

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2459

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HB 619

2459

Moore

vs.

3AN-83-5405

Orsini Associates and
State of Alaska

Year Filed: 1983

Description

Moore was a subcontractor on a contract between Orsini Associates and the State of Alaska. Orsini Associates did not pay the subcontractor, who sued for payment.

Decision

The State has been dropped from the suit due to a "hold harmless" clause in the contract between the State and Orsini Associates.

Attorneys

State of Alaska--Virginia Ragle
Department of Law

Moore -- not available

Orsini Associates-- not available

Cost -- not available

Richard ("Dick") Shultz

vs.

A83-303 (U.S. District Court)

Robert Sundberg, et. al.

Year Filed: 1983

Description

Plaintiff claims his civil rights were violated by being forced to attend a joint session for the confirmation hearings on executive appointments.

Status

The State filed for and received a motion for summary opinion in its favor. The case is currently under appeal.

Attorneys

Shultz - Boyko, Davis and Dennis
733 West Fourth Avenue, Suite 400
Anchorage, Alaska 99501

Senate--Birch, Horton, Bittner, Pestinger & Gross & Burke
& Anderson 424 North Franklin
1127 W. 7th Avenue Juneau, Alaska 99801
Anchorage, Alaska 99501

State of Alaska--Jim Baldwin & George Hayes
Department of Law 1007 W. 3rd Avenue Suite 400
Anchorage, Alaska 99501

Cost*

Birch, Horton, et al. = \$15,131.28
Gross & Burke = \$20,000.00
Boyko Davis & Dennis = \$97,792.01
George Hayes = \$44,000.00
\$176,923.29

*The cost of representation by George Hayes was provided by Jim Baldwin of the Department of Law. The remaining payments were made by the Legislative Affairs Accounting Office. This does not necessarily represent the total cost of the case.

Robert Dupere & Associates

vs.

1JU-82-115 Civil

State of Alaska, et. al.

Year Filed: 1982

Description

In 1981, there was a delay in the organization of the House of Representatives. Senator Hohman who had been the Chairman of Legislative Council for the previous legislature, entered into various contracts, stating that since the new Legislative Council was not yet formed, he still had the authority to enter into contracts.

An Attorney General opinion stated that he had no such authority. Dupere & Associates sued the Legislative Council for payment of a contract which they had entered into with Senator Hohman.

Status

The case is currently pending.

Attorneys

Plaintiff -- Loren Domke
Box 1216
Juneau, AK 99802

Defendant -- Laura Davis
Department of Law

Cost -- not available

Crow

vs.

4BE-82-040

Kerttula

Year Filed: 1982

Description

When Senator Hohman was convicted, the Senate was going to suspend him from the Senate. Crow sued, saying that Senator Hohman had to be expelled from the Senate, and a Senator appointed to enable Senator Hohman's district to be represented.

Status

The court decided in the plaintiff's favor.

Attorneys

Kerttula -- Jim Baldwin
Department of Law

Crow -- not available

Cost -- not available

State of Alaska

vs.

1JU-82-746

Jan Erickson

Year Filed: 1982

Description

Jan Erickson had a contract with Representative Buchholdt and did not complete the work. Representative Buccholdt asked the Department of Law to file suit.

Decision

The proceedings were dismissed when Ms. Erickson completed the contract.

Attorneys

State of Alaska -- Laura Davis
Department of Law

Erickson -- not available

Cost -- not available

Denton Wright Auction Company and State of Alaska
vs.
Ben Grutney
vs.
Attorney General for State of Alaska, Wilson Condon

vs.
Jalmar Kerttula, et. al
vs.
Joe Hayes, et. al.
vs.
Governor Jay Hammond

3AN-82-3313 Civil

Year Filed: 1982

Description

A gold company was high bidder at an auction selling State surplus equipment. The company attempted to pay for this equipment with a piece of paper entitled "Legal Tender" instead of money. The State refused.

The company sued saying that the State could not refuse the paper.

Decision

The State was justified in not accepting the "Legal Tender"

Attorneys -- not available

Cost -- not available

Legislature as Amicus Curiae

Rodney Vest

vs.

100-82-1103 Civil

Marian Schafer and the State of Alaska

Year Filed: 1982

Description

Suit questioned the constitutionality of the Longevity Bonus Program.

Decision

The Superior Court ruled the Longevity Bonus Program was unconstitutional.

The case is currently under appeal.

Attorneys

Plaintiff -- Camarot, Sandberg and Hunter
(Mark A. Sandberg)
310 K Street, Suite 500
Anchorage, Alaska 99501

State -- Deboran Vogt
Robert Maynard
Department of Law

Amicus -- Robertson, Monagle, Eastaugh and Bradley
(William Ruddy)
210 Ferry Way, Second Floor
Juneau, Alaska 99801

Cost*

Robertson, Monagle, Eastaugh & Bradley = \$6,801.05

*These costs were paid by the Legislative Affairs Accounting Office and do not necessarily represent the total cost of the case.

Malone

vs.

Meekins

Year Filed: 1981

Description

Representative Malone was seeking a declaration that former Speaker of the House, Jim Duncan, was illegally removed.

Decision

650 P₂d 351 (Alaska 1982)

The Supreme Court ruled that this was non-judicable (not appropriate for court action). They stated that under the State Constitution, each house has the exclusive power to remove its own officers and a majority vote of the members is all that is required. The Court would not declare the election of the new speaker invalid even if the representative who convened the meeting at which the election was held was without authority to do so, since such a declaration would be an unwarranted intrusion into the business of the House. There is no judicially enforced requirement of subject-matter notice with respect to a vote considering organization or reorganization of one house of the State Legislature.

Attorneys

Malone--Douglas Pope
526 Main Street
Juneau, Alaska 99801

Meekins--Jim Robinson
821 N Street, Suite 201
Anchorage, Alaska 99501

Legislative Staff--Jim Baldwin
Department of Law

Cost -- not available

Ramona Barnes "

vs.

3AN-81-5935

State of Alaska

Year Filed: 1981

Description

The plaintiffs questioned whether or not ch 120, SLA 1981 (SB 162) dealing with a grain facility had been duly enacted. Later in the case, questions regarding some contracts for the Seward grain terminal were raised. The State claimed that these questions could not be raised in this lawsuit.

Decision

Court held that SB 162 became law pursuant to Senate adoption of the House version of the bill and the Governor's signing of the bill.

The lawsuit was appealed; the parties settled out of court and dropped the appeal.

Attorneys

Plaintiff -- Hartig, Rhodes, Norman, Mahoney & Edwards
(G. Kent Edwards)
717 K Street
Anchorage, Alaska 99501

Defendant -- Jon Rubini
Department of Law

Cost*

Hartig, Rhodes, et. al. = \$57,443 "

*These costs were paid by the Legislative Affairs Accounting Office and do not necessarily represent the total cost of the case.

Hohman

vs.

1JU-31-141

Charney

Year Filed: 1981

Description.

In 1981, there was a delay in the organization of the House of Representatives. Senator Hohman, who had been the Chairman of Legislative Council for the previous legislature, entered into various contracts, stating that since the new Legislative Council was not yet formed, he still had the authority to enter into contracts. Myrt Charney, Executive Director of Legislative Council, refused to sign off on these contracts. Senator Hohman sued to force Mr. Charney into recognizing the contracts.

Status

There has been no litigation on this matter other than the original filing.

Attorneys

Charney -- Jim Baldwin
Department of Law

Hohman -- not available

Cost -- not available

Alaska State Legislature

vs.

1JU-80-1163 Civil

John S. Hammond

Year Filed: 1980

Description

Plaintiffs claimed that Governor Hammond, before signing certain appropriation bills vetoed entire line items; reduced appropriation amounts; and deleted individual words and phrases removing recipient names, conditions or limitations to appropriations or otherwise altering the purpose of an appropriation. The Legislature contended that the latter was beyond the scope of the governor's item veto authority.

Governor Hammond, in a counter claim, challenged certain appropriations in justifying his changes.

Decision

The court found that: 1) appropriations challenged as violative of the separation of powers doctrine did not violate that doctrine; 2) appropriations challenged for failure to state a public purpose failed to state a public purpose and were invalid; 3) appropriations challenged for providing direct aid to a private educational institution did not do so and were not invalid; 4) most of the appropriations challenged for violating the confinement requirement of Act II, §13 of the State Constitution did violate that section, some didn't; and 5) the appropriation challenged as an invalid delegation of legislative powers to the executive branch was an invalid delegation.

Attorneys

Legislature -- Theodore E. Fleischer
E. 510 L Street, Suite 700
Anchorage, Alaska 99501

Ely Guess & Rudd
Gordon E. Evans
318 4th Street
Juneau, Alaska 99801

State -- James L. Baldwin
Department of Law

Cost -- not available

The Alaska Legislative Council

vs.

4FA-80-1689

Jay S. Hammond, Governor of the State
of Alaska

Year Filed: 1980

Description

SCSHB 207 am S passed the Senate and went to the House of Representatives. The House passed the bill, but failed the effective date before sending it on for the Governor's signature. The governor returned the bill to the House stating that it had not been duly enacted.

Decision

The Judgment entered March 19, 1981 found that the bill had been duly enacted.

Attorneys

Leg. Council -- Call, Dewitt & Barrest
(David H. Call)
711 Gaffney Road
Fairbanks, Alaska 99701

State -- Rodger Pegues
Department of Law

Cost -- not available

Legislative Council as Amicus Curiae

Marine View Chapter, Juneau Tenants Association, et.al.

vs.

100-80-1037 Civil

Alaska State Housing Authority (ASHA) and Department
of Administration, State of Alaska

Year Filed: 1980

Description

ASHA was converting floors of the Marine View apartments into commercial space. The tenants association claimed that ASHA could not evict tenants and convert floors of one of the few low income apartments in downtown. The plaintiffs also claimed that ASHA had not received legislative approval for the lease as required by AS 37.05.280 for leases over \$25,000 and, therefore, could not rent the commercial space.

Decision

The court decided that AS 37.05.280 (leasing of space by Dept. of Administration) was an unconstitutional intrusion by the legislature into the sphere of the executive branch violating the principle of separation of powers.

The remainder of the case was recently dismissed at the request of the tenants association.

Attorneys

Plaintiff -- Alaska Legal Services Corp.
(Bruce Horowitz and Mary Alice McKeen)
419 6th Street, Suite 322
Juneau, Alaska 99801

Defendant -- Thomas Jahnke
Department of Law

Amicus curiae -- Delaney, Wiles, Moore, Hayes, & Reitman
(Stephen M. Ellis)
1007 W 3rd Avenue, Suite 400
Anchorage, Alaska 99501

Cost -- not available

United States Senate

OFFICE OF SENATE LEGAL COUNSEL
WASHINGTON, D. C. 20510

September, 1983

OFFICE OF SENATE LEGAL COUNSEL

The Office of Senate Legal Counsel was created by Title VII of the Ethics in Government Act of 1978, 2 U.S.C. § 288 (Supp. V 1981). It was the product of several years of legislative work in the Senate, both by the Committee on Governmental Affairs and the Subcommittee on the Separation of Powers of the Committee on the Judiciary. As originally conceived, the legislation would have created an Office of Congressional Legal Counsel. The House conferees on the Ethics Act stated that the House was not prepared to agree to a joint office, but the conferees agreed to a Senate amendment to establish an Office of Senate Legal Counsel.^{1/}

The Counsel and Deputy Counsel are appointed by the President pro tempore of the Senate upon the recommendation of the Majority and Minority Leaders. The appointments of

^{1/} The interests of the House in litigation are represented by General Counsel to the Clerk of the House, and private counsel retained under the auspices of the House Committee on Administration. Senate Counsel and House Counsel cooperate in litigation pursuant to the direction of the conference report on the Ethics Act that "the Senate Legal Counsel shall, whenever appropriate, cooperate and consult with the House in litigation matters of interest to both Houses." H.R. Rep. No. 1756, 95th Cong., 2d Sess. 80 (1978).

the Counsel and Deputy Counsel are made effective by resolution of the Senate, and the term of appointment for each is two Congresses. Ethics Act, § 701(a)(3)(A); 2 U.S.C. § 288(a)(3)(A). The appointment of the Counsel and Deputy Counsel and the Counsel's appointment of Assistant Senate Legal Counsels are required to be made without regard to political affiliation. Ethics Act, §§ 701(a)(2) and (b)(1); 2 U.S.C. §§ 288(a)(2) and (b)(1).

The office is responsible to the Joint Leadership Group. Ethics Act, § 702(a); 2 U.S.C. § 288a(a). The Joint Leadership Group is comprised of the Majority and Minority Leaders, the President pro tempore, and the chairman and ranking minority members of the Committees on the Judiciary and Rules and Administration. In the 98th Congress the members of the Joint Leadership Group are Senators Baker, Byrd, Thurmond, Biden, Mathias, and Ford.

The statute provides for four major activities of the office: (1) defending the Senate, its committees, members, officers, and employees; (2) representing committees of the Senate in proceedings to aid their investigations; (3) appearing for the Senate when it intervenes or appears as amicus in a lawsuit to protect a power or responsibility of the Congress; and (4) advising committees and officers of the Senate. The Senate may adopt resolutions to assign other responsibilities to the office.

1. Defense of the Senate, its committees, members, officers, and employees.

Two kinds of defensive representation are authorized. The first is when the Senate, a committee, member or officer is named as a party defendant in a civil lawsuit which concerns the validity of a proceeding or action undertaken by them in an official or representative capacity. Ethics Act, §§ 703(a), 704(a)(1); 2 U.S.C. §§ 288b(a), 288c(a)(1). In some of these cases the plaintiffs seek to impose monetary liability on members, officers, and employees: e.g., claims by congressional employees of sex discrimination, Davis v. Passman, 442 U.S. 228 (1979), and Hanson v. Hoffmann, 623 F.2d 42 (D.C. Cir. 1980); a claim by a congressional employee that she was dismissed in violation of the First Amendment for seeking a clarification of an office maternity leave policy, Hanson v. Hoffmann, supra; a claim for damages for an alleged violation of the First, Fourth, and Fifth Amendments in the conduct of a Senate investigation, McSurely v. McClellan, 553 F.2d 1277 (D.C. Cir. 1976) (en banc), cert. dismissed, 438 U.S. 189 (1978); or a defamation action by a government assisted researcher against a member and Senate employee for statements in a news release, Hutchinson v. Proxmire, 443 U.S. 111 (1979).

In other cases plaintiffs have named Senate parties in challenges to the constitutionality of congressional practices or actions: e.g., a claim by taxpayers that the payment

of compensation to the chaplains of the Senate and House violates the Establishment Clause of the First Amendment, Murray v. Buchanan, 674 F.2d 14 (D.C. Cir. 1982), vacated and rearqued by order of the Court en banc; a claim by members of the House of Representatives that the Tax Equity and Fiscal Responsibility Act of 1982 was passed in violation of Article I, Section 7, Clause 1 of the Constitution which requires that all bills for raising revenue shall originate in the House of Representatives, W. Henson Moore v. The United States House of Representatives, 533 F. Supp. 267 (D.D.C. 1982), appeal docketed, No. 83-1077 (D.C. Cir.) (the Senate is also a defendant); and a claim by a senator that he was entitled to examine witnesses on the floor of the Senate during consideration of an expulsion resolution, Williams v. Bush, No. 81-2839 (D.D.C. Feb. 3, 1982) (the senator had been accorded the right to subpoena and examine witnesses before the Select Committee on Ethics).

The second kind of defensive representation the Counsel may undertake is when the Senate, its committees, members, officers, employees are subpoenaed to produce documents or provide testimony relating to official or representative functions. While the authority to represent members, officers, and employees when they are defendants is limited to civil proceedings, the authority to represent them when they are subpoenaed as witnesses extends to criminal pro-

ceedings as well. The representation of members, officers, and employees, when their documents or testimony are subpoenaed relates to the power of the Senate over the disposition of Senate documents and the attendance of its members while the Senate is in session. The Office of Senate Legal Counsel advises members, officers, and employees when they receive subpoenas or requests for documents or testimony, and assists them in determining whether a congressional privilege should be asserted. The office also assists in preparing Senate resolutions to permit the production of documents and to authorize members, officers, and employees to testify on matters not subject to a congressional privilege.

The representation of the Senate, its committees, members, officers, or employees, whether as defendants or as subpoenaed witnesses, may be authorized by either a resolution of the Senate or a vote of two-thirds of the members of the Joint Leadership Group. The defense of a member, officer, or employee may only be undertaken with the consent of the individual involved.

2. Proceedings to aid investigations by Senate committees.

The Senate Legal Counsel may represent committees in proceedings to obtain evidence for Senate investigations. Two specific proceedings are authorized.

18 U.S.C. § 6005 provides that a committee or subcommittee of either House of Congress may request an immunity order from a United States district court when the request has been approved by the affirmative vote of two-thirds of the members of the full committee. The Senate Legal Counsel may be directed by a vote of two-thirds of the members of a full committee to represent it or a subcommittee in an application for an immunity order. Ethics Act, §§ 703(d)(2), 707; 2 U.S.C. §§ 288b(d)(2), 288f. The Attorney General is entitled to ten days' notice of the intention of the committee or subcommittee to apply for the order, and on the request of the Attorney General the district court is required to defer action on the immunity application for up to twenty days. The district court must grant the application for an immunity order if it determines that these procedural requirements have been satisfied. The witness may not refuse to testify on the basis of his privilege against self-incrimination after the order is communicated to the witness by the chairman of the committee or subcommittee.

The Senate Legal Counsel may also be directed to represent a committee or subcommittee of the Senate in a civil action to enforce a subpoena. Prior to the Ethics in Government Act of 1978, subpoenas of the Senate could be enforced only through the cumbersome method of a contempt proceeding.

before the bar of the Senate or by a certification to the United States attorney and a prosecution for criminal contempt of Congress. The Ethics Act authorizes a third method to enforce Senate subpoenas, a civil action in the United States District Court for the District of Columbia. Ethics Act, § 705(f)(1); 28 U.S.C. § 1364. See, In the Matter of the Application of the United States Senate Permanent Subcommittee on Investigations, 655 F.2d 1232 (D.C. Cir.), cert. denied, 454 U.S. 1084 (1981). The House chose not to avail itself of this procedure and the new enforcement method applies only to Senate subpoenas.

The new civil action has important advantages both for investigating committees and witnesses. For committees, it establishes an expeditious procedure to test the objections offered by a witness and, if those objections are insufficient, to obtain by a judicial proceeding an order directing the witness to testify. A failure to comply with the order is contempt of court and may lead to the imposition of coercive sanctions. For the witness who asserts in good faith a legal objection to a congressional inquiry, the civil proceeding provides a neutral forum to determine the validity of his objection.

The statute details the procedure for directing the Senate Legal Counsel to bring a civil action to enforce a subpoena. In contrast to an application for an immunity

order, which may be authorized by a committee, only the Senate by resolution may authorize an action to enforce a subpoena. The Senate may not consider a resolution to direct the Counsel to bring an action unless a majority of the committee reports it. The statute specifies the contents of the committee report; among other matters, the committee must report on the extent to which the subpoenaed party has complied with the subpoena, the objections or privileges asserted by the witness, and the comparative effectiveness of a criminal and civil proceeding.

There is a significant limitation on the new civil enforcement remedy. The statute excludes from its coverage actions against officers or employees of the federal government acting within their official capacities. Its reach is limited to natural persons and to entities acting or purporting to act under the color of state law. However, the office has been directed to appear as amicus curiae in the name of Senate committees to support their claim to documents in the possession of an executive department.

3. Representing the interests of the Senate as intervenor or amicus.

The Senate by resolution may direct the Counsel to intervene or appear as amicus curiae in the name of the Senate, or an officer, committee, subcommittee, or chairman of a committee or subcommittee, in any federal or state pro-

ceeding in which the powers or responsibilities of the Congress are placed in issue. Ethics Act, §§ 706, 713(a); 2 U.S.C. §§ 283e, 2881(a).

This authorization permits the Senate to advocate an interest of the Congress in cases in which the Department of Justice aligns itself with the executive branch against the Congress. Utilizing this authority, the Senate appeared as amicus curiae or intervenor in the defense of statutes which have provided that one or two Houses of Congress may disapprove by resolution executive actions or agency rules. In Immigration and Naturalization Service v. Chadha, 51 U.S.L.W. 4907 (U.S. June 23, 1983), the United States Supreme Court held that such legislative vetoes are unconstitutional.

