

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1353 SCOMM 51: BLUE RIBBON COMN. ON STATE PERSONNEL ACT 1978-1983

regulations, administrative law, departmental regulations, or in the Alaska Statutes. The council was to discuss the welfare of the community where they were at. It met about four times and then the members of the council lost interest.

In conclusion, Mr. Huston stated that there is no doubt that the state will need a new facility in 1985, and that close custody inmates will make up the majority of its population. There will also need to be provisions in the facility for some maximum custody prisoners. A discussion of parole followed.

John Pugh pointed out that while 32% of the prison population is Alaska Native, they make up only 16-17% of the total state population. He indicated that there is a new prison facility which will open in Nome in two years, and that there are a number of Alaska Natives willing to work in it. The state should be encouraged to train and provide employment opportunities for them. Representative Fuller added that attitudes in the Bush are changing. One of the best things that has happened in that regard is the Village Safety Office program. Instead of sending in a trooper or having the school teacher serve as authority figure, the program enables villagers to take responsibility for themselves in these matters. Mr. Huston indicated that cultural traditions could make it more difficult for Native people to be as aggressive as is required in correctional work.

Mr. Pugh suggested that with the reduction in federal money, and particularly federal money to Native corporations, there needs to be an increase in training programs to develop opportunities for state employment. Senator Ray pointed out that contracting with Native Corporations for services may provide a bridge between the cultures. Representative Fuller added that contracting would provide a mechanism for training in both the skills required and in cultural differences. Mr. Pugh pointed out that it would be an advantage to the state to train local individuals to fill positions in rural Alaska, since there is a large turnover in people brought in from outside to fill those positions. Often rural Alaskans don't know of employment opportunities and therefore don't apply.

The commission turned to a discussion of the difference between a pure merit system of employment and implementing affirmative action plans. James Fisher said that affirmative action plans permit a temporary variance of the merit selection system to overcome past difficulties. Lois Jund pointed out that although the commission hearings were extensively advertised few people had appeared to testify. Many people were probably afraid to come forward. She suggested that more people might speak out if the meeting were held on a weekend or if people were invited to provide written testimony and assured that the commission would hold their identities confidential. She cited figures from page 36 of the 1979 Human Rights Commission report which show that 18% of the state's minority employees held jobs classified as range 15 or above in April 1978 which rose to 22.8% in January of 1980, while 44% of the state's white employees held positions range 15 or above positions in April 1978, and 44.5% did in January, 1980. Similarly, in 1978, 18% of

the state's female employees were in positions at range 15 or above, which increased to 20.6% in 1980. During these same periods, 74.8% of the state's male employees were in jobs classified as range 15 or above in 1978, while in 1980, 75.1% were.

Darlene Livermore pointed out that any complaint about discrimination is difficult to keep secret, since to resolve it, the Human Rights Commission must discuss it with the employer. Mr. Huston added that the Blue Ribbon Commission should consider a Saturday meeting, since any employee wishing to appear would be conspicuous in his or her absence from work otherwise.

Senator Ray asked members whether they had ever received confidential inquiries because of their participation in the commission. Lynda McCurry indicated that several women have spoken with her about being considered but not hired for promotional opportunities. Typically, they were within the top five on the register for the positions involved, and the individual selected was lower on the register than they were. It appears that there may be an "old boys" network, but it is difficult to resolve whether there is discrimination or not.

Mr. Huston suggested that the commission consider recommending a review of departmental and divisional registers to discover criteria which might unintentionally operate to discriminate. Many policies have existed since statehood without anyone questioning them.

Mr. Thayer explained, in answer to another question, that each annual personnel evaluation of a supervisory state employee is supposed to contain a rating on how well that employee is carrying out the department's affirmative action plan. However, he has never seen anyone comment in writing about that factor. Mr. Fisher commented that the Division of EEO is working with the departments on their affirmative action plans. Most have only been in effect for one year. They are presently being revised. The division is also putting out a package of information to encourage affirmative action committees in the departments to use the teleconference network to supplement their meetings, to enhance awareness and for training. He added that he senses a momentum in the EEO division, which was established in the fall of 1978. He hoped it would continue to encourage cooperative activities, to help with preparing the affirmative action plans, with training, and with increasing the awareness within state government.

Lois Jund asked whether the state has a positive recruitment program to help minority persons get on the registers, to encourage them to apply for positions and to advise them of what might be available. Ken Kareen answered that the Division of Personnel has no real outreach recruitment of any kind. The departments do whatever is done. The division does respond to requests for participation in public programs more often if it appears that the audience will be composed of women or minority group members.

John Pugh pointed out one positive note in that area. The Nome Youth Center will be opening in December. The Department of Health

and Social Services with the cooperation of the Division of Personnel recruited extensively to encourage residents in Nome to get on the register. Instead of the usual practice of scoring the tests first and then holding oral exams, they took all of the applicants through the orals and then gave the written exams. However, this kind of change from the normal way of handling applications needs to be planned for well in advance. The department began seven or eight months prior to the time that they knew the facility would be opened. The Division of Personnel has become much more willing in the last few years to work with the departments, despite being inundated with general applications for employment. He suggested that the commission recommend to the departments that to work with the Division of Personnel to come up with creative solutions to the problem of getting minorities on the registers.

Roger Thayer added that most villages now have cable TV. The Department of Transportation uses those scanners to provide information about job openings. Lynda McCurry added that additional resources are available through the Job Service Offices of the Department of Labor.

The commission recessed at 11:55 p.m.

Senator Ray reconvened the meeting at 1:35 p.m. and asked for public testimony.

Florencio Q. Pax addressed the commission. He indicated that he was born in the Philippines and was educated under an American educational system, graduating with an accounting major and later passing the Philippine bar examination. He worked for the government as a quasi-judicial hearing officer for six years and had also worked for 23 years in the accounting field. He served during World War II with American forces in the Philippines but chose not to come to the United States at the end of the war. He recently immigrated to the United States because his wife's family had moved here. He introduced M. S. Pax to the commission.

Mr. Pax told the commission that Aaron Isaac suggested to him that he apply for the position of the director of the Division of Equal Employment Opportunity. However, Mr. Pax had never seen the vacancy advertised. Senator Ray asked James Fisher, the new director of that division, to let Mr. Pax know why there had been no advertising. Mr. Pax also indicated that he had been a finalist for the Executive Director of the Anchorage Equal Rights Commission. Although he was not finally selected for the post, he did not quarrel with that. However, he was also a finalist for the position of Affirmative Action Officer for the University of Alaska, Juneau. Another finalist for that position told him that the person finally selected was less qualified than she was, and suggested that Mr. Pax should take steps to challenge the appointment.

Mr. Pax indicated that he had reviewed the United States Constitution, and the constitutional provision of the State of Alaska as well as the State Personnel Act, various civil rights provisions, Executive Orders and the equal employment opportunity provisions in the Code of Federal Regulations. He said that he felt that there are adequate provisions of law in this area and that the problem lies in the effective

implementation of those provisions. He suggested that there should be a continuing educational process so that the goals can be effectively met.

On the question of why individuals do not come forward to testify at hearings such as the present one, Mr. Pax suggested that there are a number of reasons. First, there is fear of reprisal. Also, others had suggested to Mr. Pax that individuals do not come before a group composed of white persons to complain about the actions of a white supervisor because they believe that they will not be successful. Mr. Pax added that he does not share this belief. Mrs. Pax also suggested to him that it might be helpful to educate people about the importance of the subject, to encourage them to speak out.

Mr. Pax stated that he has been placed on three registers with the state: executive director of Wage and Hour Officer, as a loan examiner and as a regulations specialist. There were a number of job classes for which he was found not to qualify because the Division of Personnel did not consider his education in the Philippines to satisfy the requirement of graduation from an accredited college or university. Mr. Pax stated that his education had been in the American system and that he is familiar with the curriculum in accounting at the University of Alaska and it is practically the same as the education he received in the Philippines. He also was not credited with his 23 years work experience in the field.

Mr. Pax advised the commission that he and his wife participated in a one-month orientation program when they were first hired by the Seattle Public School District. All persons newly hired were required to take the course which provided information on cultural and ethnic backgrounds as well as topics such as effective communications, office skills, first aid and transportation. He reported that there has been a decision by the U.S. District Court in Oklahoma declaring that a Filipino accent could not be grounds for firing an employee. The case was Karinio (?) vs. University of Oklahoma.

Mr. Pax suggested that there should be separate affirmative action goals for women and for minority persons, and that hiring women should not satisfy the goal for employment of minority persons. He added that he opposes reverse discrimination against whites. In order to meet EEO goals, Mr. Pax suggested that the recruitment system should be computerized to monitor applicants and employees so that it is possible to follow an individual through the application process into the employment history. It should show, for example, whether advanced training for an employee was appropriate and whether he was eligible for promotion. He added that a supervisor should be dutybound to recommend training for a woman or minority person who is qualified for it in order to encourage the promotion of these protected classes.

Mr. Pax concluded his testimony by offering to assist the commission in any capacity, whether as a volunteer or as an employee. Senator Ray thanked him for his testimony and asked whether any commission

members wished to ask questions.

In answer to a question from Lois Jund, Mr. Pax indicated that he believed that minority persons might be more likely to bring their problems to the commission if its membership included minority persons or if there were an intake officer who was a minority person. As an example of what he was suggesting, he pointed out that the Anchorage Equal Rights Commission is composed of nine members, with representation from whites, blacks, Native Alaskans, the Filipino community, and Chicanos or those of Spanish origin, and contains both male and female members.

Verneelia Randall addressed the commission. She has worked for the state for four years, first as a Public Health Nurse and now as the Maternal Child Nurse Coordinator. She is also chairperson for the Department of Health & Social Services EEO Committee. She addressed the commission as a private citizen.

In answer to why so few people chose to speak before the commission, she related reasons given to her by other state employees. These included questioning how many women and minorities would make up the membership on the commission, whether commission members would hold positions of power which could lead to real changes, and the fact that they would have to take annual leave in order to testify. Senator Ray advised Ms. Randall that it is not necessary for state employees to take annual leave to appear before the commission. He indicated that membership on the commission includes the Commissioner of Administration, the Director of the Division of Personnel, representatives of employee unions, the Ombudsman and public members in addition to legislators.

Ms. Randall said that there are two kinds of discriminatory problems, those created by societal habits and those which arise from individual discrimination. Societal problems develop from a system which has not been changed in 30 or 40 years and which have an inadvertent discriminatory effect. Once it is in place, the system tends to resist change, rather than being open to solving the problems which it creates. She gave as an example her own situation. She has a bachelor's degree, a masters, is working on a master's in public health and intends to pursue a Ph.D. in health policy and management. Even then, she will not be eligible for the position of health officer because she is not a doctor, a dentist or a veterinarian. Those requirements were created years ago and may have been appropriate for the position then, but the department has not reviewed them since, even though the health education field has changed significantly.

Ms. Randall criticized testing and experience ratings of applications and pointed out that they work against women and minorities. Tests are culturally based and test a person's ability to take tests more than ability for a job. Experience requirements work against those who have had less opportunity to work. Anyone can learn to take a test and can therefore pass a test. The opposite is also true. For example, until an instructor worked with her on test-taking, she nearly flunked out of nursing school, despite knowing the material thoroughly. After

learning how to take tests, she now does well on them. Because of these problems with tests and experience requirements, the registers work against people from different cultural backgrounds. If they appear at all, they are likely to be low on the registers.

Ms. Randall told the commission that the Governor had recently authorized a new register system in which the names of the top five applicants plus the names of the top five from a protected class are shown for those job classes in which women or minorities are underutilized. The problem with this approach is that it is voluntary. The recruiting agency should be required to hire from an affirmative action register for positions in underutilized job classes.

There is a second type of discrimination -- individual discrimination. It may be either conscious or subconscious. Ms. Randall stated that everyone is racist either consciously or subconsciously. Until we recognize that and work to change it, the implementation of any affirmative action policy will not happen on a regular, consistent basis.

Ms. Randall advised the commission of DHSS statistics on minority and women hires. She suggested that DHSS is one of the best departments because women and minority persons are most likely to be either nurses or social workers or office clerks, and DHSS hires a lot of all of those job classes. The figures are based on the department's EEO plan, which identifies the availability of minorities and women for state employment, as compared to the actual employment.

	<u>Female</u>	<u>Minority</u>
Availability of office clerks	79%	21.1%
Employment by the department	90.3%	17.8%
Availability of officials & administrators	44%	19.3%
Employment by the department	26.7%	11.3%

There is a significant difference between the available market and what is actually happening, even if the figures are off by 5%. Ms. Randall recommended that the state use computers to identify underutilized job classes. When a department requests a register in one of the identified classes, they should get an affirmative action register, whether they wanted it or not. A supervisor should have to justify not hiring a woman or minority person for a vacancy if any appeared on the register. The present system requires the supervisor to justify hiring from below the top five even when hiring for job classes in which minorities or women have been shown to be underutilized.

Ms. Randall acknowledged that this system would be reverse discrimination but pointed out that when you have a relay race and one team started the race 15 minutes after you did, then you cannot expect them to win the race unless you provide some catch-up time. In our society women and minorities began well after the race was underway, and only those minorities and women who are far above the exception even get into the running. You cannot have equal opportunity until society

provides women and minorities a chance to catch up.

Ms. Randall said that she had a personal concern for Alaska. It is unfair to group Alaska Natives with other minorities. Alaska is a state of immigration and many minorities who are highly qualified choose to come here. Statistics show that Native Alaskans, who were here first, get drowned out by blacks, Filipinos and Chicanos who immigrated. While 11.3% of the officials and administrators may be minority, 0% may be Alaska Native. Ms. Randall recommended that in underutilization figures, Alaska Natives should be broken out to insure that they have fair representation and that immigrants not be allowed to take the jobs that they would have had.

Ms. Randall shared another area of concern: that of upward mobility. One problem is the opportunity for training. DHSS provides individual training contracts for its employees. An employee can go to the agency and say "here's a course which relates to my job and will give me added skills and I want to take it." If the agency agrees, it will cover the costs provided the employee signs a contract to remain on the job for a specified length of time. Last year, DHSS had 85 such contracts. There are 71 officials and administrators in the department. Of those, 20% had individual training contracts, while only 4% of the office clerks (who number 421) had them. In answer to a question from Lois Jund, Ms. Randall indicated that she did not know how many applications had been filed for training. She did show that 79% of the officials went out-of-state for their training. None of the office clerks went out-of-state. It's the office clerks who need the training for promotional opportunities. To have affirmative action, the state has to provide opportunities for upward mobility. Therefore, training funds should be part of every budget and there should be some system to insure that a fair portion of those funds reach those on the bottom. If 60% of a department's workforce is classed as officer clerks, then 60% of those employees should be getting training.

Senator Ray pointed out that the legislative finance committees have been reluctant to pay for on-the-job training. The legislators feel that there are requirements which employees should meet before getting the job. The state should not have to pay for it. Therefore, a good share of the inservice training money gets cut from the budget. It's an area which has been abused and is still abused. Ms. Randall replied that it is short-sighted to cut training funds. Recruiting and orienting new employees is more expensive than training existing employees who have proven themselves to be loyal to the state and who will stay in the job for a longer time.

A second difficulty in providing upward mobility is that supervisors may discourage their employees from seeking promotions. If that attitude is to change, it must start at the top. She gave as an example her own promotion to her present position. Her supervisor discouraged her, saying that she wouldn't be able to do the work, and the position was vacant for a whole year.

Ms. Randall agreed with Mr. Pax's recommendations that goals for employment of women and minorities should not be grouped together. Women have different problems and circumstances from those of minorities. Problems women face arise in part from the traditional employment system which is based on the employment of men who could work knowing that their families would be cared for by their wives. That is no longer the case. Single parent families are now prevalent and two-working-parent families are a fact of life. Any employer, whether private or public, will have to recognize that the traditional system of hours of work, work days, and annual leave, was made up for the traditional family system. Day care is necessary for even two-parent working families. The employer should be responsive to that need, although the employee should expect to pay for the care provided. In addition, employers should be sensitive to the needs of working parents. For example, Ms. Randall suggested that women be allowed to take annual leave, sick leave, or leave without pay in order to breast feed children while working. This kind of small accommodation could make a family's life much easier and also free an employee to put more energy into the job.

In closing, Ms. Randall said that any program which is developed must have teeth in order to be effective, especially for those who are low on the pole.

Senator Ray asked whether Ms. Randall had been discriminated against in working for the state because she is a black. She replied that it is hard for a non-minority or a male to understand. It is not that there is clear discrimination, but little things happen. For example, when there is a question in her section, people who are above her will first go to the man who is under her and ask him. If he is not available, they will go to the white woman who is not even in her section and ask her. The end result is that those who have been asked come to Ms. Randall for the answer. Ms. Randall indicated that it is probably because of conscious or subconscious racism. In answer to another question, Ms. Randall indicated that whether the motivation is a personal, individual dislike or racism or sexism, the end result is the same. The cause does not matter. The end result for her as a woman and a black, is discrimination. Senator Ray thanked Ms. Randall for her testimony before the commission.

Brenda Randall-Sadek addressed the commission. She is an Accounting Clerk III for the Department of Transportation and has worked for the state for a year in December without promotion. She first spoke of applying for a position with the Juneau office of the Human Rights Commission. There was a vacancy for an entry level, trainee position which she saw advertised. It required a high school degree, and she has graduated from college. She applied, but received no response. The position was advertised two more times and each time she applied. Only after she went to the office did she receive a letter telling her that she was not qualified for the position.

In the time that she has worked for DOT, Ms. Randall-Sadek said that she has asked to take the state accounting course three times. Her requests have been both oral and in written memos. Although she

wrote that she intended to stay with the department and hoped to be promoted into a position which would require the knowledge the course offered, the only reply she received was written on the bottom of her memo saying "we do send people when we feel that it is related."

