more than four years in the mid-1990s and was working at Alaska Communications Systems while her husband's time at City Hall wound down. The couple's only other sources of income at the time were from Lily of the Valley Church of God in Christ, where Jim Hayes was and is pastor; their annual dividends from the Alaska Permanent Fund; and interest earned from two savings accounts, according to Jim Hayes' financial disclosure statement filed with the Alaska Public Offices Commission for the year 2000.

Chris Hayes would soon have a new job, however, that would compensate for the loss of her husband's mayoral income. She would become executive director of LOVE Social Services Center, a nonprofit tutoring and mentoring program she, along with others, helped establish.

That job, paid for with federal taxpayer funds through a series of congressional earmarks, now finds her at the center of a complicated federal criminal case that alleges she and her husband misappropriated hundreds of thousands of dollars in federal aid directed to their center.

But just how much taxpayer money was she being paid as the center's executive director?

The public record is unclear and incomplete.

[\(View related public records here\)](#)

[\(View previous stories in this special report\)](#)

Gaps with the IRS

LOVE Social Services' public filings with the Internal Revenue Service, which provided them to the Daily News-Miner, do not specify how much Chris Hayes was paid or list her as a paid employee, though the IRS clearly requires the information and that it be part of the public record. Other nonprofits in the Fairbanks area — Big Brothers/Big Sisters, the Literacy Council of Alaska and the Fairbanks Community Food Bank, for example — list the names and compensation of their officers and key employees on the federal tax forms, Form 990.

Also with LOVE Social Services.

The nonprofit's Form 990 for 2003, signed by Chris Hayes and carrying her title of executive director, lists "compensation of officers, directors, etc." as \$28,546, and a later section of the form indicates that that pay is for board member Sharen Miller. A separate line for "Other salaries and wages" lists \$75,371 and includes a breakdown of about \$100,000 for management, though there is no reference to how or whom that money was allocated.

Nor is Hayes included in a later section of the 2003 Form 990 that requires the listing, by name, of all "officers, directors, trustees and key employees" and the compensation given to each of those people. The 2003 form lists only five board members, with Miller the only one noted as being paid. IRS instructions for that year define "executive director," the paid position held by Hayes, as among the positions that require the listing of the job-holder's name and pay.

The 2004 Form 990, also signed by Hayes, is similarly absent of detailed information about Hayes' pay at LOVE Social Services. No dollar amount is listed where pay for officers and directors is to be noted, though a \$63,142 entry appears in the "Management and general" category of the "Other salaries and wages" line. Again, there is no detailing of the number of positions that that dollar amount encompasses. Hayes' name is also missing from the later section that requires the listing and pay of all directors and key employees, wording that the IRS again defines as including the position of executive director, the job Hayes continued to hold at LOVE Social Services.

Failure to provide the information to the IRS subjects a tax-exempt organization to penalties for submitting an incomplete return.

As for other tax years, LOVE Social Services' IRS forms for 2001, 2002 and 2005 could not be obtained, and the form for 2006 is not due yet. The IRS, in a July 8, 2005 letter to the News-Miner, said the nonprofit's 2001 and 2002 forms "are unavailable." The agency would not explain why, though it did offer a general array of possible reasons. The IRS sent a similar letter to the newspaper on Feb. 12 of this year regarding the 2005 form. An IRS spokeswoman said the agency's regulations prevent the release of information about whether or not the Form 990 had been filed for those years.

Most tax-exempt organizations must file a Form 990 each year; the only exception is for groups that have less than \$25,000 in gross receipts in a given year. LOVE Social Services exceeded that threshold from 2001 forward. Forms 990 must, by law, be made available to the public by the tax-exempt organization. They can also be provided by the IRS.

Howard Hornbuckle, with LOVE Social Services, said he doesn't know if IRS forms were filed for 2001 or 2002.

"We don't have the tax form that you are looking for 2001 and 2002 here on file. The feds took all of that paperwork with them, so you can contact them if you need to look at the documents," Hornbuckle said in a voice mail message to the News-Miner earlier this year. He was referring to the January 2006 raid by agents from the Justice Department, HUD, the FBI and the IRS who served search warrants at the center, at the Lily of the Valley Church and at the Hayeses' Doyon Estates home. He gave a similar response in late February when asked about the group's Form 990 for 2005.