The office has also appeared for the Senate as amicus curiae in support of a statute which confers certain powers on committees of the Congress. The Federal Land Policy and Management Act of 1976 authorizes the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources to notify the Secretary of the Interior that an emergency exists on designated federal lands. Upon receiving a committee notification the Secretary is required to withdraw the lands from development for a period of not more than three years. The United States District Court for the District of Montana upheld the statute after accepting the Senate's interpretation that the statute

conferred on the Secretary the power to determine the duration and scope of the withdrawal. Pacific Legal Foundation v. Watt, 529 F. Supp. 982 (D. Mont. 1981), and 539 F. Supp. 1194 (D. Mont. 1982).

In several cases the office has appeared as amicus curiae in the name of committees of the Senate in support of requests or subpoenas to obtain information in the possession of the Department of Justice. United States v. Dorfman, No 81 CR 269 (N.D. Ill. 1981) (appearance on behalf of Senate Select Committee on Ethics to obtain wiretap evidence relating to alleged conspiracy to bribe member of the Senate); In re Grand Jury Impaneled October 2, 1978 (79-2), 510 F. Supp. 112 (D.D.C. 1981) (appearance on behalf of Senate Committee on the Judiciary to obtain Department of Justice documents relating to Robert Vesco).

The Senate or its committees have also appeared as amicus curiae in cases in which the interests of the executive and legislative branch are in harmony but where there is still a special interest in separate Senate representation. The Senate appeared in an action to defend the congressional frank which had been challenged on the theory that it unfairly advantages incumbents over challenges. The district court dismissed the complaint. Common Cause v. Bolger, C.A. No. 1887-73 (D.D.C. Sept. 7, 1982), aff'd, 51 U.S.L.W. 3784 (U.S. May 2, 1983 (No. 82-1141)). The Committee

on Governmental Affairs appeared as amicus curiae in a successful appeal concerning oversight investigations of executive departments. Peter Kiewit Sons' Co. v. U.S. Army Corps of Engineers, No. 82-1461 (D.C. Cir. August 9, 1983).

4. Advice to committees and officers of the Senate.

The Ethics Act details a number of advisor functions of the Office of Senate Legal Counsel. Principal among these are the responsibility of advising officers of the Senate with respect to subpoenas or requests for the withdrawal of Senate documents, and the responsibility of advising committees about the promulgation and revision of rules and procedures for congressional investigations. The office also provides advice about questions which arise during the course of investigations. Ethics Act, §§ 708(a)(5,6); 2 U.S.C. §§ 238h(a)(5,6).

5. Other duties as directed by the Senate.

Section 708(c) of the Ethics Act, 2 U.S.C. §288h(c), provides that the Counsel shall perform such other duties consistent with the purposes and limitations of Title VII as the Senate may direct.

When the office was changed in conference from an Office of Congressional Legal Counsel to an Office of Senate Legal Counsel, no specific provision was made for the representation of Senate interests concerning agencies which serve the entire Congress. One such entity is the Congressional

Research Service. When an administrative law judge at the Federal Trade Commission issued a subpoena to CRS, at the request of oil company respondents in an FTC antitrust proceeding, the Senate used the catchall authority of section 708(c) to direct the Office of Senate Legal Counsel to represent the CRS in order to protect the confidentiality of communications from CRS to the members and committees of Congress.

Another use of section 708(c) was in the investigation relating to Billy Carter and Libya when the Senate directed the Counsel and Deputy Counsel to work under the direction of the chairman and vice chairman of the subcommittee charged with the conduct of that investigation. The Senate turned to the Office of Senate Legal Counsel as a nonpartisan office; the office became the nucleus of the investigating staff, and continued in that role under the direction of Judge Philip Tone, when he was appointed to be Special Counsel to the subcommittee. In the Senate's investigation of Abscam and other undercover activities, the office detailed an Assistant Senate Legal Counsel to work on the committee staff.

B. CONGRESSIONAL LEGAL COUNSEL

1. NEED FOR A CONGRESSIONAL COUNSEL

It is not widely known that Congress presently relies on the Justice Department for representation in litigation arising out of the exercise by Congress of its constitutional powers. Although Congress has been the object of litigation throughout its existence, such litigation has been more frequent and particularly threatening in recent years. Meanwhile, the reliance of the legislative branch on the Department continues despite an increasing conflict of interest in the Department providing this representation.

Although this conflict of interest has not resulted in any charges of corruption, failure by Congress to remedy this conflict may have consequences which will seriously affect the vitality and independence of Congress. In order to assure that Congress will have the capacity for vigorous and effective representation before the courts, Congress should establish its own Office of Congressional Legal Counsel to represent Congress and congressional interests in litigation. The Justice Department supports the establishment of such an office and the bill has been modified in certain respects to meet all objections raised by the Department.

The need for creating an Office of Congressional Legal Counsel is clear. It is not surprising that the exercise by Congress of its constitutional powers is frequently challenged in and affected by various court proceedings. As Alexis de Tocqueville observed during his travels in America in 1831, "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." *Democracy in America*, volume I—Vintage Books: page 280. Congress can no longer ignore this fact.

Unlike the executive branch of Government, Congress does not generally attempt to effectuate its will and perform its duties by initiating lawsuits in the courts. With a few notable exceptions, Congress should rely on its legislative, oversight, and impeachment powers—rather than initiate lawsuits—to fulfill its constitutional responsibilities. However, through no choice of the Congress, many matters vitally affecting Congress end up in the courts. Most of these cases arise where lawsuits have been brought against Congress to challenge an official action of the Congress, a Member or employee of Congress, or a committee or agency of Congress. In cases where Congress is not named as a party, the powers of Congress are often at issue and are interpreted by a court.

For example, Congress has not been named as a party in the *Common Cause* (Franklin) privilege case, but Congress has an interest in the case even more substantial than that of the Postmaster, who is the named defendant. Indeed, the House has recently intervened in this case.

In each of these types of cases, the vital interests of Congress will be affected whether or not Congress chooses to advocate its position to the court. Because our judicial system relies on adverse parties to sharpen the issues in order for the court to make the best decision, it is essential that the courts have the opportunity to evaluate congressional interests based upon the vigorous and effective presentation of

these interests to the court by an attorney representing the Congress.

At present, representation of Congress and congressional interests in these cases is provided on an ad hoc basis by the Justice Department and private legal counsel. Because no permanent office has ever been given the responsibility to monitor and defend these interests, Congressional interests are often inadequately represented or are not represented at all.

The Justice Department's practice of defending Members, officers, and committees of Congress in civil cases has developed gradually, until at present the Congress is almost wholly dependent on the Department for such representation. This practice began as far back as December 20, 1818, when the House adopted a resolution authorizing the Speaker to hire private counsel to defend the Sergeant at Arms in the landmark case of *Anderson v. Dunn*, the first case upholding Congress contempt power. Acting as a private citizen, the Attorney General argued the case on behalf of Congress and was paid a fee of \$500. Since 1818 the Attorney General and—after its creation in 1870—the Justice Department have frequently served as defense counsel to Congress.

The only direct statutory basis for the practice is 2 U.S.C. 113, enacted in 1875, which requires that upon request the Department defend an "officer" of either House of Congress for acts performed in the "discharge of his official duty." This statute was enacted after the Speaker of the House, James Blaine, had been sued for having enforced an order of the House. See 86 Congressional Record 2016-2017 (March 1, 1875); *Representation of Congressional Interests in Court*, Hearings before the Subcommittee on Separation of Powers, 1976 (hereafter "Representation") at 38. The Department does, however, represent Members and committees of Congress as well, but there is no direct statutory basis for the practice. Of course, the Department handles congressional cases only when requested to do so.

On occasion, Congress has chosen instead to retain private counsel to defend itself; for example, in the civil action brought against Congress by former Congressman Adam Clayton Powell—see 113 Congressional Record 6040-6049 (March 9, 1967) and in connection with the subpoenas issued to Members and staff in the Common Cause franking privilege case. See 120 Congressional Record H0882-H0870; (September 20, 1974); 120 Congressional Record H11497-H11498 (December 10, 1974); 120 Congressional Record H10291-H10292 (December 18, 1974); 121 Congressional Record H11877-H11878 (December 4, 1975); 122 Congressional Record H1699-H1703 (March 9, 1973). Committees sometimes defend themselves using existing staff counsel, such as did the Senate Watergate Committee when three cases were brought to restrain its probe of corruption in the executive branch and as has the General Counsel to the House Clerk in a number of recent cases involving the Clerk's supervisory functions.

In recent years, Congress has involuntarily been subjected to extensive litigation to defend its constitutional powers. Indeed, in the last 6 years the Justice Department alone has defended Members, officers and committees of Congress in at least 70 cases. Representation at 20. This total does not even include the 60 legal matters before the courts in which the Senate Watergate Committee became involved

(Senate Report 92-291), Final Report of the Senate Select Committee at 1079) nor at least ten other recent cases in which private counsel has been retained, nor numerous other legal proceedings in which subpoenas for Congressional documents have been issued. All told, Congress has been involved in no less than 200 legal proceedings in recent years.

These cases include civil actions brought to enjoin enforcement of committee subpoenas or issuance of committee reports; civil actions related to the enforcement of the campaign finance laws by officers of Congress; civil actions related to attempts to hold demonstrations on the Capitol Grounds; a civil action to invalidate the censure system; a civil suit to recoup salaries paid to Members while absent from Congress; and a civil suit to invalidate the qualifications for membership in the Senate Press Gallery. The court papers of the Watergate Committee alone run almost 8,200 pages. *Legal Documents Relating to the Select Committee Hearings, appendix to the hearings of the Senate Select Committee—June 28, 1974—two parts.*

Not included in this number are actions involving allegations of criminal conduct, abuse of the franking privilege by an individual Member or contested elections, which the Department and the proposed Congressional Legal Council will not handle.

Not only is the number and variety of these lawsuits impressive, but many of them have been so complex that it has required years to resolve them in the courts.

However, more significantly, the importance of the precedents being established in these cases cannot be ignored. In *Powell v. McCormack*, 395 U.S. 468 (1969), the Supreme Court limited the right of the Congress to judge the qualifications of its Members; in *United States v. Gravel*, 403 U.S. 608 (1972), and in *Doe v. McMillan*, 412 U.S. 308 (1973), it limited the ability of Congress to inform the public; in *Buonley v. Valco*, 424 U.S. 1 (January 20, 1975), it limited Congress' ability to appoint officers to the Federal Election Commission. Indeed, Senator Ervin warned that the *Gravel* decision alone poses "a clear and present threat to the continued independence of Congress as a coordinate branch of Government and constitutes a further deterioration of its power and prerogatives in relation to the executive and judicial branches." 69 *Virginia Law Review* 173 (1973).

In each case, the precedents established by the courts have an impact on Congress as an institution, not just on the specific Members, officers, or committees involved. Therefore, Congress as an institution cannot be indifferent to the legal precedents which are established in these cases, even if Congress may have no interest in their effect on individual parties involved. By representing the individual Member in a case involving his performance of official duties, in a very real sense Congress represents itself.

Court challenges to the exercises by Congress of its constitutional power will continue to occur. For example, each day of Congress has been named defendants in a suit by Ramsey Clark to invalidate the congressional veto over regulations of the Federal Election Commission. This lawsuit may determine the constitutionality of literally hundreds of such provisions in existing statutes.

Similarly, criminal defendants recently have issued various subpoenas to congressional committees demanding access to documents, raising the issue of the constitutional power of Congress to control access to its papers. These types of subpoenas have been and will be issued to the new Intelligence Committee in attempts to declassify information. The executive branch threatened to issue subpoenas for House travel records, until the House voluntarily turned over the materials. The nature and novelty of other challenges to Congress power cannot be predicted, but these challenges are sure to occur with regularity.

In cases of interest to Congress where Congress is not a party, the Department of Justice will not intervene or file an amicus brief on behalf of Congress. In such cases, however, congressional interests have occasionally been represented by private counsel retained on an ad hoc basis. For example, the Senate retained private counsel to represent it as amicus curiae in *Gravel v. United States*, where the issue of legislative immunity was at issue. See 113 Congressional Record 6602-6691 (March 28, 1973). Private counsel has also been retained to intervene on behalf of a subcommittee of the House of Representatives in *Ashland Oil v. FTC*, a case where the subcommittee is opposing an attempt by Ashland Oil to bar the FTC from complying with the subcommittee's subpoena. See 121 Congressional Record H12918-19 (December 13, 1976); Representation at 404. Private counsel is now representing a House subcommittee in the case of *United States v. A.T.T.* See House Report 94-1423; 123 Congressional Record H9153-9157 (August 23, 1976). Private counsel is representing Senator Proxmire in a case involving important issues regarding Congress' function of informing the public. See 123 Cong. Rec. H16835-312576 (August 9, 1976). Private counsel appeared on behalf of the Congress in the *Lovett* case as far back as 1943. See Representation at 230-231, 412-414.

The variety and importance of this litigation demonstrates that the interests of Congress as an institution make its present reliance on the ad hoc services of the Justice Department and private counsel wholly unsatisfactory. These institutional interests make it inappropriate as a matter of principle and of the constitutional separation of powers for the legislative branch to rely upon and entrust the defense of its vital constitutional powers to the advocate for the executive branch, the Attorney General.

Despite its long history in representing Congress in court, the Department of Justice supports the establishment of an Office of Congressional Legal Counsel. This support for Congress defending itself in litigation before the courts recognizes that Congress, as a co-equal branch of government, should represent itself in court. The Department recognizes also the legitimacy and constitutionality of vesting the functions and powers in title II with a Congressional Counsel Office.

In testimony during the 94th Congress before the Senate Government Operations Committee and the Senate Judiciary Committee's Subcommittee on the Separation of Powers, representatives of the Department of Justice have unequivocally stated the obvious: The

Department of Justice is a part of the executive branch and its first and foremost responsibility is to represent the interests of the President and the executive branch. Where the interpretation of the powers of the Congress before the courts is entrusted to the executive branch, the Congress relies on a branch of government with which Congress has, under the constitutional system of checks and balances, an adversarial relationship. Without in any way questioning the good will or intentions of the Department, it is clear that the integrity and independence of Congress as a coequal branch of government requires that Congress defend itself through its own counsel.

More specifically, the Department of Justice acknowledges that it is placed in an untenable conflict of interest situation when called upon to handle certain cases on behalf of Congress. In such cases, the Department states that it will decline to provide representation and will assist in the hiring of outside private counsel. However, the Department's position as to what constitutes a conflict of interest is very limited and covers only those situations where the Department is taking a position in one case which is directly inconsistent with a position the Department simultaneously is advocating in another matter then also in litigation in the same court.

The Department also acknowledges a conflict where the substantive position of Congress in the case would in the Department's view result in an infringement of a power of the President. However, it is clear that a conflict may also exist whenever the Department of Justice is in the position of defending a congressional power which may in the future be exercised by Congress against the executive branch. Most cases presently being handled by the Department on behalf of Congress involve precisely such powers and precisely this conflict of interest.

When the Department is able in advance to perceive a conflict in representing Congress, it will, of course, not commence such representation. It is, however, sometimes difficult to determine in advance exactly when the Department will decline to handle a congressional case. Other than in thoughts expressed by the Department in correspondence with various Members and committees, there are no written or formal guidelines applied by the Department in making this determination. The determination is subjective, is made on a case-by-case basis, and requires in essence that the Department prejudge whether the congressional defendant was acting within the scope of his official duty. Because of this uncertainty, Congress already must make ad hoc provisions for retaining private counsel when the Department perceives a conflict.

Unfortunately, in three recent cases the conflict did not become apparent to the Department until after the Department had entered its appearance on behalf of Congress. In fact, in *Doe v. McMillan* and *Eastland v. United States Servicemen's Fund*, the Department withdrew its representation of congressional committees just as the litigation reached the Supreme Court, after having represented Congress in the district court and court of appeals. As a result, Congress then had to hire private counsel at this advanced and crucial stage of the litigation. See Representation at 67 and 675. In the *McMillan* case, the Supreme Court remanded the case back to the district court, at which

time the Department determined that the conflict had ceased to exist and defended the remaining defendants. Although the Department will normally withdraw when a conflict arises, in the case of *Duckley v. Vales* the Department did not formally withdraw its appearance as counsel to the Secretary of the Senate and the Clerk of the House even when it proceeded to argue that the statute creating the Federal Election Commission—on which the Secretary and Clerk served—was unconstitutional. The Department has recently been forced to withdraw as Congressional Counsel in *Prosser v. Simon*.

Because of the wide range of responsibilities which are assigned to the Department, there are many ways in which such a conflict can suddenly arise for the Department in the midst of defending a congressional client. The conflict which arose in the *Servisimone's Fund* case occurred when the Department of Justice voluntarily chose to appear as amicus curiae in opposition to the suit by the Senate Watergate Committee to enforce its subpoena for the White House tapes. See Representation at 374. The Department's narrow definition of what constitutes a conflict of interest did, however, enable the Department to continue representing other congressional defendants in cases pending in other courts in which speech and debate clause immunity was also a defense. But the point remains, one cannot predict when a conflict will arise which will force the Department to terminate its services.

The problem of anticipating conflicts is compounded by the fact that it is the Department's official position that even though it has undertaken to represent Congress, if an agency of the executive branch subsequently asks the Department for representation which will create a conflict of interest with the Department's representation of Congress, the Department will automatically force the congressional client to obtain other counsel. With a law firm, such conflicts are easily avoided because the firm will simply refuse to take on the new client. However, the executive branch is always the priority client of the Department. When a conflict arises in representing a congressional defendant, it is clear that the Department does not and can not continue to represent its congressional clients and, as importantly, when a conflict arises, it is in Congress' best interest to obtain other counsel.

As a result of these experiences in a number of congressional cases, committees which were or are being represented by the Department have also retained counsel to protect themselves in the event the Department suddenly feels compelled to withdraw. There is obvious waste when taxpayers must pay for Justice Department attorneys to handle a congressional case and pay as well for a private lawyer to insure that the Department vigorously defends congressional interests and to be ready to undertake the representation of Congress if the Justice Department should choose to withdraw from the case. However, faced with the policy of the Department of Justice with respect to conflicts of interest, it is prudent for Congress to retain these private attorneys.

Further compounding the inherent conflict of interest when the Department serves as the advocate for the Congress, the Department "insists on retaining control of the litigation and making the litigation decisions." Representation at 32. The Department asserts the case

degree of control over congressional cases as it exerts over its own executive branch cases. The Department's position on control of the litigation was dramatically illustrated at hearings before the Subcommittee on Separation of Powers. The following exchange occurred between the subcommittee and Irving Jaffe, Deputy of the Civil Division:

SENATOR. If the Justice Department has no authority to take a congressional case unless it is requested to do so, why does it have, at that point when it is requested, complete control over the case?

MR. JAFFE. Because we do it in the interest of the United States. That interest is vested in us.

SENATOR. Even to the distinction of the interest of the client?

MR. JAFFE. In many instances, yes.

SENATOR. ARGUMENT. Then it is a matter of definition between you and the client as to what is in the interest of the United States.

MR. JAFFE. Except that we have the ultimate determination. SENATOR. ARGUMENT. Your definition overrides his. (Repetition at 77.)

The result of this Department policy is that when Congress wishes to make arguments with which the Department is in disagreement, the Department will take the position that Congress must retain private counsel if it wants to make such arguments. This position can have the effect of inhibiting congressional defendants from asserting proper control over their Department attorney, except on crucial issues.

This description of the conflicts of interest for the Department of Justice when it represents congressional interests is not intended as a criticism of the Department. The Department only represents congressional interests at the request of its congressional clients. In turn, Congress makes these requests of the Department because there is no adequate alternative but for Congress to do so. Indeed, when Members or committees are faced with litigation, the Members or committees may place substantial pressures on the Department to handle the case despite possible long-term disadvantages for Congress as an institution. In its efforts to maintain cordial relations between the branches, the Department will make every effort to honor congressional requests. The conflicts of interests which inevitably arise are of an institutional nature.

Although no conflict of interest is involved, serious problems also arise with congressional reliance on the use of private counsel when Department representation is not available. First, the use of private counsel is very expensive. One reason for this expense is that few if any private counsel have experience or expertise with the unique substantive and procedural legal issues which arise in congressional cases. It can be very expensive repeatedly to subsidize private counsel for the time it takes for them to gain this expertise. Even then private counsel will lack invaluable experience.