Ms. Randall-Sadek said that she had worked at three different clerk desks in the department. When she was in the research section, she learned that her supervisor planned to hire a Tech I. She was planning to leave that section and her supervisor did not want her to leave. He said she was a good worker and encouraged her to stay in the section. However, he did not hire her for the Tech I position, explaining that she was too low on the register. The person who was hired had worked for the department for less time than she had and was a white male. Ms. Randall-Sadek told the supervisor that Tech I's are under-utilized class and he could have hired her if he had wanted to. Furthermore, in her time with DOT she has seen them hold registers for people who they want to hire and justify hiring anyone they want regardless of where they were on the register.

In the time that she has been with DOT, Ms. Randall-Sadek said that the only other minorities she has seen are Filipinos. She asked several people how long they had worked for the department and found that the three or four white people who had been with the department from four to six years all were at the Tech III or Accounting I levels. She knows of two Filipinos who do excellent work and have been with the department for more than five years, but who are still at the Accounting Tech I level.

Ms. Randall-Sadek agreed with Verneelia Randall on the register system and test-taking. Test results depend on your abilities to take tests. However, she said that if that is the system the state is going to use, then they should stick by it, instead of waiting for the people they want to get on the register. Ms. McCurry added that as a personnel officer she calls the tactics Ms. Randall-Sadek mentioned "crafty techniques". All of them are legal. She suggested that the commission should zero in on these practices and fix them. She added that DOT could have called for departmental promotional lists to fill the Tech I position and that probably Ms. Randall-Sadek would have placed well on that register. A second thing at DOT could have done was use the Five-Plus-Five register and gone below the top five to select her. Ms. Randall-Sadek pointed out that DOT cannot use those registers because their EEO plan has not been accepted yet.

Mr. Thayer asked Ms. Randall-Sadek to provide him with copies of her requests to take the training course and added that it is the practice of DOT to use promotional registers. He indicated that he planned to do some checking on the situation.

Senator Ray asked whether Ms. Randall-Sadek's experiences resulted from discrimination against her because of her race or sex rather than being a situation where the supervisor was hiring a friend regardless of who the other people applying for the job were. She replied that the system seems to work most against the blacks and

Filipinos and Indians. Verneelia Randall added that when the system breaks down like this, then white people get caught in it but black people, Indians, Filipinos, minorities get caught in it more. The end result of the race is that since women and minorities are 15 minutes behind to begin with, then when 10 more minutes are added to everyone's time, it makes them 25 minutes behind.

Ms. Jund suggested that the situation might have been better handled if the state's policy were to always provide an EEO register for any vacancy in a job class where underutilization had been shown. The supervisor would have to justify not hiring from that register. This would put it in the proper perspective and get away from the game of crafty techniques.

Senator Ray added that he hoped more people would come to testify and that if anyone used an appearance in front of this commission to discriminate against a witness, that he wanted to know about it because the commission and the Governor would not tolerate that.

Mr. Pax suggested that the state should enforce laws which provide that the state as grantor to political subdivisions can withdraw funding from any grantee who violates anti-discrimination laws. Senator Ray said that he would ask the Legislative Affairs Legal Division to research the area to insure that the laws in effect were adequate.

Ms. Jund suggested that the commission propose legislative intent to insure that any training funds are used proportionately to categories of people to enhance upward mobility. Senator Ray replied that legislative intent is not enforceable and that the language could be put into a statute. He added that he expected that the departments would resist the suggestion. The commissioners would come before the legislative committee and say that where they really needed training funds is for the specialized classes.

Brenda Knapp, a planner with the Central Council of Tlingit-Haida Indian Tribes of Alaska addressed the commission. She indicated that the council would be submitting testimony in written form to the commission and that she wanted to share the introduction now.

Sealaska Advisory Committee to the United States Commission on Civil Rights produced a report and initiated a series of open meetings in the fall of 1978, including a meeting in Juneau on 11 September, 1978 and the findings of the Alaska Advisory Committee were published in July, 1980. To date, a great deal of effort has been made to correct and improve the employment representation of Alaska Natives and other minorities in state government. Reports have been filed, plans developed, responsibilities pinpointed, roles clarified, data systems implemented, policy expounded and the Blue Ribbon Commission established.

In April, 1978, Native people held 518 jobs in state government. This figure represented 5.4% of the total state government workforce. Today, November 3, 1981, 3-1/2 years later, according to figures just released by this commission, Native people hold 5.4% of jobs in

state government workforce. There has been a rise in actual numbers that went from 518 to 694, but the percent of the total state government jobs has not changed, 5.4%.

In other words, despite all of the talks, meetings, reports, plans, commissions, etc., which have taken place during the past 3-1/2 years, Native people in Alaska have not improved their representation in the workforce of state government. Although 16% of the state's population is Native, less than 6% of the jobs in state government are held by Native people. Most of these jobs are, as everyone knows, concentrated in the clerical, craft and paraprofessional categories. Very few professional and management positions are held by Native people. The underrepresentation and underutilization of Native people affects most job categories and departments of state government. In fact, in nine of the 15 departments of the Executive Branch of state government, the representation of Alaska Native people has declined between April '78 and September '81. Of the remaining six departments, four increased the representation that Native people by less than 1% over earlier figures. Two departments, Community & Regional Affairs and Natural Resources appear to have made substantial gains. But, we have no information as to what really resulted in these gains.

It would appear that the commitment so clearly stated in Administrative Order No. 59 as expressing the equal employment policy of the executive branch of state government needs to be more forcefully and imaginatively translated into action. The actions of the past 3-1/2 years have provided necessary and useful mechanisms to help state government recruit, select, hire, promote and retain minorities in state employment. The expanded certification policy is a particularly useful step in bringing qualified Native people to the attention of hiring departments. But we believe that what has been accomplished to date, represent only the first few steps in an overall plan that must produce results in numbers, rather than intentions.

Senator Ray asked Ms. Knapp whether she knew how many state jobs had been contracted out to Native Corporations. These positions would therefore no longer show up in state employment figures and would probably have been held largely by Native Alaskans. Therefore, the number of Native state employees would have decreased, although the number of employed Natives would not have. Ms. Knapp replied that she did not know. However, she pointed out that since the jobs are no longer part of any of the figures on state employment, that she did not consider them relevant to this question. Of the remaining positions, the state should have been able to do better than maintain 5.4% Alaska Natives over the last three years. Good intentions are not translating into action. She pointed out that many Native people were working under CETA positions and that these programs are being eliminated as a result of the current economic trend. These trainees are available for employment.

In answer to another question from Senator Ray, Ms. Knapp said that she did not know whether the number of Native Alaskans who are applying for state jobs has increased or decreased since 1978, but that there are a significant number of Native people who are now unemployed

and who would like to work. If their number has substantially decreased on state registers, then the important question is "why". Senator Ray agree and said that what the commission is trying to discover is whether there is a discriminatory attitude or whether there is some other problem. Ms. Knapp pointed out that the Native Corporations are able to find, recruit and employ qualified Native people. The state government should also be able to do that. She indicated that the written testimony which the council will provide will include specific recommendations on what the state might do to improve opportunities for Native Alaskans.

Senator Ray thanked Ms. Knapp for testifying.

Mary Lisack, Affirmative Action Officer for the University of Alaska, Juneau, addressed the commission. She reported that the University has been under a compliance review by the federal government since the early 1970's. If it does not show progress in affirmative action, it will lose its federal funding. The University's Affirmative Action Office is under top management rather than part of the personnel office. Her responsibility is to monitor and ensure compliance with affirmative actions plans and employment opportunities. One of the ways in which the University tries to eliminate discrimination is through ensuring that job qualifications are job related. The affirmative action officer has to approve all job qualifications for positions open at the University. The qualifications must be job related. For example, there is no reason that a secretary has to have graduated from high school to do the work. For a large portion of jobs, the qualifications are simply knowledge, skills and ability sufficient to perform the duties of the job. For example, if one of the duties is budgeting, the University will consider that handling a household budget demonstrates the person has the skill to handle that portion of the job.

The University maintains flow charts for every protected group person who applies for a job. The rejection of that person has to be justified on the flow chart. All hiring has to be approved by the Affirmative Action Officer to ensure that the selection process has not been discriminatory. According to the University Affirmative Action Plan, preference is given to members of protected groups wherever applicants are equally qualified.

This year for the first time, the University has funds for staff development. It has earmarked a portion of those funds for training for protected persons, in order to better attract, retain and promote them.

Ms. Lisack pointed out that you can't successfully force affirmative action on a hiring authority. Where a hiring authority, with the agreement of others in the office, has selected a non-protected person, the Affirmative Action Officer cannot require that a protected person be hired. The other employees in the office will say that the only reason for the hire was because of the person's race. The protected person will be made to feel extremely uncomfortable and will probably terminate early. Hiring authorities and co-workers need to be educated. The University does not hire unqualified people. But supervisors need to be trained in how to deal with these situations, how to work with the

people they supervise, how to train them to deal with cultural barriers that exist. One hiring authority complained to her about a minority person who had been hired, saying that she could not do the work. But that was not the problem. When Ms. Lisack went to the office at lunch, everyone went out together leaving the protected person sitting there. The hiring authority made no effort to correct the situation. Instead they said that the person could not function.

In answer to a question from Mr. Huston, Ms. Lisack explained that the University testing is done by reviewing written applications and then interviewing the applicants. They also give typing tests where production typing is required.

Senator Ray thanked Ms. Lisack for her testimony.

A woman in the audience asked about hiring the handicapped. She asked whether the statistics in the commission memos included handicapped in the "Other" category. Ms. Cramer replied that the memo was addressed only to the racial make-up of the state workforce.

Ms. Randall pointed out that there is a problem in getting handicapped state employees to speak out. She conducted a voluntary survey and asked handicapped employees to identify any concerns they had. Few of the questionnaires were returned, and most of those said that there were no problems. Ms. Randall indicated that she suspected that handicapped individuals have a harder time and are more reluctant to identify themselves. For example, if handicapped individuals are to work at their highest capacity, they should be provided with desks and other equipment which best meets their needs. Handicapped individuals are not seen in state employment, particularly where their employment would require a change in the office environment. Perhaps the commission should try to find out why they are not there.

Senator Ray pointed out that in all the time that the commission has been in existence, there has not been one complaint from anyone representing handicapped people. John Pugh added that the Governor's Special Commission on Hiring the Handicapped is a very active group and does a very good job addressing this problem. For the Blue Ribbon Commission to look at the area would be an unnecessary duplication. Ken Kareen pointed out that the Division of Vocational Rehabilitation has counselors who look for job opportunities for handicapped people, either with the state or with private employers. For a position with the state, the counselor can make the referral, the person can be hired as a provisional employee and after four months on the job they can be made permanent. Ms. Jund added that Vocational Rehabilitation also provides training. Another woman asked for a definition of handicapped and wondered why alcohol and drug abuse has been added to it. Mr. Fisher responded that they have been added. The Department of Natural Resources received an award from the Governor's Council for placement of 25 handicapped persons with 80% retention since January, 1981.

Senator Ray pointed out that the Constitution of the State of Alaska provides for a merit system. The state government is supposed to employ people according to their merits. Wages and fringe benefits are

attractive and many of the top class of workers in the state are applying for state jobs. The state should get the best employees they can for the money they spend. That's the way a merit system works. He added that those handicapped persons he has been associated with were the most accommodating people and the best workers. The supervisor will recognize the capabilities of the person and provide the equipment that they need.

The woman indicated that she still had a problem with the definition of handicapped. Mr. Kareen indicated that Vocational Rehabilitation uses federal guidelines because so much of their funding comes from the federal government. Senator Ray added that the legislature tried to prepare legislation to provide for free ferry rides for senior citizens and handicapped individuals, but the word "handicapped" was so hard to define to insure that it included those who should be included, but to exclude those not genuinely handicapped, that they had to give up. They have worked on the problem over the interim and developed another definition which will probably be closely examined next session.

Senator Ray asked the commission whether they wanted to hold an election for the vice chairman's seat. Mr. Huston moved that the matter be held over to a later date. The motion passed without objection.

Senator Ray adjourned the meeting at 4:20 p.m.

* * * * *

TOTAL STATISTICS BY REGION

BEGIN-DATE 010181

END-DATE 093081

	CASES OPEN AT END OF PRIOR PERIOD	NEW FILINGS THIS PERIOD	CASES CLOSED THIS PERIOD	CASES OPEN AT END OF THIS PERIOD
CENTRAL	162	098	080	180
SYSTEMIC	003	000	000	003
NORTHERN	104	043	071	076
SOUTHEASTERN	086	033	024	095
OTHER	057	003	004	056

STATE TOTALS

412 86 177 26 179 15 410 75 = 18.3% *

TOTAL EMPLOYMENT CASES IN
SYSTEM SINCE 1975
SOA

3172 }
321 } = 10.1%

SOA Cases

* Note: 24 SOA Cases have been
consolidated at hearing (1 issue)

AS OF 8/16/78 (CIVIL RTS COMM TESTIMONY)

TOTAL 2162 }
SOA 200 } = 9.3%

SOA Proportion
if 24 Cases
Counted as one $\frac{324}{52} = 13.4\%$

NOTE: NON FARM WORKFORCE 8.0%
EMPLOYED BY SOA = 9.0% (1978)

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
October 5, 1981

MINUTES

Senator Ray, Chairman, called the meeting to order at 10:00 a.m. The roll call showed Ken Kareen, Senator Dick Eliason, John Chenoweth, Representative Jack Fuller, Lynda McCurry, Greg O'Claray, John Pugh, Fred Muller, Bill Huston, Darlene Livermore (alternate for Cherie Shelley) and Senator Bill Ray present. Myrt Charney and Lois Jund were absent. Also present were Roger Thayer and Robert Mourant.

Senator Ray advised the commission of the Letter of Intent passed by the Legislature when it provided funding for the commission. He asked the members to consider the question of affirmative action and minority hiring within the framework of the provision of the Alaska Constitution calling for a merit system for state employment. Ken Kareen pointed out that the constitution also requires that there be equality of citizens regardless of race, and that the framers of the Alaska Constitution would probably not see a constitutional conflict between those provisions. Jack Chenoweth commented that he found it hard to believe that the state's provisions on the merit system would exclude Alaska from having an affirmative action program. At least the constitution gives equal weight to affirmative action and probably the courts would find that helping people to apply for positions with the state would be enhanced by the provisions of the constitution.

Senator Ray added that affirmative action should mean that every citizen has an equal opportunity to apply for jobs. But what is the use of having a testing and classification system if the state is required to hire, for example, 10% Native Americans and 10% Eskimos regardless of qualifications. He added that the state should, in its approach to affirmative action and other programs, recognize the distinct cultural differences between Eskimos and Alaska Natives.

Senator Ray asked whether females should be considered a minority group. Fred Muller answered that women are classified as a "protected class" because there is an institutional bias which has resulted in lower pay for women. In the past, they have been barred from entry to a number of positions.

Mr. Kareen suggested that for continuity, the commission should use the federal government classifications and those that the State Human Rights Commission has established. Senator Ray disagreed. He asked whether this is a first step towards eliminating the merit system.

Darlene Livermore replied that this would not be a step to either eliminate or harm the merit system. Senator Ray added that he

wants to see more minority individuals employed in government, but how can that be done without reverse discrimination?

Greg O'Claray pointed out that if the state has an affirmative action program then, in effect, they are using two hiring systems -- the merit system and another.

Senator Ray commented that the majority of complaints of discrimination against women which the commission has heard appear to have resulted from personality conflict rather than from outright discrimination.

Ms. Livermore pointed out that it depends on how you define discrimination, whether you are looking at covert or overt acts. Covert discrimination is more insidious because it doesn't leap to the surface, you have to look at patterns to identify it. APEA would normally refer a charge of discrimination to the Human Rights Commission. To establish a charge of covert discrimination requires prolonged investigation. You have to consider comments made over a long period of time and work assignments given. There are certain kinds of jokes which may be accepted as humor, but may also reveal a discriminatory intent behind the surface. It is difficult to bring covert discrimination to the surface. In the case of people who are labeled trouble-makers, they frequently become trouble-makers because they want to stand up for themselves, to ease the tension they are feeling.

John Pugh suggested that the commission focus on the under-utilization of women and minorities, on problems of getting on the state's registers and on looking at whether positions are overclassified.

Senator Eliason pointed out that the state does overclassify positions. What is the interest of the state -- getting the best qualified person for a job or providing equal opportunity for all of its people?

Bill Huston added that the Department of Health and Social Services has sent directives to the correctional institutions to try to hire minority applicants, but very few appear on the state's registers. He used to believe that recruitment should be the responsibility of the Division of Personnel, but perhaps the departments should recruit on their own.

In response to the question of overclassification of positions, Mr. Kareen related that several years ago the Governor's Commission on Minority Employment formed a subcommittee which considered every classification in the state. They recommended substitutions for educational requirements in a number of classifications, and now there are very few jobs which have an absolute requirement for educational background. Relevant experience has been substituted. But for people living in rural areas of the state, frequently there is neither the opportunity for academic training nor for gaining the substitute experience required.

Occasionally when an individual does have both the education and the training, he may still be lower on the eligibility list.

Since last spring, Mr. Kareen continued, the state has been using a new hiring system called the Five-Plus-Five system, which allows managers to consider not only the top five applicants on the eligible list but also the top five members of a protected class which has been shown by the department's Affirmative Action Plan to be underrepresented in the department's workforce. Underrepresentation deals with many things. Where the administration recognizes that they do have a shortage of women or minorities, candidates frequently do not exist in the labor force for that position or for work in that location.