A tangle of numbers

The federal indictment lists Chris Hayes' annual salary as executive director of LOVE Social Services as approximately \$60,000, but public records obtained by the News-Miner from the federal departments that passed along nearly \$3 million in grants to LOVE Social Services provide a confusing picture that doesn't cleanly match the indictment's assertion.

Documents related to three Justice Department grants, analyzed together, indicate that LOVE Social Services would

have been paying its executive director \$400,706 through the life of the earmarks secured by Sen. Ted Stevens.

The total life of the Justice grants itself varies, however: LOVE Social Services indicated the grants would pay for operations for a total of five years and three months, meaning Hayes' salary would average about \$76,300 annually. The Justice Department, though, lists the life span of the grants as six years, meaning Hayes' pay would be just under \$66,800.

A Justice Department spokeswoman declined to comment when asked about Hayes' pay and how it was portrayed to the department.

"We cannot comment on a case when charges are pending," said Joan LaRocca, with the department's Office of Justice Programs, which supplied the money to LOVE Social Services as dictated by Congress.

The LOVE Social Services grant requests to the Justice Department, obtained by the Daily News-Miner under the federal Freedom of Information Act, give some idea about Hayes' salary as the agency's executive director:

- The budget worksheet for the first of the three Justice Department grants lists a salary of \$50,328 for the director for each of two years and gives a total of \$100,706.
- The budget worksheet for the second grant, to cover the period June 30, 2003 to June 30, 2006, lists a salary of \$60,000 for the director for three years and gives a total of \$180,000 for that position. The reported funding period for this grant overlaps the funding of the first grant for 10 months, yet there is no associated reduction in the listed pay for Hayes and the two other paid positions listed on the applications to compensate for that overlap.
- The budget worksheet for the third grant, to cover the period June 1, 2004 through July 31, 2007, lists the director's salary of \$60,000 for each of two years and gives a total of \$120,000. The funding period for this grant overlaps the period of the second grant for 25 months, yet again there is no offsetting reduction in the proposed personnel budget for either of the overlapping grants.

Hayes was also to be paid as the center's executive director through a HUD grant obtained, by a Stevens earmark, prior to approval of the Justice Department funds. Congress provided the first, in the amount of \$1 million, for fiscal 2001 and a second, for \$175,000, for fiscal 2005. Chris Hayes signed both funding requests.

The paperwork submitted to HUD on Nov. 22, 2000 by LOVE Social Services lists a \$40,000 salary for an "admin," with that amount including expenses, travel and training. The amount was listed on a budget plan for the year 2001. There is no indication, in the information provided by HUD, that any of the second HUD grant was to be used for personnel expenses. A HUD official has said that the department conducted no reviews to see if any of the money it awarded to LOVE Social Services was spent as the nonprofit's leaders proposed in the paperwork they submitted to obtain the funds.

Payment postscript

Since 2003, the Hayeses' financial disclosure statements filed with the state have shown the same two employers: Lily of the Valley Church for Jim Hayes and LOVE Social Services for Chris Hayes. He has been filing the forms annually since leaving the mayor's job and being appointed to the University of Alaska Board of Regents; she has been filing them since her appointment to the Alaska Workforce Investment Board and the Alaska Human Rights Commission.

Neither form tells much about their income, however, since actual pay is not required to be listed. The form only asks for the listing of employers who pay a person more than \$5,000. The Hayeses also note that they receive payments from retirement programs, though, again, the amount is not required to be listed.

Chris Hayes, however, has the potential for a continual payment from the church. In April 2006, Jim Hayes signed a form, filed with the state Recorder's Office in Fairbanks, that designated his pastoral successor upon his incapacitation, resignation, removal or death."

The same form also included the following: "Upon request of Pastor James C. Hayes and in recognition of the establishment of this church by LeeRoy Parham, the new pastor is requested to set aside an honorarium for Murilda Chris Hayes until her remarriage or death."

NEXT: The government's loose leash

Contact staff writer Rod Boyce at 459-7575 or by e-mail at rboyce@newsminer.com.

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FAIRBANKS
Daily News - Miner

Most tax-exempt organization information is public

By Rod Boyce
 Published March 27, 2007

With Part 3 of 4

Information about the funding and expenses of federally tax-exempt organizations is, in most circumstances, required by law to be public.