Second, the retention of different private counsel to handle different cases provides for little if any consistency among the legal post-

tions and approaches taken in the different cases. A private attorney will only be intimately knowledgeable about the case he is handling—and not with the full range of litigation involving Congress. One attorney might, therefore, inadvertently make an argument or concede a point in one case which has an adverse precedential impact on another case involving Congress. Similarly, individual private attorneys are likely to have little perspective or interest in how the long-range interests of Congress may be affected by any given litigation. They may have little sensitivity to any political implications of a given law suit. They will not have inclination or the ability to establish contacts with the broad spectrum of congressional views which may exist on various issues. They will have no ongoing relationships with the leadership.

Finally, when faced with a law suit, Members, officers and committees often have no time to locate, interview, and retain private counsel. This is why in such cases there is little alternative but to request Department of Justice representation, even when they may be aware that retaining private counsel would be preferable. A simple phone call from a committee chairman to the Department, for example, often suffices to arrange for the Department to handle a case. If, however, private counsel is to be employed, an attorney must be found who is willing and able to handle the case, a fee arrangement must be negotiated and arrangements must be made for payment of the fee. Furthermore, to compensate private counsel it will often be necessary for the congressional parties to request appropriations from the contingent fund, a time-consuming and unpredictable process. A committee or Member must, therefore, be willing to endure substantial additional inconvenience if they choose not to rely on the Department of Justice.

In addition to mitigating these conflicts and practical problems resulting from reliance on the Department or private counsel, there are substantial benefits which would result from the establishment of an Office of Congressional Legal Counsel which cannot otherwise be achieved. A first-class litigating office in Congress will make available to Congress advice on how to avoid or anticipate litigation and continuous monitoring of congressional interests in cases where Congress is not a party. Increasingly, the prospect of litigation must be considered whenever Congress exercises its constitutional powers. The adverse consequences of failing to consider the possibility of litigation has been most notable when criminal contempt of Congress charges are dismissed by the courts on technicalities. This occurred in the recent perjury case of then Lieutenant Governor of California Edward R. Brooke—*United States v. Brooke*, 524 F. 2d 438 (D.C. Cir. 1975)—because a committee had not published its rules in the Congressional Record. Neither the Department nor private counsel can, will, or should perform these advisory functions. The Department acknowledges that this function is quite properly lodged in the Congress itself.

Similarly, when a committee undertakes an investigation, there is a constant need for advice on how properly to frame and issue subpoenas and how to utilize other congressional investigative powers so that the committee's actions will, if necessary, be sustained by the courts. Again, it would not be constitutionally proper for the Justice Department or desirable for private counsel to provide such an advisory service.

Existing legislative and staff counsel readily admit that they do not have the time or training to litigate or to provide advice in anticipation of litigation. Staff of one committee might gain some litigation experiences but then will be unavailable to assist the next committee in need of counsel. Other than the Clerk of the House, the Secretary of the Senate, and the Permanent Investigations Subcommittee of the Senate Governmental Affairs Committee, no one body in Congress has developed any litigation expertise.

The Congressional Legal Counsel would also continuously monitor congressional interests in cases where Congress is not a party. For example, in the litigation concerning the custody of former President Nixon's tapes and papers, the Justice Department is defending an act of Congress which denies Mr. Nixon custody of these materials even though the Justice Department, at the time of the Nixon pardon, issued a written legal opinion that Mr. Nixon had the legal right to custody of the materials. Congress has not chosen to intervene or appear amicus curiae in this law suit. However, the testimony submitted to the Government Operations Committee by Senator Nelson concerning the conduct of the case—1973 Hearings, part II, page 142—illustrates the need for an office of Congress with the ability to represent Congress in a legal action, if necessary, and to closely monitor such legal actions. Again, neither the Department nor private counsel can or should perform this role. To the extent that existing legislative or staff counsel presently monitor the course of such litigation, it would still be necessary to retain counsel if congressional interests were being adversely affected.

Finally, if the Congress adopts the jurisdictional statute, discussed in detail below, to enable Congress to enforce its subpoenas by civil court actions, attorneys will be necessary to bring the actions. Neither the Justice Department nor private attorneys should be given this responsibility.

2. NEED FOR CIVIL ENFORCEMENT OF SUBPOENAS

Presently, Congress can seek to enforce a subpoena only by use of criminal proceedings or by the impractical procedure of conducting its own trial before the bar of the House of Representatives or the Senate. However, if the Congress or a committee is interested in compelling compliance with a subpoena rather than merely punishing the subpoenaed party, civil subpoena enforcement will often be preferable to certifying a criminal contempt complaint. Unlike a civil enforcement action, in a criminal contempt action the defendant cannot purge himself of the contempt by finally producing the documents. In addition, with a criminal contempt action, expediting the litigation is more difficult than in a civil enforcement action, committee compliance with its procedures is more strictly reviewed, and the subpoenaed party's rights are given greater weight. The Justice Department has supported a civil enforcement mechanism in 1982 and has reiterated that support this session. The Department has stated also that Congress may bring the subpoena enforcement actions without infringing on any Executive Branch powers.

The reluctance of Congressional committees to enforce their subpoenas under the criminal contempt statute was graphically demonstrated by debate in the Senate Judiciary Committee in 1962.

The Subcommittee on Antitrust and Monopoly had subpoenaed cost data from the 12 largest steel companies. Four of these companies refused to produce the subpoenaed data or even to appear before the Subcommittee. The Subcommittee then voted 3 to 2 to report a criminal contempt citation to the full Judiciary Committee.

In the debate before the Subcommittee all parties agreed that the steel companies' refusals were based on a good faith belief that the cost data was confidential. Senator Hart stated that what all parties were seeking was "to establish a priority among principles." The steel companies declared their unwillingness to comply "until required to do so through established Judicial procedures." One member of the committee speculated that—contrary to the law of criminal contempt—if the companies were held in contempt "the steel company executives (could) produce the records . . . (and) purge themselves from contempt."

At the request of the steel companies, the Judiciary Committee held 3 days of hearings on the events before the full committee. Steel Companies (Subpoenas), Hearings before the Committee on the Judiciary, September 12, 14, and 20, 1962. It was again clear that the companies' refusal was their "instrument or . . . approach of testing which of these two principles—of Congressional power and business confidentiality—ultimately would prevail." *Id.* at 33 (Senator HART). Senator Keating stated his preference for a civil contempt statute (*id.* at 55), a preference shared by Senator Ervin. (*Id.* at 73). Senator Keating declared flatly that it was "wrong in cases in which there is no criminal intent to be forced to resort to a criminal prosecution in order to test the validity of a committee's questions or requests for documents." (*Id.* at 77.)

The dilemma facing the committee was made apparent by the subcommittee chairman, Senator Estes Kefauver, who said:

I would like to make perfectly clear that the subcommittee has no interest in punishing individuals. What we want is the subpoenaed material. (*Id.* at 85).

It is apparent from the committee debate that the availability of a civil enforcement statute could have alleviated the dilemma. Ultimately no criminal contempt citation was voted.

During this same period the U.S. Court of Appeals for the District of Columbia was reviewing the conviction of Austin J. Tobin, the executive director of the Port Authority of New York, under the criminal contempt statute. *Tobin v. U.S.*, 303 F.2d 970 (D.C. Cir.) cert. denied 371 U.S. 803 (1962). Tobin had been cited for contempt in refusing to produce certain documents subpoenaed by the House Judiciary Committee in an investigation of the 1931-32 interstate compact between the States of New York and New Jersey. The Port Authority argued that after having approved the compact Congress did not have the constitutional power to rescind it. The Governors of both affected States instructed Tobin not to respond to the subpoena. Tobin did not

prevail in his constitutional argument about the committee's jurisdiction but his conviction was nonetheless reversed on the grounds that the Judiciary Committee had been given no power to issue subpoenas for the internal memos of the authority.

When the district court considered the case, Judge Youngdahl pleaded for Congress to provide an alternative to criminal contempt.

The Court of Appeals in reversing Tobin's conviction quoted Judge Youngdahl's plea and added its own. It specifically noted that—

A contempt of Congress prosecution is not the most practical method of inducing courts to answer broad questions broadly.

At the end of its opinion the court made an extraordinary appeal to Congress:

Especially do we say this in view of the unusual nature of the present case, where we are asked to decide essentially civil and jurisdictional issues at the same time that we establish criminal precedent. The conflicting duality inherent in a request of this nature is not particularly conducive to the giving of any satisfactory answer, no matter what the answer should prove to be. Should this controversy be resumed, it is hoped that Congress will give sympathetic consideration to Judge Youngdahl's eloquent plea. 308 F. 2d at 275-273.

Eight years later the same court renewed this appeal in *United States v. Fort*, 443 F. 2d 870, 877-878 (D.C. Cir. 1971), cert. denied, 403 U.S. 932 (1971).

Congress should be able to enforce its subpoenas expeditiously and with due respect for the constitutional rights of a witness. The criminal contempt statute is inflexible, giving a party no incentive to comply with a subpoena. Enactment of the civil subpoena enforcement statute will give Congress the option of punishing recalcitrant witnesses or bringing a civil action to secure compliance with the subpoena. This flexibility will reduce the reluctance of Congress to take action when a subpoena is not complied with.

PAST CONGRESSIONAL CONCERN WITH OFFICE OF CONGRESSIONAL LEGAL COUNSEL AND CIVIL ENFORCEMENT OF SUBPOENAS

Office of Congressional Legal Counsel

Congressional concern with the need to establish an Office of Congressional Legal Counsel has often been expressed over the last decade. In 1965 the Joint Committee on the Organization of Congress considered the litigation needs of Congress and recommended that a Joint Committee on Congressional Operations be established and given the "continuing responsibility for determining, with the approval of the leadership of both Houses, whether Congress should be appropriately represented" in cases of vital interest to Congress. The Joint Committee found that "representation of the Congress with respect to its vital interests is unsatisfactory and the effect upon Congress of court decisions should be a matter of continuous concern for which some agency of Congress should take responsibility."

Building on this proposal, on March 23, 1967, Senator Vance Hartke introduced S. 1224, a bill to establish an Office of Congressional Gen-

oral Council. Then on May 8, 1967, Senator Vance Hartke attempted to offer his bill, S. 1224, as an amendment to S. 255, the Legislative Reorganization Act of 1967. S. 255 already included a provision which authorized the proposed Joint Committee on Congressional Operations, with the approval of the President Pro Tempore, Speaker, and majority and minority leaders, "to provide for appropriate representation on behalf of Congress or either House thereof in any proceeding or action" which, "in the opinion of the Joint Committee, is of vital interest to Congress, or to either House of the Congress." The principal objection to Senator Hartke's bill and amendment was that it authorized the Congressional General Council to be the "authoritative source for interpretation of legislative intent." The Senate considered it to be unwise to establish a quasi-legal office of Congress having the power to issue binding legal opinions whether or not requested by a committee to do so. Accordingly, Senator Hartke's amendment was tabled by a vote of 68 to 13. When the Joint Committee on Congressional Operations was finally established in 1970, it was given the power only to "identify" court proceedings of vital interest to Congress.

In July of 1967 one of the subjects of the Subcommittee on Separation of Powers' first hearings under the chairmanship of Senator Sam Ervin was the Hartke proposal, S. 1224.

In 1973 the Joint Committee on Congressional Operations held 4 days of hearings on the "Constitutional Immunity of Members of Congress." In these hearings the Joint Committee explored the Justice Department's policy in representing Congress and in particular the conflict of interest faced by the Department of Justice when it defended Congress in *Doe v. McMillan*. The Senate's decision to file an amicus brief in *Gravel v. United States* was also discussed. In 1973, hearings by the Subcommittee on Separation of Powers on "Removing Politics From the Administration of Justice" again focused on the Council for Congress proposal.

The Senate Select Committee on Presidential Campaign Activities participated in over 60 different matters before the courts during the course of its Watergate investigations in 1973 and 1974. The court filings, which comprise most of the "Legal Documents Relating to the Select Committee Hearings," run to over 2,100 pages. As a result of its experience, the Select Committee recommended that the Congress give careful consideration to a bill then pending before the Senate (S. 2569) that would establish a Congressional Legal Service and thus give Congress "a litigation arm that would allow it to protect its interest in court by its own counsel." As Senator Baker, Vice Chairman of the Select Committee, stated: "There are numerous instances in which the interests of Congress and Congressional committees are divergent from those of the President and the various departments, and in which the existence of a permanent Congressional litigating staff would be both helpful and appropriate. The Select Committee on Presidential Campaign Activities certainly was engaged, albeit unsuccessfully, in extensive litigation; and a Congressional Legal Service would have been of great utility to the Committee." S. 2569 had been introduced by Senator Walter Mondale on October 11, 1973. Similar proposals to establish an Office of Congressional Legal Council had been introduced by Senator Jacob K. Javits, including S. 2377 on June 4, 1974.

On December 11, 1974, Senator Ervin introduced S. 4977 which was based upon the recommendations of the Watergate Committee and which contained Senator Mondale's proposal.

In the fall of 1975 and the spring of 1976, the Subcommittee on Separation of Powers held hearings on "Representation of Congressional Interests Before the Courts." The chairman of the subcommittee, Senator James Abourezk, had earlier introduced S. 2731 which revised previous proposals for an Office of Congressional Legal Counsel. The subcommittee compiled a detailed hearing record, focusing specifically on the conflict of interest which occurs when the Justice Department represents Congress and generally on the inadequacy from Congress' institutional point of view of the present ad hoc provisions for representation of Congress.

Civil enforcement of subpoenas

Historically Congress has made various provisions for enforcing its subpoenas and orders. The contempt power of Congress was affirmed in the 1821 case of *Anderson v. Dunn*, 19 U.S. 204 (1821). During its early period Congress brought contumacious witnesses for trial before the House and Senate and confined those found in contempt in the Capitol guard house. Variations of this practice continued until 1945.

In 1857 Congress grew dissatisfied with the fact that it could imprison a person only until the end of a legislative session. In that year Congress passed a statute, still in effect in amended form as 2 U.S.C. 192, making it a criminal offense to refuse to divulge information demanded by Congress. Even after passage of the 1857 statute, Congress preferred to enforce its own punishment rather than turn a witness over to the United States attorney. However, as courts more frequently began to review Congressional contempt trials, Congress came to rely entirely on the criminal sanction. Using both procedures, Congress has held approximately 400 persons in contempt since 1730, most of the contempts having occurred since 1945.

While investigating the contested election of Senator William S. Vare in 1928, a Senate committee sought to enforce a subpoena for certain ballot boxes and various documents by bringing a civil suit. The Supreme Court held that the Senate did not intend or authorize the committee to bring suit. (*Reed v. the County Commissioners of Delaware County*, 277 U.S. 376 (1928)). The day the Supreme Court decision was rendered, the Senate enacted a standing order authorizing all Senate committees to "bring Suit . . . if the Committee is of the opinion that the suit is necessary to the adequate performance of the powers vested in it." (69 Cong. Rec. 10508 (May 29, 1928)). That Order has, however, been held not to confer jurisdiction on the courts to hear a subpoena enforcement action. *Senate Select Committee v. Nixon*, 368 F. Supp. 51 (D.D.C. 1973).

The original proposal for enacting a jurisdiction statute for civil enforcement of Congressional subpoenas was introduced on May 4, 1953, by then Congressman Kenneth Keating. Four days of hearings were held on H.R. 4075 on June 3, July 19, 28, and 31, 1954. The bill passed the House on August 4, 1954 and again the next session of Congress on March 15, 1955. The Senate took no action on either occasion.

The Congress has had recent experiences in court enforcement of a committee subpoena. Confronted by President Nixon's refusal to honor

its subpoenas for certain White House tape recordings, the Senate Watergate Committee brought a civil action for a declaratory judgment that President Nixon's claim of executive privilege was unlawful. The committee found the prospect of criminal contempt or trial before the Senate inadequate and inappropriate remedies. Judge Sirica, however, held that the court had no jurisdiction to hear the action. *Senate Select Committee v. Nixon*, 388 F. Supp. 51 (D.D.C. 1973). Senator Ervin then introduced and the Congress soon passed a statute (Public Law 93-100) giving district court jurisdiction over that suit and others the Watergate Committee might bring to enforce subpoenas issued by it to the executive branch. The original version of this statute would have confined jurisdiction on the courts to hear suits by all congressional committees to seek subpoena enforcement. This provision was deleted prior to passage of the law. Eventually the court of appeals dismissed the Committee's suit due to the pending House Impeachment inquiry.

C. TITLE III—FINANCIAL DISCLOSURE

1. REASONS FOR PUBLIC FINANCIAL DISCLOSURE

Existing financial disclosure requirements vary throughout the Federal government. Under rules recently adopted by the House of Representatives and the Senate, full and complete financial disclosure is required for Members and certain officers and employees of those bodies. Executive branch regulations require confidential disclosure of the financial interests of certain high-level employees to those employees' agencies. Members of the judiciary are subject to voluntary confidential disclosure requirements which call for the disclosure of very limited financial information. Some top government officials, such as the President, Vice President, and Justices of the Supreme Court, are not required to make any financial disclosures whatsoever.

It was the opinion of the majority of witnesses who testified before the Committee on this subject that any requirements for public financial disclosure should apply uniformly across-the-board to high-level officials in the executive, judicial and legislative branches of the government.

Some of the reasons for public financial disclosure stated by witnesses who appeared before the Committee during consideration of S. 555 this year and its predecessor, S. 405, in the 94th Congress, are summarized below:

(1) Public financial disclosure will increase public confidence in the government. Numerous national polls of voter confidence in officials of the Federal government, and the low turnout of voters in recent elections, were cited for the proposition that public confidence in all three branches of the Federal government has been seriously eroded by the exposure, principally in the course of the Watergate investigation, of corruption on the part of a few high-level government officials. Public financial disclosure was seen as an important step to take to help restore public confidence in the integrity of top government officials, and, therefore, in the government as a whole.

(2) Public financial disclosure will demonstrate the high level of integrity of the vast majority of government officials. Only a very



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE
September 9, 1983

Rcd
9-19-83

Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Speaker Kerans has asked me to answer your recent letter concerning staff attorneys responsibilities for litigation involving the Legislative Assembly.

The following are responses to the questions you posed:

(1) The Legislative Counsel staff includes 12 attorneys. None are specifically or exclusively assigned to litigation.

(2) There were two instances in the past approximately 10 years. The first instance involved alleged violation of the open meeting law by a House committee. The second involved the constitutionality of a statutory provision subjecting certain appointees of the Governor to Senate confirmation. In both cases, the Legislative Counsel staff did the background research and consultation with outside counsel retained to argue the matter in court.

(3) Legislative Counsel staff attorneys represent the whole Legislative Assembly. On occasion, the various caucuses or leadership officers will hire attorneys to work in their offices to assist in issue analysis, etc, but they have not necessarily had a role in any litigation being considered.

(4) None

(5) None. The Legislative Counsel Committee general fund budget for 1983-1985 is \$2,229,711.00 which covers all functions of the office, including lawyer time spent involved in litigation, if any.

(6) The Senate confirmation suit voted in (2) above was litigated by outside counsel. The total bill for services was \$5,000.

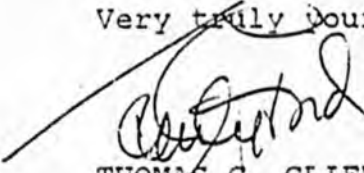
Representative Charlie Bussell
9/9/83 Page 2

(7) There is no established pattern. In the Senate confirmation case, Legislative Counsel attorneys interviewed several private attorneys and retained one of them after consultation with Senate leadership.

(8) We write over 150 advisory opinions for legislators during each biennium. We often discuss legal ramifications with legislators who request drafting service. We draft approximately 80 percent of all measures and amendments. We are precluded by statute from discussing the merits (advisability) of any issue.

I hope the above information assists you as you consider legislation similar to ORS 173.111 et seq. You might wish to discuss the Oregon situation with Dave Dierdorff, who is with Bill Barrier's office. Dave was counsel to the Senate President when the confirmation suit was brought.

Very truly yours,



THOMAS G. CLIFFORD
Legislative Counsel

TC:dfw

cc: Speaker Grattan Kerans

173.050 [Amended by 1953 c.625 §4; repealed by 1953 c.492 §16]

173.055 Contracts to provide fiscal data. The Legislative Fiscal Officer and Legislative Revenue Officer are authorized to contract with other agencies or persons to provide fiscal data necessary to carry out the provisions of ORS 173.025 to 173.055. (1977 c.414 §4)

LEGISLATIVE COUNSEL COMMITTEE

173.110 (1953 c.492 §1; repealed by 1969 c.256 §1 (173.111 enacted in lieu of 173.110))

173.111 Legislative Counsel Committee and office of Legislative Counsel created. The Legislative Counsel Committee, referred to in ORS 173.111 to 173.240 and 171.275 to 171.315 as the committee, is established as a joint committee of the Legislative Assembly. The committee shall select a Legislative Counsel to serve as its executive officer. (1969 c.256 §2 (enacted in lieu of 173.110); 1971 c.638 §4)

173.120 Legislative Counsel to be in attendance upon legislative sessions. The Legislative Counsel shall be in attendance upon all sessions of the Legislative Assembly. (1953 c.492 §2)

173.130 Performance of legislative services; charges. (1) The Legislative Counsel shall prepare or assist in the preparation of legislative measures when requested to do so by a member of the Legislative Assembly.