Senator Eliason pointed to startling employment figures from the Annual Affirmative Action Report of 1981 which show that of a total of 10,479 employees in the Executive Branch of State Government, only about 250 are Alaska Native. (Page 13 of the Report).

Mr. Huston reported that the Department of Health & Social Services just completed a Prisoner Profile Study which was published on August 10, 1981, and shows the racial composition of the Alaska Correctional Institutions. Senator Ray directed the commission staff to request a copy of the Profile from the Division of Corrections. He also asked the staff to ask the Limited Entry Commission for a breakout on the number of permits originally issued to Natives and to Caucasians and the numbers presently held.

Senator Ray asked the commission to consider the goals it wished to pursue in this project and the things which should be looked at. Senator Eliason suggested the classification procedures and asked who writes the class specifications. Mr. Kareen answered that the position descriptions for each position in the classified service are written either by the employee holding the position or by his or her supervisor. From those position descriptions, the Division of Personnel writes the generalized class specifications.

John Pugh suggested that the commission should look more closely at underutilization of women and minorities. It is not clear how many members of those protected classes are actually on registers. Mr. Kareen pointed out that in Alaska the registers identify the race of ethnic background of applicants. The law permits that kind of identification where the purpose is permissible. It would not be permissible to show race or sex if that information was to be used for discrimination. Mr. Pugh suggested that to decide whether there has been discrimination, you have to know whether there have been minority applicants who have not been hired. It may be that the underutilization results from a limited labor pool, that minority workers are not interested in working for the state government in that job class. Then the solutions to underutilization should focus on increased job training.

Mr. Huston asked how many minorities apply for work but fail to qualify and be placed on the register. Mr. Kareen answered that the Division of Personnel hopes to be able to provide that information soon. They are developing a program to provide data on how many people have applied, how many were tested, then how many were placed on the register. All applications will be entered into the system. Mr. Muller pointed out that since the question on racial and ethnic background on state applications is voluntary, the data captured will not be an entirely true representation of those who have applied for state employment.

Mr. O'Claray noted that the Human Rights Commission Report for 1980 on page 44 shows that of the new cases filed, 51% were filed by Caucasians and 25% were filed by Blacks. Fifty-three per cent were filed by females.

Mr. Thayer suggested that it is also important to consider where the job is. Many Natives do not want to leave their villages. Rep. Fuller agreed. Many people choose to follow their cultural traditions, and prefer to be able to leave work for the spring seal hunt, for example. Mr. Muller added that temporary and nonpermanent employees are excluded from the data on state employees which the Division of Personnel is developing.

Senator Eliason asked whether it would be possible to find out the number of full time state jobs located in the Bush which are filled by Caucasians and by Alaska Natives. Mr. Kareen responded that the data exists for the executive branch, but that it would take considerable time to extract it and put it in a usable form. Rep. Fuller added that there are few state jobs in the villages. Most are located in Kotzebue, Nome, Bethel and Barrow.

Senator Ray suggested that educational requirements for state jobs are too strict. Mr. Kareen replied that the largest number of complaints which the Division of Personnel receives about minimum qualifications are from administrators who say the requirements should be stricter because the lists contain too many people who cannot do the job.

Mr. O'Claray asked about current state practices for increasing the number of women and minorities hired. Mr. Pugh explained that expanded certification is used to meet affirmative action plans. Senator Ray asked whether that short circuited the merit system. Mr. Kareen replied that the courts have disagreed about whether considering race for the purposes of meeting affirmative action goals was constitutional or not. In the Bakke case, Mr. Bakke won, but the court did say that race could be considered. Mr. Thayer added that whether a department uses the expanded certification is an individual departmental choice. If a supervisor has 10 employees who are all white males, then he may decide that for the next vacancy he will hire a woman or a minority

person. He fills out a form and requests an expanded certification. He will get a person who is qualified to do the job, but not necessarily the most qualified person for that job.

Senator Eliason asked how frequently the departments evaluate the progress they are making on their affirmative action plans. Mr. Thayer replied that it depends on the individual department and the Division of Equal Employment Opportunity. For example, DOT has a large staff in their EEO section, and they provide information every month. Mr. Muller added that the EEO Division in the Department of Administration recently began to monitor the statistics closely. There may be a realistic problem in requiring that applicants from a protected class must be hired for some positions. There is also a question, however, of whether ranking on the register actually reveals an ability to perform the job. He added that there are two basic time periods to consider in looking at discrimination. The first is from the time of application to the time of hire. Once members of protected classes become state employees, then that's a separate area.

Senator Ray asked Mr. Chenoweth if he could provide the commission with a paper discussing his views on the compatibility of minority hiring programs with the merit system in the constitution.

James Fisher, Director of the Division of Equal Employment Opportunity addressed the commission. Mr. Fisher explained that he is new to the EEO Division and that he is still learning what has been done, how it is done, and what the division's mission is. The division, under Administrative Order 59 of June, 1980, is to provide management assistance to the executive branch in affirmative action functions, in training functions, and in complaints procedures - to pick up errors in the system. Mr. Fisher said that he is contacting each commissioner of the state government departments to review their EEO systems and to learn how things are going.

Senator Ray asked whether there were any questions for Mr. Fisher. There were none. Senator Ray thanked Mr. Fisher for addressing the commission.

Senator Ray reviewed what the commission needs to do and suggested that one of the statistics it would be helpful to obtain is the percentage of Alaska Natives in the group of employees working in Range 16 and under. Mr. Kareen pointed out that in the information Senator Ray asked for, the Labor Trades and Crafts positions are not covered, since they are on a different salary schedule. Mr. Muller said that the state is in the process of developing statistical tools to track all employees by race, sex, and full employment history (whether they are promoted or not, for example). That statistical review is a year or two away from being operational, however.

Mr. Chenoweth suggested that perhaps the state should consider the diversity of its population. The difference between the state's approach to hiring and the Bureau of Indian Affairs' approach when each had positions in the Bush was that the BIA positions required ability to speak the local language in addition to English. Perhaps the state should consider requiring bilingual speakers for social service positions in the Bush. That would be one way of avoiding a direct consideration of race or ethnic background in hiring. Senator Ray pointed out that many of the social services positions in the rural areas have been eliminated because the state has contracted with Native Corporations to perform those services. Senator Ray asked the staff to check with the Department of Health and Social Services and the Division of Personnel on the number of state employees lost when those services were contracted out. Those positions may have previously been filled by minority group members and those employees may have remained on the job and become employees of the contractor instead of the state. Senator Ray recessed the meeting for lunch at 11:45 a.m.

Senator Ray reconvened the meeting at 1:35 p.m. and reviewed the memo on the status of the bills sponsored by the commission last legislative session. Terry Cramer advised the members that the Senate State Affairs Committee is holding a teleconference hearing in Anchorage on Monday, October 12th, to consider retirement bills.

Senator Ray asked Roger Thayer to review the memo concerning the Marine Highway System hiring procedures. Mr. Thayer explained that all applications for employment on the ferries are group scored and that hiring is done by groups. If there is an opening, then the division contacts all applicants whose scores fall in the top group. Those who respond are interviewed and the selection is made. When the top group has been exhausted, then hiring proceeds from the second group, and so on. However, it's getting harder to find work in the ferry system, and they are beginning a period of reduction in force, so there will be even fewer jobs.

Senator Ray asked why the division could not accept applications all year long. Mr. Thayer explained that there was a discrimination suit filed several years ago which resulted in an agreement that applications would be accepted only for a limited period which would occur before any selections were made. The division advertizes in 32 newspapers around the state beginning in January of each year and accepts applications from February 15 to March 15. The applications are then graded and grouped and selection begins in late March or early April.

Mr. O'Claray asked whether they hired from any source other than those applications received during the "window period". Mr. Thayer replied that for entry level positions, those applications were the only

ones considered. However, for higher level positions, the division accepts and considers applications received all year long. He added that the division has not hired an able-bodied seaman from outside the system in two years.

Mr. O'Claray added that the most frequent complaint he hears is not being able to file an application until February. Senator Ray pointed out that the division's public image would improve if the application period were longer. Mr. Thayer indicated that he thought it might be possible to extend the period from 30 days to 60 days, but that he was uneasy at making it as long as 120 days. The reason for the limited period is to insure that all applications are processed before hiring starts.

Senator Ray asked whether there were any other matters before the commission. Ms. Cramer answered that the commission had received documentation from Betsy McGuire who had applied for a Project Coordinator, Range 18 position in Juneau. Initially, the Division of Personnel advised her that she did not meet the minimum qualifications. Ms. McGuire was successful in having the division staff review her application and her score is now 103.65. She submitted this material to the commission for its information.

Senator Eliason asked whether nonresidents make more money than residents on the ferry system. People in his area believe that they do. Mr. Thayer explained that nonresidents are paid less than residents, but that within the Marine Highway System there are two different salary scales - one for the Southeast Alaska ferries and one for those in Southwest Alaska. In Southeast, the monthly wage is based on 240 hours per month while in Southwest it is based on 182 hours per month. Nonresidents are also responsible for paying their own travel expenses to and from Alaska.

Mr. O'Claray suggested that someone from the Human Rights Commission be invited to the next Blue Ribbon Commission meeting and that they be asked to compare the number and kinds of complaints they receive from the public sector as contrasted with those they receive from the private sector.

Senator Ray asked Mr. Fisher whether the Division of EEO has any outstanding complaints on file. Mr. Fisher replied that there are complaints and that the division is in the process of getting a better handle on what has been filed against the state because of the Governor's requirement that all complaints be served on the EEO Division.

Senator Ray announced that the position of Vice Chairman of the commission is vacant and asked members to consider the question so that the position can be filled at the next meeting. He asked whether

there was any objection to a meeting in Juneau around the 1st of November and then a public hearing on the issues before the commission in Anchorage about two weeks later. There was no objection. Senator Ray adjourned the meeting at 2:10 p.m.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
February 11, 1981

MINUTES

Senator Bill Ray, chairman, called the meeting to order at 1:30 p.m. Roll call showed all members or alternates present except Don Fisher, Representative Buchholdt, Myrt Charney, Bruce Cummings, Senator Eliason, Greg O'Claray and Fred Muller. The commission began review of the draft of the report to the legislature. Mr. Cummings, Mr. O'Claray, Senator Eliason and Representative Buchholdt arrived.

During the discussion of Section 9, amending AS 39.25.120, page 12 of the report, Mr. O'Claray raised a question concerning the status of employees in the Division of Labor Relations. Mr. O'Claray asked whether those employees negotiate their own salaries. He suggested that it might be more appropriate to place them in the partially exempt service instead of in the classified service.

Mr. Cummings replied that recently those employees had petitioned the Labor Relations Agency to be removed from membership in the Confidential Employees Association. The petition was granted and they are now members of the classified service, but not members of any of the unions which represent state employees. Their salary schedule is the same as the schedule for partially exempt employees. There are 11 or 12 employees in the state who are in the classified service but not members of any collective bargaining unit.

Lynda McCurry added that CEA had released the employees from membership after studying their request. There is nothing to prevent those employees from petitioning the Labor Relations Agency at a later time to be placed back in the CEA membership.

Mr. Cummings pointed out that membership in the classified service insured that selections were made on the basis of merit and that there were some protections for the employees from arbitrary action.

Mr. O'Claray moved that AS 39.25.120 be amended to include the director, deputy director and all of the 12 employees in the Labor Relations Division of the Department of Administration. Discussion followed. Lynda McCurry pointed out that there are clerical employees included in the motion who remain members of the Confidential Employees Association. Their job duties do not directly involve them in negotiations for the state.

Frank Flavin said that the partially exempt and exempt services were created so that the administration can set and control its management policies. It is appropriate to expect that when there is a change

in administration, there will be a change in the division to reflect the new administration's policies. Senator Ray added that collective bargaining negotiations are a sensitive and important area in which the administration should have full control over policies.

Bill Huston pointed out that if the employees were placed in the partially exempt service, persons selected would not have to meet the minimum qualifications as is now the case. Lois Jund added that leaving the positions in the classified service provides a career ladder for those individuals and makes the positions more attractive to qualified people.

Mr. O'Claray amended his motion to provide that the clerical employees who are presently members of CEA should remain in the classified service. Those employees who would be placed in the partially exempt service are: director, deputy director, personnel analysts II, labor relations analysts II, labor relations analysts I, senior negotiators, and research directors. A roll call vote was taken:

Yeas: Senator Bill Ray; Representative Thelma Buchholdt; Senator Dick Eliason; Frank Flavin; Representative Jack Fuller; Greg O'Claray; John Pugh; Cherie Shelley.

Nays: Bruce Cummings; Lois Jund; Lynda McCurry; Bill Huston.

Absent: Don Fisher; Myrt Charney; Fred Muller.

The motion carried.

Bruce Cummings suggested that paragraph (9) of AS 39.25.120 in section 9 of the bill be amended to more clearly state that additional special assistants may be created by the Personnel Board pursuant to AS 39.25.130. There was no objection to the change.

Frank Flavin pointed out a problem in section 13, AS 39.25.150-(17). The word "citizen" has been interpreted to exclude resident aliens. He suggested changing the word to provide for grievances from the general public. There was no objection.

Senator Ray suggested that an effective date of July 1, 1981 be added to the bill. There was no objection.

Senator Ray asked whether the commission favored adopting this part of the report and sponsoring the bill amending the State Personnel Act as amended in the meeting. Without objection, the motion carried.

The commission turned to consideration of the section of the report on the nepotism bill. Roger Thayer advised the membership of a

problem in the present draft of the bill. Subsection (a) prohibits the hiring of someone related to the person doing the hiring. That prohibition could make it impossible to find employees to fill positions in the rural areas of the state. He suggested deleting the phrase referring to the person doing the hiring. Without objection, the motion carried.

The commission discussed the draft bill limiting the adjustment of retirement benefits and the section of the report concerning that bill. Lois Jund suggested that the report be redrafted to reflect the fact that there were many retired Alaskans in the situation described. There was no objection. There were no other changes proposed for that section of the report.

The commission reviewed the section of the report on the bill amending the membership of the Public Employees Retirement Board. There were no objections to its adoption.

The commission reviewed the section concerning the bill applying the Administrative Procedure Act to the adoption of regulations by the state retirement systems. There were no objections to its adoption.

The commission reviewed Chapter II of the report, concerning "Unresolved Personnel Issues". Senator Ray advised the commission that the legislature does not presently have a classification system for their employees. He indicated that he intended to suggest to the presiding officer of each house of the legislature that the Blue Ribbon Commission be delegated the task of drafting a uniform code for hiring and employment practices for the legislature. He added that he also intended to request that the commission be extended for another year. He asked whether there were any objections. There were none.

Senator Ray introduced Chief Buehler from Kotzebue who was a guest of the commission.

Senator Ray advised the commission of correspondence concerning credit for service in the state retirement systems. The Chief of Police of Seward wrote that he was not able to purchase three years of employment with the municipality into the state retirement system. Under the current law a police officer must work for the state for three years before he is eligible to purchase prior law enforcement time into the PERS.

Bruce Cummings explained that originally the retirement law provided that the only extra time for which retirement credit would be given was for employment with the Territory of Alaska. That service was credited without charge to the employee after he or she had worked for the state for at least five years. The period of required employment was then shortened from five years to three and other kinds of service

were added to the list.

Bill Huston added that the concern of law enforcement officers is that the work is for consecutive years, and yet some of the time counts toward retirement credit and some does not, depending on the agreement between the state and the municipality.

Senator Ray suggested that Bill Huston, Bruce Cummings and Terry Cramer investigate the question and consider whether there is merit in amending the statute. Bruce Cummings suggested that it would be more appropriate to include a referral to someone within the Division of Retirement and Benefits. Senator Ray directed the commission staff to pursue the matter.

Greg O'Claray raised an issue which had been brought to his attention. An individual has been a state employee for a number of years and is now placed in the position of losing seven years of retirement credit. He worked as a vessel employee on the state ferries. Then, in 1977, he was appointed to work as port captain. When that happened, he was no longer eligible to participate in the Taft-Hartley Trust Fund which is the retirement system for marine highway employees. At the time that he accepted the position onshore, he was assured by the Division Director of Retirement and Benefits and by Bill Hudson in the Division of Marine Transportation, that he would be able to transfer his period of service with the Taft-Hartley trust into the state retirement system. He therefore accepted the appointment at reduced pay with the understanding that his retirement benefits payments would continue. The Taft-Hartley trust requires 10 years of employment before a member is vested.

In fact the information which he was given was wrong, and he has now been told that he cannot receive credit with PERS for his period of employment on the ferries which was covered by the Taft-Hartley trust. He is left having to consider suing the state.

Senator Ray suggested that Greg O'Claray and any other interested members be constituted a subcommittee to call on Mr. Hudson to ask for his statement and report to the commission. Bruce Cummings pointed out that as a trustee on the NW Marine Highway Trust he has become familiar with the case. Commissioner Hudson does not dispute the facts. He advised the individual that he could transfer his Taft-Hartley service to the PERS system and that was an error. Mr. Cummings suggested that it might be appropriate to consider amending the PERS to allow time with any other retirement system to be credited with PERS under certain circumstances.

Senator Ray adjourned the meeting at 2:45 p.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Representative Thelma Buchholdt
Bruce Cummings
Senator Dick Eliason
Frank Flavin
Representative Jack Fuller
Lois Jund
Lynda McCurry
Greg O'Claray
John Pugh
Cherie Shelley
Bill Huston

OTHERS IN ATTENDANCE

Roger Thayer
Robert Maurant
Darlene Livermore
Donald Buehler

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
January 8, 1981

MINUTES

Senator Bill Ray, Chairman, called the meeting to order at 10:05 a.m. The commission began consideration of the draft bill on nepotism. Senator Ray asked for objections to the commission sponsoring the bill. It was noted that APEA had registered its objections to the bill at a previous commission meeting. Bill Huston pointed out that nepotism laws will prevent a child pursuing the same choice of career with the state as his or her parent. Sandra Withers suggested that the disadvantage of that limitation should be weighed against the alternative, which is the appearance of favoritism given whenever a close family member is employed in an office headed by another family member. Frank Flavin added that he would prefer to see the statute focus on the basis of the hire rather than on the existence of a relationship. Many of the complaints which the Ombudsman receives are based on relationships which are as close as marriage without there being any formal legal tie, rather than on a relationship which the draft bill would address. Senator Ray called for objections to the commission pursuing this bill. Doryce Eggleston, Frank Flavin and Bob Maurant objected.