Tax-exempt organizations that have annual gross receipts in excess of \$25,000 in a tax year must file an "information return" with the Internal Revenue Service for that year. The return, not really a tax return but often referred to as such, is known as a Form 990 and requires the reporting of revenue sources; expenses such as salaries and wages, supplies, travel, and legal fees; and a statement of program accomplishments. It also asks for the names of, and compensation given to, "officers, directors, trustees and key employees" and requires the answering of dozens of other questions. The names and addresses of contributors to nonprofit organizations are not required to be listed.

(View Forms 990 and other LOVE Social Services documents here)

The Form 990 is a public document that the tax-exempt organization must make available on demand.

Instructions for Form 990, for the 2006 tax year and for several preceding tax years, say a tax-exempt organization must:

- "Make its application for recognition of exemption and its annual information returns available for public inspection without charge at its principal, regional and district offices during regular business hours."
- "Make each annual information return available for a period of three years beginning on the date the return is required to be filed (determined with regard to any extension of time for filing) or is actually filed, whichever is later."
- "Provide a copy without charge, other than a reasonable fee for reproduction and actual postage costs, of all or any part of any application or return required to be made available for public inspection to any individual who makes a request for such copy in person or in writing (except as provided in Regulations sections 301.6104(d)-2 and -3)."

The rules also say that the organization may have an employee present during the inspection and that anyone wanting to inspect the records must be allowed "to take notes freely" during the inspection.

Requests made in person and during regular business hours for a copy of Form 990 must be fulfilled on the day of the request except in unusual circumstances, which the IRS defines as having the records request cause an unreasonable burden on the organization.

In those circumstances, the organization must provide the record on the business day immediately following the day the unusual circumstance ends or the fifth business day after the request, whichever occurs first.

The "application for recognition of exemption" referred to in the instructions for Form 990 are Form 1023 and Form 1024. Those forms and all supporting material required by the IRS and any additional material submitted with the

application for exemption are also public, as are any documents or letters from the IRS in response to the application, as long as the application was filed before July 15, 1987.

Forms 990 are also available through some online services. One popular source is GuideStar.org, which makes the Forms 990 available without charge. GuideStar is a service provided, according to its Web site, by Philanthropic Research Inc., which is also a federally tax-exempt organization. "PRI's mission is to revolutionize philanthropy and nonprofit practice with information," it says on its Web site.

GuideStar, funded by a variety of foundations, says it gets its financial information from the "IRS Business Master File of exempt organizations and IRS Forms 990, 990-EZ, and 990-PF. Other information, such as an organization's programs, accomplishments, and goals, are obtained directly from the organization or from the organization's Form 990 or 990-EZ."

—Red Boyce

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Daily News - Miner

Much of budget devoted to personnel costs

By Staff Report
Published March 27, 2007

With Part 3 of 4

Total personnel costs — including travel, benefits and board member expenses — proposed by LOVE Social Services in paperwork for the five grants through the Department of Housing and Urban Development and the Department of Justice accounted for about \$1.2 million of the \$2.9 million awarded to the agency for the 2001-2007 period the grants were intended to cover.

Chris Hayes was the highest paid employee at the nonprofit center, which also employed a student services coordinator and administrative assistant. Members of the LOVE Social Services board of directors, which at various times included Jim Hayes; his daughter, LaNene Scott; and Chris Hayes' nephew, Don Thomas, were not paid but did make several trips to cities throughout the Lower 48 and paid for through the federal grant funds.

[\(View budget documents here\)](#)

The Hayeses, Scott and Thomas were the four founding incorporators of LOVE Social Services and all signed state incorporation papers on Sept. 17, 2000. Most of the travel budget, which included air fare, hotel, meals and transportation, was to be used for travel by board members and Chris Hayes, though mentors and tutors were sometimes listed as joining them. Training was listed as the purpose of nearly all of the travel.

An undated memo to Hayes from the Office of the Comptroller in the Office of Justice Programs provided a breakdown of how much the department had authorized be spent in each of a variety of categories, among them \$121,457 for travel, \$790,726 for personnel, \$86,668 for benefits.

The center's director, Hayes, is budgeted for several trips in the Justice Department grant applications: The first grant, in 2002, includes trips to San Francisco, Seattle, Juneau and two each to Anchorage and Washington, D.C.; the second grant includes travel to Los Angeles, Juneau, and an unnamed location in Oregon, three trips to Anchorage and two trips to Washington, D.C.; the third Justice Department grant details travel for the director to Los Angeles, Juneau, Washington, D.C., and twice to Anchorage.