(2) Upon the written request of a state agency, the Legislative Counsel may prepare or assist in the preparation of legislative measures that have been approved for preparation in writing by the Governor or the Governor's designated representative. The Legislative Counsel may also prepare or assist in the preparation of legislative measures that are requested in writing by the Secretary of State, the State Treasurer, the Attorney General, the Commissioner of the Bureau of Labor and Industries or the Superintendent of Public Instruction. In accordance with ORS 283.110, the Legislative Counsel may charge the agency or officer for the services performed.

(3) The Legislative Counsel shall give such consideration to and service concerning any measure before the Legislative Assembly as circumstances permit, and which is in any way requested by the House of Representatives or Senate, or any committee of the Legis-

lative Assembly having the measure before it for consideration.

(4) The Legislative Counsel, pursuant to the policies and directions of the Legislative Counsel Committee and in conformity with any applicable rules of the House or Senate, shall perform or cause to be performed, as circumstances will permit, research service requested by any committee of the Legislative Assembly in connection with the performance of its functions. Research assignments made to the Legislative Counsel Committee by joint or concurrent resolution of the Legislative Assembly shall be given priority over other research requests received or initiated by the committee. The research service to be performed includes the administrative services incident to the accomplishment of the research requests or assignments. (1953 c.492 §3; 1959 c.295 §2; 1973 c.226 §1; 1979 c.237 §1)

173.135 Participation in legal proceedings to protect legislative interests. When deemed necessary or advisable to protect the official interests of the Legislative Assembly, one or more legislative committees, or one or more members of the Legislative Assembly, the committee may direct the Legislative Counsel and his staff, or may retain any member of the Oregon State Bar, to appear in, commence, prosecute or defend any action, suit, matter, cause or proceeding in any court or agency of this state or of the United States. Expenses and costs incurred pursuant to this section may be paid by the committee from any funds available to the committee. (1961 c.167 §32)

173.140 Preparation of initiative measures. The Legislative Counsel shall cooperate with the proponents of an initiative measure in its preparation when:

(1) Requested in writing so to do by 50 or more electors proposing the measure; and

(2) In the judgment of the committee there is reasonable probability that the measure will be submitted to the voters of the state under the laws relating to the submission of initiative measures. (1953 c.492 §4)

173.150 (1953 c.492 §5; 1961 c.279 §1; repealed by 1981 c.517 §10 (171.275 enacted in lieu of 173.150))

173.152 (Formerly 171.272; amended by 1963 c.420 §1; 1965 c.372 §1; 1981 c.517 §21; renumbered 171.315)

173.155 (1959 c.295 §1; repealed by 1963 c.292 §1 (173.310 to 173.340 enacted in lieu of 173.155))

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**173.160 Powers and duties of Legisla-
tive Counsel in preparing editions for
publication.** In preparing editions of the
statutes for publication and distribution, the
Legislative Counsel shall not alter the sense,
meaning, effect or substance of any Act, but,
within such limitations, may renumber sec-
tions and parts of sections of the Acts, change
the wording of head-notes, rearrange sections,
change reference numbers to agree with re-
numbered chapters, sections or other parts,
substitute the proper subsection, section or
chapter or other division numbers, strike out
figures or words which are merely repetitious,
change capitalization for the purpose of uni-
formity, and correct manifest clerical or typo-
graphical errors. [1953 c.492 §6]

173.170 [1953 c.492 §7; 1961 c.167 §28; 1981 c.517
§22; renumbered 171.285]

173.180 [1953 c.492 §8; 1981 c.517 §23; renumbered
171.295]

173.190 [1953 c.492 §9; 1961 c.167 §29; repealed by
1969 c.256 §3 (173.191 enacted in lieu of 173.190)]

**173.191 Membership; term; vacancies;
chairman; advisory committees.** (1) The
Legislative Counsel Committee shall consist
of the Speaker of the House of Representa-
tives, the President of the Senate, five mem-
bers of the House appointed by the Speaker,
and four members of the Senate appointed by
the President. The Speaker of the House of
Representatives and the President of the
Senate may each designate an alternate from
time to time from among the members of his
house to exercise his powers as a member of
the committee. The appointing authorities
shall appoint members of a new committee
within 30 days after the convening of the
Legislative Assembly in regular session.

(2) The term of a member of the commit-
tee shall expire upon the convening of the
Legislative Assembly in regular session next
following the member's appointment. Vacan-
cies occurring in the membership of the com-
mittee shall be filled by the appointing au-
thority.

(3) The committee has a continuing exist-
ence and may meet, act and conduct its busi-
ness during the sessions of the Legislative
Assembly or any recess thereof, and in the
interim period between sessions but the com-
mittee has no authority to affect the rules of
either house.

(4) The committee shall select its own
chairman who may, in addition to other acts

authorized, approve disbursements for indeb-
tedness or expenses.

(5) The committee may appoint advisory
committees or subcommittees. Except as oth-
erwise provided in this subsection, individuals
other than members of the Legislative Assem-
bly may serve on such advisory committees or
subcommittees. A member of such committee
or subcommittee who is not a member of the
Legislative Assembly shall be compensated
and reimbursed in the manner provided in
ORS 292.495. An advisory committee or sub-
committee appointed to assist the committee
in review of state agency rules may consist
only of two or more members of the Legisla-
tive Assembly. [1969 c.256 §4 (enacted in lieu of
173.190); 1971 c.638 §5; 1975 c.136 §6; 1975 c.530 §4;
1977 c.344 §5]

173.196 [1975 c.136 §8; repealed by 1977 c.344 §7]

173.200 Legislative Counsel. (1) The
committee shall select the Legislative Coun-
sel, who shall serve at the pleasure of the
committee. The Legislative Counsel shall be a
person authorized to practice law in the high-
est court of one of the states of the United
States.

(2) The committee shall fix the annual
salary of the Legislative Counsel. Subject to
and in the manner otherwise provided by law,
the Legislative Counsel shall be reimbursed
for actual and necessary expenses incurred or
paid by him in the performance of his duties.
[1953 c.492 §10]

173.210 Employment of staff. Subject
to the approval of the committee, the Legisla-
tive Counsel may employ and fix the compen-
sation of such professional assistants and
clerical and other employes as he deems nec-
essary for the effective conduct of the work
under his charge. [1953 c.492 §11; 1973 c.735 §8]

**173.215 Effect of expiration of terms
of committee members.** (1) The expiration of
the terms of members of the Legislative Coun-
sel Committee upon the convening of the
Legislative Assembly in regular session next
following the commencement of their terms,
as provided by ORS 173.191, does not affect
the employment of any individual filling a
position previously approved by the commit-
tee.

(2) After the convening of the Legislative
Assembly in regular session and until such
time as the newly appointed committee pro-
vides otherwise:

(a) The Legislative Counsel may employ and fix the compensation of individuals he deems necessary for the effective conduct of the work under his charge.

(b) Notwithstanding ORS 173.111 and 173.200, the President of the Senate and the Speaker of the House of Representatives, in case of a vacancy in the position of Legislative Counsel, may jointly select a Legislative Counsel having the qualifications set forth in ORS 173.200 to serve at their pleasure at a salary they jointly fix, not exceeding that last fixed by the committee. The President and Speaker may act in lieu of the committee under ORS 293.335 in designating the Legislative Counsel they select to approve voucher claims and in filing the statement of designation, and the provisions of ORS 293.335 shall apply as if the Legislative Counsel they select and so designate had been so designated by the committee.

(c) Nothing in paragraph (b) of this subsection limits the authority of the committee during its term of office over the matters described in paragraph (b) of this subsection. (1965 c.113 §1; 1967 c.5 §1; 1975 c.136 §10)

173.220 Location of Legislative Counsel's office. The permanent office of the Legislative Counsel shall be in the State Capitol, where he shall be provided with suitable and sufficient offices convenient to the chambers of the House and Senate. (1953 c.492 §12)

173.230 Confidential nature of matters handled by committee's staff. Neither the Legislative Counsel nor any employe of the committee shall reveal to any person not an employe or a member of the committee the contents or nature of any matter before him in his official capacity, if the person bringing the matter before the committee or employe designates the matter as confidential. Matters not designated as confidential may only be revealed as prescribed by the rules of the committee. (1953 c.492 §14; 1961 c.167 §30)

173.240 Committee's staff prohibited from influencing legislation. Neither the Legislative Counsel nor any employe of the committee shall oppose, urge or attempt to influence legislation. (1953 c.492 §14)

173.250 [1953 c.492 §15; 1957 c.60 §1; subsection (4) enacted as 1961 c.159 §2; 1969 c.256 §5; 1981 c.517 §24; renumbered 171.305]

173.310 [1963 c.292 §2 (173.310 to 173.340 enacted in lieu of 173.155); 1969 c.314 §10; 1971 c.638 §7; 1977 c.156 §1; repealed by 1979 c.472 §2]

LAW IMPROVEMENT COMMITTEE

173.315 Law Improvement Committee created; duties; membership; chairperson.

(1) The Legislative Counsel Committee shall cause to be conducted a continuous substantive law revision program and shall establish the Law Improvement Committee to supervise the conduct of the program.

(2) The Law Improvement Committee shall consist of:

(a) The cochairpersons of the Legislative Counsel Committee;

(b) The deans of Oregon's accredited law schools, or their designees;

(c) A person designated by the Board of Governors of the Oregon State Bar;

(d) The Attorney General or the Attorney General's designee; and

(e) The chairpersons of the legislative committees having jurisdiction over judicial matters in the preceding regular session.

(3) The Law Improvement Committee shall elect its chairperson and vice-chairperson with such powers and duties as the committee shall determine. (1981 c.813 §1)

173.320 [1963 c.292 §3 (173.310 to 173.340 enacted in lieu of 173.155); repealed by 1979 c.472 §2]

173.325 Compensation and expenses of members. A member of the Law Improvement Committee who is not a member of the Legislative Assembly shall receive no compensation for services as a member but, subject to any other applicable law regulating travel and other expenses for state officers, may receive actual and necessary travel and other expenses incurred in the performance of official duties, providing funds are appropriated therefor in the budget of the Legislative Counsel Committee. Subject to the availability of funds, any member of the committee who is a member of the Legislative Assembly shall be entitled to compensation and expenses as provided in ORS 171.072 (4) or (5) for service on the committee. (1981 c.813 §2)

173.330 [1963 c.292 §4 (173.310 to 173.340 enacted in lieu of 173.155); repealed by 1979 c.472 §2]

173.335 Committee staff; duties. (1) With the approval of the Law Improvement Committee chairperson, the Legislative Counsel shall designate a staff attorney whose primary duty shall be to assist the committee to carry out its functions as provided by law.

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STATE OF UTAH
OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

JON M. MEMMOTT
Director/General Counsel

September 14, 1983

Representative Charlie Bussell
Chairman
Committee on Judiciary
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Speaker Norman H. Bangerter has referred your inquiry of August 11 to our office for response. Hopefully an outline of our office organization will address some of your questions.

The Utah legislature presently has three full-time professional staff offices: (1) The Legislative Fiscal Analyst or budget office, (2) The Legislative Auditor General which conducts performance audits on state agencies, etc., and (3) The Office of Legislative Research and General Counsel. The professional offices provide professional staff support to legislative committees and individual legislators on a non-partisan basis. The Office of legislative Research and General Counsel employs both attorneys and non-attorneys on its professional staff. The other professional staff members include economists, statisticians, and other professionals in varied areas. The objective of the office is to provide an integrated professional team for specific legislative committees and a broad professional staff for individual legislative requests. Under the office's statutory authority, the director of the office may also be the legislative general counsel. Currently, that is the situation where Jon Memmott is both director and general counsel. However, in the future a separation of those functions could occur, although the office would still function as a single entity.

We presently have 11 full-time attorneys who provide general legal assistance to the legislature. In addition to their responsibilities to provide legal advice to the legislature, a primary function of the attorneys is to draft legislation. Utah's legislature meets in limited sessions, however, so the drafting requirements tend to be highly concentrated. There are no attorneys specifically designated to represent the legislature in the event of litigation. Rather, litigation needs are examined on an as-needed basis and personnel resources allocated accordingly. As for back-up staff, we have approximately ten clerical people that assist the entire office professional staff. This includes computer operators whose primary responsibility centers on bill drafting and the preparation of other session-related documentation.

Letter to Rep. Charlie Bussell
September 14, 1983
Page Two

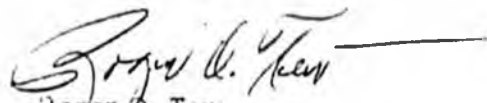
Candidly, this office has infrequently been involved in actual litigation on behalf of the legislature. This is not because we have declined to represent our clients, but there simply has been very little demand. In those instances where major litigation has occurred we have retained the services of outside legal counsel. However, it is likely that more opportunities will arise in the future and our office is developing the capacity to address those litigation needs.

Your inquiries also addressed how our office deals with controversies between political interests in the legislature. Our office is strictly non-partisan which requires us to represent all political interests in the legislature. Often this means that we are providing legal advice on the same issue for different political interests. This situation does require a high degree of professionalism and a concerted effort to insulate the staff from involvement in partisan political issues. To date we have been successful in handling these situations. We have not had a situation of having to represent different political parties in the legislature in actual litigation.

The operating budget of the office is approximately \$1.3 million. This figure includes salaries for both the legal and non-legal staff. No specific appropriation for litigation needs is made. The last major piece of litigation required the expenditure of \$20,000 for outside counsel which came from certain carry-over funds.

I hope this general information is of some assistance to you. If you have any further questions, I would be happy to answer them for you.

Sincerely,



Roger D. Tew
Assistant General Counsel

ROT/jp

(g) To maintain a legislative research library containing analytical, statistical, legal, and descriptive data relative to current and potential governmental and legislative subjects.

(h) To appoint and develop a professional staff within budget limitations.

(i) To prepare and submit the annual budget request for such office.

History: L. 1975, ch. 109, § 12.

36-12-13. Legislative fiscal analyst — Qualifications — Powers, functions, and duties. (1) The legislative fiscal analyst shall have a master's degree in public administration, political science, economics, accounting, or the equivalent in academic and practical experience.

(2) The powers, functions, and duties of the legislative fiscal analyst shall be:

(a) To analyze in detail the executive budget before the convening of each legislative session and make recommendations to the legislature on each item or program appearing in the executive budget.

(b) To prepare cost estimates on all proposed bills which anticipate government expenditures.

(c) To prepare a review and analysis of revenue estimates for existing and proposed revenue acts.

(d) To report instances in which the administration may be failing to carry out the expressed intent of the legislature.

(e) To direct attention to each new proposed service contained in the governor's budget.

(f) To direct attention to each budget item previously denied by the legislature.

(g) To propose and analyze statutory changes for more effective operational economies or more effective administration.

(h) To prepare, after each session of the legislature, a summary showing the effect of the final legislative program on the financial condition of the state.

(i) To conduct organizational and management improvement studies.

(j) To prepare and deliver upon request of any study committee or the legislative management committee, reports on the finances of the state and on anticipated or proposed requests for appropriations.

(k) To recommend areas for research studies by the executive department or the study committees.

(l) To assist in prescribing the format for the presentation of the governor's budget to facilitate program review of state expenditures.

(m) To appoint and develop a professional staff within budget limitations.

(n) To prepare and submit the annual budget request for such office.

(3) In carrying out the duties provided for in this section, the legislative fiscal analyst shall have the authority to obtain access to all records, documents, and reports of the departments, agencies, and other units of the state government, necessary to the scope of his duties, including the power to subpoena records and agency officials, when necessary for this purpose.

History: L. 1975, ch. 109, § 13.

36-12-14. Legislative general counsel — Qualifications — Powers, functions, and duties. (1) The legislative general counsel shall be a lawyer admitted to practice law in this state and shall be selected without reference to party affiliation and solely on the grounds of fitness to perform the duties of his office.

(2) The powers, functions, and duties of the legislative general counsel shall be:

(a) To exercise the constitutional authority provided in Article VI, Sec. 32, of the Constitution of Utah.

(b) To serve as legal counsel to the legislature, any of its committees or subcommittees, or the professional legislative staff and to represent the legislature, any

of its committees or subcommittees, or the professional legislative staff in cases and controversies before courts and administrative agencies and tribunals.

(c) To prepare and assist in the preparation of legislative bills, resolutions, memorials, amendments, and other documents or instruments required in the legislative process and give advice and counsel regarding them to the legislature, any of its members or members-elect, any of its committees or subcommittees, or the professional legislative staff.

(d) To keep on file records concerning all legislation and proceedings of the legislature with respect to this legislation and subject indexes of bills introduced at each session of the legislature.

(e) To formulate plans for the revision, clarification, classification, arrangement, codification, annotation, and indexing of Utah statutes, and submit to each general session of the legislature a report concerning these matters, including proposed legislation to effectuate the recommendations.

(f) To appoint and develop a professional staff within budget limitations.

(g) To prepare and submit the annual budget request for such office.

History: L. 1975, ch. 109, § 14.

36-12-15. Legislative auditor general — Qualifications — Deputy — Powers, functions and duties. (1) The legislative auditor general shall be a licensed certified public accountant or certified internal auditor with at least five years' experience in the auditing or public accounting profession, or the equivalent, prior to appointment.

(2) The legislative auditor, with concurrence of the audit subcommittee of the legislative management committee, shall appoint a deputy legislative auditor general. The legislative auditor general shall also appoint and develop a professional staff within budget limitations.

(3) The legislative auditor general shall exercise the constitutional authority provided in Article VI, Sec. 33 of the Constitution of Utah. He shall conduct comprehensive and special purpose audits and prepare and submit a written report on each audit to the legislative management committee, the audit subcommittee and to all members of the legislature within 75 days after the completion of the examination. The audit shall include any or all of the following:

(a) An examination to determine the honesty and integrity of fiscal affairs, the accuracy and reliability of financial statements and reports, and the adequacy and effectiveness of financial controls to properly record and safeguard the acquisition, custody, and use of public funds;

(b) An examination to determine whether administrators have faithfully adhered to legislative intent;

(c) An examination to determine whether the operations of the departments, agencies, and other units of the state have been conducted in an efficient and effective manner;

(d) An examination to determine whether state programs, administered by the departments, agencies, and other units of the state, have been effective in accomplishing intended objectives;

(e) An examination to determine whether management control and information systems are adequate and effective in assuring that state programs are administered faithfully, efficiently, and effectively.

(4) The legislative auditor general shall have the following additional powers, functions, and duties:

(a) To obtain access to all records, documents, and reports of the departments, agencies, and other units of the state government, necessary to the scope of his examination, including the power to subpoena records and agency officials, when necessary for this purpose;



ROBERT A. COLDSNOW

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LEGISLATIVE COUNSEL
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TOPEKA, KANSAS 66612

August 23, 1983

Representative Charlie Bussell
Chairman, House Committee on Judiciary
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Your August 11 letters to Senator Doyen and Speaker Hayden have been referred to me for a response to your questions.

You indicate you have a copy of the Kansas statutes for the office of legislative counsel. Please be sure your copy of K.S.A. 46-1224 in its "History:" reflects it is the version as amended by Laws 1975, ch. 278, §1; May 3. I also enclose a copy of the Duty Assignments adopted for this office by the Legislative Coordinating Council.

My responses are numbered to correspond to your questions.

- 1) One attorney serves as the legislative counsel and works for both the House and the Senate in matters involving litigation, and such other duties as the Legislative Coordinating Council may direct.
- 2) The office of legislative counsel averages three or four instances a year with direct involvement in litigation by way of amicus curiae briefs, intervention or direct representation of individual legislators who have been named defendants or subpoenaed as witnesses, and in some instances the Legislature as a body, or the House and the Senate have been named. This office continuously monitors litigation involving agencies where there is a particular and more direct interest on the part of the Legislature in the litigation, e.g., nursing home reimbursement litigation, legislative appropriation of federal grants, legislatively-imposed restrictions on uses of appropriation items. Counsel for the involved agencies frequently in such matters

Representative Charlie Bussell
August 23, 1983
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consult with this office and keep us informed in the event new legislation might be indicated as a possible way of settlement or in case aid might be requested by way of an amicus brief to reflect the Legislature's special interest in the matter.