The commission next considered the draft bill amending the State Personnel Act and discussed the bill section by section.

In Section 4, page 2, line 2, the amendment to existing law was deleted, leaving the line reading "authorized by this chapter".

In Section 7, page 3, line 21, the word "and" was changed to "or", to make the phrase read "temporary or special inquiry".

The commission discussed the section concerning procedures for amending the Personnel Rules, Section 11, which begins on page 7, line 9, and decided to delete the material on page 8, lines 15-28 and to amend the preceding paragraph by adding eligible lists, hours of work, and merit increases to the topics which are included within "matters of public policy".

AS 39.25.150(17). In Section 12, page 11, line 7, procedures for resolving citizen grievances were added to the topics which the rules should address by adding the word "citizen" between the words "employee" and "and".

In discussion of AS 39.25.150(21), Representative Fuller raised a problem which has occurred in the conversion of Fish and Game temporary positions to permanent seasonal positions. He provided commission members with background material and explained that for positions in the bush which used to be classified as temporary positions, the change to permanent seasonal has meant that many fewer local residents are qualifying for the jobs. Permanent seasonal positions must be hired from the

registers, and many residents of the villages in question (Gambell, Savoonga, Diomed, and Shishmaref, for example) either are reluctant to apply at all, or else, because they do not have much formal education, do not score as well as college students when their applications are evaluated. As a result the Fish and Game Technicians I and III who are hired for monitoring marine mammal harvest and collecting biological specimens are more likely to be from Anchorage and Fairbanks than from the local area. This costs the state more because of transportation costs and the technicians spend a substantial period of time initially becoming familiar with the area, rather than being able to begin their substantive work immediately.

Mike McMullen pointed out that the requirement that employees be hired from the register cannot be waived for permanent seasonal positions, while it could be waived by the Division of Personnel if the positions were classified as nonpermanent. Frank Flavin added that block scoring would be appropriate, since to do the job well does not require technical knowledge. This kind of job classification would benefit from essentially a pass/fail application evaluation system.

Senator Ray suggested that the commission authorize him to send a letter to the Governor, perhaps with copies to the Department of Fish and Game and to the Division of Personnel explaining the situation and encouraging the hiring of local residents for these positions. The letter might also be directed to Jerry Reinwand, the Governor's special assistant who had addressed the commission on personnel matters at an earlier commission meeting. There was no objection.

The commission continued review of the bill. In Section 14, AS 39.25.160(i), the word "unlawfully", page 14, line 25, was deleted.

In discussion of Section 15, beginning on page 14, line 28, questions were raised about whether employees who were hired in positions in the classified service only to have those positions transferred into the partially exempt or exempt service have any recourse. Members also asked whether the more routine positions which are presently in the exempt service or the partially exempt service are being transferred into the classified service. Senator Ray suggested that the commission write to Jerry Reinwand asking for a response to the latter question.

Frank Flavin noted that the present draft of the State Personnel Act does not set out a penalty clause. The present statute provides that violation of the Rules is a misdemeanor, but that is not an effective deterrent, since it is rarely enforced. Senator Ray suggested that discussion of the penalty clause should be reserved for future meetings of the commission.

In Section 18, AS 39.25.192, Senator Ray suggested that a state employee's right to make contributions to political candidates and campaigns be listed, since many state employees believe that they are denied this right under the present State Personnel Act. There was no objection. This ended discussion on the State Personnel Act amendments.

Senator Ray brought up recent correspondence to the commission from Donald E. Buehler, Chief of Police in Kotzebue. Chief Buehler has submitted his name for consideration for appointment to the Blue Ribbon Commission. However, since the membership on the commission is full, the commission decided that Chief Buehler should be invited to the next meeting as an observer.

The commission reviewed the draft bill on membership of the Public Employees Retirement Board. The draft dated December 30, 1980 was approved without objection.

The draft bill limiting the adjustment of retirement benefits was under consideration.

The commission considered the draft bill limiting the adjustment of retirement benefits. Lois Jund pointed out that the present draft would not significantly help in the cases about which the commission had initially been concerned. In those cases, the amount of overpayments had exceeded 10 per cent of the amount to which the retired person was actually entitled. Discussion followed. The commission agreed to delete AS 14.25.173(b)(3) page 1, lines 17-18, and AS 39.35.520(b)(4), page 1, lines 28-29.

The commission also decided to eliminate the phrase "which reduces benefits or" from page 1, lines 10 and 20 so that for future payments, retired persons will only be entitled to the correct amount of their payments. A question was raised concerning whether the phrase "credited service with the state" includes territorial service as well as employment after statehood. The commission decided that in order to benefit from the limitation on adjusting retirement benefits, retired people will have to meet all the requirements listed, and therefore decided to add the word "and" between paragraphs (1) and (2) of Section 1, page 1, line 14, and between paragraphs (?) and (3) of Section 2, page 1, line 25.

Paul Arnoldt, Director of the Division of Retirement and Benefits addressed the commission on the retirement bills. He began with a presentation on the bill requiring that the Public Employees Retirement Board comply with the Administrative Procedures Act in adopting future regulations. He pointed out that the intent of the APA is to insure that there is an opportunity for public comment before regulations are promulgated, to provide the Department of Law with an opportunity for review, and to insure that the Governor has input into regulations which are adopted. He indicated that these goals are met by the present system for adoption of regulations. The process of adopting regulations through the APA is involved and if those goals are met now, then it does not seem appropriate to change the system.

Mr. Arnoldt also pointed out that there is a nationwide trend for holding retirement board members personally responsible for their actions which began with the 1974 ARISA Act. It is appropriate therefore

to provide the PERS board members with the tools which they will need to carry out their responsibilities. For example, last session, 10 retirement bills were combined and passed by the Legislature in the closing days of the session. These measures had to be implemented expeditiously. If the board had had to comply with the APA in adopting regulations to put the new laws into effect, then considerable time would have been lost. Lois Jund agreed that many agencies find the APA procedures cumbersome. Frank Flavin pointed out that the APA does provide for the adoption of emergency regulations for that situation.

Mr. Arnoldt continued with discussion of the bill affecting membership of the retirement board. He stated that the provisions of the bill were appropriate and he had no objection to the proposal.

On the adjustment of retirement benefits bill, Mr. Arnoldt stated that he agreed that any errors in retirement benefit payments should be found and corrected quickly, but that the two-year limit imposed by the bill was not really necessary. The appeals procedures presently in the law provide the retirement boards with an opportunity to act in consideration of the circumstances of the retired person and to provide an equitable solution to the error. Since the ARISA Act is imposing personal accountability on private sector retirement boards and since the federal government is expected to impose similar provisions on public sector retirement boards, the authority of the PERS board should not be decreased.

Senator Ray pointed out that while the retirement board has the authority to waive collection of overpayments, they can be quite slow to act. The retired person, who often has only the retirement income to live on, is put through considerable grief and uncertainty. Other procedures which do not put the retired person through that sort of experience should be developed to provide the retirement board with the information and control which it requires. Senator Ray was called away from the meeting and Don Fisher, Vice Chairman of the Commission, chaired the meeting.

Bill Huston suggested that in order to keep the retirement fund solvent, errors should be paid for out of the general fund rather than from the retirement contributions of members and employers. Frank Flavin pointed out that the ARISA provisions are aimed at penalizing board members for improper investments rather than for improper payment of benefits. Greg O'Claray replied that nonetheless, the board cannot sit as a fiduciary and condone improper payment of benefits. They would have to correct the payment and collect the improper back payment unless there were provisions to the contrary in the law. Mr. Arnoldt repeated that he felt that this bill would be taking a wrong turn in the direction of retirement legislation. The national trend is in the other direction. Frank Flavin pointed out that the bill does not take away any present powers, it just states that after two years, the board's power

to act is limited. Mr. Fisher thanked Mr. Arnoldt for coming to the commission meeting and expressing his views.

Mr. Fisher asked the commission to consider when to schedule the next meeting. Wednesday, February 11 at 1:30 p.m. was selected. He adjourned the meeting at 3:40 p.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Don Fisher, Vice Chairman
Mike McMullen
Frank Flavin
Representative Jack Fuller
Lois Jund
Roger Thayer
Greg O'Claray
Robert Maurant
Doryce Eggleston
Sandra Withers
Bill Huston

OTHERS IN ATTENDANCE

Paddy Moriarty
Paul Arnoldt
John Logan
Ann Wolden

* * * * *

Since the conversion of our temporary help to permanent seasonal positions, we must now hire from a list of eligible applicants on a statewide register, rather than through local Employment Offices. The net result is that normally we must hire someone from outside of the area, as they will be on the top of the list of available applicants. As a result, we usually end up having to pay the individual travel from and back to Fairbanks or Anchorage and often have to provide a subsistence or per diem payment while on the job.

Some of the reasons this happens include:

- 1) Registers are usually open for recruitment for limited periods of the year.
- 2) The time an individual must apply to get on a register is often months away from the time the job will be available.
- 3) Most people indicate they will work anywhere in the State because they know most Technician jobs are of short duration during the summer, and it is an adventurous experience for them. They don't expect to take the same job more than once or twice.
- 4) College students are looking for these type jobs for the experience and money and they will almost always rate higher on the register than someone living say at Gambell, with limited education and work experience.

Some possible solutions include:

- 1) Some preference for hiring local residents.
- 2) More flexibility in getting applicants rated and on registers, by allowing local Employment Offices to examine and rate applicants at the time jobs are actually being filled.
- 3) When it can be demonstrated that hiring a local resident will save the State money, measurably contribute to the success of the program, or provide a more efficient employee, that latitude be granted the employing agency.

January 5, 1981

Maybe an example will illustrate the problem. If we intended to place observers in Gambell, Savoonga Diomed, and Shishmaref to monitor marine mammal harvest and collect biological specimens this summer, here is what we would have to do. The positions would be Fish and Game Technicians I and III's and the registers are only open during December. So, during December we would have to try and contact individuals in those villages telling them to fill out State of Alaska employment applications, and be sure and turn them in for a job that won't start til May. As you know it is most likely that only a limited number of individuals in each village will actually fill them out and send in the application form. Also, anyone who happens to not get the word for whatever reason, but who would be available to work in the summer, obviously will not be on the register.

In April we ask for registers for the positions and find that there are over 100 names on the register, almost all from somewhere other than the four villages that we intend to station the positions. Even if there are individuals from the four villages, they will probably be rated much lower than several of the college students on the register, many of whom will take jobs if they are offered. So instead of hiring someone from the village, we have to hire someone out of Anchorage or Fairbanks, pay their travel to the job site and assist in locating housing for them. For the first two weeks they must spend most of their time getting to know the local hunters.

I should make it clear that I don't have anything against college students working for the Department as seasonal technicians, as they have proven to be exceptional employees, and they need the experience, not to mention money, to round out their education. There are simply some situations where local residents could be a decided advantage to the overall program.

In the past I've recommended hiring individuals in various villages, as part time Department employees to perform a variety of tasks such as, sealing furs, issuing harvest tickets, conducting subsistence surveys, recording harvest by village residents, be a contact person that residents of a village could go to for an explanation of regulations, or to voice their concerns about the effects of various Fish and Game regulations. However, I've backed off pushing the idea the last two budget submissions, because it is essential, for such a program to work, that I be able to hire residents of the individual villages.

There are several advantages to the individuals hired as permanent seasonal as opposed to the old temporaries, but the net result is that Fish and Game is less likely to hire someone from the local area now than we used to two years ago.

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
December 4, 1980

MINUTES

Senator Ray, chairman, called the meeting to order at 10:00 a.m. and asked commission members to consider the draft bill limiting the adjustment of retirement benefits. Paddy Moriarty asked why, in subsections (b)(1) of the first two sections of the bill, the date set was after the incorrect benefit was first paid rather than after the individual had retired from state employment. It was pointed out that the purpose of the bill is to set a statute of limitations and that beginning to run the period from the first incorrect payment was a reasonable decision.

Bruce Cummings pointed out that the Public Employment Retirement System board presently has an appeals procedure to consider cases in which overpayments have been alleged by the Division of Retirement and Benefits and the retired person has difficulty in repaying the amount. However, an individual can knowingly allow an overpayment to be made, and in those cases it would be appropriate for the state to seek to recover the amount overpaid. The review system of the PERS board would permit this but the proposed bill would not.

Senator Ray asked how the state should handle the situation in which an employee retires after having received written computations from the division setting out his years of credited service and the amount of benefits to which he will be entitled and later is told that the figures were incorrectly calculated. Therefore, the amount of his benefits will be reduced. Senator Ray asked whether it would be fair to require the state to rehire the retired employee in the job from which he retired. The retired employee would then have an opportunity to earn the credits which he was initially informed he had.

Bruce Cummings suggested that this would injure the employee who had replaced the retiree on the job. The new employee might have resigned from a job to accept the new position and giving the retired person back his old job would mean injuring the new worker. Some other system for addressing the problem should be developed.

Fred Muller asked what the frequency of error in the computations of length of service credits is. Lois Jund explained that a number of cases had arisen at the same time several years ago when the Division of Retirement and Benefits performed a wholesale audit of the retirement system and discovered a number of errors. Many of the cases which were raised involved overpayments of from \$1000 to \$5000. It was often very difficult for the retired person to repay this large an amount. Mr. Muller asked whether any of the commission members knew how many state

employees retire expecting to be eligible to receive retirement benefits and then discover that an error has been made and that they are not eligible for any benefit at all.

Paddy Moriarty replied that the Ombudsman's office has received information of several cases in which people wrote to the Division asking for a computation of their creditable service. They received a written response and then retired. Later the division reviewed their file and disallowed some portion of the service which had been previously included in the computation. Bill Huston added that some of the computation errors occur because of statutory changes. The formulas for computing creditable service are complicated so that an employee cannot simply add up the number of months he has worked for the state and know the length of creditable service or the retirement benefits he will be entitled to.

Bruce Cummings suggested that there are two possible solutions to the problem which the commission is considering. The state could offer assistance to those whose creditable service has been erroneously computed in returning to work, as has been done for Julie Issac. In addition, the PERS board has the authority to waive recoupment of overpayments in cases of hardship. Senator Ray pointed out that in Mrs. Issac's case, the appeal to the board took 2-1/2 years to reach a decision and that her petition was denied because her husband's resources were considered in evaluating whether collecting the overpayment would be a hardship to her. On that information, the board found that it would not be a hardship if she were required to repay the money to the state. The issue was finally satisfactorily resolved through the efforts of the Governor's Office and the Attorney General.

Senator Ray asked whether there was any objection to adding a statute of limitations to the adjustment provisions of the retirement benefit law. Fred Muller suggested that it would be appropriate to require that the larger cases of overpayments be reviewed by the PERS board rather than automatically waiving any recoupment. He suggested that the statute of limitations should not apply to those cases in which the overpayment had been more than 10 per cent of the monthly benefit to which the retired person was correctly entitled. Senator Ray asked whether there was consensus on Mr. Muller's proposal. There was no objection.

The commission then considered the draft bill relating to the nepotism in state employment. Terry Cramer, the administrative assistant to the commission, explained that this bill was an attempt to place the provisions of the Personnel Rules prohibiting nepotism into statutory form. The drafter changed the language of the Personnel Rule, which uses the term "appointing authority" and instead used the term "person making the appointment" in the draft.

Darlene Livermore stated that the Alaska Public Employees Association has three concerns about the proposed bill. The current statute prohibits employment of persons related to the commissioner of the department. The intent of the legislature was therefore probably to

discourage political patronage in the state employment. The Personnel Rules probably were drafted with the same theory as their basis. Recently in the Civil Service Reform Act of 1978, the federal government repealed a 90-year old nepotism law which had a general application. Congress retained prohibitions against abuse of power by elected officials, aiming again at political patronage. Secondly, Ms. Livermore raised the issue of whether the present draft is in opposition to laws protecting certain classes of people from employment discrimination, particularly, from discrimination based on marital status or change in marital status. The third issue which APEA is concerned about is access to employment. Unlike most locations in the Lower 48, there are a number of communities in Alaska which have only a few major employers. For example, in Valdez there are two -- the division of highways and the division of mental health. Both to provide employment opportunities for the people living in those communities and to provide a pool of employees for the state, the nepotism laws should not be unnecessarily stringent.

Bruce Cummings said that he did not disagree with the points which APEA was raising and that the provision of the Personnel Rules gives the director of the division of personnel authority to waive enforcement of the rule. He added that could not recall an instance in which he had refused to waive enforcement of the rule. However, it is appropriate to have each case of employment of close relatives considered in order to prevent abuse.

Ms. Livermore explained that she did not object to the present situation in which the statute addressed nepotism at the commissioner level and the Rules had broader application, but that putting the provisions of the Rules into the statutes would provide the courts with a greater opportunity for review and limitation. Mr. Cummings explained that the Attorney General has advised the division that the scope of the rule is broader than the rule-making authority granted by the statute. Therefore, enforcement of the rule could probably not be defended successfully in court.