The training and travel budget is listed as \$30,000 for the 2001 HUD grant, with the application noting that the money was for the training and travel of board members. It makes no reference to Chris Hayes, who was the center's director but not a board member. No travel is proposed in the 2005 grant that LOVE Social Services obtained from HUD at the direction of Congress. The public record offers only a partial picture of what travel may actually have occurred, however. The Form 990 that tax-exempt organizations such as LOVE Social Services must file each year require the reporting of travel expenses. The IRS only has records of LOVE Social Services for 2003 and 2004, with the 2003 filing showing \$21,575 on travel and the 2004 filing reporting \$21,593 for travel.

—Rod Boyce

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Daily News - Miner

Federal earmarks help support Alaska programs. Too often, how that money is used goes unchecked

By Rod Boyce and Sam Bishop
Published March 28, 2007

Part 4 of 4

The federal indictment against Jim and Chris Hayes, for all its detail, is silent on the government's own role in what it alleges transpired between the Hayeses, their church and the nonprofit center in which they are so central.

LOVE Social Services received its federal money, nearly \$3 million, on the recommendation of Sen. Ted Stevens. Using language attached to annual spending bills, Stevens directed the Department of Justice and the Department of Housing and Urban Development to provide the grants to the nonprofit group founded by the former Fairbanks mayor and run by his wife.

Such directions are called "earmarks," and, in the nation's capital, they've grown as ubiquitous as cherry blossoms in spring.

[\(View the LOVE Social Services earmarks and related documents here\)](#)

The practice has been the subject of growing scorn by people in and out of government not only for increasing the government's spending but also for frittering away the taxpayers' money.

Stevens, though, ardently defends earmarks and his judgment in using several to direct money to LOVE Social Services while he was chairman of the Senate Appropriations Committee during the first half of this decade.

Federal agencies often neglect Alaska, Stevens said in a March 1 interview about his role in the situation.

"Someone has to call their attention to a need in Alaska and we do that through this earmark in a 'report,'" he said.

Once the agencies hand out the money, it's their job to monitor it, he said.

"When I was home in Fairbanks, I heard a lot about it," Stevens said, referring to discussions about the Hayeses' program while visiting during the mid-February congressional break.

"A lot of people seem to think I should have paid more attention, etc., etc., and I tried to tell them 'That's not my job,'" he said.

But critics say the federal agencies also seem disinclined to view it as their job when it comes to congressionally earmarked grants.

If accurate, the opposing assertions would seem to leave no one diligently checking on a grant-making system that prosecutors say allowed the Hayeses to misspend at least \$425,000 in taxpayer money over the course of five years.

Cascade of criticism

The Justice Department's Office of Justice Programs, through which three of the five LOVE Social Services earmarks was criticized in a 2002 report by the Government Accountability Office for its poor record of grant monitoring. The GAO is an investigative agency of Congress.

"Our work has shown long-standing problems with OJP grant monitoring and has begun to raise questions about the methodological rigor of some of OJP's impact evaluation studies," wrote Laurie Ekstrand, the GAO's director of justice issues, in a statement to a House subcommittee in 2002.

The following year, in October 2003, a report from the White House Task Force for Disadvantaged Youth delivered a report to President Bush that criticized congressional earmarks and said earmarks for programs for disadvantaged youth were "an especially problematic situation." Stevens' 2003 earmark to LOVE Social Services is among the many earmarks nationwide listed in the report's appendix.

"Earmarked programs do not receive the oversight that enables agencies to make sure they are actually helping youth, achieving their goals, and making wise use of limited funds. The earmark process also keeps federal agencies, charged with implementing the statutes, from making funding decisions based on a coordinated, identified need to address a specific problem," the report said.

Another report, in December 2005 from a federal advisory committee, called for the elimination of all earmarks to the Office of Juvenile Justice and Delinquency Prevention, the agency that handled three LOVE Social Services grants totaling \$1.7 million.

"Besides taking a drastic portion of federal program appropriations, earmarked programs are not held accountable for effectiveness (or ineffectiveness)," said the report, which was given to the president and Congress by the Federal Advisory Committee on Juvenile Justice.