3) The attorney represents the entire Legislature under the direction of the Legislative Coordinating Council. Yes, situations may arise where there is political conflict. Generally, then, this office is not involved in the matter. Most of the time, however, the matters are concerned with the Legislature as an institution and its prerogatives as the legislative branch of government. Many of the matters arise out of the legislative-executive conflicts which have been arising with greater frequency the last few years.

4) One secretary is employed on a full-time basis. Law clerks are hired by the office on a temporary, as-needed basis. This arrangement is practical by reason of the location of Washburn University Law School in Topeka (the Capital) and the Kansas University Law School in Lawrence (25 miles away).

5) The office has an annual budget of about \$65,000. It is not practical to break down the figures into litigation and other, since almost everything is involved with litigation directly or on the fringes of litigation. As an example, this office helps staff the Joint Committee on Special Claims Against the State. This Committee serves as the screening or processing committee for what in most states would be considered private bills. These are claims for damages where governmental immunity prevents direct litigation, or requests for other relief where there is no administrative remedy, etc. The Committee in effect sits somewhat like the old chancery courts to do equity. All claims against the state arising out of implied contract have to be processed by the committee. This office investigates the larger and more serious of these claims and all of the claims which may have questions of law and unusual fact circumstances or involve a potential for possible litigation.

6) None

7) The procedure for selection of the legislative counsel is set forth in K.S.A. 46-1222. It involves bi-partisan action by two members each of the House and Senate Judiciary

Representative Charlie Bussell
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Committees and the Chief Justice of the Kansas Supreme Court, as well as the final decision of the Legislative Coordinating Council (which is a bi-partisan council of the legislative leadership--President of the Senate, Majority and Minority Leaders of the Senate, Speaker of the House, Speaker-Pro Tem of the House, Majority and Minority Leaders of the House). This procedure has been satisfactorily used three times since the office was created in 1974.

8) This is difficult to differentiate for this office because most of the work is on the fringes of litigation if not directly involved in litigation. The best estimate would be--about 50-50 for litigation and non-litigation. The office has in the past spent considerable time with four or five legislative investigation committees which were using compulsory process (see assignments for this office). These investigating committees have probably involved at least 15-20 percent of the time alone. Relatively small amount of time is spent with individual legislators, outside of the leadership, unless they are named in litigation or as a witness or a potential witness. The exception is that frequently legislators inquire as to the scope and coverage of legislative immunity. Activities of certain committees such as those involved with reapportionment or redistricting are monitored because of litigation potentials and special assistance is given, e.g., preparing a special committee report for submission to the respective house of the Legislature and inclusion in the journal as part of the legislative history and explanation. Conscious continuous effort is maintained to not get involved with advice on the advisability of any particular policy issue or matter. Each year at tax time a good deal of time is spent with individual legislators on advice as to the income tax treatment of the legislators' per diem expense allowances. I have been involved with this issue since it first arose in 1975 and cooperated with and assisted NCSL in its efforts to reach a permanent solution.

You should be aware that some will challenge the idea of a legislative litigation attorney as an affront to or unnecessary competitor with the Attorney General. I am sure, however, your Legislature has experienced situations where the Attorney General had a conflict by reason of being a part of the executive department and a primary duty and obligation to the executive department in the particular matter. Sometimes this conflict may be politically inspired, sometimes it arises from purely philosophical differences;

Representative Charlie Bussell
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and, on other occasions, it is simply unavoidable. Having its own counsel authorized to represent the Legislature in court gives the legislative branch some independence from the Attorney General to avoid possible adverse consequences from these conflicts. I have had people also tell me that just the existence of this office has resulted in an overall more professional attitude on the part of the Office of the Attorney General and other agency counsel when dealing with matters which might involve the legislative branch in a more or less direct way.

I have been fairly active the last few years in the Legal Services Staff Section of NCSL. Increasingly, during the last three years, the discussion has turned to the problems and conflicts which are arising with the executive branch and the general dissatisfaction and frustration which arises because of the conflicts with the Attorney General. More and more legislative leaders from other states have been addressing the section on encouraging the states to establish some arrangement to be in a position, if desired, to be independent of any other branch when it came to independent representation in litigation.

This gets to a point which may be somewhat personal, but I hope you will consider it in the light of an effort to make a point. You will note that the Kansas statutes contemplate that the person occupying this office have at least five years practice and at least some trial or court experiences. I had twenty-four years in private practice with a fairly reasonable amount of trial and appellate court experience. I also had the fortune of having the experience of serving six years in the Kansas House of Representatives during the 1960's. This familiarity with legislative procedure, etc., has been invaluable.

The point has been made at the Legal Staff Section meetings that most legislative staff attorneys are not familiar or competent enough with trial practice to adequately represent the Legislature in court. These staff lawyers are good people and very competent in their fields of bill drafting, statute publications, general subject matter research, etc.; but, it is apparently true that by far the large percentage of them have spent most, if not all, of their professional lives in this limited professional environment.

A response made to this was that if you were not willing to fund and hire counsel in-house competent in trial work,

Representative Charlie Bussell

August 23, 1983

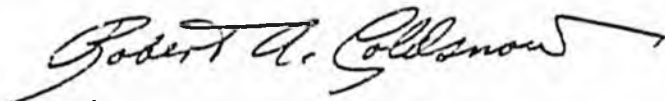
Page 5

the Legislature should have in-house counsel authorized to represent the legislature (to avoid standing questions) and the ability to hire outside counsel for the actual trial work. The point was made that most competent trial attorneys know very little about the Legislature and the legislative process, as the competent legislative staff attorney may know little about trial work. Working together, however, they can make a very adequate presentation on behalf of the Legislature.

You may wish to contact Representative Ed Jackamonis of Wisconsin (Speaker of the House in 1982) who has had considerable experience as a legislator and was the target for considerable litigation while Speaker. Also, the Minnesota Senate Counsel's office may be of help. The Minnesota Senate Counsel was established unilaterally by Senate Resolution when (as I understand it) the Minnesota House was unwilling to participate in establishing a legislative attorney authorized to represent the Legislature in court. The U.S. Supreme Court in the early 1970's recognized the Office of Minnesota Senate Counsel as a proper entity to represent the Minnesota Senate in litigation. I understand the Minnesota Senate Counsel has handled a good volume of litigation for the Senate. Incidentally, the Kansas office of legislative counsel was passed over the Governor's veto.

I hope I have given you adequate answers to your questions and some background and thoughts of others in this area. While it appears the executive-legislative conflicts will be ongoing for some time, I would stress that the establishment of a legislative attorney authorized to have standing to represent the legislature in court does not necessarily have to heighten or sharpen the possibility of conflict. With the proper professional attitude of the respective attorneys (legislative versus executive), much cooperation and problem solving can be accomplished. Under such a situation, both branches can be better served and those issues requiring litigation can be better and more professionally presented to the courts. This, however, does seem to come about only after the Legislature takes a stand and duly establishes someone with authority to represent it in court.

Sincerely,



Robert A. Coldsnow

RAC:ja

Enclosure

cc: Speaker Hayden
President Doyen

DC. ASSIGNMENTS FOR LEGISLATIVE COUNSEL

The Legislative Coordinating Council has established the following duties and priority of duties for the office of Legislative Counsel:

1. In the event any legislative committee, legislator, or legislative staff member is served with any summons or any court order in any court proceeding, as a result of their official duties in the discharge of legislative business, the committee chairman, or individual legislator or staff member should immediately advise Legislative Counsel and furnish him a copy of the papers. Legislative Counsel will make appropriate pleadings and appropriate appearances in court on behalf of the committee or persons so served.

2. The legislative leadership, the appropriate committee chairmen, or any of the committees' staff should notify Legislative Counsel, as soon as possible, when they think a particular study, inquiry or investigation may require the use of compulsory process. Where compulsory process is being utilized by any legislative committee, Legislative Counsel should give assistance to the committee as follows:

- (a) Where a particular study, inquiry or investigation has been authorized or directed by a concurrent resolution or statute of the legislature and exercise of compulsory process is specifically authorized by said concurrent resolution or statute or by the Legislative Coordinating Council.
- (b) Where any standing committee or the Legislative Coordinating Council is authorized to exercise the powers of compulsory process without further authorization.
- (c) Where any standing committee by statute and authority of either the Speaker of the House or President of the Senate is authorized to exercise the powers of compulsory process.
- (d) Where any study committee is authorized by the Legislative Coordinating Council to exercise the powers of compulsory process.

3. The committee chairman of any committee holding extensive hearings and desiring extensive questioning of any witnesses to be made by staff members may request Legislative Counsel to prepare and administer such questioning under supervision of the committee chairman.

4. When specifically authorized by the Legislative Coordinating Council, Legislative Counsel may render unofficial advisory opinions upon legal questions concerning pending legislative matters.

KANSAS

unable to enter into a contract for the required audit services, the federal audit committee shall request the post auditor to provide another list of firms to be negotiated with by the federal audit committee and, upon receipt of such list, the federal audit committee shall proceed in accordance with the provisions of K.S.A. 46-1123 to 46-1125, inclusive.

History: L. 1980, ch. 153, § 6; April 30.

46-1126. Contracts for financial-compliance audits; professional liability insurance; responsibilities of selected firm. (a) Each contract for a financial-compliance audit of a state agency negotiated under K.S.A. 46-1123 to 46-1125, inclusive, shall be entered into between the post auditor and the firm selected to perform the financial-compliance audit. Each such contract shall require the firm selected to perform the financial-compliance audit to submit evidence which is satisfactory to the federal audit committee that the firm has general professional liability insurance or specific professional liability insurance which is adequate for such audit.

(b) In addition to the requirements in subsection (a) each such contract for financial-compliance audit services shall specify the responsibilities undertaken by the firm selected to perform such audit and that such firm shall be responsible for all material errors and omissions in the performance of such contract.

(c) Such contracts shall not be subject to the provisions of K.S.A. 1980 Supp. 75-3739 and amendments thereto.

History: L. 1980, ch. 153, § 7; April 30.

46-1127. Federal audit committee to monitor conduct of financial-compliance audit; written audit report; duty of confidentiality. (a) The federal audit committee shall monitor the performance of the firm or firms conducting a financial-compliance audit pursuant to a contract entered into under K.S.A. 46-1126 to insure that such audit is performed in accordance with the specifications developed for the conduct of such audit. The firm or firms selected to perform such audit shall submit a written audit report at the conclusion of the audit to the governor, the director of accounts and reports, the director of the budget, the secretary of administration, the state agency which is audited, the post auditor, each

member of the legislative post audit committee and other persons or agencies as may be required by the specifications.

(b) In the performance of such audit, the officers and employees of the firm or firms performing the audit shall be subject to the same duty of confidentiality applicable to the post auditor and officers and employees of the division of post audit under the legislative post audit act and shall have access to all books, accounts, records, files, documents and correspondence, confidential or otherwise, of any person or state agency subject to the financial-compliance audit.

History: L. 1980, ch. 153, § 8; April 30.

Article 12.—LEGISLATIVE COORDINATING COUNCIL

Law Review and Bar Journal References:

"1971 Legislative Synopsis," Robert F. Bennett, 40 J.B.A.K. 307, 357 (1971).

46-1201. Legislative coordinating council; membership; officers; meetings; notice of meetings to members of legislature and certain legislative officials; copies of minutes. (a) There is hereby established the legislative coordinating council which shall have seven (7) members. Such members shall be the president of the senate, the speaker of the house of representatives, the speaker pro tem of the house of representatives, the majority leader of the senate, the majority leader of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives.

(b) In even-numbered years, the speaker of the house of representative shall be chairman of the legislative coordinating council, and the president of the senate shall be vice-chairman thereof. In odd-numbered years, the president of the senate shall be chairman of the legislative coordinating council, and the speaker shall be vice-chairman thereof.

(c) The legislative coordinating council shall meet at least once each month in the interim between legislative sessions. Such council shall meet on the call of its chairman or any three members of the council. The director of legislative administrative services, director of legislative research, revisor of statutes and each member of the legislature shall be given notice of each meeting of the council by its chairman, except in cases

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or existing joint committee on legislative services and facilities shall become officers and employees of the office of revisor of statutes, legislative research department or of the legislature, as the case may be, and shall retain all retirement benefits which such officers or employees had before such transfer under the laws of this state, and their services shall be deemed to have been continuous.

History: L. 1971, ch. 184, § 17; May 1.

46-1218. Same; transfer and continuation of revisor of statutes; transfer not to affect rules and regulations. (a) The office of revisor of statutes established by this act shall be the successor in every way, with respect to the powers, duties and functions of the revisor of statutes in which the same were vested prior to the effective date of this act, except as otherwise provided by this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the revisor of statutes established by this act to which such powers, duties and functions are transferred by this act, shall be deemed to have the same force and effect as if performed by the revisor of statutes in whom such functions were vested prior to the effective date of this act. Whenever the revisor of statutes is referred to or designated by law, contract or other document, such reference or designation shall be deemed to apply to the revisor of statutes provided for by this act.

(b) All rules and regulations of state agencies lawfully filed with the revisor of statutes before the effective date of this act shall continue to be effective and shall be deemed to be duly filed with the revisor of statutes provided for by this act until revised, amended, repealed, or nullified pursuant to law.

(c) The office of revisor of statutes created by this act shall be a continuation of the office of revisor of statutes established under K.S.A. 77-301 and the revisor of statutes appointed in accordance with said section 77-301 shall be and continue as revisor of statutes under this act, until the legislative coordinating council exercises its appointing authority hereunder.

History: L. 1971, ch. 184, § 18; May 1.

46-1219. Same; abolition and transfers relating to Kansas legislative council. Whenever the Kansas legislative council or

the secretary of the Kansas legislative council is referred to or designated by law, contract or other document, such reference or designation shall be deemed to mean and apply to the legislative coordinating council created by this act. Whenever any such statute provides for submission of recommendations or reports, such council may refer the matter submitted to appropriate committees. Whenever the research department of the Kansas legislative council is referred to or designated by law, such reference or designation shall be deemed to mean and apply to the legislative research department established by this act.

History: L. 1971, ch. 184, § 19; May 1.

46-1220. Same; transfer of records and property of Kansas legislative council. The legislative research department shall succeed to all records of the existing Kansas legislative council and shall also succeed to the file cabinets containing such records. The office of revisor of statutes shall succeed to all property and records of the existing revisor of statutes, except records held by the revisor of statutes as secretary of the Kansas legislative council. The office of revisor of statutes shall succeed to the equipment of the Kansas legislative council located in the office of revisor of statutes, except the file cabinets mentioned above. Any conflict as to the proper disposition of such property or records arising under this section, and resulting from the reorganization under this act, shall be determined by the legislative coordinating council.

History: L. 1971, ch. 184, § 20; May 1.

46-1221. Nonapplication of act in certain cases. The provisions of this act [°] shall not apply to the state finance council, the Kansas commission on interstate cooperation, the advisory committee to the Kansas commission on interstate cooperation, the motor vehicle reciprocity commission, the legislative post-audit committee or the Kansas judicial council, nor to any committee, delegate, member, officer or employee of any of the foregoing specified in this section when acting for or under authority thereof.

History: L. 1971, ch. 184, § 21; May 1.

* "This act," see, also, 45-116, 45-313, 46-150, 46-152, 46-153, 46-1001, 46-1004, 46-1005, 46-1015, 46-1201 to 46-1220, 75-2537, 75-3215, 75-3717, 75-3762 to 75-3765, 75-3769 and 75-3772.

46-1222. Office of legislative council,

46-1222. Office of legislative counsel; nomination, appointment, removal, qualifications, compensation and expenses of legislative counsel. There is hereby established the office of legislative counsel. The legislative counsel shall be appointed by the legislative coordinating council for a term of four (4) years, and may be removed by the legislative coordinating council for cause. The appointment and removal of the legislative counsel shall be made by a vote of five (5) members of the legislative coordinating council. The legislative counsel shall be appointed from a panel of three (3) persons selected by a nominating committee composed of the chairman of the senate standing committee on judiciary, a minority member of said senate committee having seniority thereon, to be appointed by the minority leader of the senate, the chairman of the house standing committee on judiciary, a minority member of said house committee having seniority thereon, to be appointed by the minority leader of the house, and the chief justice of the supreme court. Of the panel of three (3) persons selected by the nominating committee, not more than two (2) of such persons shall be members of the same political party. No person shall be eligible for nomination or appointment as legislative counsel unless:

(a) He has been admitted to practice law in Kansas for not less than five (5) years prior to his nomination.

(b) He is admitted to practice in the federal court.

In addition to the foregoing qualifications, in considering persons for nomination, the nominating committee shall investigate their experience in legal research, trial and appellate practice and related areas in order that nominees shall possess the experience and judgment deemed necessary to fulfill the duties and responsibilities of the office. The nominating committee shall further make such investigation of persons considered for nomination as will insure that such nominees are of high professional standing. The legislative counsel shall be in the unclassified service of the Kansas civil service act and shall receive compensation fixed by the legislative coordinating council, and such compensation shall not be subject to approval of the state finance council. The legislative counsel shall receive expenses as provided by law for non-legislator officers of the legislative branch. Such compensation and expenses shall be paid from appropriations for the legislature.

History: L. 1974, ch. 211, § 1; March 20.

46-1223. Same; legal investigative and clerical personnel; expenditures. The legislative coordinating council shall provide to the office of legislative counsel legal, investigative and clerical personnel as required to carry on the duties, functions and responsibilities of such office. Expenditures provided for in this act shall not be subject to approval of the state finance council nor to approval under any other statute, and shall be paid from appropriations for the legislature.

History: L. 1974, ch. 211, § 2; March 20.

46-1224. Same; duties of legislative counsel; powers and standing in courts; representation of legislature, when. As directed by the legislative coordinating council, the legislative counsel shall represent the legislature, or either house thereof, in any cause or matter. In cases of quo warranto and mandamus the legislative counsel shall have the same powers and standing in all courts of this state as any county attorney or district attorney has in his or her county or in the supreme court and as the attorney general has in any court. When the legislature is in session, either house thereof by its resolution, or both houses by concurrent resolution may authorize the legislative coordinating council to direct the legislative counsel to bring or participate in any cause or action by representing the legislature or either house thereof or the legislative coordinating council in any court of this state or of the United States. When the legislature is not in session, the legislative coordinating council may direct the legislative counsel to bring or participate in any cause or action by representing the legislature or either house thereof or the legislative coordinating council in any court of this state or of the United States in accordance with directions of said council. The legislative counsel shall render unofficial advisory opinions upon such legal questions as are submitted to him or her by any member or any standing or special committee of the legislature, all in accordance with policies to be established by the legislative coordinating council. Upon direction of the legislative coordinating council, the legislative counsel shall act as counsel to special committees of the legislature and shall provide investigative assistance, conduct examination of witnesses and participate in committee hearings and deliberations as deemed necessary by the committee chairpersons. The legislative counsel shall perform such other duties as are directed by the legislative coordinating council.

History: L. 1974, ch. 211, § 3; L. 1975, ch. 278, § 1; May 3.

nomination, appointment, removal, qualifications, compensation and expenses of legislative counsel. There is hereby established the office of legislative counsel. The legislative counsel shall be appointed by the legislative coordinating council for a term of four (4) years, and may be removed by the legislative coordinating council for cause. The appointment and removal of the legislative counsel shall be made by a vote of five (5) members of the legislative coordinating council. The legislative counsel shall be appointed from a panel of three (3) persons selected by a nominating committee composed of the chairman of the senate standing committee on judiciary, a minority member of said senate committee having seniority thereon, to be appointed by the minority leader of the senate, the chairman of the house standing committee on judiciary, a minority member of said house committee having seniority thereon, to be appointed by the minority leader of the house, and the chief justice of the supreme court. Of the panel of three (3) persons selected by the nominating committee, not more than two (2) of such persons shall be members of the same political party. No person shall be eligible for nomination or appointment as legislative counsel unless:

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(b) He is admitted to practice in the federal court.

In addition to the foregoing qualifications, in considering persons for nomination, the nominating committee shall investigate their experience in legal research, trial and appellate practice and related areas in order that nominees shall possess the experience and judgment deemed necessary to fulfill the duties and responsibilities of the office. The nominating committee shall further make such investigation of persons considered for nomination as will insure that such nominees are of high professional standing. The legislative counsel shall be in the unclassified service of the Kansas civil service act and shall receive compensation fixed by the legislative coordinating council, and such compensation shall not be subject to approval of the state finance council. The legislative counsel shall receive expenses as provided by law for non-legislator officers of the legislative branch. Such compensation

and expenses shall be paid from appropriations for the legislature.