Representative Fuller asked whether there were regulations for elected officials. Senator Ray replied that the State Personnel Act applies only to the executive branch of government. Representative Eliason asked whether nepotism was a lively issue. Mr. Cummings answered that there are some communities in the state in which there has been considerable public interest in the question. Senator Ray asked whether there were any objections to the commission sponsoring a bill which would put the language of the Personnel Rules into the statutes. Darlene Livermore registered APEA's objection.

The commission next considered the draft to require that the regulations adopted by the retirement board be subject to the Administrative Procedure Act. Members commented that the draft did not follow the instructions which the commission had given the drafter and decided to defer consideration of the subject until a redraft was available.

The commission considered the draft bill relating to membership of the Public Employees Retirement Board. Lois Jund suggested that the draft be amended to require that of the four members elected by the members of the retirement system, at least one must be a retired person. The amendment was adopted without objection.

The commission turned to the redraft of the State Personnel Act amendments. Several problems were noted and Senator Ray asked Jack Chenoweth, from the Legal Services Division of the Legislative Affairs Agency to meet with the commission. After reviewing the second draft of the State Personnel Act with Mr. Chenoweth, the commission discussed with him the amendments to the draft limiting adjustments to retirement benefits which had been agreed upon earlier in the meeting.

Terry Cramer advised the commission members of a telephone call from Grace Kack. Ms. Kack is concerned that individuals applying for state positions must be re-examined every two years in order to stay on the register for a job class. Ms. Kack was not concerned on her own behalf, since she is presently employed by the state, but she felt that the requirement was unfair for those who were not presently employed.

Ms. Cramer also advised the commission that several responses had been received from agencies whose employees were placed in the exempt and partially exempt services concerning whether those employees should remain in their present status or should be transferred to the classified service.

Senator Ray stated that the commission would meet to review redrafts of all of the bills probably at the end of December.

Senator Ray adjourned the meeting at 11:45 a.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Bruce Cummings
Representative Dick Eliason
Representative Jack Fuller
Lois Jund
Lynda McCurry
Fred Muller
Bill Huston
Paddy Moriarty
Robert Maurant
Darlene Livermore

OTHERS IN ATTENDANCE

Roger Thayer

* * * * *

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau
October 29-30, 1980

MINUTES

The meeting was called to order at 10:00 a.m., by the Chairman, Senator Bill Ray.

John Williams, Commissioner of the Commercial Fisheries Entry Commission, testified in response to the Blue Ribbon Commission's request for information concerning whether his employees should be in the exempt service or would more appropriately be placed in the partially exempt or classified service. Mr. Williams stated that the limited entry commission is a quasi-judicial, independent regulatory body which is granted special status by the Alaska Statutes. According to an Attorney General's opinion, prepared for the Alaska Oil and Gas Conservation Commission, it is appropriate for commissions of this type to remain independent from the executive branch. Therefore, Mr. Williams believes that employees of the commission are most appropriately left in the exempt service. Placing them in the partially exempt or classified service would subject them, and the commission as their employer, to inappropriate regulation by the executive branch.

Mr. Williams stated that the commission had conducted a poll of its employees to learn what their wishes were. Of the 29 employees, 25 participated. Each of the staff was provided with a copy of the State Personnel Act prior to the poll being taken. Every effort was made to insure that the poll was secret. Of those voting, 21 favored remaining in the exempt service and four favored moving to the partially exempt service. None wished to be placed in the classified service.

Mr. Williams added the commission has chosen to follow the practices which the Personnel Rules set out for partially exempt employees.

Greg O'Claray addressed the question which the commission had posed at its last meeting about why the vessel employees of the Marine Highway System are placed in the exempt service. He provided the members with a letter explaining his reasons.

The vessels are, by federal law, under the jurisdiction of the United States Coast Guard for the safe operation, navigation, staffing and examination, and certification of personnel. These federal regulations cover employment rights, health, safety and other conditions of employment of the seamen as well as making requirements concerning the number of qualified personnel who must be on board before the vessel can sail. In addition, employees recruited from the Maritime Unions are covered by

private Taft-Hartley health and welfare and retirement trusts and would not automatically participate in the state retirement system or in its other benefit coverage without considerable loss of benefits. For Merchant Seamen, engineers and mates recruited from the private sector, the state's wage classification system would not provide a competitive salary. Therefore, the state decided at the inception of its involvement in the marine transportation enterprise, that the employees should be exempt from the State Personnel Act. None of these reasons has changed and therefore Mr. O'Claray recommends that the Marine Transportation System employees remain in the exempt service.

Roger Thayer added that the ferry system receives approximately 1200 applications a year. They must be submitted to the department between February 1st and March 10th. The personnel office ranks them based on training and education, and shoreside and maritime experience. Grades range from 70 points for a person without a high school diploma and with no relevant work experience to 110, for someone with the previous shipboard experience in a field directly related to steward's tasks who also holds a Coast Guard license for lifeboatman. Hiring is usually done by late April. This system was developed as a resolution to EEO complaints claiming that the ferry system discriminated against women and minority applicants. Most positions which are above the entry level are filled by promotion.

Senator Ray raised the question of the membership of the Public Employment Retirement System board. The statutes presently require that the three members of the Personnel Board sit on the PERS board as well as on the Labor Relations Agency. He asked whether any of the commission members believed that the overlap in membership was important. Cherie Shelley pointed out that as a result of recent legislation, the PERS board is now responsible for decisions concerning the Alaska Supplemental Benefits program and the Deferred Compensation program, in addition to the retirement program. Therefore, their duties have significantly increased. It makes sense to limit the demands on the time of those board members, who are all volunteers. Without objection the commission agreed to draft a bill to change the membership of the Retirement Board. Two alternatives were proposed: to eliminate the members of the Personnel Board from membership on the PERS board and replace them with one member appointed by the Governor and two members elected from the retirement system; and to increase the size of the PERS board while leaving the members of the Personnel Board on it.

The commission reviewed the memorandum on employee service credits and then recessed for lunch.

The meeting reconvened at 1:30 p.m. Eric Yould, Executive Director of the Alaska Power Authority, addressed the members on the question of why the power authority employees are in the exempt service. Of the 16 employees, 14 have college degrees. He believes that they should remain in the exempt service. The Authority would have difficulty meeting its deadlines if it had to go through the red tape of hiring

employees through the classified system.

The Alaska Power Authority was structured by the Legislature to permit it to become similar to a public utility district which is a form prevalent in the lower 48. Mr. Yould was concerned that changes which might be made in the structure of the Authority now would foreclose flexibility in the future when the Authority has developed to the extent anticipated by the legislature. He wanted to preserve those options for future employees. It is anticipated that there will be power plant operators, linemen and so on, once the structures are in operation.

In answer to a question from Darlene Livermore, Mr. Yould explained that although most of the employees have degrees, they perform general professional kinds of duties rather than highly-technical tasks. Mr. Yould added that he is not opposed to union membership for the clerical employees of the Authority.

The commission began its discussion of the review on the State Personnel Act. See attached comments and recommendations.

Fred Cook, personnel officer for the Department of Fish and Game, addressed the commission about a number of his concerns. The Personnel Division has been receiving a large number of applications for the positions available, especially for permanent seasonal positions. Changing from hiring temporary employees to hiring permanent seasonal employees has increased the Department's recruiting expenses from \$8,000 - \$57,000 this past year. Contacting the applicants through phone calls and telegrams has been difficult because frequently people do not reply. Therefore, the department continues to send them telegrams or to call them for other positions. He knows of one gentleman who received approximately 30 telegrams and didn't answer any of them.

Many applicants state they will accept employment anywhere in the State, but when the department contacts them, they say that they are not interested in going to such and such place. Mr. Cook suggests that if anyone rejects a job offer, he be removed from the state register at once. The application form should specify four regions of Alaska (such as Southcentral, Southeast, Central and West) to narrow down areas in which the applicant says he will work. It would speed up the process for his people and also would save the department a tremendous amount of money. He figures that the department, as a whole, spends upwards of \$200,000 a year just in recruitment.

Another problem area is in insuring that applicants are Alaskan residents. No one verifies the information provided by the applicant.

The scoring of the applications is also a problem. There are approximately 100-200 applicants with the same score all ranking #1 on the register. He suggested a more sophisticated grading system to rank these applications so that the top group would have fewer applicants in it. The department then would have fewer people to consider when filling a position.

Mr. Cook also suggested changing the length of time for recruitment of bush positions. Presently it is 30 days. He would like it changed to 60 days to enable the recruiting people time to have applications corrected and the applicants time to get it done. He gave an example of a problem he had today. The department has a Fish & Game Resource Specialist II position, at range 16, open and there's an Alaska Native in Angoon that they would like to hire. They want a bilingual person. The applicant forgot to sign his application. In order to meet the application deadline, Mr. Cook had to contact him, which took five telephone calls to Angoon, take the application out to Channel Flying and instruct the pilot on what needed to be done, fly the application to Angoon for the gentleman's signature and have it returned by 3:00 p.m. that afternoon. He estimates that particular problem costs his department \$200.

Jerry Reinwand, Executive Assistant to Governor Hammond, addressed the commission at its request. He explained that the Governor's Office is in the process of reviewing the separate agencies which are located within it to decide whether they should remain as part of the Office or whether it would be more appropriate to attach them to one of the departments. There are questions which make the decision difficult in some cases. For example, the Human Rights Commission should avoid even the appearance of being subject to political pressure, and therefore, it would appear to make sense that it be placed in one of the departments rather than the Governor's Office. However, it should also be insulated from the pressures of being a line agency within one department, and therefore, it may be inappropriate to place it in a department. Mr. Reinwand indicated that he has questions about whether the staff of the Division of Budget & Management and the Division of Policy Development & Planning and the Office of Internal Audit need to be in the partially exempt service. Since the review process has not been concluded, Mr. Reinwand suggested that the commission wait for its results as an expression of what the Governor recommends on the question of who needs to be in the exempt service.

The commission recessed at 3:20 p.m. until 10:00 a.m. Thursday, October 30.

Senator Ray, chairman, reconvened the meeting at 10:00 a.m. on October 30.

Kerry Romesburg, Executive Director of the Postsecondary Education Commission spoke in response to the commission's request.

The Postsecondary Education Commission has 30 permanent employees and adds four nonpermanent employees to its staff in the summer. He indicated that although the statutes place himself and the staff in the exempt service, in reality the commission uses the same pay scale as the classified service, the kinds of work which most of the employees do is similar to work done by classified employees and, except for hiring employees from the registers, the commission operates under most of the

procedures of the Personnel Rules. Of the 30 employees, 16 are loan repayment, awards and collection clerks. Three others are clerical employees, two are in the administrative assistant class and the remainder are professional employees. He added that as permanent exempt employees, the commission employees receive benefits as do permanent classified employees.

There being no more questions for Mr. Romesburg, he was thanked and excused.

John Pugh commented that it did not appear that the Post-secondary Education Commission needed to be in the exempt service. He recommended that if the Blue Ribbon Commission is going to clean up the State Personnel Act, that each of the boards and commissions which presently has its staff placed in the exempt or partially exempt service be carefully reviewed.

The commission then returned to reviewing the draft of the State Personnel Act. Comments and recommendations are attached.

Senator Ray stated that when a redraft of the Act is available the commission will meet again. Without objection, the meeting was adjourned at 11:30 a.m.

October 29, 1980

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Diane DeSimone (for Bruce Cummings)
Bill Huston
Paddy Moriarty (for Frank Flavin)
Fred Muller
Greg O'Claray
John Pugh
Cherie Shelley
Roger Thayer (for Lynda McCurry)

OTHERS IN ATTENDANCE

Darlene Livermore
Bob Mourant

October 30, 1980

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Diane DeSimone (for Bruce Cummings)
Bill Huston

Fred Muller

John Pugh
Cherie Shelley
Roger Thayer (for Lynda McCurry)

OTHERS IN ATTENDANCE

Darlene Livermore
Bob Mourant

A D D E N D U M

To the
MINUTES

October 29-30, 1980

COMMENTS AND RECOMMENDATIONS ON THE STATE PERSONNEL ACT

Page 2 AS 39.25.080. Public Records.
Line 7

Cherie Shelley was concerned that the Division of Labor Relations might use this section to assert that information APEA needed in preparing cases was confidential and could not be released. Senator Ray suggested adding For the purpose of this Act at the beginning of the sentence on Line 7.

In discussion of paragraphs (1)-(5) members noted that paragraph (1) provides for information on all state employees and that paragraph (2) provides for information about an individual employee. Members decided that the phrase state employee should be used rather than the phrase "state officer or employee".

Page 3 AS 39.25.110. Exempt Service.
Line 1

After discussing the standards proposed in subsection (a), the commission members decided to delete all of (a).

The commission will consider whether the employees of the agencies named in paragraphs (11) and (12) should remain in the exempt service after further testimony on the question.

A question was raised about the difference between the exempt and classified service. An employee in the exempt service is not hired from the register, does not get paid according to the pay plan, and can be fired at will. In the classified service there must be just cause before an employee can be fired.

Page 5 AS 39.25.120. Partially Exempt Service.
Line 23

Assistant Commissioners should be added to paragraph (1).

Page 6 Commission members asked why the state forester, hearing
Line 8, examiners in the Department of Revenue and the Chief of
23 & 27 Subsistence in the Department of Fish & Game should be in the

partially exempt service. The question will be considered later.

Page 6
Line 29 Bob Maurant pointed out that there are airport managers for smaller airports who are not in the partially exempt service. Only the managers of the Anchorage and Fairbanks International Airports are partially exempt. Paragraph (16) should be changed to reflect this.

Page 7
Line 2 The commission will consider in the future whether the deputy director of the division of tourism and the deputy director of the division of insurance should remain in the partially exempt service.

Page 8
Line 5 AS 39.25.140. Amendment of Personnel Rules.

The question of the distinction between public policy and internal management was raised. Paddy Moriarty suggested that instead of the phrase "public policy", that the draft should say whether it affects the public or is used by an agency in dealing with the public. Senator Ray suggested looking at the language which was used in the Alcoholic Beverage Control Board bill last session to help clarify the distinction between public policy and internal management regulations. Cherie Shelley pointed out that many of the subjects covered in the Personnel Rules have been included in the collective bargaining agreements. Therefore changes in the Rules which are contrary to the substance of the contracts would have little practical effect.

Page 8
Line 20 The commission decided that the Personnel Rules should be required to be published in the Alaska Administrative Register and Code and therefore that the word "may" in paragraph (4) should be changed to shall.

Page 8
Line 27 AS 39.25.150. Scope of the Rules.

The commission decided that the Personnel Board should also approve the classification plan.

Page 9
Line 18 Senator Ray suggested finding a clearer phrase than "sound employee selection methods" for this paragraph.

Page 11
Line 4 After considerable discussion about the veteran's preference system, the commission decided not to amend this paragraph. Under the present system, a veteran receives the five additional points only on the applications he files before he is hired. Once he has accepted a position with the state, then any applications for other positions which he has filed are rescored to remove the 5-point bonus.

Page 12
Line 7 Senator Ray suggested investigating the definition which the director of the division of vocational rehabilitation uses in

determining whether a person is severely handicapped. It might be appropriate to include that definition in the State Personnel Act.

Page 12 In discussion of paragraph (23), the commission questioned the
Line 10 definition of programs and disadvantaged persons. Senator Ray suggested adding that the programs could not be against the standards of a merit system of employment.

Page 12 AS 39.25.153. Personnel Officers.
Line 18

Diana DeSimone pointed out that the Department of Law does not have a Personnel Officer so subsection (a) should be redrafted. It should read: If a principal department of the executive branch requires a personnel officer, then the personnel officer shall be permanently employed by and located within the department.

Page 12 She also suggested that the whole section be deleted since
Line 22 the director of the division of personnel has the authority under AS 39.25.150 to delegate authority for personnel actions to the personnel officers of the departments and since that authority has been delegated recently. Roger Thayer replied that the delegation is recent and that he would prefer to have some authorization for independent action by the personnel officers remain in the Act.

Page 12 The commission decided to delete the language authorizing
Line 22 the personnel officers to act contrary to the Personnel Rules so that subsection (b) begins with the phrase Subject to the provisions.

Page 13 The commission also decided to delete paragraph (4) which
Line 7 would have given the personnel officers authority to make rules concerning the methods and procedures for overtime work and pay.

Page 13 In order to provide for consistency in the personnel policies
Line 15 of the state, the commission decided to require that the commissioner of administration must approve the exercise of any powers under this section, rather than the commissioner of the department in which the employee worked.

Line 13 AS 39.25.160. Generally.
Line 17

After discussion of the meaning of "precinct level" the commission decided that the phrase should be defined in the State Personnel Act.

Page 13 To clarify subsection (b), Senator Ray recommended changing
Line 23 it to read: ... in connection with securing or making an appointment....

Page 13 Senator Ray recommended that subsection (c) be made to
Line 26 apply to all state employees rather than just those in the

classified service.

Page 14 The commission decided that protection against actions based
Line 6 on unlawful discrimination due to race, sex, color, religion,
 national origin, age or handicap should be extended to all
 state employees. Classified employees should be protected
 against discrimination based on political beliefs.

Page 14 Senator Ray recommended adding the word knowingly to the
Line 11 first line of subsection (g) so that it reads: "A person may
 not knowingly make a false statement...."

 Definitions should be included in the Act for "fraud" and
 for "knowingly".

Page 14 Subsection (h) should be changed to read: "...person may not
Line 16 unlawfully defeat, deceive, or obstruct...."

Page 14 AS 39.25.170. Hearings and appeals upon dismissal, demotion, or
Line 27 suspension.

 The commission decided that all state employees should have
 the right to appeal actions based on unlawful discrimination.
 Subsection (c) should be redrafted to provide for this. Classified
 employees should have the right to appeal actions based on
 unlawful discrimination due to political beliefs.