"Because these programs bypass the competitive grant process by going directly to a member of Congress, they do not have to meet performance standards nor demonstrate that they work," the committee said.

"In fact, it is often difficult for federal agencies to monitor earmarked programs as program staff believe they are not subject to agency oversight because their funding came directly from Congress," it added.

Stevens disagreed strongly with such assertions.

An earmark of the sort given LOVE Social Services is not law; it is a recommendation to fund an organization, he said.

"It makes them eligible to participate in the program and in effect urges the agency to favorably consider an application for it. But it is not a mandate. Very clearly it is not a mandate," he said.

Agencies often need that encouragement, he said. "The problem is, they've got expertise but they never go to Alaska," Stevens said.

Stevens acknowledged that Alaska nonprofits and other organizations can apply for grants like any other group in the nation, even without earmarks.

"Oh yeah, you can apply. The question is, do they (the agencies) have anyone in the area that can investigate and mine the validity of it," he said. "If we're going to get any of this money, it's only through earmarks or through somehow or another calling it to their attention."

Despite critics' assertions, the "somehow or another" often involves working with the agencies, said Lisa Sutherland, who served as Stevens' aide for Alaska projects during the senator's tenure as Appropriations Committee chairman.

Stevens, concerned about Alaska's high rate of violence against women, once forced a federal program director to attend a conference with rape crisis centers, she said.

Afterward, the agency "developed a program and they used our earmark money for it," Sutherland said.

"So we do pull the expertise of the agencies in," she said. "That's why he brings all those people up to Alaska in the summer, to show them the things we're working on."

The pressure from back home to provide earmarks is intense. Stevens receives hundreds of requests, and he said he maybe gets one out of every eight or nine he seeks. "We don't dream these up now," he said.

The upside of earmarks

Earmarks are often virtual blessings from on high to nonprofit groups in Alaska.

For example, the senator has directed about \$650,000 annually for the past five years to the Alaska Mentoring Demonstration Project, mostly through the same federal office that handled the LOVE Social Services grant — the Office of Juvenile Justice and Delinquency Prevention.

To run the Alaska mentoring project, the Big Brothers-Big Sisters groups in Fairbanks, Anchorage and Southeast Alaska teamed with Boys and Girls Clubs of Alaska and the National Senior Service Corps.

The money was a "godsend," said Taber Rehbaum, executive director of Big Brothers/Big Sisters of Fairbanks. It helped bring a mentoring program to about 500 kids in about 30 communities, reaching well beyond the state's urban areas where Big Brothers-Big Sisters has operated for many years, she said.

"That would not have been possible without the expansion money," Rehbaum said. "The suicide rate is such a concern, especially in rural Alaska, and the resources for individual communities — there aren't a lot."

Chuck Barber, a consultant from Eagle River who has helped administer the grants, said the project is truly a "demonstration" because Big Brothers-Big Sisters had never operated in the nation's rural areas before and no one was sure how well it would work.

Costs are higher but evaluations indicate the project is very beneficial, Barber said.

The recent decision by the Democratic leadership in Congress to eliminate earmarks in the current fiscal year budget may kill the federal funding for the project, though, Barber said. So people involved in the project are working hard to demonstrate its success to the agencies.

They may have some lingering resentments to overcome.

"Most of the staff people I've talked to over the years are not fond of earmarks and don't like their hands tied that way," Barber said.

Like them or not, Stevens said, the agencies have the responsibility to monitor the earmarked grants.

"We don't have any investigators on Appropriations," he said of the Senate committee. "I don't have any way of

oversight on these things. Oversight is clearly an executive branch function, and we rely on them to do that."

And if agencies might have any reason to be timid in their oversight of earmarks, Stevens said "not to my knowledge."

Sutherland said agencies sometimes do defy an earmark. She cited the example of a senior center, not in Fairbanks, to which Stevens sent some money for exercise equipment through a federal agency program.

"It turns out that program only funds operations. It did not fund equipment. So that one was rejected and we had to find another way to do it, which we did," Sutherland said.

The first of three Justice Department earmarks to LOVE Social Services, for fiscal 2002, appears in a funding bill after language that says the Office of Justice Programs "is expected to review the following proposals, provide grants if warranted," and report to Congress on its intentions. It also says that "up to 10 percent of the funds provided for each program shall be made available for an independent evaluation of that program."