History: L. 1974, ch. 211, § 1; March 20.

46-1223. Same; legal investigative and clerical personnel; expenditures. The legislative coordinating council shall provide to the office of legislative counsel legal, investigative and clerical personnel as required to carry on the duties, functions and responsibilities of such office. Expenditures provided for in this act shall not be subject to approval of the state finance council nor to approval under any other statute, and shall be paid from appropriations for the legislature.

History: L. 1974, ch. 211, § 2; March 20.

46-1224. Same; duties of legislative counsel; powers and standing in courts; representation of legislature, when. As directed by the legislative coordinating council, the legislative counsel shall represent the legislature, or either house thereof, in any case or matter in cases of quo warranto and mandamus proceedings. The legislative counsel shall have the powers and standing in all courts of this state as any county attorney or district attorney or clerk of her county or in the supreme court and the attorney general have in any court in which the legislative counsel is authorized to appear. His or her presence in either house of the legislature by consent of a resolution may authorize the legislative coordinating council to authorize the legislative counsel to bring and participate in any cause or action, or to represent the legislature or either house thereof or the legislative coordinating council in any court of this state or of the United States. If the legislative counsel is not in action, the legislative coordinating council may direct the legislative counsel to bring and participate in any cause or action by representing the legislature or either house thereof or the legislative coordinating council in any court of this state or of the United States. The legislative counsel shall render unofficial advisory opinions upon such legal questions as are submitted to him or her by any member or any standing or special committee of the legislature, all in accordance with policies to be established by the legislative coordinating council. Upon direction of the legislative coordinating council, the legislative counsel shall act as counsel to special committees of the legislature

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and shall provide investigative assistance, conduct examination of witnesses and participate in committee hearings and deliberations as deemed necessary by the committee chairpersons. The legislative counsel shall perform such other duties as are directed by the legislative coordinating council.

History: L. 1974, ch. 211, § 3; L. 1975, ch. 278, § 1; May 3.

Article 13.—RETIREMENT BENEFITS

46-1301.

History: L. 1972, ch. 300, § 2; Repealed, L. 1973, ch. 329, § 9; July 1.

Revisor's Note:

New act, see 74-1991 to 74-1998.

Article 14.—LEGISLATIVE PETITION FOR SPECIAL SESSION

46-1401. Legislative petition for calling of special session by governor; form. Whenever any legislator wishes to petition the governor to call a special session of the legislature as provided in section 5 of article 1 of the constitution of the state of Kansas, he shall subscribe the form prescribed in this section, completed by insertion of the name of the governor and the date of the commencement of the special session. Such form shall be sworn to (or affirmed) before an officer authorized to administer oaths. Such form shall be substantially as follows:

State of Kansas, County of _____:

PETITION

To The Honorable _____, Governor:
State Capitol, Topeka, Kansas

You are hereby petitioned to call the Legislature into Special Session, such Special Session to commence at 10:00 a.m., _____ 19____.

Signature Title and District Number

Subscribed and sworn to before me this _____ day
of _____ 19____.

Notary Public

(SEAL)

My commission expires: _____

History: L. 1974, ch. 212, § 1; July 1.

46-1402. Same; duty of governor to call special session, when. Whenever the governor receives petitions, in the form provided in K.S.A. 46-1401, properly executed by two-thirds of the members elected to each house of the legislature, petitioning him to call the legislature into special session at a

particular time, and all being at the same particular time, he shall call the petitioned for special session to commence at the time so specified.

History: L. 1974, ch. 212, § 2; July 1.

46-1403. Same; convening of special session notwithstanding governor's failure to call special session upon legislative petition; session deemed properly called, when. Whenever petitions have been delivered to the governor, or to his official office in the state capitol, in accordance with K.S.A. 46-1402, and the governor fails to properly make the call required by K.S.A. 46-1402 and section 5 of article 1 of the constitution of the state of Kansas, the legislature shall convene at the time specified in such petitions. The first order of business of each house shall be to consider a concurrent resolution declaring the special session to be duly called. If two-thirds of all the members elected to each house shall approve such resolution, the special session shall be deemed to be duly called, notwithstanding the failure of the governor to properly make the required call.

History: L. 1974, ch. 212, § 3; July 1.

Article 15.—LEGISLATIVE INFORMATION SYSTEM

46-1501. Legislative information system; supervision and operation by revisor of statutes; function and scope of system. In accordance with any instructions given by the legislative coordinating council and as provided in this act, the revisor of statutes shall introduce in phases and supervise or operate, or both supervise and operate as may be appropriate, a comprehensive legislative information system. Such system shall initially be operated to accomplish computer search of existing statutes of Kansas and computer preparation of legislative bills and resolutions. In succeeding years, as may be convenient, such system shall encompass computer preparation of the following:

- (a) Statutory search,
- (b) search of other documents,
- (c) bill and resolution preparation,
- (d) printing (outside the office of revisor of statutes) of bills, resolutions and other documents within the legislative branch,
- (e) preparation of such legislative documents as journals, calendars, bill locators, bill indexes and research materials,

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



LEGISLATIVE COMMISSION (702) 885-5627

EPH E. DINI, Jr., *Assemblyman, Chairman*
Arthur J. Palmer, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 885-5640

ROGER BREMNER, *Assemblyman, Chairman*
Daniel G. Miles, *Fiscal Analyst*
Judy Matteucci, *Fiscal Analyst*

ARTHUR J. PALMER, *Director*
(702) 885-5627

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
JOHN R. CROSSLEY, *Legislative Auditor* (702) 885-5622
DONALD A. RHODES, *Research Director* (702) 885-5637

August 22, 1983

Representative Charlie Bissell
Chairman of the Committee on Judiciary
Pouch V
Juneau, Alaska 99811

Dear Mr. Bissell:

Both Senator Ashworth and Speaker Vergiels have referred to me your letter asking about legal representation for the legislature. I shall combine some of the answers as I believe a clear explanation of our practice requires.

We have a staff of 12 lawyers, including me. None is assigned specially to litigation, but at least four of the present staff have worked on litigated cases to some extent, often in helping each other informally. There are 24 other employees in the legal division. Only my personal secretary does much work with litigation, but other typists sometimes do briefs or pleadings from a model and the lawyer's manuscript. We have never to my knowledge employed an attorney for litigation on private contract. (Questions 1, 4 and 6.)

We usually have no more than two or three matters pending, often none. At the most, I would say we spend the equivalent of eight days in court in a year, and perhaps an equal amount of time conferring with legislators on these matters. From this it is evident that the lawyers on our staff who do litigate--I do the majority of it personally--spend much more time counseling legislators and committees than litigating. Our records show no reliable division between counseling and the other aspects of drafting legislation, which is the primary task of us all. (Questions 2 and 8.)

My fellow lawyers and I represent the legislature as a whole: in litigation, in drafting legislation, and in every other respect. There are no separate lawyers for parties, houses or committees. This requires us to keep inviolate the secrets of opposing factions when, as often, we are privy to both. We have not encountered any problem of conflict of interest in litigation. As you are aware from NRS 218.697, whether we take part is determined by the legislative commission, on which both houses are equally, and both parties almost equally, represented. (Question 3.)

Representative Charlie Bissell
August 22, 1983
Page Two

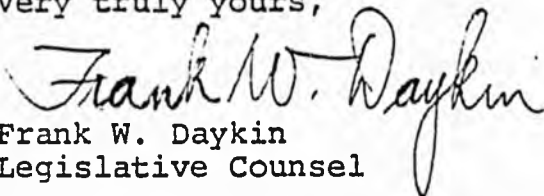
We do not budget in advance for litigation as a separate item, because it is by its very nature unpredictable, but we do keep account of time spent. Our records of the cost of this for the last biennium show:

1981-82	\$19,210.00
1982-83	\$10,106.50

None of the preceding biennia would exceed this. (Question 5.)

The legislative commission must approve the appointment of the legislative counsel. I in turn employ the other lawyers without reference to any political consideration, and retain, promote or discharge them on the basis of performance. The legislators could say better than I whether it has been successful, but I have been for just under 18 years chief deputy, special counsel for sessions, or legislative counsel (the last eight years), so either they like it or they are long suffering. (Question 7.)

Very truly yours,


Frank W. Daykin
Legislative Counsel

FWD:ct

cc: Speaker John Vergiels
Senator Keith Ashworth

of any question or matter upon which he may be required to act in his official capacity, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.

[Part 1911 C&P § 47; RL § 6312; NCL § 9996]—(NRS A 1979, 1463)

218.605 Contracts in which legislator has interest: Prohibitions, exception; penalties.

1. Except as provided in subsection 2, it is unlawful for any member of the legislature to:

(a) Become a contractor under any contract or order for supplies or any other kind of contract authorized by the legislature of which he is a member for the state or any of its departments, or the legislature or either of its houses, or to be interested, directly or indirectly, as principal, in any kind of contract so authorized.

(b) Be interested in any contract made by the legislature of which he is a member, or be a purchaser or interested in any purchase or sale made by the legislature of which he is a member.

2. Any member of the legislature may sell, or enter into a contract to sell, to the state or any of its departments any item or commodity if he is the only source of supply of that item or commodity within the state.

3. Any contract made in violation of subsection 1 may be declared void at the instance of the state or of any other person interested in the contract except the member of the legislature prohibited in subsection 1 from making or being interested in the contract.

4. Any person violating subsection 1 is guilty of a gross misdemeanor and shall forfeit his office.

(Added to NRS by 1977, 1110)

LEGISLATIVE COUNSEL BUREAU

218.610 "State departments" defined. [Effective until July 1, 1982.] As used in NRS 218.510 to 218.890, inclusive, "state departments" means all state offices, departments, boards, commissions, institutions, or agencies, and the Nevada industrial commission.

[1:205:1949; A 1953, 169]—(NRS A 1979, 67)

218.610 "State departments" defined. [Effective July 1, 1982.] As used in NRS 218.610 to 218.890, inclusive, "state departments" means all state offices, departments, boards, commissions, institutions, or agencies, and the state industrial insurance system.

[1:205:1949; A 1953, 169]—(NRS A 1979, 67; 1981, 1517, effective July 1, 1982)

218.620 Legislative counsel bureau: Creation and composition; director and deputy director; divisions and division chiefs; compensation and expenses.

1. There is hereby created the legislative counsel bureau, which

consists of a legislative commission, an interim finance committee, a director, an audit division, a fiscal analysis division, a legal division, a research division, and an administrative division.

2. The legislative auditor is chief of the audit division. The legislative counsel is chief of the legal division. The research director is chief of the research division. The director shall designate from time to time one of the fiscal analysts to be responsible for the administration of the fiscal analysis division.

3. The legislative commission shall:

(a) Appoint the director.

(b) Fix the compensation of the director, each of the other division chiefs, and each fiscal analyst.

4. The director shall appoint the fiscal analysts and the chiefs of the other divisions with the approval of the legislative commission, and may serve as the chief of any division.

5. The director may, with the consent of the legislative commission, designate one of the other division chiefs or an employee of the legislative counsel bureau as deputy director, who shall serve as deputy director without additional compensation.

6. The director, officers and employees of the legislative counsel bureau are entitled to receive, when engaged in official business for the legislative counsel bureau, travel expenses and subsistence allowances as provided by law.

[1:134:1953]—(NRS A 1963, 1014; 1967, 1371; 1969, 1014; 1973, 1352, 1659; 1975, 1395; 1977, 344; 1979, 67; 1981, 559)

218.625 Officers, employees of legislative counsel bureau not to oppose or urge legislation; restrictions upon disclosure; public inspection of records of travel expenses.

1. The director, other officers and employees of the legislative counsel bureau shall not:

(a) Oppose or urge legislation, except as the duties of the legislative auditor, the legislative counsel, the research director and the fiscal analysts require them to make recommendations to the legislature.

(b) Except as provided in this section, disclose to any person outside the legislative counsel bureau the contents or nature of any matter, unless the person entrusting the matter to the legislative counsel bureau so requests or consents.

2. Except as the legislative auditor and his staff are further restricted by this chapter, the nature or content of any work previously done by the personnel of the legislative counsel bureau may be disclosed to a legislator or public agency if or to the extent that such disclosure does not reveal the identity of the person who requested it or include any material submitted by the requester which has not been published or publicly disclosed.

3. When a bill or resolution drafted at the request of any person who is not a legislator, is delivered to a legislator, the legislative counsel shall disclose the identity of the requester to the recipient, and when the bill or resolution has been introduced he shall upon request disclose the identity of the requester to any legislator.

4. When a statute has been enacted or a resolution adopted, the legislative counsel shall upon request disclose to any person the state or other jurisdiction from whose law it appears to have been adopted.

5. The records of the travel expenses of legislators and officers and employees of the legislative counsel bureau are available for public inspection at such reasonable hours and under such other conditions as the legislative commission may prescribe.

(Added to NRS by 1977, 340; A 1979, 122)

218.635 Limitations on studies, investigations by divisions of legislative counsel bureau; work priorities.

1. The legislative commission shall, between sessions of the legislature, fix the work priority of all studies and investigations assigned to it by concurrent resolutions of the legislature within the limits of available time, money and staff. The legislative commission shall not make studies or investigations so directed by resolutions of only one house of the legislature.

2. Between sessions of the legislature no study or investigation may be initiated or continued by the fiscal analysts, the legislative auditor, the legislative counsel or the research director and their staffs except studies and investigations which have been specifically authorized by concurrent resolutions of the legislature or by an order of the legislative commission. No study or investigation may be carried over from one session of the legislature to the next without additional authorization by a concurrent resolution of the legislature, except audits in progress, whose carryover has been approved by the legislative commission.

(Added to NRS by 1963, 1027; A 1967, 839; 1969, 131; 1973, 1660; 1977, 344)

218.640 Appropriation of funds for legislative counsel bureau. Funds to carry out the functions of the legislative counsel bureau shall be provided by legislative appropriation from the general fund to the legislative fund, and shall be paid out on claims as other claims against the state are paid. All claims shall be approved by the director of the legislative counsel bureau or his designee before they are paid.

[1:134:1953] + [Par] 4:205:1949; A 1953, 171]—(NRS A 1963, 1015; 1971, 222; 1973, 1117)

218.642 Petty cash account. A petty cash account of the legislative counsel bureau is hereby created in the sum of \$500 for the minor expenses of the legislative counsel bureau. The account must be kept in the custody of an employee designated by the director of the legislative counsel bureau and must be replenished periodically from the legislative fund upon approval of expenditures and submission of vouchers or other documents to indicate payment.

(Added to NRS by 1979, 290)

218.644 Checking account. The legislative counsel bureau shall maintain a checking account in any qualified bank for the purposes of providing advance money to legislators for travel expenses during a regular session of the legislature, paying the salaries of persons on the payroll of the legislative branch of government, related payroll costs and any other expenses directed by the legislative commission. The account must be secured by a depository bond to the extent the account is not insured by the Federal Deposit Insurance Corporation. All checks written on this account must be signed by the chairman of the legislative commission and the director of the legislative counsel bureau or his designee, except that during a regular session of the legislature, the majority leader of the senate and the speaker of the assembly shall sign the checks.

(Added to NRS by 1979, 290; A 1981, 5, 17)

218.645 Sales of studies, reports, materials of legislative counsel bureau; fixing and disposition of fees. The legislative commission may fix reasonable fees for the sale of studies, audit reports, bulletins and miscellaneous materials of the legislative counsel bureau, and those fees must be deposited with the state treasurer for credit to the legislative fund.

(Added to NRS by 1963, 1031; A 1971, 1545; 1973, 1117; 1979, 291)

218.646 Manuals, handbooks containing selected portions of NRS; compilation, publication and sale. With the approval of the legislative commission, the legislative counsel may compile and publish manuals or handbooks containing selected portions of Nevada Revised Statutes. Such manuals and handbooks shall be sold at a price fixed by the legislative commission and all moneys received for the sale of such publications shall be deposited in the legislative fund in the state treasury.

(Added to NRS by 1967, 841; A 1971, 1545; 1973, 1117)

218.647 Compilation, publication of legislative manual; payment of costs.

1. The legislative counsel bureau shall compile and publish a legislative manual containing information concerning the legislature and the offices, departments, institutions and agencies of the state government and other information appropriate for legislators.

2. The costs of compilation and publication shall be paid from the legislative fund.

(Added to NRS by 1965, 1461; A 1971, 1545; 1975, 1395)

218.650 Administrative services for legislature; costs; custody and inventory of legislative supplies, equipment, furniture and network.

1. All administrative services necessary to the operation of the legislature during and between sessions shall be provided by the legislative counsel bureau at the expense of the legislative fund.

2. The legislative counsel bureau shall be responsible for the care,

custody, acquisition and inventory of legislative supplies, furniture, artwork and equipment between sessions of the legislature.

3. At the beginning of each session, the director of the legislative counsel bureau shall submit a report to the legislature detailing all supplies, furniture and equipment acquired to meet the needs of the current session and detailing all supplies, furniture and equipment on hand.

[9:134:1953]—(NRS A 1965, 1456; 1971, 1545)

218.660 Legislative commission; Creation; regular and alternate members; vacancies;

1. There is hereby created in the legislative counsel bureau a legislative commission consisting of 12 members.

2. At each regular session of the legislature held in odd-numbered years, the senate shall, by resolution, designate six senators as regular members of the legislative commission and six senators as alternates, and the assembly shall, by resolution, designate six assemblymen as regular members of the legislative commission and six assemblymen as alternates.

3. The legislature shall determine by joint rule at each regular session of the legislature in odd-numbered years:

(a) The method of determining the majority party and the minority party regular and alternate membership on the legislative commission.

(b) The method of filling vacancies on the legislative commission.

(c) The terms of office of members.

(d) The method of selecting the chairman.

(e) The term of office of the chairman.

[2:134:1953; A 1955, 68]—(NRS A 1957, 387; 1961, 457; 1963, 1029; 1969, 1412; 1975, 705)

218.670 Meetings of legislative commission; attendance of alternate members; quorum; secretary.

1. The members of the legislative commission shall meet at such times and at such places as shall be specified by a call of the chairman or a majority of the commission. The director of the legislative counsel bureau shall act as the nonvoting recording secretary. The commission shall prescribe rules and regulations for its own management and government. Seven members of the commission shall constitute a quorum, and a quorum may exercise all the power and authority conferred on the commission.

2. If any regular member of the legislative commission is unable to attend a scheduled meeting of the commission, and notifies the secretary of the commission, the secretary shall notify the proper alternate member. Such alternate member may then replace the regular member at that meeting, only with all the duties, rights and privileges of the replaced member.

[3:134:1951]—(NRS A 1961, 9, 251; 1963, 1030; 1967, 1397; 1969, 1413)

218.680 Salaries, per diem and travel expenses of legislative commission members, alternates.

1. Except during a regular or special session of the legislature, for each day's or portion of a day's attendance at each meeting of the commission or its audit subcommittee, if a member of the subcommittee, or if engaged in the official business of the legislative counsel bureau, the members of the legislative commission are entitled to receive the compensation provided for a majority of the members of the legislature during the first 60 days of the preceding session, and the per diem allowance and travel expenses provided by law.

2. An alternate member of the legislative commission who replaces a regular member at a meeting of the commission or on official business of the legislative counsel bureau is entitled to receive the same salary and expenses as a regular member for the same service. An alternate member who attends a meeting of the commission but does not replace a regular member is entitled to the travel expenses provided by law.

[4:134;1953]—(NRS A 1961, 205; 1965, 1461; 1967, 1397; 1975, 296; 1977, 1569; 1979, 612; 1981, 1178)

218.681 General objectives, functions of legislative commission.

1. The general objectives and functions of the legislative commission are to:

(a) Assist the legislature in retaining status coordinate with the executive and judicial branches of state government.

(b) Investigate and inquire only into subjects upon which the legislature may act by the enactment or amendment of statutes.

(c) Assure that the most effective use is made of the audit, fiscal, legal and research services and facilities provided by the legislative counsel bureau to the legislature and its members.

2. In addition to the powers and duties elsewhere conferred and imposed upon the legislative commission in this chapter, in order to carry out its general objectives and functions the legislative commission:

(a) Shall receive recommendations and suggestions for legislation or investigation from:

(1) Members of the legislative commission and other members of the legislature; and

(2) Any board, commission, department or officer of the state government or any local government.

(b) May receive recommendations and suggestions for legislation or investigation from:

(1) Bar associations, chambers of commerce, labor unions and other organized associations and groups; and

(2) Individual citizens.