Page 15 Subsection (d) was phrased unclearly. It should be
Line 2 redrafted to read:

 A permanent employee in the classified service who holds
 probationary status in his present position may appeal a
 dismissal from the classified service the Personnel Board.

Page 16 AS 39.25.185. Employment of Federal Employees.
Line 6

 The commission decided that this new section should be
 deleted.

* * * * *

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
Capitol Building, Juneau
August 19, 1980

MINUTES

Senator Ray, Chairman, called the meeting to order at 1:35 p.m. The commission continued its discussion of the State Personnel Act begun at its meeting on Monday, August 18th.

AS 39.25.140 (Amendment of the personnel rules). Senator Ray pointed out the distinction between those rules governing the internal management of agencies and those rules which affect the public and should be considered matters of public policy. Rules which affect the public should be subject to public review before being adopted or amended. He suggested that subsection (e) be amended to limit the exemption from the Administrative Procedures Act to those rules affecting only the internal management of state agencies. A new subsection should be added requiring that those rules which affect the public must be enacted pursuant to the APA. He also directed the staff to ask the Attorney General's office and the legal staff of the Legislative Affairs Agency to prepare opinions on what legal authority the rules have.

Darlene Livermore pointed out that most of the collective bargaining agreements which the state has entered contain a clause which says that if there is a conflict between the contract terms and the Personnel Rules, then the contract terms govern. Only if the contract is silent on a subject do the Personnel Rules apply to employees who are members of collective bargaining units. Since almost all of the classified employees in the state are members of collective bargaining units, the Personnel Rules have a very limited application. Because of this, most state employees are probably not even aware that the state has Personnel Rules.

Senator Ray pointed out that the political climate is not necessarily favorable to the present public employee collective bargaining situation and that it is possible that the governor or some legislators will sponsor legislation to change the present system. Therefore, it is appropriate to be concerned about the personnel system.

The commission discussed the distinction between exempt, partially exempt and classified employees. There are about 500 employees in the partially exempt service and 5 employees in the classified service who are not members of collective bargaining units. Senator Ray asked for reasons for preserving both the partially exempt and exempt services. Bruce Cummings replied that partially exempt positions are appropriate where the work performed is essentially similar to other kinds of positions in the state. For example, the salary and job title and most of the duties of a clerk typist in the Office of the Governor are comparable to other clerk typists. However, it is appropriate for the Governor to be able to appoint and dismiss the employee with greater ease than if the position were covered by the protections of the classified service.

Positions are appropriately placed in the exempt service when the salaries which must be offered to attract skilled employees are not included in the

state's pay plan, when the position is not expected to last long or requires unique responsibilities, and for the political appointments which the chief executive needs to be able to make for policy reasons.

The classified service provides salary integrity and protections from arbitrary hiring or firing decisions.

AS 39.25.150 (Scope of the rules). The commission discussed cleaning up the language of this section to delete material more appropriately included in the rules. Bruce Cummings pointed out that subsection (2) does not make provision for paying employees pursuant to a valid collective bargaining agreement, although the state has interpreted the language to permit paying employees based on pay plans adopted under union contracts. The commission agreed that language should be proposed to address this problem. Darlene Livermore added that while she agrees that the section should be cleaned up, she thinks it is important to preserve the statements of principles which are presently there, such as "like pay for like work."

On the question of crediting work experience as an alternative to formal education, and on the question of tests, Bruce Cummings explained that the laws requires employers to be able to demonstrate that any tests for employment are consistently able to predict that those who receive good scores are more likely to be successful employees than those who receive lower scores. The state is trying to develop validated tests, but it is a difficult process and there are only three employees in the division who are assigned to that project. The state has fewer than 15 tests which would be likely to withstand a challenge in court. Furthermore, the tests which the state is discarding for the validated tests have been, in fact, irrelevant. For example, there was an excellent accountant in the Division of Finance who was marked for promotion. He took the old exam five times and failed it each time. When the new, validated exam was ready he took it and was number one on the register.

Senator Ray pointed out that there is another problem - that of being sure that the job description is kept current so that the job classification actually reflects the duties of the position. The state needs a full scale desk audit program.

AS 39.25.153 (Personnel Rules for certain departments). Lynda McCurry reported that the personnel officers in the departments continue to believe that they can perform their jobs better if they are the employees of the departments in which they work rather than the employees of a centralized Division of Personnel. The Division of Personnel has recently begun to decentralize several personnel functions to the departmental personnel offices.

Bruce Cummings raised questions about subsection (b) which gives the departmental personnel officers authority to adopt regulations for those positions unique to their departments. At present those powers have not been exercised, but if they were, the state could find that there were significantly different working conditions for groups of employees based only on which department they worked for. Consistency is important, not only for morale of the employees but also because the state has to comply with the terms of the collective bargaining agreements it enters.

Delegating greater authority to the departmental personnel officers increases the importance of auditing. In the 1980 Report the commission recommended that annual audits be performed either by the Division of Personnel or by some other agency. Mr. Cummings has thought about the question and believes it would be better for a third party to perform the audit since the Division of Personnel needs to remain effective as a service agency, rather than being perceived in a policing role. The division would, of course, work closely with whoever did the audit to provide information and expertise as requested.

Senator Ray suggested that the subsection might be changed to enable departmental personnel officers to adopt only rules which relate to the internal management of the department for classes which are unique to the department.

Don Fisher raised the question of setting up a system for a periodic review of the Personnel Rules to insure that they accurately reflect the changing policies and procedures of the state. Senator Ray directed the staff to investigate the feasibility of doing so.

AS 39.25.155 (Vocational substitution program). Bruce Cummings pointed out that the positions which fall within the program have all been placed in the Local 71 bargaining unit. The program is therefore no longer used, since Local 71 members are hired through a union-operated hiring hall. The union system does not include the kinds of minimum qualifications which the state uses in evaluating applicants.

Lois Jund asked whether subsection (g) which establishes a one-year residency requirement was still legal. Mr. Cummings replied that it wasn't.

AS 39.25.160 (Prohibitions). Senator Ray suggested that subsection (e) should provide that partially exempt employees as well as classified employees are required to resign from their positions in the state service when they seek nomination or become candidates for state or national elective political office.

Bruce Cummings indicated that the Rules do require a partially exempt employee to resign, even though the statute does not.

AS 39.25.170 (Hearings and appeals). Senator Ray asked whether an employee could require that hearing be open to the public. Bruce Cummings replied that the Personnel Rules do give the employee this right. Senator Ray suggested amending the section.

AS 39.25.180 (Status of present employees). Senator Ray pointed out that the first three subsections of this section are obsolete.

AS 39.25.195-200 (Nonpermanent law). The law has not yet been in effect for a full year and therefore it is too early to consider whether it needs to be changed. The commission should review figures on positions which used to be temporary and are now seasonal as a result of the procedures created by the nonpermanent law at a later time.

AS 39.25.210 (Penalties). The commission will consider later the question of implementing a graduated penalty schedule, whether there should be administrative penalties set out in the statute and whether it is appropriate that

being found guilty of a willful violation of the Rules leads to conviction of a misdemeanor.

AS 39.10.010 (Nepotism prohibited). The commission agreed that a stronger statute prohibiting nepotism should be prepared for its review.

Senator Ray directed the staff to prepare a work draft of a revision of the State Personnel Act with the help of the Legislative Affairs Agency legal division. The commission will meet when the draft has been completed, which should be in one month.

Senator Ray adjourned the meeting at 2:55 p.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Don Fisher, Vice Chairman
Bruce Cummings
Duncan Fowler (for Frank Flavin)
Representative Jack Fuller
Lois Jund
Darlene Livermore (for Cherie Shelley)
Lynda McCurry
John Pugh

OTHERS IN ATTENDANCE

Bob Mourant

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
Capitol Building, Juneau
August 18, 1980

MINUTES

Senator Ray, Chairman, called the meeting to order at 10:00 a.m. He asked for testimony from the public. Julie Issac called the commission's attention to a problem that she is having with the state's retirement system.

Mrs. Issac retired in 1976, at which time the Retirement Division on four separate occasions had advised her that she was eligible for more than nine years of credited service with the state. As the result of an amendment to the laws three months after she retired, she was also told she would receive credit for an additional three years of military service. Her benefits were calculated on that basis. In 1979 Mrs. Issac received a letter from the Retirement Division advising that their original computations had been in error. She had been credited with 4½ years of service to which she was not entitled, part of which was for employment with the University of Alaska. Furthermore, she had received over \$5000 in overpayments which would have to be paid back to the state. In the beginning of January, 1980, the division began reducing her retirement check by \$100 per month to be credited towards the overpayment, in addition to having reduced her check because of the decrease in the years of credited service.

Mrs. Issac was advised that she could appeal the division's decision to the Retirement Board at their next meeting. She was unable to attend but a friend did read a letter to the board which preserved her appeal rights. Following that hearing, Mrs. Issac asked that the state waive collection of the debt. According to its interpretation of the statutes, the only ground upon which the division can waive repayment is hardship. The division therefore required that she submit information not only about her own financial situation but also about her husband's. Mrs. Issac questioned why her husband's information should be considered since it is her retirement credit which is under question.

Mrs. Issac added that the basis for denying her period of employment with the University of Alaska was a regulation adopted by the Retirement Division in 1978 - two years after she retired. Without credit for the University of Alaska employment, she needs an additional 13 months state employment in order to claim her territorial service.

Early in July, Mrs. Issac wrote to Commissioner Hudson asking for assistance in finding employment with the state so that she could work for the time needed to then receive credit for her territorial service. She was no longer eligible to be placed on the state's rehire lists because more than 2 years had elapsed since she left state employment. She has also asked the Governor's office for assistance in finding a position in which she can earn the necessary service credits. Mrs. Issac pointed out that she had been a loyal and responsible state employee but that she believes that the state has treated her shabbily and that she is becoming bitter.

Lois Jund stated that while she was at the Department of Health and Social Services, several people had talked with her about receiving similar notices from the Division of Retirement. Bruce Cummings explained that while

he was working in the retirement division he noticed that there was a constant flow of files with errors. Therefore, the director of the division ordered a wholesale audit of all of the PERS and TRS records. Any with errors would be adjusted as of the date of the audit. Although he had no sure figures, Mr. Cummings estimated that 3 to 5% of the files contained errors. Because the retirement statutes require that any errors in benefits be corrected, the division does not have the authority to write off any overpayments which a retired person may have received. He suggested that the legislature consider giving the retirement boards authority to waive recoupment of overpayments in certain situations.

Duncan Fowler pointed out that Mrs. Issac's case raises two questions. First, whether the state ought to be prohibited from seeking repayment because she had based her retirement plans on information provided by the state and over 3 years had elapsed since then. The second problem is with the state's investigation into her husband's financial situation when considering whether to grant her a hardship waiver. Lois Jund pointed out that in the federal retirement system there is a statute of limitations and that they can only seek to correct errors which occurred within the past two years.

Dick Smith said that Mrs. Issac has two complaints against the state: being charged with an overpayment which resulted from the state's errors and being denied 4½ years of credited service. It appears that because the Retirement Board is considering her appeal, there can be no immediate appeal to the courts, although, on the basis of the information which she has provided it seems likely that she would be successful in court. He suggested that it would be appropriate to change the retirement statutes to provide for a statute of limitations against attempts by the division to collect for errors which it caused. Bruce Cummings added that since there are between 80 and 90 other employers who participate in PERS and TRS, any changes should be carefully drafted to apply only to the state's employees.

Mr. Smith added that the second part of Mrs. Issac's problems - denial of service credits for her work with the University of Alaska - is harder to remedy since the University is a separate entity according to the state constitution. The University voluntarily joined the retirement system in 1978, but before that work with the University did not apply to the state's retirement system.

Senator Ray suggested that there should also be some recourse for an employee who wanted to return to work for the state to build up retirement credits. Bruce Cummings explained that if there was a 2-year statute of limitations for asserting overpayments, then an employee would still have rehire rights and would therefore be entitled to preference for any vacancy in the job class from which she or he retired. Mrs. Issac also asked that if the commission sponsored any legislation that it be made retroactive to resolve her problems as well as helping other employees.

Senator Ray asked whether the commission approved sending a letter to the Retirement Board concerning the commission's suggestions for future legislation. There was no objection. Staff was directed to work with Deputy Commissioner Smith on a draft of the letter.

The commission began consideration of the memorandum on public inquiries.

Issue 1. Posting of promotional opportunities on bulletin boards. Darlene Livermore explained that APEA and PSEA take different approaches to protecting their members' interests in access to promotional opportunities.

Issue 2. Postsecondary Education Commission. Senator Ray pointed out that whether these positions should be in the exempt or classified service raises the ongoing question of ease of hiring versus protection of the rights of employees. This question will be discussed during the review of the State Personnel Act.

Issue 3. Delay in processing applications. Bruce Cummings explained that the division received some 5,500 applications in July, and that this volume has partly caused the delay. In addition, all of the processing is done manually at present. The division hopes that the number of applications will decrease in August. There has been no turnover in the division staff for the last three months, which should also help reduce the time to process applications. They are implementing a system of block scoring for all job classifications in which that is possible and also hoping to move toward an automated record keeping system. However, if the volume of applications continues to increase, it may not be possible to decrease the time.

Mr. Cummings explained some of his division's long-range plans for speeding up the application process. They are investigating a computerized automatic classification tracking system, but first the state job classification system has to be restructured. This system does not read applications, establish whether the minimum qualifications are met, nor does it score the examinations. However, the state is also investigating a self-administered training and experience rating system which appears to work with the clerical classes but not others. An additional problem in the classification computer system is that it is not designed to fit into the IBM equipment which the state presently uses and therefore there is a conversion problem.

Senator Ray moved that the commission write to the Commissioner of Administration asking him to outline what he thinks needs to be done to shorten the application process time to a more reasonable period. The motion passed without objection.

Issue 5. Geographical cost of living differentials. The commission noted that this is a matter which is addressed in the collective bargaining contracts.

Issue 6. Employee credits. Bruce Cummings explained that employee credits are designed to encourage retention and promotion of state employees and to discourage breaks in service. The system awards these extra points only to permanent classified employees. John Pugh pointed out that the system can work against employees who for family reasons are forced to move from one area of the state to another without having a new job lined up, although they intend to remain in state service if they can find employment. They lose their points as soon as they resign from one job, even though they may return to work within a short period of time. The same thing happens to classified employees who accept employment in the partially exempt or

service. They lose their accumulated credits upon resigning from the classified position. Lois Jund suggested that the commission recommend that the state do away with the system of employee credits. Senator Ray proposed that the staff research the advantages and disadvantages of employee credits and other bonus point systems and report to the commission.

Senator Ray asked whether there were any statistics on the number of permanent seasonal positions created for positions which had been previously filled by temporary employees and how many nonpermanent positions there were. Bruce Cummings replied that it is not yet available. Senator Ray pointed out that the newspapers had reported 1100 new positions created by the budget but that in fact from the information presented to the Finance Committee he thought that there were no more than 300. The rest were already in existence because of Revised Programs which had been started before the new fiscal year or through converting CIP positions.

Senator Ray adjourned the meeting at 11:42 for lunch.

The commission reconvened at 1:30 p.m. and began discussion of the Revision of the State Personnel Act memorandum. Only those sections on which there was discussion will be noted.

AS 39.25.040. Director of personnel. The staff was directed to find out what the statutes say about the position of the Director of Labor Relations and the actual duties of the director.

AS 39.25.060. Personnel board. Senator Ray pointed out that this section includes unnecessary language and should be cleaned up. He asked whether there was a need for the Personnel Board since most of their original functions are now performed through collective bargaining. Mr. Cummings replied that there are still five employees who are in the classified service but not members of any bargaining unit. The State Personnel Act and the Personnel Rules govern all of the terms and conditions of their employment. In addition, some of the members of the Confidential Employees Association have petitioned the Labor Relations Agency to be taken out of the CEA unit, which would add them to this group of five. The Personnel Board adopts the Personnel Rules and amendments and some body is needed to continue to do that. Senator Ray asked the staff to contact the Personnel Board to ask whether they should continue in operation.

AS 39.25.080. Public records. Mr. Cummings explained that the Personnel Rules which implement this section provide for confidentiality for personal information about state employees. The public does have access to information about who is a state employee, where he works, how much he is paid, and how long he has been employed. Confidential records include information about an employee's family and performance evaluations, although any state supervisor who is considering hiring a present state employee does have access to the whole personal file. Every employee can see his entire file at any time and have copies of anything in the file. Secret files are forbidden.

Senator Ray suggested that the statute be changed to specify which information is open to the public and which information is to be kept confidential rather than relying on the Personnel Rules to set those standards. Mr. Cummings mentioned that there are a number of conflicting laws on this subject already.

AS 39.25.110. Exempt service. The commission discussed the groups who are made members of the exempt service and agreed that the section should be recodified. Duncan Fowler suggested that the commission should hear from those entities which have employees in the exempt service to learn whether there are positions which should be transferred to the classified or partially exempt service. Senator Ray also directed the staff to inquire of Greg O'Claray whether there is still a reason for the employees of the ferry system to be in the exempt service.

AS 39.25.120. Partially exempt service. The commission discussed specific language changes which should be made to clean up this section. In addition, Duncan Fowler suggested that the commission should develop a policy statement for the exempt service comparable to the policy statement found in AS 39.25.130 concerning the partially exempt service. Mr. Cummings explained that positions in the partially exempt service are similar to other state jobs and therefore can be placed in the job classification plan and paid according to the pay plan but they are not susceptible to ordinary methods of recruitment or they require greater flexibility in hiring and dismissal than do positions in the classified service.