Similar direction to the Office of Justice Programs appears, absent the reference to an independent evaluation, for the 2003 and 2004 earmarks.

Stevens said he never saw any such evaluations or reports. That's not unusual, he said.

"We get periodic reports about what they've done," he said. "However, the oversight really is done by Justice, and they would only report back to us if they had a negative impact or any irregularity."

'A perfect example'

In the end, Sutherland said, the agency oversight of LOVE Social Services did uncover the alleged misuse of funds.

The Department of Housing and Urban Development's inspector general looked at some of the LOVE Social Service reports and apparently found irregularities, she said.

"They were involved in working with the U.S. attorney's office in bringing this indictment," she said. "So, if anything, this is a perfect example of oversight working. [The] HUD inspector general found a problem, you have the Justice Department following up, and they're dealing with it."

Justice Department officials have repeatedly declined to answer questions from the News-Miner about their monitoring of the LOVE Social Services grants. A spokesman for the Office of Justice Programs recently declined to answer questions about the grants, noting that they were part of a criminal case.

A spokesman for the Department of Housing and Urban Development, through which two of the five congressional earmarks to LOVE Social Services came, said in 2005 that the department's oversight of LOVE Social Services was not up to par.

"I will say that the department has recently tightened certain reporting protocols to more effectively track and monitor the draw downs on the many THOUSAND(s) of these special purpose grants," spokesman Brian Sullivan wrote in an e-mail response to the News-Miner at the time.

Stevens said he had no reason to worry about the LOVE Social Services grants, given Jim and Chris Hayes' standing in Fairbanks.

"I of course never envisioned what we're seeing now, and I'm really saddened and surprised by it because Hayes had an

enormous reputation," Stevens said of the former mayor.

Stevens said he and his wife, Catherine, have known the Hayeses for many years. In May of 2003, the senator arranged for Jim Hayes, pastor of Lily of the Valley Church of God in Christ, to deliver the opening invocation to the U.S. Senate.

The Hayeses' son, James, worked for Stevens in Fairbanks and Washington, D.C., for about six years starting in 1999, although "he was not in any way connected with that earmark," the senator said.

Stevens said he has not talked with Jim or Chris Hayes since before federal officers served warrants at the church, the nonprofit and the Hayes home in January 2006.

He has not talked to any law enforcement officers about the case, he said. "I haven't, and I don't think my staff has either."

Stevens tends to take the long, broad view of his earmarks and the criticism they generate.

"I've been here all but 10 years since Alaska has been a state, and when I came here there were literally hundreds of programs that we did not participate in because they didn't have anyone looking at Alaska to determine what the needs were," he said.

So he took on that role, and he believes his record has been successful, despite the recent criticism.

Contact staff writer Rod Boyce at 459-7575 or by e-mail at rboyce@newsminer.com. Staff writer Sam Bishop ended his employment with the News-Miner on March 14.

This article may be accessed online at <http://newsminer.com/2007/03/28/6186/>.

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FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SR 3
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
 Title "Relating to consideration by the Senate of RDU Legislative Council
of impeachment of James C. Hayes, University of Alaska..." Component Session Expenses
 Sponsor Senators Wagoner, Bunde
 Requester Senate HESS Committee Component No. 782

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	10.0					
Travel	210.0					
Contractual	200.0					
Supplies	5.0					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	425.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	425.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	425.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SR3 relates to consideration by the Senate of impeachment of James C. Hayes, University of Alaska Regent. If the Senate passes this resolution, the matter would be referred to the House of Representatives which would conduct a trial on impeachment for the removal of James C. Hayes from his position. For the purposes of this fiscal note, it is assumed that the Senate would hold hearings in the committees of referral during the 25th Legislature and any costs to the Senate would be absorbed within existing budgets. If this resolution passes, it is anticipated that the Legislature would convene in special session to hold a trial. For purposes of this fiscal note it is assumed that a trial would last approximately two weeks. After the special session convened, the Senate would most likely recess with the approval of the House while the trial was conducted. Costs for a special session to conduct a two week impeachment trial would be \$425.0.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
 Division Legislative Affairs Agency Date/Time 4/25/07 11:30 AM
 Approved by: Pamela Varni, Executive Director Date 4/25/2007
 Agency Legislative Affairs Agency