(c) May hold hearings on any subject or matter which is a proper subject for legislative action whenever it considers such hearings necessary or desirable in the performance of its duties.

(Added to NRS by 1965, 1463; A 1973, 1660; 1975, 1395)

218.682 Powers of legislative commission. The legislative commission may:

1. Carry forward the participation of the State of Nevada as a member of the Council of State Governments and the National Conference of State Legislatures, and may pay annual dues to such organizations out of the legislative fund. The legislative commission is designated as Nevada's commission on interstate cooperation.

2. Encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with the other states, with the Federal Government, and with local units of government.

3. Establish such delegations and committees as official agencies of the legislative counsel bureau as may be deemed advisable to confer with similar delegations and committees from other states concerning problems of mutual interest. The membership of such delegations and committees shall be designated by the members of the legislative commission and may consist of legislators and employees of the state other than members of the commission. Members of such delegations and committees shall serve without salary, but they shall receive out of the legislative fund the per diem expense allowance and travel expenses as provided by law.

4. Endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation, and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process.

5. Establish such subcommittees and interim or special committees as official agencies of the legislative counsel bureau as may be deemed advisable to deal with governmental problems, important issues of public policy and questions of statewide interest. The membership of such subcommittees and interim or special committees shall be designated by the members of the legislative commission and may consist of members of the legislative commission and legislators other than members of the commission, employees of the State of Nevada or citizens of the State of Nevada. Members of such subcommittees and interim or special committees who are not legislators shall serve without salary, but they shall receive out of the legislative fund the per diem expense allowances and travel expenses as provided by law. Except during a regular or special session of the legislature, members of such subcommittees and interim or special committees who are legislators are entitled to receive out of the legislative fund the compensation provided for a majority of the members of the legislature during the first 60 days of the preceding session for each day or portion of a day of attendance, and the per diem expense allowances and travel expenses as provided by law.

6. Supervise the functions assigned to the divisions of the bureau in this chapter.

[10:134:1953]—(NRS A 1957, 386; 1961, 253; 1963, 1014; 1965, 1455; 1971, 2206; 1973, 119, 1118; 1975, 296; 1979, 612)

218.6821 Subpena power of legislative commission; witnesses' fees and mileage.

1. In the discharge of any duty imposed by this chapter, the legislative commission shall have the authority to:

(a) Administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, department records, documents and testimony; and

(b) Cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by rule of court for taking depositions in civil actions in the district courts.

2. In case of disobedience on the part of any person to comply with any subpoena issued in behalf of the legislative commission, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the district court of any county, or the judge thereof, shall, on application of the chairman of the legislative commission, compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

3. Each witness who appears before the legislative commission by its order, other than a state officer or employee, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper claims sworn to by such witness and approved by the secretary and chairman of the legislative commission.

(Added to NRS by 1965, 1462)

218.6823 Audit subcommittee of legislative commission: Creation; composition; chairman, secretary; meetings; quorum.

1. There is hereby created in the legislative commission an audit subcommittee consisting of three members.

2. The subcommittee must be composed of:

(a) The chairman of the legislative commission or a member of the legislative commission appointed by him; and

(b) Two other members of the legislative commission.

3. The person serving on the subcommittee pursuant to paragraph (a) of subsection 2 shall serve as chairman and the legislative auditor or a member of his staff appointed by him shall serve as secretary of the subcommittee.

4. The subcommittee shall meet at the times and places specified by a call of the chairman. Two members of the subcommittee constitute a quorum, and a quorum may exercise any power or authority conferred on the subcommittee.

(Added to NRS by 1981, 1176)



218.6825 Interim finance committee: Creation; regular and alternate members; duties; manner of voting; compensation.

1. There is hereby created in the legislative counsel bureau an interim finance committee composed of the members of the assembly standing committee on ways and means and the senate standing committee on finance during the current or immediately preceding session of the legislature. The immediate past chairman of the senate standing committee on finance shall be the chairman of the interim finance committee for the period ending with the convening of the 56th session of the legislature. The immediate past chairman of the assembly standing committee on ways and means shall be the chairman of the interim finance committee during the next legislative interim, and the chairmanship shall continue to alternate between the houses of the legislature according to this pattern.

2. If any regular member of the committee informs the secretary that he will be unable to attend a particular meeting, the secretary shall notify the speaker of the assembly or the majority leader of the senate, as the case may be, to appoint an alternate for that meeting from the same house and political party as the absent member.

3. The interim finance committee, except as provided in subsection 4, may exercise the powers conferred upon it by law only when the legislature is not in regular or special session. The membership of any member who does not become a candidate for reelection or who is defeated for reelection continues until the next session of the legislature is convened.

4. During a regular session the interim finance committee may also perform the duties imposed on it by NRS 353.220, 353.224 and 353.335 and chapter 621, Statutes of Nevada 1979. In performing those duties, the senate standing committee on finance and the assembly standing committee on ways and means may meet separately and transmit the results of their respective votes to the chairman of the interim finance committee to determine the action of the interim finance committee as a whole.

5. The director of the legislative counsel bureau shall act as the secretary of the interim finance committee.

6. A majority of the members of the assembly standing committee on ways and means and a majority of the members of the senate standing committee on finance, jointly, may call a meeting of the interim finance committee if the chairman does not do so.

7. In all matters requiring action by the interim finance committee, the vote of the assembly and senate members must be taken separately. An action must not be taken unless it receives the affirmative vote of a majority of the assembly members and a majority of the senate members.

8. Except during a regular or special session of the legislature, each member of the interim finance committee and appointed alternate is entitled to receive the compensation provided for a majority of the members of the legislature during the first 60 days of the preceding

regular session for each day or portion of a day during which he attends a committee meeting or is otherwise engaged in committee work plus the per diem allowance and travel expenses provided by law. All such compensation must be paid from the contingency fund in the state treasury.

(Added to NRS by 1969, 1013; A 1971, 1545; 1977, 165, 1569; 1979, 613; 1981, 228, 522, 2042)—(Substituted in revision for NRS 218.6822)

218.683 Director of legislative counsel bureau: Supervision of administrative and technical activities of bureau; employment, salaries and leave of bureau employees.

1. The director of the legislative counsel bureau, as executive head of the legislative counsel bureau, shall direct and supervise all its administrative and technical activities. The fiscal analysts, legislative auditor, research director and legislative counsel shall perform the respective duties assigned to them by law under the administrative supervision of the director.

2. Except as otherwise provided in this chapter, the director of the legislative counsel bureau shall, consistent with the budget approved by the legislative commission and within the limits of legislative appropriations and other available funds, employ and fix the salaries of or contract for the services of such professional, technical, clerical and operational personnel and consultants as the execution of his duties and the operation of the legislative counsel bureau may require.

3. All of the personnel of the legislative counsel bureau are exempt from the provisions of chapter 284 of NRS. They are entitled to such leaves of absence as the legislative commission shall prescribe.

(6:134:1953)—(NRS A 1963, 485, 1016; 1965, 1456; 1971, 1546; 1973, 1352; 1977, 345, 753)

218.685 Director of legislative counsel bureau: Employment of personnel for legislative duties between sessions; payment of salaries, costs. Notwithstanding the provisions of NRS 218.150 and 218.180, between sessions of the legislature, the director of the legislative counsel bureau, with the approval of the legislative commission, may appoint such technical, clerical and operational staff as the functions and operations of the legislature may require. Salaries and the costs of any contract services shall be paid from the legislative fund.

(Added to NRS by 1963, 40; A 1963, 1009; 1971, 1546)

218.6851 Administrative division: Composition; duties.

1. The administrative division consists of the chief of the division and such staff as he may require.

2. The administrative division is responsible for:

- (a) Accounting;
- (b) Communication equipment;
- (c) Control of inventory;
- (d) Janitorial services;
- (e) Maintenance of buildings, grounds and vehicles;
- (f) Purchasing;

- (g) Security;
- (h) Shipping and receiving;
- (i) Utilities; and
- (j) Warehousing operations.

3. The legislative commission may assign any other appropriate function to the administrative division.

(Added to NRS by 1979, 68; A 1981, 560)

218.6853 Administrative division: Duties of chief as legislative fiscal officer.

1. The chief of the administrative division is ex officio legislative fiscal officer. As such officer, he shall keep a complete, accurate and adequate set of accounting records and reports for all legislative operations, including any records and reports required by the Federal Government for the administration of federal revenue and income tax laws.

2. The chief shall withhold from the pay of each legislator, employee of the legislature and employee of the legislative counsel bureau the amount of tax specified by the Federal Government and shall transmit the amount deducted to the Internal Revenue Service of the United States Department of the Treasury.

3. The chief may provide for the purchase of United States savings bonds or similar United States obligations by salary deduction for any legislator, legislative employee or employee of the legislative counsel bureau who submits a written request for these deductions and purchases. The chief shall provide forms authorizing deductions for and purchases of these United States obligations.

4. The chief may withhold from the pay of a legislator, employee of the legislature or employee of the legislative counsel bureau such amount as the claimant specifies in writing for payment to his credit union. Any money which is withheld must be transmitted by the chief in accordance with the claimant's written instructions. The chief may adopt regulations necessary to carry out the provisions of this subsection.

(Added to NRS by 1981, 558)

218.686 Fiscal analysis division: Composition; duties.

1. The fiscal analysis division consists of the senate fiscal analyst, the assembly fiscal analyst and such additional staff as the performance of their duties may require.

2. The fiscal analysis division shall:

(a) Thoroughly examine all departments of the state government with special regard to their activities and the duplication of efforts between departments;

(b) Recommend to the legislature any suggested changes looking toward economy and the elimination of inefficiency in government.

(c) Ascertain facts and make recommendations to the legislature concerning the state budget and the estimates of the expenditure requirements of the state departments.

(d) Make projections of future public revenues for the use of the legislature.

(e) Analyze the past history and probable future trend of the state's financial position in order that a sound fiscal policy may be developed and maintained for the State of Nevada.

(f) Analyze appropriation bills, revenue bills, and bills having a fiscal impact upon the operation of the government of the State of Nevada or its political subdivisions.

(g) Advise the legislature and the members and committees thereof regarding matters of a fiscal nature.

(h) Perform such other functions as may be assigned to the fiscal analysis division by the legislature, the legislative commission or the director of the legislative counsel bureau.

(Added to NRS by 1977, 339)

218.687 Information, records concerning public funds to be made available to fiscal analyst upon request. Upon the request of a fiscal analyst or his duly authorized representative, every elective state officer in the State of Nevada, every board or commission provided for by the laws of the State of Nevada, every head of each and every department in the State of Nevada, and every employee or agent thereof, acting by, for, or on account of any such office, board, commission or officer receiving, paying or otherwise controlling any public funds in the State of Nevada, in whole or in part, whether the same may be funds provided by the State of Nevada, funds received from the Federal Government of the United States or any branch, bureau, or agency thereof, or funds received from private or other source, shall make available to the requester all books, papers, information and records of a public nature under their control necessary or convenient to the proper discharge of the duties of the fiscal analysis division under this chapter.

[8:134:1953]—(NRS A 1963, 1030; 1977, 345)

218.690 Legislative counsel: Qualifications; duties. The legislative counsel shall:

1. Be an attorney licensed to practice law in the State of Nevada and shall be versed in some or all of the following: Political science, parliamentary practice, legislative procedure, and the methods of research, statute revision and bill drafting.

2. Perform the duties required by this chapter and chapter 220 of NRS.

[5:134:1953]—(NRS A 1963, 484, 1015; 1971, 1546; 1975, 344)

218.695 Legislative counsel: Powers and duties; opinions. The legislative counsel shall:

1. Have the powers and duties assigned to him in this chapter and chapters 219 and 220 of NRS, and such other powers and duties as may be assigned to him by the legislature and the legislative commission.

2. Upon the request of any member or committee of the legislature or the legislative commission, give his opinion in writing upon any question of law, including existing law and suggested, proposed and pending legislation which has become a matter of public record.

(Added to NRS by 1963, 1016; A 1965, 1456)

~~218.697~~ ~~Copyright of legislative counsel bureau publications by legislative counsel. The legislative counsel is authorized to secure copyright under the laws of the United States in all publications issued by the legislative counsel bureau, the copyright to be secured in the name of the State of Nevada.~~

1. When deemed necessary or advisable to protect the official interests of the legislature or one or more legislative committees, the legislative commission may direct the legislative counsel and his staff to appear in, commence, prosecute, defend or intervene in any action, suit, matter, cause or proceeding in any court or agency of this state or of the United States.

2. Expenses and costs incurred pursuant to this section may be paid by the legislative commission from the legislative fund.

(Added to NRS by 1965, 1461; A 1971, 1346)

218.698 Copyright of legislative counsel bureau publications by legislative counsel. The legislative counsel is authorized to secure copyright under the laws of the United States in all publications issued by the legislative counsel bureau, the copyright to be secured in the name of the State of Nevada.

(Added to NRS by 1971, 155)

218.731 Duties of research director. The research director shall:

1. Provide the legislature and the members and committees thereof with comprehensive and accurate research reports and background papers on subjects of legislative interest.

2. Analyze and evaluate the long-range planning activities and programs of the State of Nevada and its political subdivisions when authorized by the legislature, the legislative commission or the director of the legislative counsel bureau.

3. Analyze and evaluate the public policies of the State of Nevada and its political subdivisions and make appropriate recommendations regarding such policies when authorized by the legislature, the legislative commission or the director of the legislative counsel bureau.

4. Serve as the Nevada legislative federal-state coordinator.

5. Advise the legislature and the members and committees thereof regarding matters of a research nature.

6. Perform such other functions as may be assigned to the research division by the legislature, the legislative commission or the director of the legislative counsel bureau.

(Added to NRS by 1973, 1658; A 1977, 345)

218.740 Legislative auditor: Qualifications. The legislative auditor shall:

1. Be a certified public accountant or public accountant qualified

COMMITTEE MEMBERS:
THOMAS B. MURPHY
SPEAKER, HOUSE OF REPRESENTATIVES
CHAIRMAN
HAMILTON McWHORTER, JR.
SECRETARY OF THE SENATE
SECRETARY
ZELL MILLER
PRESIDENT OF THE SENATE



COMMITTEE MEMBERS:
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SENATOR JIMMY LESTER
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REPRESENTATIVE LAUREN McDONALD, JR.
REPRESENTATIVE WAYNE SNOW, JR.
GLENN W. ELLARD
CLERK, HOUSE OF REPRESENTATIVES

FRANK H. EDWARDS
LEGISLATIVE COUNSEL

LEGISLATIVE SERVICES COMMITTEE
OFFICE OF LEGISLATIVE COUNSEL
316 STATE CAPITOL
ATLANTA, GEORGIA 30334

September 14, 1983

Representative Charlie Bussell
Chairman, Committee on Judiciary
Alaska State Legislature
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

Both the Lieutenant Governor and the Speaker have requested me to reply to your letter of August 11, 1983, to each of them relative to the Office of Legislative Counsel with particular emphasis on representation of the legislative branch in litigation.

On November 1, 1982, the new Official Code of Georgia Annotated became effective. Consequently, the law relative to the Legislative Services Committee and the Office of Legislative Counsel has a new citation. Enclosed find a copy of Chapter 4 of Title 28 of the O.C.G.A. which takes the place of the Annotated Code of Georgia which you cite in your letter. That chapter contains Code Sections 28-4-1 through 28-4-9. Code Section 28-4-1 was amended at the 1983 session to make a change in a committee name and the enclosed section supersedes that section of the same Code number which is contained in the main volume.

You request the answers to several questions and I will answer them by number as they are listed in your letter.

(1) We have not employed attorneys for the specific purpose of representing the General Assembly in litigation.

(2) Rarely.

Representative Charlie Bussell
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(3) Our office represents no particular political faction but represents and offers services to the entire General Assembly. Our office is nonpartisan and is strictly impartial and we serve all factions, all political parties, etc., equally.

(4) No back-up staff.

(5) None.

(6) None.

(7) Has never been utilized.

(8) When we draft legislation for members of the General Assembly, we advise them as to whether we think the bill being requested would be constitutional. I know of no way we can say how much time we spend on that particular matter because that is just a part of our bill drafting process. Standing committees and interim study committees are assigned to a member of our staff and this staff member is available for consultation or legal advice all through the year. Frankly, I have no idea how much time is spent on that particular function.

As you see, I have made the answers to your questions very brief and for that reason I thought I would make a few general comments. The Office of Legislative Counsel was created in 1959 and is an outgrowth of the old bill drafting unit which was in the Attorney General's office. The bill drafting unit was abolished when this office was created. As you will note, our office is authorized to perform numerous functions, but we consider our most important function the drafting of legislation for members of the Senate and the House for introduction in our legislative sessions. As mentioned previously, if we have doubts about the constitutionality of a request we so inform the legislator making the request. I will not burden you with going over the other duties because they are mostly contained in Code Section 28-4-3.

The provision in which you are particularly interested--representing the interests of the legislative branch in litigation--was added in 1976. We could see the possibility of some conflicts arising between the executive

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and legislative branches and thought perhaps it would be wise to specifically authorize our office to represent the interests of the legislative branch. Upon request, the Attorney General's office is authorized to represent the legislative branch. There is, however, no requirement that he represent the legislative branch or that he be requested to do so. Our office has actually been in litigation only twice since its creation. The first time was when a suit was filed against some members of the Appropriations Committees of the Senate and the House under the "sunshine law." A conference committee had held executive sessions and it was alleged that this was a violation of the sunshine law. In that case, we were assisted by the Attorney General's office and, as a matter of information, the Georgia Supreme Court held that the sunshine law did not apply to the legislative branch of government. The second time had to do with separation of powers. Members of the General Assembly served on various executive boards, commissions, etc., and the Governor directed the Attorney General to file suit to attempt to remove the members of the General Assembly from those boards, commissions, etc. In that case the Attorney General represented the Governor's office and we represented the legislative defendants. We lost that case with the Georgia Supreme Court saying that it was a violation of the separation of powers provision of the Constitution for legislators to serve on executive boards, commissions, etc.

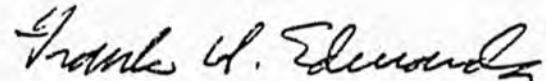
The legislative branch is rarely in court. As you are aware, most suits against the state are brought against some executive branch official and only in some rare instance would the legislative branch be sued. Also, the Georgia legislature to my knowledge has never sued anybody. As I indicated, that portion of our Act authorizing our office to represent the legislative branch was put in more as a safeguard than anything else. I might add, however, that there is a possibility that a trend is developing where our legislative branch might be involved in litigation much more than it has been in the past. As a matter of fact, this has taken place in a number of states including, as you stated, Alaska. My personal view is that it would be a wise idea for you to enact a statute somewhat similar to ours or similar to some of the other states. We made ours purposely rather broad and believe it would cover most any conceivable situation that might arise. The part about using outside counsel was placed in there because

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our other duties keep us rather busy, particularly during the months before and during sessions, and we want to be able to carry on those duties and litigation at the same time if necessary.

I note from your letter that the news media has lambasted your legislature and, if it is any consolation, as far as the Georgia news media is concerned the legislature can do no right. I can think of no reason why your legislature should not have the right to litigate on its behalf, but of course the news media does not think the legislature has any right. I hope this rather rambling letter has given you the information you desired, but if you have any specific questions I shall be glad to try to answer them for you.

Sincerely yours,



Frank H. Edwards
Legislative Counsel

FHE:jp

Enclosures

cc: Honorable Zell Miller
Honorable Thomas B. Murphy

Supplement

28-3-20

28-4-1

LEGISLATIVE SERVICES

28-4-1

~~The 1983 amendment, effective July 1, 1983, substituted "by recorded vote" for "viva voce" in the first sentence.~~

~~Cross references. — Recorded vote required in General Assembly elections. Ga. Const. 1983, Art. III, Sec. IV, Para. X.~~

~~Editor's note. — Ga. L. 1983, p. 494, § 1 provides: "It is the intent of this Act to implement certain changes required by Article III, Section IV, Paragraph X of the Constitution of the State of Georgia."~~

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CHAPTER 4

LEGISLATIVE SERVICES

Sec.

28-4-1. Legislative Services Committee —
Creation; membership; allow-
ances of members; meetings.

28-4-1. Legislative Services Committee — Creation; membership;
allowances of members; meetings.