On the other hand, exempt service positions are not subject to either the state's classification plan or the pay plan. They are generally meant to be jobs which are so unique or of such short duration that it is more appropriate not to try to fit them into the system. The Division of Personnel makes no attempt to develop a job description for exempt positions, to classify them, or to set the salary for them. There is a need for both the exempt and the partially exempt service, in addition to the classified service. Lois Jund added that the state really has four services: the exempt, the partially exempt, the classified service which participates in collective bargaining with the state, and the classified service positions which are not unionized.

AS 39.25.130. Extension of partially exempt and classified services. Senator Ray suggested eliminating the reference to dates in this section.

AS 39.25.140. Amendment of personnel rules. Senator Ray suggested that the law should provide two methods for adoption of the Personnel Rules. Those Rules which affect the public policy should be adopted through the Administrative Procedures Act. Those Rules which are matters of internal management only, could be adopted without the procedural requirements of the APA.

The commission will meet to review a proposed draft of a revised State Personnel Act in September.

Senator Ray adjourned the meeting at 3:45 p.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Don Fisher, Vice Chairman
Bruce Cummings
Duncan Fowler (for Frank Flavin)
Representative Jack Fuller
Lois Jund
Darlene Livermore (for Cherie Shelley)
Lynda McCurry
John Pugh
Dick Smith

OTHERS IN ATTENDANCE

Bob Maurant

ADDENDUM: Correction for the Merit System/Collective Bargaining and Full Commission minutes of November 15, 1979 - Frank Flavin was present at the meeting. It had been erroneously recorded that he had been absent.



RECORDS CERTIFICATION



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Date

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#51:3

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau, Alaska
December 4, 1980

MINUTES

Senator Ray, chairman, called the meeting to order at 10:00 a.m. and asked commission members to consider the draft bill limiting the adjustment of retirement benefits. Paddy Moriarty asked why, in subsections (b)(1) of the first two sections of the bill, the date set was after the incorrect benefit was first paid rather than after the individual had retired from state employment. It was pointed out that the purpose of the bill is to set a statute of limitations and that beginning to run the period from the first incorrect payment was a reasonable decision.

Bruce Cummings pointed out that the Public Employment Retirement System board presently has an appeals procedure to consider cases in which overpayments have been alleged by the Division of Retirement and Benefits and the retired person has difficulty in repaying the amount. However, an individual can knowingly allow an overpayment to be made, and in those cases it would be appropriate for the state to seek to recover the amount overpaid. The review system of the PERS board would permit this but the proposed bill would not.

Senator Ray asked how the state should handle the situation in which an employee retires after having received written computations from the division setting out his years of credited service and the amount of benefits to which he will be entitled and later is told that the figures were incorrectly calculated. Therefore, the amount of his benefits will be reduced. Senator Ray asked whether it would be fair to require the state to rehire the retired employee in the job from which he retired. The retired employee would then have an opportunity to earn the credits which he was initially informed he had.

Bruce Cummings suggested that this would injure the employee who had replaced the retiree on the job. The new employee might have resigned from a job to accept the new position and giving the retired person back his old job would mean injuring the new worker. Some other system for addressing the problem should be developed.

Fred Muller asked what the frequency of error in the computations of length of service credits is. Lois Jund explained that a number of cases had arisen at the same time several years ago when the Division of Retirement and Benefits performed a wholesale audit of the retirement system and discovered a number of errors. Many of the cases which were raised involved overpayments of from \$1000 to \$5000. It was often very difficult for the retired person to repay this large an amount. Mr. Muller asked whether any of the commission members knew how many state

employees retire expecting to be eligible to receive retirement benefits and then discover that an error has been made and that they are not eligible for any benefit at all.

Paddy Moriarty replied that the Ombudsman's office has received information of several cases in which people wrote to the Division asking for a computation of their creditable service. They received a written response and then retired. Later the division reviewed their file and disallowed some portion of the service which had been previously included in the computation. Bill Huston added that some of the computation errors occur because of statutory changes. The formulas for computing creditable service are complicated so that an employee cannot simply add up the number of months he has worked for the state and know the length of creditable service or the retirement benefits he will be entitled to.

Bruce Cummings suggested that there are two possible solutions to the problem which the commission is considering. The state could offer assistance to those whose creditable service has been erroneously computed in returning to work, as has been done for Julie Issac. In addition, the PERS board has the authority to waive recoupment of overpayments in cases of hardship. Senator Ray pointed out that in Mrs. Issac's case, the appeal to the board took 2-1/2 years to reach a decision and that her petition was denied because her husband's resources were considered in evaluating whether collecting the overpayment would be a hardship to her. On that information, the board found that it would not be a hardship if she were required to repay the money to the state. The issue was finally satisfactorily resolved through the efforts of the Governor's Office and the Attorney General.

Senator Ray asked whether there was any objection to adding a statute of limitations to the adjustment provisions of the retirement benefit law. Fred Muller suggested that it would be appropriate to require that the larger cases of overpayments be reviewed by the PERS board rather than automatically waiving any recoupment. He suggested that the statute of limitations should not apply to those cases in which the overpayment had been more than 10 per cent of the monthly benefit to which the retired person was correctly entitled. Senator Ray asked whether there was consensus on Mr. Muller's proposal. There was no objection.

The commission then considered the draft bill relating to the nepotism in state employment. Terry Cramer, the administrative assistant to the commission, explained that this bill was an attempt to place the provisions of the Personnel Rules prohibiting nepotism into statutory form. The drafter changed the language of the Personnel Rule, which uses the term "appointing authority" and instead used the term "person making the appointment" in the draft.

Darlene Livermore stated that the Alaska Public Employees Association has three concerns about the proposed bill. The current statute prohibits employment of persons related to the commissioner of the department. The intent of the legislature was therefore probably to

discourage political patronage in the state employment. The Personnel Rules probably were drafted with the same theory as their basis. Recently in the Civil Service Reform Act of 1978, the federal government repealed a 90-year old nepotism law which had a general application. Congress retained prohibitions against abuse of power by elected officials, aiming again at political patronage. Secondly, Ms. Livermore raised the issue of whether the present draft is in opposition to laws protecting certain classes of people from employment discrimination, particularly, from discrimination based on marital status or change in marital status. The third issue which APEA is concerned about is access to employment. Unlike most locations in the Lower 48, there are a number of communities in Alaska which have only a few major employers. For example, in Valdez there are two -- the division of highways and the division of mental health. Both to provide employment opportunities for the people living in those communities and to provide a pool of employees for the state, the nepotism laws should not be unnecessarily stringent.

Bruce Cummings said that he did not disagree with the points which APEA was raising and that the provision of the Personnel Rules gives the director of the division of personnel authority to waive enforcement of the rule. He added that could not recall an instance in which he had refused to waive enforcement of the rule. However, it is appropriate to have each case of employment of close relatives considered in order to prevent abuse.

Ms. Livermore explained that she did not object to the present situation in which the statute addressed nepotism at the commissioner level and the Rules had broader application, but that putting the provisions of the Rules into the statutes would provide the courts with a greater opportunity for review and limitation. Mr. Cummings explained that the Attorney General has advised the division that the scope of the rule is broader than the rule-making authority granted by the statute. Therefore, enforcement of the rule could probably not be defended successfully in court.

Representative Fuller asked whether there were regulations for elected officials. Senator Ray replied that the State Personnel Act applies only to the executive branch of government. Representative Eliason asked whether nepotism was a lively issue. Mr. Cummings answered that there are some communities in the state in which there has been considerable public interest in the question. Senator Ray asked whether there were any objections to the commission sponsoring a bill which would put the language of the Personnel Rules into the statutes. Darlene Livermore registered APEA's objection.

The commission next considered the draft to require that the regulations adopted by the retirement board be subject to the Administrative Procedure Act. Members commented that the draft did not follow the instructions which the commission had given the drafter and decided to defer consideration of the subject until a redraft was available.

The commission considered the draft bill relating to membership of the Public Employees Retirement Board. Lois Jund suggested that the draft be amended to require that of the four members elected by the members of the retirement system, at least one must be a retired person. The amendment was adopted without objection.

The commission turned to the redraft of the State Personnel Act amendments. Several problems were noted and Senator Ray asked Jack Chenoweth, from the Legal Services Division of the Legislative Affairs Agency to meet with the commission. After reviewing the second draft of the State Personnel Act with Mr. Chenoweth, the commission discussed with him the amendments to the draft limiting adjustments to retirement benefits which had been agreed upon earlier in the meeting.

Terry Cramer advised the commission members of a telephone call from Grace Kack. Ms. Kack is concerned that individuals applying for state positions must be re-examined every two years in order to stay on the register for a job class. Ms. Kack was not concerned on her own behalf, since she is presently employed by the state, but she felt that the requirement was unfair for those who were not presently employed.

Ms. Cramer also advised the commission that several responses had been received from agencies whose employees were placed in the exempt and partially exempt services concerning whether those employees should remain in their present status or should be transferred to the classified service.

Senator Ray stated that the commission would meet to review redrafts of all of the bills probably at the end of December.

Senator Ray adjourned the meeting at 11:45 a.m.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Bruce Cummings
Representative Dick Eliason
Representative Jack Fuller
Lois Jund
Lynda McCurry
Fred Muller
Bill Huston
Paddy Moriarty
Robert Maurant
Darlene Livermore

OTHERS IN ATTENDANCE

Roger Thayer

* * * * *

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
State Capitol, Juneau
October 29-30, 1980

MINUTES

The meeting was called to order at 10:00 a.m., by the Chairman, Senator Bill Ray.

John Williams, Commissioner of the Commercial Fisheries Entry Commission, testified in response to the Blue Ribbon Commission's request for information concerning whether his employees should be in the exempt service or would more appropriately be placed in the partially exempt or classified service. Mr. Williams stated that the limited entry commission is a quasi-judicial, independent regulatory body which is granted special status by the Alaska Statutes. According to an Attorney General's opinion, prepared for the Alaska Oil and Gas Conservation Commission, it is appropriate for commissions of this type to remain independent from the executive branch. Therefore, Mr. Williams believes that employees of the commission are most appropriately left in the exempt service. Placing them in the partially exempt or classified service would subject them, and the commission as their employer, to inappropriate regulation by the executive branch.

Mr. Williams stated that the commission had conducted a poll of its employees to learn what their wishes were. Of the 29 employees, 25 participated. Each of the staff was provided with a copy of the State Personnel Act prior to the poll being taken. Every effort was made to insure that the poll was secret. Of those voting, 21 favored remaining in the exempt service and four favored moving to the partially exempt service. None wished to be placed in the classified service.

Mr. Williams added the commission has chosen to follow the practices which the Personnel Rules set out for partially exempt employees.

Greg O'Claray addressed the question which the commission had posed at its last meeting about why the vessel employees of the Marine Highway System are placed in the exempt service. He provided the members with a letter explaining his reasons.

The vessels are, by federal law, under the jurisdiction of the United States Coast Guard for the safe operation, navigation, staffing and examination, and certification of personnel. These federal regulations cover employment rights, health, safety and other conditions of employment of the seamen as well as making requirements concerning the number of qualified personnel who must be on board before the vessel can sail. In addition, employees recruited from the Maritime Unions are covered by

private Taft-Hartley health and welfare and retirement trusts and would not automatically participate in the state retirement system or in its other benefit coverage without considerable loss of benefits. For Merchant Seamen, engineers and mates recruited from the private sector, the state's wage classification system would not provide a competitive salary. Therefore, the state decided at the inception of its involvement in the marine transportation enterprise, that the employees should be exempt from the State Personnel Act. None of these reasons has changed and therefore Mr. O'Claray recommends that the Marine Transportation System employees remain in the exempt service.

Roger Thayer added that the ferry system receives approximately 1200 applications a year. They must be submitted to the department between February 1st and March 10th. The personnel office ranks them based on training and education, and shoreside and maritime experience. Grades range from 70 points for a person without a high school diploma and with no relevant work experience to 110, for someone with the previous shipboard experience in a field directly related to steward's tasks who also holds a Coast Guard license for lifeboatman. Hiring is usually done by late April. This system was developed as a resolution to EEO complaints claiming that the ferry system discriminated against women and minority applicants. Most positions which are above the entry level are filled by promotion.

Senator Ray raised the question of the membership of the Public Employment Retirement System board. The statutes presently require that the three members of the Personnel Board sit on the PERS board as well as on the Labor Relations Agency. He asked whether any of the commission members believed that the overlap in membership was important. Cherie Shelley pointed out that as a result of recent legislation, the PERS board is now responsible for decisions concerning the Alaska Supplemental Benefits program and the Deferred Compensation program, in addition to the retirement program. Therefore, their duties have significantly increased. It makes sense to limit the demands on the time of those board members, who are all volunteers. Without objection the commission agreed to draft a bill to change the membership of the Retirement Board. Two alternatives were proposed: to eliminate the members of the Personnel Board from membership on the PERS board and replace them with one member appointed by the Governor and two members elected from the retirement system; and to increase the size of the PERS board while leaving the members of the Personnel Board on it.

The commission reviewed the memorandum on employee service credits and then recessed for lunch.

The meeting reconvened at 1:30 p.m. Eric Yould, Executive Director of the Alaska Power Authority, addressed the members on the question of why the power authority employees are in the exempt service. Of the 16 employees, 14 have college degrees. He believes that they should remain in the exempt service. The Authority would have difficulty meeting its deadlines if it had to go through the red tape of hiring

employees through the classified system.

The Alaska Power Authority was structured by the Legislature to permit it to become similar to a public utility district which is a form prevalent in the lower 48. Mr. Yould was concerned that changes which might be made in the structure of the Authority now would foreclose flexibility in the future when the Authority has developed to the extent anticipated by the legislature. He wanted to preserve those options for future employees. It is anticipated that there will be power plant operators, linemen and so on, once the structures are in operation.

In answer to a question from Darlene Livermore, Mr. Yould explained that although most of the employees have degrees, they perform general professional kinds of duties rather than highly-technical tasks. Mr. Yould added that he is not opposed to union membership for the clerical employees of the Authority.

The commission began its discussion of the review on the State Personnel Act. See attached comments and recommendations.

Fred Cook, personnel officer for the Department of Fish and Game, addressed the commission about a number of his concerns. The Personnel Division has been receiving a large number of applications for the positions available, especially for permanent seasonal positions. Changing from hiring temporary employees to hiring permanent seasonal employees has increased the Department's recruiting expenses from \$8,000 - \$57,000 this past year. Contacting the applicants through phone calls and telegrams has been difficult because frequently people do not reply. Therefore, the department continues to send them telegrams or to call them for other positions. He knows of one gentleman who received approximately 30 telegrams and didn't answer any of them.

Many applicants state they will accept employment anywhere in the State, but when the department contacts them, they say that they are not interested in going to such and such place. Mr. Cook suggests that if anyone rejects a job offer, he be removed from the state register at once. The application form should specify four regions of Alaska (such as Southcentral, Southeast, Central and West) to narrow down areas in which the applicant says he will work. It would speed up the process for his people and also would save the department a tremendous amount of money. He figures that the department, as a whole, spends upwards of \$200,000 a year just in recruitment.

Another problem area is in insuring that applicants are Alaskan residents. No one verifies the information provided by the applicant.

The scoring of the applications is also a problem. There are approximately 100-200 applicants with the same score all ranking #1 on the register. He suggested a more sophisticated grading system to rank these applications so that the top group would have fewer applicants in it. The department then would have fewer people to consider when filling a position.

Mr. Cook also suggested changing the length of time for recruitment of bush positions. Presently it is 30 days. He would like it changed to 60 days to enable the recruiting people time to have applications corrected and the applicants time to get it done. He gave an example of a problem he had today. The department has a Fish & Game Resource Specialist II position, at range 16, open and there's an Alaska Native in Angoon that they would like to hire. They want a bilingual person. The applicant forgot to sign his application. In order to meet the application deadline, Mr. Cook had to contact him, which took five telephone calls to Angoon, take the application out to Channel Flying and instruct the pilot on what needed to be done, fly the application to Angoon for the gentleman's signature and have it returned by 3:00 p.m. that afternoon. He estimates that particular problem costs his department \$200.

Jerry Reinwand, Executive Assistant to Governor Hammond, addressed the commission at its request. He explained that the Governor's Office is in the process of reviewing the separate agencies which are located within it to decide whether they should remain as part of the Office or whether it would be more appropriate to attach them to one of the departments. There are questions which make the decision difficult in some cases. For example, the Human Rights Commission should avoid even the appearance of being subject to political pressure, and therefore, it would appear to make sense that it be placed in one of the departments rather than the Governor's Office. However, it should also be insulated from the pressures of being a line agency within one department, and therefore, it may be inappropriate to place it in a department. Mr. Reinwand indicated that he has questions about whether the staff of the Division of Budget & Management and the Division of Policy Development & Planning and the Office of Internal Audit need to be in the partially exempt service. Since the review process has not been concluded, Mr. Reinwand suggested that the commission wait for its results as an expression of what the Governor recommends on the question of who needs to be in the exempt service.

The commission recessed at 3:20 p.m. until 10:00 a.m. Thursday, October 30.

Senator Ray, chairman, reconvened the meeting at 10:00 a.m. on October 30.

Kerry Romesburg, Executive Director of the Postsecondary Education Commission spoke in response to the commission's request.

The Postsecondary Education Commission has 30 permanent employees and adds four nonpermanent employees to its staff in the summer. He indicated that although the statutes place himself and the staff in the exempt service, in reality the commission uses the same pay scale as the classified service, the kinds of work which most of the employees do is similar to work done by classified employees and, except for hiring employees from the registers, the commission operates under most of the

procedures of the Personnel Rules. Of the 30 employees, 16 are loan repayment, awards and collection clerks. Three others are clerical employees, two are in the administrative assistant class and the remainder are professional employees. He added that as permanent exempt employees, the commission employees receive benefits as do permanent classified employees.

There being no more questions for Mr. Romesburg, he was thanked and excused.