FISCAL NOTE

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. SR 3

ANALYSIS CONTINUATION

Personal Services

Costs for floor staff and LAA Special Session Staff
Total 10.0

Travel

Cost to bring all Legislators to Juneau - 50.0
2 days session per diem - Senators - 9.0
14 days session per diem - House - 121 0
Total - 180.0

Costs to bring witnesses to Juneau for
both sides
5 witnesses for each side = 10 witnesses
5 days per diem for each witness
to allow for being called back to testify - 15.0
Travel costs for 10 witnesses - 15.0
Total - 30.0

Travel and per diem costs for a Supreme Court
Justice to preside at the trial will be absorbed
by the Court System

Contractual

Costs for Attorney Fees to advise the House - 100.0
Costs for Attorney Fees to advise Regent Hayes - 100.0
Total - 200.0

Supplies

Business supplies - 2.5
Lounge operation costs - 2.5
Total - 5.0

Total Costs for a Special Session on Impeachment of University Regent James C. Hayes - 425.0.

Memorandum

To: Senator Bettye Davis
From: Richard Benavides
Date: April 4, 2007
RE: Proposal on How to Proceed with Senate Resolution 3

I have reviewed the packet on this resolution and would like to make the following recommendations for a possible hearing in Senate HESS.

Limit the meeting solely to the following issues:

- The effect of Regent Hayes' situation on the business of the Regents.
- The monetary impact of his absences.
- The issue of time lost in decision making by his absences.
- Any operational impacts.
- Any lost planning time impacted.
- Any lost budgeting time impacted.

The Committee could request Legislative Research to research these areas for discussion. This should prevent having to delve into any time consuming legal areas that would require us to have legal counsel present for both sides during the time the committee debates the resolution.

**RESPONSE TO SENATE HESS COMMITTEE REGARDING
SENATE RESOLUTION 3**

1. The effect of Regent Hayes' situation on the business of the Regents.

Board of Regents' Bylaw 03. Duties of the Board of Regents.

The board will be responsible for the governance of the university as provided by the Constitution of the State of Alaska and the laws enacted pursuant thereto. The board may annually review the performance of the board. A failure to perform an annual review is an internal matter and does not affect the validity of any action.

As an appointed official of the State of Alaska, any regent absence is a loss; however, because there are 11 regents, the effect of the absence of one member at a meeting does not keep the board from taking action as appropriate and necessary.

2. The monetary impact of his absences.

Board of Regents' Bylaw 02.C. Compensation.

Regents receive no compensation for their service. Regents will receive actual transportation expenses for attendance at board meetings or for other university purposes approved by the board's chair. Each regent may elect on an annual basis to receive meals and lodging expense reimbursement in accordance with board travel policy and university regulation; or to receive a per diem allowance as established by the board travel policy and university regulation for each day or portion of a day spent in an actual meeting, or on authorized official business incident to duties as a regent, in accordance with AS 39.20.

When a regent does not attend a meeting, he/she receives no reimbursement expenses.

3. The issue of time lost in decision making due to his absences.

Board of Regents' Bylaw 08.G. Quorum.

No business may be transacted at any meeting of the board unless at least six regents are present. There will be no proxy permitted. There is no quorum requirement for committee meetings. Official action of the board requires the affirmative vote of the majority of the whole board.

As long as a quorum is present, a regent's absence does not result in lost time in decision making.

4. Any operational impacts to the Board.

Board of Regents' Bylaw 08.G. Quorum.

No business may be transacted at any meeting of the board unless at least six regents are present. There will be no proxy permitted. There is no quorum requirement for committee meetings. Official action of the board requires the affirmative vote of the majority of the whole board.

As long as a quorum is present, a regent's absence does not result in negative operational impacts to the university.

5. Any lost planning time impacts.

Board of Regents' Bylaw 08.G. Quorum.

No business may be transacted at any meeting of the board unless at least six regents are present. There will be no proxy permitted. There is no quorum requirement for committee meetings. Official action of the board requires the affirmative vote of the majority of the whole board.

As long as a quorum is present, a regent's absence does not result in lost time in planning.

6. Any lost budgeting time impacts.

Board of Regents' Bylaw 08.G. Quorum.

No business may be transacted at any meeting of the board unless at least six regents are present. There will be no proxy permitted. There is no quorum requirement for committee meetings. Official action of the board requires the affirmative vote of the majority of the whole board.

As long as a quorum is present, a regent's absence does not result in lost time in making budget decisions.