John Pugh commented that it did not appear that the Post-secondary Education Commission needed to be in the exempt service. He recommended that if the Blue Ribbon Commission is going to clean up the State Personnel Act, that each of the boards and commissions which presently has its staff placed in the exempt or partially exempt service be carefully reviewed.

The commission then returned to reviewing the draft of the State Personnel Act. Comments and recommendations are attached.

Senator Ray stated that when a redraft of the Act is available the commission will meet again. Without objection, the meeting was adjourned at 11:30 a.m.

October 29, 1980

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Diane DeSimone (for Bruce Cummings)
Bill Huston
Paddy Moriarty (for Frank Flavin)
Fred Muller
Greg O'Claray
John Pugh
Cherie Shelley
Roger Thayer (for Lynda McCurry)

OTHERS IN ATTENDANCE

Darlene Livermore
Bob Maurant

October 30, 1980

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Diane DeSimone (for Bruce Cummings)
Bill Huston

Fred Muller

John Pugh
Cherie Shelley
Roger Thayer (for Lynda McCurry)

OTHERS IN ATTENDANCE

Darlene Livermore
Bob Maurant

A D D E N D U M

To the
MINUTES

October 29-30, 1980

COMMENTS AND RECOMMENDATIONS ON THE STATE PERSONNEL ACT

Page 2 AS 39.25.080. Public Records.
Line 7

Cherie Shelley was concerned that the Division of Labor Relations might use this section to assert that information APEA needed in preparing cases was confidential and could not be released. Senator Ray suggested adding For the purpose of this Act at the beginning of the sentence on Line 7.

In discussion of paragraphs (1)-(5) members noted that paragraph (1) provides for information on all state employees and that paragraph (2) provides for information about an individual employee. Members decided that the phrase state employee should be used rather than the phrase "state officer or employee".

Page 3 AS 39.25.110. Exempt Service.
Line 1

After discussing the standards proposed in subsection (a), the commission members decided to delete all of (a).

The commission will consider whether the employees of the agencies named in paragraphs (11) and (12) should remain in the exempt service after further testimony on the question.

A question was raised about the difference between the exempt and classified service. An employee in the exempt service is not hired from the register, does not get paid according to the pay plan, and can be fired at will. In the classified service there must be just cause before an employee can be fired.

Page 5 AS 39.25.120. Partially Exempt Service.
Line 23

Assistant Commissioners should be added to paragraph (1).

Page 6 Commission members asked why the state forester, hearing
Line 8, examiners in the Department of Revenue and the Chief of
23 & 27 Subsistence in the Department of Fish & Game should be in the

partially exempt service. The question will be considered later.

Page 6 Bob Mourant pointed out that there are airport managers for
Line 29 smaller airports who are not in the partially exempt service. Only
 the managers of the Anchorage and Fairbanks International Air-
 ports are partially exempt. Paragraph (16) should be changed
 to reflect this.

Page 7 The commission will consider in the future whether the
Line 2 deputy director of the division of tourism and the deputy
 director of the division of insurance should remain in the
 partially exempt service.

Page 8 AS 39.25.140. Amendment of Personnel Rules.
Line 5

 The question of the distinction between public policy and
 internal management was raised. Paddy Moriarty suggested that
 instead of the phrase "public policy", that the draft should
 say whether it affects the public or is used by an agency in
 dealing with the public. Senator Ray suggested looking at the
 language which was used in the Alcoholic Beverage Control Board
 bill last session to help clarify the distinction between public
 policy and internal management regulations. Cherie Shelley
 pointed out that many of the subjects covered in the Personnel
 Rules have been included in the collective bargaining agreements.
 Therefore changes in the Rules which are contrary to the
 substance of the contracts would have little practical effect.

Page 8 The commission decided that the Personnel Rules should be
Line 20 required to be published in the Alaska Administrative Register
 and Code and therefore that the word "may" in paragraph (4)
 should be changed to shall.

Page 8 AS 39.25.150. Scope of the Rules.
Line 27

 The commission decided that the Personnel Board should
 also approve the classification plan.

Page 9 Senator Ray suggested finding a clearer phrase than "sound
Line 18 employee selection methods" for this paragraph.

Page 11 After considerable discussion about the veteran's preference
Line 4 system, the commission decided not to amend this paragraph.
 Under the present system, a veteran receives the five additional
 points only on the applications he files before he is hired.
 Once he has accepted a position with the state, then any appli-
 cations for other positions which he has filed are rescored
 to remove the 5-point bonus.

Page 12 Senator Ray suggested investigating the definition which the
Line 7 director of the division of vocational rehabilitation uses in

determining whether a person is severely handicapped. It might be appropriate to include that definition in the State Personnel Act.

Page 12 In discussion of paragraph (23), the commission questioned the
Line 10 definition of programs and disadvantaged persons. Senator Ray suggested adding that the programs could not be against the standards of a merit system of employment.

Page 12 AS 39.25.153. Personnel Officers.
Line 18

Diana DeSimone pointed out that the Department of Law does not have a Personnel Officer so subsection (a) should be redrafted. It should read: If a principal department of the executive branch requires a personnel officer, then the personnel officer shall be permanently employed by and located within the department.

Page 12 She also suggested that the whole section be deleted since
Line 22 the director of the division of personnel has the authority under AS 39.25.150 to delegate authority for personnel actions to the personnel officers of the departments and since that authority has been delegated recently. Roger Thayer replied that the delegation is recent and that he would prefer to have some authorization for independent action by the personnel officers remain in the Act.

Page 12 The commission decided to delete the language authorizing
Line 22 the personnel officers to act contrary to the Personnel Rules so that subsection (j) begins with the phrase Subject to the provisions.

Page 13 The commission also decided to delete paragraph (4) which
Line 7 would have given the personnel officers authority to make rules concerning the methods and procedures for overtime work and pay.

Page 13 In order to provide for consistency in the personnel policies
Line 15 of the state, the commission decided to require that the commissioner of administration must approve the exercise of any powers under this section, rather than the commissioner of the department in which the employee worked.

Line 13 AS 39.25.160. Generally.
Line 17

After discussion of the meaning of "precinct level" the commission decided that the phrase should be defined in the State Personnel Act.

Page 13 To clarify subsection (b), Senator Ray recommended changing
Line 23 it to read: ... in connection with securing or making an appointment....

Page 13 Senator Ray recommended that subsection (c) be made to
Line 26 apply to all state employees rather than just those in the

classified service.

Page 14 The commission decided that protection against actions based
Line 6 on unlawful discrimination due to race, sex, color, religion,
 national origin, age or handicap should be extended to all
 state employees. Classified employees should be protected
 against discrimination based on political beliefs.

Page 14 Senator Ray recommended adding the word knowingly to the
Line 11 first line of subsection (g) so that it reads: A person may
 not knowingly make a false statement....

 Definitions should be included in the Act for "fraud" and
 for "knowingly".

Page 14 Subsection (h) should be changed to read: "...person may not
Line 16 unlawfully defeat, deceive, or obstruct....

Page 14 AS 39.25.170. Hearings and appeals upon dismissal, demotion, or
Line 27 suspension.

 The commission decided that all state employees should have
 the right to appeal actions based on unlawful discrimination.
 Subsection (c) should be redrafted to provide for this. Classified
 employees should have the right to appeal actions based on
 unlawful discrimination due to political beliefs.

Page 15 Subsection (d) was phrased unclearly. It should be
Line 2 redrafted to read:

 A permanent employee in the classified service who holds
 probationary status in his present position may appeal a
 dismissal from the classified service the Personnel Board.

Page 16 AS 39.25.185. Employment of Federal Employees.
Line 6

 The commission decided that this new section should be
 deleted.

* * * * *

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 6, 1980

BKC Meeting
10/29/80
JAY S. HAMMOND, GOVERNOR

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

Hoyle H. Hamilton, Chairman
Alaska Oil & Gas Conservation
Commission
3001 Porcupine Drive
Anchorage, Alaska 99501

Re: Commission's Place in State Government
and Status for Budget Purposes.
Our File: J-66-302-80

Dear Commissioner Hamilton:

You requested our opinion on the place that the Alaska Oil and Gas Conservation Commission (hereafter "the Commission") occupies in state government and the Commission's status for budget purposes. In early January, 1980, we gave you preliminary answers to your questions by telephone. This letter is to confirm the answers we gave you at that time.

I. The Commission's Place in State Government.

AS 31.05.005(a) states: "There is created as an independent quasi-judicial agency of the state the Alaska Oil and Gas Conservation Commission, composed of three commissioners appointed by the governor and confirmed by the legislature in joint session." The Commission came into existence on January 1, 1979, assuming the responsibilities and duties of the former Division of Oil and Gas Conservation in the Department of Natural Resources.

The question of the Commission's "place" in state government has two aspects. The first involves the

basic doctrine that governmental powers are separated into three branches: executive, legislative and judicial. The doctrine is recognized in Alaska as the Alaska Constitution provides for a legislature (art. II), executive (art. III) and judiciary (art. IV). See Bradner v. Hammond, 553 P.2d 1 (Alaska 1976) at pp. 5-6 and cases cited.

The Commission, however, cannot easily be "placed" in one of the three branches because it exercises all three types of power. AS 31.05.030(c) provides that "[t]he Commission shall adopt rules, regulations and orders and take other appropriate action to carry out the purposes of this chapter [AS 31.05]." Under its mandate to "adopt rules [and] regulations," the commission takes part "in the legislative function of enacting laws governing the people of the state." Alaska State-Operated School System v. Mueller, 536 P.2d 99, 103 (Alaska 1975). It also has been stated that conservation commission orders "are legislative in character." Cities Services Gas Co. v. Peerless Oil & Gas Co., 220 P.2d 279, 291 (Okla.), aff'd 340 U.S. 179 (1950). Also see California Co. v. State Oil & Gas Bd., 27 So.2d 542 (Miss. 1946). The Commission also acts in a judicial capacity. In addition to the jurisdiction and authority to adopt "orders" under AS 31.05.030(c), the Commission is designated a "quasi-judicial agency of the state" in AS 31.05.005(a), and is given the power to hold hearings, AS 31.05.060(a), and subpoena witnesses. AS

31.05.070. Finally, under AS 31.05.030(c)'s mandate to "take other appropriate action to carry out the purposes of [AS 31.05]," the Commission performs the executive branch function of executing and putting into operation and effect the laws relating to oil and gas conservation. Cf. Alaska State-Operated School System v. Mueller, supra (school system falls within executive branch because function is to execute or put into operation and effect laws relating to public education).

The Commission's blended power makes it impossible to classify the Commission as distinctly executive, legislative or judicial. The difficulty in classifying the Commission was pointed out by Mr. Justice Jackson of the United States Supreme Court, dissenting in FTC v. Ruberoid Co., 343 U.S. 470, 487-488 (1952), as follows:

[Regulatory agencies such as the Commission] have become a veritable fourth branch of the Government, which has deranged our three-branch legal theories as much as the concept of a fourth dimension unsettles our three-dimensional thinking. Courts have differed in assigning a place to the seemingly necessary bodies in our constitutional system. Administrative agencies have been called quasi-legislative, quasi-executive or quasi-judicial, as the occasion required, in order to validate their functions within the separation-of-powers scheme of the Constitution. The mere retreat to the qualifying "quasi" is implicit with confession that all recognized classifications have broken down, and "quasi" is a smooth cover which we draw over our confusion as we might use a counterpane to conceal a disordered bed.

Mr. Justice Jackson's "fourth branch of government" characterization clearly is a fiction, although it points out the difficulty of conceptually placing the Commissioner in one of these branches. However, in an administrative or bureaucratic sense, regulatory agencies like the Commission clearly are in the executive branch of government in Alaska. Ak. Const., art. III, §§ 22, 26. Many such agencies are explicitly created by the legislature in one of the principal executive departments. See e.g., AS 42.05.010 (Alaska Public Utilities Commission in Department of Commerce and Economic Development). On occasion, such placement is coupled with an express statement that the agency is independent from substantive control by that department. See e.g., AS 14.40.913(b) (Alaska Commission on Post Secondary Education in Department of Education for administrative support services but not subject to direction of commissioner or state Board of Education). Still others are merely established without express assignment to a principal department of the executive branch. See e.g., AS 16.43.020(a) (Alaska Commercial Fisheries Entry Commission ". . . is established . . . as a regulatory and quasi-judicial agency of the state").

However, regardless of a regulatory agency's placement in one of the principal executive branch departments, and regardless of any statutory statement of independence, such an agency is not under the supervision of the executive.

In Boehl v. Sabre Jet Room, Inc., 349 P.2d 585, 588 (Alaska 1960), the Alaska Supreme Court stated that in art. III, §§ 22-26, "provision is made for creation by the legislature of regulatory agencies that are not under the supervision of the executive." (Footnote omitted; emphasis added.) In that case, the court was discussing the Alcoholic Beverage Control Board, which "is established . . . within the Department of Revenue." AS 04.05.010(a).

There is no question regarding the Commission's independence, as AS 31.05.005(a) provides that the Commission "is created as an independent quasi-judicial agency of the state." (Emphasis added.) To ensure that the the Commission (assuming the duties of the former Division of Oil and Gas Conservation) no longer is considered a part of the Department of Natural Resources, the legislature expressly stated the relationship between the Commission and the Department of Natural Resources in AS 31.05.026. In subsections (a) and (b), that Department is given standing before the Commission, defined in AS 31.05.026(e) as "the same standing (no more or less) . . . as granted by law to any other proprietary interest." To ensure administrative independence from that Department, AS 31.05.026(d) provides:

For budget and audit procedures and considerations, the Commission shall have the same standing as any other major state agency. Whenever practicable the Commission may enter into state inter-agency agreements concerning administrative, employee relations, and fiscal duties.

Summarizing, it is our opinion that the Commission is an independent regulatory state agency in terms of its program responsibilities and activities. While it is not responsible to (nor the responsibility of) the governor, it is administratively (i.e., bureaucratically) a part of the executive (as opposed to the legislative or judicial) branch of government.

II. Commission's Status for Budget Purposes.

This brings us to the second half of your opinion request, a determination of the Commission's "status" for budget purposes. We understand your question relates particularly to the procedures which must be followed in presenting the Commission's budget to the legislature and in enabling the Commission to draw on any resultant appropriations, and specifically whether the Commission is entitled to its own separate budget code.

AS 31.05.026(d) gives an explicit answer to this question: "For budget and audit procedures and considerations, the Commission shall have the same standing as any other major state agency." While that is a concise answer, making it clear that the Commission is not to be relegated to the subordinate status of a mere division or subdivision of one of the principal executive branch departments for budget purposes, it does not describe with any particularity the

procedures which must be followed in establishing the Commission's budget, presenting it to the legislature, and drawing down any funds ultimately appropriated by the legislature to the Commission. The details of those procedures, as well as the bureaucratic responsibility for carrying them out, must be determined from other provisions of law.

Article IX, § 12 of the Alaska Constitution places responsibility on the governor to submit annually to the legislature "a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State." (Emphasis added.) Implementing this section of the Constitution, AS 44.19.015 provides: "The governor shall direct the preparation and administration of the state budget." AS 37.07, the Executive Budget Act, establishes additional guidelines for preparation of the budget by the governor, and makes the Division of Budget and Management the state agency responsible for giving the governor and all state agencies the detailed assistance needed in preparing and submitting the annual budget. For example, AS 37.07.050(a) provides that each state agency, "on the date and in the form and content prescribed by the [D]ivision [of Budget and Management]," is to forward its proposed budget request and supporting documentation to that division and the Legislative Finance Division.

In preparing the budget, the governor has both constitutional and statutory power to organize his annual budget proposal in virtually any manner he chooses. Of course, the process does not end with submission of the annual budget. Article IX, § 13 of the Alaska Constitution provides in part: "No money shall be withdrawn from the treasury except in accordance with appropriations made by law." Statutory language implementing this constitutional provision establishes a budgetary system in which all appropriations are made by legislative act. AS 37.07.030, 37.07.070 and 37.07.100; see Municipality of Anchorage v. Frohne, 568 P.2d 3, 5 n. 5 (Alaska 1977). The legislature is not bound by the budget submitted by the governor; instead, "[t]he legislature shall consider the governor's proposed . . . programs and financial plans, evaluate alternatives to the plans, make program selections among the various alternatives and determine, subject to available revenues, the level of funding required to support authorized state services." AS 37.07.070 (in part).

Once the legislature has made an appropriation, each state agency has full authority to administer its program assignment and is responsible for its proper management "[e]xcept as limited by policy decisions of the governor, appropriations by the legislature, and other provisions of law." AS 37.07.080(a) (in part). The Division of Budget

and Management has general oversight responsibility for program execution. AS 37.07.080(b) - 37.07.080(f). The governor is empowered to direct the withholding or reduction of appropriations to a state agency only if he determines that (1) the planned expenditures cannot be made due to factors outside the control of the state, or (2) the state's estimated receipts will be insufficient to match the proposed expenditures. AS 37.07.080(g). However, the Department of Administration is responsible for all state accounting, including development of the accounting system, maintaining accounting records, etc. AS 37.05.130-37.05.150.

Nothing in AS 31.05 specifies the manner in which the Commission's budget request is to be presented to or acted on by the legislature, nor is any particular accounting or funding mechanism specified. In the absence of such specification and under AS 37.05.320(2) and 37.07.120(1), the provisions of AS 37.05 and AS 37.07 respectively appear to apply to the Commission. Accordingly, the provisions of AS 37.07 control the Commission's budget submission, in effect giving the Division of Budget and Management the power to include the Commission's budget request in the overall budget submitted by the governor in whatever fashion the division deems appropriate. Similarly, under AS 37.05, the Department of Administration has the power to establish whatever accounts it deems appropriate to enable the Commission to draw on appropriations made by the legislature to