(a) There is created the Legislative Services Committee, hereinafter called the committee, to be composed of the Speaker of the House of Representatives, the President of the Senate, the chairman of the Appropriations Committee of the Senate, the chairman of the Appropriations Committee of the House of Representatives, the chairman of the Judiciary Committee of the Senate, the chairman of the Judiciary Committee of the House of Representatives, the chairman of the Banking and Finance Committee of the Senate, the chairman of the Ways and Means Committee of the House of Representatives, the Clerk of the House of Representatives, and the Secretary of the Senate; provided, however, that the President of the Senate shall be allowed to designate in writing that the President Pro Tempore of the Senate shall serve in place of the President of the Senate with all the rights, privileges, and duties of the President of the Senate and shall so serve until the appointment is withdrawn in writing by the President of the Senate or until the end of the term of the President of the Senate. The Speaker of the House of Representatives shall be chairman of the committee, and the Secretary of the Senate shall be secretary of the committee.

(b) The members of the committee shall receive no additional allowances for service on the committee while the General Assembly is in session; but, for each day spent in the performance of their duties under this chapter between sessions, the members shall receive the allowances authorized by law for legislative members of interim legislative committees.

(c) The committee shall meet on call of the chairman. Six members of the committee shall constitute a quorum and the affirmative vote of a majority of those members present at a meeting of the committee, provided such members present constitute a quorum, shall be necessary to transact business of the committee. The chairman shall be entitled to vote on all matters requiring a vote of the committee. (Ga. L. 1959, p. 152, § 1; Ga. L. 1961, p. 230, § 1; Ga. L. 1976, p. 176, § 1; Ga. L. 1979, p. 795, § 1; Ga. L. 1983, p. 722, § 1.)

The 1983 amendment, effective March 16, 1983, substituted "Banking and Finance Committee" for "Banking,

Finance, and Insurance Committee" in the first sentence of subsection (a).

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28-5-42. Time for introduction of bills having significant impact upon anticipated revenue or expenditure levels of counties and municipalities; request for, preparation of bills generally.

(a) Any retirement bill must be introduced no later than the twentieth day of any session. Except as provided in this Code section, this section shall not apply to any local bill affecting counties and municipalities. This section shall be advertised in accordance with Article V, Paragraph IX of the Constitution.

(b) In the event any bill as provided in this section is introduced after the prescribed time limit, it may be introduced in any manner by either the Senate or the House of Representatives. The President of the Senate shall decide whether the Senate falls within this category. The House of Representatives shall decide whether the House of Representatives falls within this category. The Senate shall have the same right of decision on bills introduced by the House of Representatives; and the Speaker of the House of Representatives shall have the same right of decision on bills introduced by the Senate.

(c) The chairman of the committee shall request the director of the state auditor to furnish a fiscal note and to file a copy of such fiscal note with the committee. The principal administrative officers of the state government and, when appropriate,

CHAPTER 5

FINANCIAL AFFAIRS

Article 3

Retirement Bills; Bills Having Significant Impact Upon Anticipated Revenue or Expenditure Levels of State Departments, Bureaus, etc., and Counties and Municipalities

Sec.

28-5-42. Time for introduction of retirement bills; time for introduction of bills having significant impact upon anticipated revenue or expenditure levels of state departments, boards, counties and municipalities, etc.; classification of bills; request for, preparation, contents, etc., of fiscal notes relating to bills generally.

28-5-43. Preparation, etc., of actuarial investigations for inclusion in fiscal notes.

Article 4

Claims Advisory Board

PART 2

CLAIMS AGAINST STATE OR DEPARTMENTS OR AGENCIES

Sec.

28-5-85. Authority of Claims Advisory Board to direct payment of claims; filing of claims; notice to affected department or agency; report and recommendation by affected department or agency; board decision; order to pay claim; claims covered by insurance; payment as full settlement; claims to which this Code section applicable; waiver of state immunity.

CHAPTER 4
LEGISLATIVE SERVICES

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| Sec. | | Sec. | |
| 28-4-1. | Legislative Services Committee — Creation; membership; allowances of members; meetings. | 28-4-7. | Employment, compensation, etc. of personnel to assist legislative counsel, legislative fiscal officer, and legislative budget analyst; provision of supplies, materials, furniture, etc. |
| 28-4-2. | Same — Powers generally. | 28-4-8. | Merit system for and retirement for personnel; payment of contributions. |
| 28-4-3. | Legislative counsel — Creation of office; qualifications; powers and duties. | 28-4-9. | Source of funds for operation of chapter. |
| 28-4-4. | Same — Election. | | |
| 28-4-5. | Attorney General to serve as advisor to legislative counsel. | | |
| 28-4-6. | Employment, duties, etc., of legislative fiscal officer and legislative budget analyst. | | |

~~28-4-1. Legislative Services Committee — Creation; membership; allowances of members; meetings.~~

(a) There is created the Legislative Services Committee, hereinafter called the committee, to be composed of the Speaker of the House of Representatives, the President of the Senate, the chairman of the Appropriations Committee of the Senate, the chairman of the Appropriations Committee of the House of Representatives, the chairman of the Judiciary Committee of the Senate, the chairman of the Judiciary Committee of the House of Representatives, the chairman of the Banking, Finance, and Insurance Committee of the Senate, the chairman of the Ways and Means Committee of the House of Representatives, the Clerk of the House of Representatives, and the Secretary of the Senate; provided, however, that the President of the Senate shall be allowed to designate in writing that the President Pro Tempore of the Senate shall serve in place of the President of the Senate with all the rights, privileges, and duties of the President of the Senate and shall so serve until the appointment is withdrawn in writing by the President of the Senate or until the end of the term of the President of the Senate. The Speaker of the House of Representatives shall be chairman of the committee, and the Secretary of the Senate shall be secretary of the committee.

(b) The members of the committee shall receive no additional allowances for service on the committee while the General Assembly is in session; but, for each day spent in the performance of their duties under this chapter between sessions, the members shall receive the allowances authorized by law for legislative members of interim legislative committees.

(c) The committee shall have a majority of the members provided such majority shall be able to transact business on all matters. Ga. L. 1961 § 1.)

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~~(c) The committee shall meet on call of the chairman. Six members of the committee shall constitute a quorum and the affirmative vote of a majority of those members present at a meeting of the committee, provided such members present constitute a quorum, shall be necessary to transact business of the committee. The chairman shall be entitled to vote on all matters requiring a vote of the committee. (Ga. L. 1959, p. 152, § 1; Ga. L. 1961, p. 230, § 1; Ga. L. 1976, p. 176, § 1; Ga. L. 1979, p. 795, § 1.)~~

~~RESEARCH REFERENCES~~

~~Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 50-53.~~

~~C.J.S. — 81A C.J.S., States, §§ 47, 55.~~

28-4-2. Same — Powers generally.

(a) The committee is empowered to:

(1) Study and adopt methods and procedures to operate more efficiently the General Assembly and each house thereof;

(2) Study and adopt methods and procedures to make more uniform the operations of the Senate and the House of Representatives;

(3) Exercise general supervision of the operation of the legislative branch of government and act for and enter into contracts on behalf of agencies of the legislative branch, the General Assembly, and each house thereof;

(4) Provide for services for the legislative branch of government; and

(5) Delegate such of its powers and authority as it deems advisable.

(b) The committee shall have complete control, authority, and jurisdiction over the rooms, chambers, offices, and other areas on the third and fourth floors of the state capitol building and on the mezzanine between the third and fourth floors. All assignments for the use of such rooms, chambers, offices, and other areas by the General Assembly, the Senate, the House of Representatives, committees of the Senate and the House, members of the Senate and the House, and agencies, officials, and employees of the legislative branch of government shall be made by the committee or under such procedure as the committee shall provide. Any assignment shall be subject to change by the committee. Use of any such room, chamber, office, or other area, other than as provided above, shall be under such procedure as the committee shall provide.

(c) The committee is authorized to provide for maintaining, repairing, constructing, reconstructing, furnishing, and refurbishing of such rooms, chambers, offices, and other areas.

(d) The committee is authorized to provide for such procedures as it deems advisable for the purpose of carrying out this Code section. (Ga. L. 1959, p. 152, § 2; Ga. L. 1964, p. 459, § 1; Ga. L. 1976, p. 176, § 2.)

Cross references. — As to authority of Governor with regard to assignment of space in state capitol, see § 50-16-61.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 49, 50-53. C.J.S. — 81A C.J.S., States, §§ 55, 120.

28-4-3. Legislative counsel — Creation of office; qualifications; powers and duties.

(a) There is created the Office of Legislative Counsel. The legislative counsel shall be an attorney skilled and experienced in legislative matters and bill drafting.

(b) It shall be the duty of the legislative counsel to:

(1) Provide bill-drafting services which shall be equally available to every member of the General Assembly; and

(2) Advise and counsel members of the General Assembly on legislative matters.

(c) The legislative counsel is authorized to:

(1) Provide for statutory and Code revision, render opinions, assist standing and interim committees, and perform similar legislative functions;

(2) Perform research, issue reports, and make recommendations as a result thereof;

(3) Exchange information, data, and material with similar agencies in other states;

(4) Provide legal services for the legislative branch of government and, with the approval of the committee or the chairman, to represent the interests of the legislative branch in matters involving litigation; and

(5) With the approval of the committee, provide for advisory committees relative to statutory and Code revision. He is authorized to seek the advice and assistance of the State Bar of Georgia, law schools, and individuals and organizations knowledgeable in this field.

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(d) Any other provisions of law to the contrary notwithstanding, he is authorized to engage the services of others, including private counsel, by contract or otherwise, to assist him in the performance of his duties and is authorized to provide for the payment of fees, compensation, and expenses therefor from legislative funds.

(e) The legislative counsel shall have such other authority and duties as the committee may provide. (Ga. L. 1959, p. 152, § 3; Ga. L. 1965, p. 270, § 1; Ga. L. 1966, p. 586, § 1; Ga. L. 1969, p. 635, § 1; Ga. L. 1976, p. 176, §§ 3, 5.)

Cross references. — As to duties of legislative counsel with regard to summary of general amendments to Constitution of Georgia, see § 21-1-2.

JUDICIAL DECISIONS

This section neither authorizes nor prohibits representation of legislators by a Deputy Assistant Attorney General. *Coggin v. Davey*, 233 Ga. 407, 211 S.E.2d 708 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 273, 274. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 50-53. C.J.S. — 81A C.J.S., States, §§ 55, 61, 120.

28-4-4. Same — Election.

The committee shall elect the legislative counsel subject to the approval of the Senate and the House of Representatives meeting in joint session, except that the present legislative counsel shall serve until such time as a new legislative counsel is elected by the committee and approved by both branches of the General Assembly as provided for in this Code section. (Ga. L. 1959, p. 152, § 4; Ga. L. 1965, p. 270, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63 Am. Jur. 2d, Public Officers and Employees, §§ 364-367. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 56. C.J.S. — 67 C.J.S., Officers and Public Employees, § 226. 81A C.J.S., States, §§ 47, 61, 105-107, 109.

28-4-5. Attorney General to serve as advisor to legislative counsel.

The Attorney General shall serve as an advisor to the legislative counsel. (Ga. L. 1959, p. 152, § 10.)

28-4-6. Employment, duties, etc., of legislative fiscal officer and legislative budget analyst.

(a) The Legislative Services Committee is authorized to employ a legislative fiscal officer for the legislative branch of government, and the fiscal officer and personnel to assist him shall be a part of the Office of Legislative Counsel. The fiscal officer shall act as the bookkeeper-comptroller for the legislative branch of government and shall maintain an account of legislative expenditures and commitments. He shall maintain an inventory of the equipment, furnishings, and nonexpendable items belonging to the legislative branch. He shall prepare and sign vouchers pertaining to the expenditure of legislative funds. He shall prepare and sign all warrants for the expenditure of funds appropriated to and available to the legislative branch of government. Such warrants shall be paid by the fiscal officer, and it shall not be necessary that they be countersigned by the Comptroller General. All payments from funds appropriated to the legislative branch of government shall be made by the fiscal officer, and reference in any other law to any other official or person in connection with any duties pertaining to such payments shall be deemed to refer to the fiscal officer; all duties of any such other official or person in connection therewith are transferred to the fiscal officer. The fiscal officer shall be under such bond as the Legislative Services Committee shall prescribe, and the premium thereon shall be paid from funds appropriated to the legislative branch of government. The fiscal officer shall have such other duties as shall be prescribed by the committee.

(b) The Legislative Services Committee is authorized to employ a legislative budget analyst to assist the General Assembly and its committees in connection with appropriations and budgetary matters. The legislative budget analyst shall render assistance and give advice to the appropriations committees of the Senate and the House of Representatives. He is authorized to request information and material from all state departments, boards, bureaus, commissions, committees, authorities, and agencies in connection with his duties; and all such departments, boards, bureaus, commissions, committees, authorities, and agencies are directed to furnish such information and material as he shall request. The legislative budget analyst shall perform such other duties as the General Assembly, the Legislative Services Committee, and the appropriations committees shall prescribe. (Ga. L. 1959, p. 152, § 5; Ga. L. 1961, p. 230, § 1; Ga. L. 1969, p. 232, § 1; Ga. L. 1971, p. 67, § 1; Ga. L. 1976, p. 176, § 4.)

Am. Jur. 2d. —
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28-4-7. Employment of legislative budget analyst.

(a) Personnel officer, and the procedure as to the supervisory duties of their

(b) The legislative budget analyst procedure as to

(c) The compensation of personnel; and furnishings, by Ga. L. 1976, p

Am. Jur. 2d. —
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Am. Jur. 2d, §
Dependencies, §§

28-4-8. Merit contribution system.

(a) The contribution system for employment units

(b) All personnel members of the Employment Chapter 2 of the system which a Counsel, including said office are

RESEARCH REFERENCES

Am. Jur. 2d. — 63 Am. Jur. 2d. Public Officers and Employees. §§ 364-367. 72 Am. Jur. 2d. States, Territories, and Dependencies. §§ 50-53. C.J.S. — 67 C.J.S., Officers and Public Employees. § 226. 81A C.J.S., States. §§ 55, 61, 105-107, 109, 120.

28-4-7. Employment, compensation, etc., of personnel to assist legislative counsel, legislative fiscal officer, and legislative budget analyst; provision of supplies, materials, furniture, etc.

(a) Personnel to assist the legislative counsel, the legislative fiscal officer, and the legislative budget analyst shall be employed under such procedure as the committee shall provide. Such personnel shall be subject to the supervision of the respective three officials with reference to the duties of their employment.

(b) The legislative counsel, the legislative fiscal officer, the legislative budget analyst, and such personnel shall be compensated under such procedure as the committee shall provide.

(c) The committee shall provide office space for such officials and personnel; and they shall be furnished with supplies, materials, furniture, furnishings, books, equipment, and services. (Ga. L. 1959, p. 152, § 5; Ga. L. 1976, p. 176, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63 Am. Jur. 2d. Public Officers and Employees. §§ 364-367. 72 Am. Jur. 2d. States, Territories, and Dependencies. §§ 50-53. C.J.S. — 67 C.J.S., Officers and Public Employees. § 226. 81A C.J.S., States. §§ 55, 61, 105-107, 109, 120.

28-4-8. Merit system for and retirement for personnel; payment of contributions.

(a) The committee is authorized to promulgate a merit system of employment under which personnel shall be selected on a basis of merit.

(b) All personnel and the legislative counsel are authorized to be members of the Employees' Retirement System of Georgia, as established in Chapter 2 of Title 47. All rights, credits, and funds in said retirement system which are possessed by any personnel of the Office of Legislative Counsel, including the legislative counsel, at the time of employment in said office are continued.

(c) It is the intention of the General Assembly that any such personnel and the legislative counsel shall not lose any rights, credits, or funds to which they were entitled prior to being employed in the Office of Legislative Counsel. There shall be paid from the funds appropriated for the operation of the legislative branch of the government all contributions required by Chapter 2 of Title 47, and all such payments shall be in addition to the regular compensation authorized to the legislative counsel and other personnel in said office. (Ga. L. 1959, p. 152, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Employees, § 49. 81A C.J.S., States, §§ 55, Territories, and Dependencies, §§ 50-53. 61, 86b.
 C.J.S. — 67 C.J.S., Officers and Public

28-4-9. Source of funds for operation of chapter.

The funds necessary to carry out this chapter shall be paid from the funds provided for the legislative branch of government. (Ga. L. 1959, p. 152, § 8; Ga. L. 1976, p. 176, § 6.)

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n among the various Governments in the United States and in
the Council of State Governments for that purpose.
7, pp. 708, 710.)

Delegations and committees; advisory boards
The commission shall establish such delegations and committees as it
deems advisable in order that they may confer and formulate proposals
by effective means to secure inter-governmental harmony, and may
perform such functions for the commission in obedience to its decisions.
With the approval of the commission, the member or members of each
delegation or committee shall be appointed by the chairman of the
commission or State official or employees who are not members of the
commission. No person on Interstate Cooperation may be appointed as members of any
delegation or committee, but private citizens holding no governmental
office in this State shall not be eligible. The commission may provide such
rules as it considers appropriate concerning the membership and the
duties of any such delegation or committee. The commission may
establish advisory boards for itself and for its various delegations and
committees and may authorize private citizens to serve on such boards.
(pp. 708, 711.)

Reports to Governor and legislature; no compensation for delegations
The commission shall report to the Governor and to the legislature within
the time specified in the convening of each regular legislative session, and at such
times as it deems appropriate. Its members and the members of all
delegations and committees which it establishes shall serve without
compensation for such service.
(pp. 708, 711.)

Designation of committees and commission
The committees and the commission established by this Chapter shall be
designated, respectively, as the Senate Cooperation Committee, the
Governor's Cooperation Committee, the Governor's Cooperation Committee and
the Interstate Cooperation Commission.
(pp. 708, 711.)

Council of State Governments; communication to other States
The Council of State Governments is hereby declared to be a joint
agency of this State and of the other States which cooperate
with it.

The Governor shall forthwith communicate the text of this
Chapter to the Governor, to the Senate, and to the House of Representatives,
and to the legislatures of the other States of the Union, and shall advise each legislature
of the action already done so that it is hereby memorialized to enact a law
similar to this measure, thus establishing a similar commission, and thus

competition and conflict.
(Acts 1937, pp. 708, 712.)

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CHAPTER 47-12. LEGISLATIVE SERVICES COMMITTEE

Sec.	
47-1201	Committee created; membership; officers; compensation; quorum
47-1202	Powers and authority of committee
47-1203	Legislative Counsel; office created; qualifications; duties and authority
47-1204	Same; election; term of office; compensation
47-1205	Employment of personnel; compensation; office quarters; supplies, books, materials and furniture
47-1206	Merit system and retirement for employees; payment of contributions
47-1207	Funds for operation of Chapter
47-1208	Attorney General as advisor to Legislative Counsel; compensation
47-1209	Authority of Legislative Counsel relative to statutory and Code revision

Editorial Note

Acts 1959, p. 152, which forms the basis for this Chapter, provides at Section 7 thereof: "An Act creating the Bill Drafting Unit as a part of the State Law Department approved February 20, 1951 (Ga. L. 1951, p. 351), is hereby repealed in its entirety. If, in any other Act or Resolution, reference is made to the Deputy Director of said Unit it shall be construed to mean and is hereby declared to refer to the Legislative Counsel. Acts 1951, p. 351, was formerly codified as §§ 40-1621 through 40-1628.

47-1201 Committee created; membership; officers; compensation; quorum

There is hereby created the "Legislative Services Committee," hereinafter called the committee, to be composed of the Speaker of the House of Representatives, the President of the Senate, the chairman of the Appropriations Committee of the Senate, the chairman of the Appropriations Committee of the House of Representatives, the chairman of the Judiciary Committee of the Senate, the chairman of the Judiciary Committee of the House of Representatives, the chairman of the Banking, Finance and Insurance Committee of the Senate, the chairman of the Ways and Means Committee of the House of Representatives, the clerk of the House of Representatives, and the secretary of the Senate. The Speaker of the House of Representatives shall be Chairman of the committee and the secretary of the Senate shall be secretary of the committee. The members of the committee shall receive no additional allowances for service on the committee while the General Assembly is in session but for each day spent in the performance of their duties hereunder between sessions, the members shall receive the allowances authorized by law for legislative members of interim legislative committees. The committee shall meet on call of the chairman. Six members of the committee shall constitute a quorum and the affirmative vote of a majority of those members present at a meeting of the committee, provided such members present constitute a quorum, shall be necessary to transact business of the committee. The chairman shall be entitled to vote on all matters requiring a vote of the committee.

(Acts 1959, p. 152; 1961, p. 230; 1976, pp. 176, 177, eff. Feb. 3, 1976.)

Editorial Note

Acts 1961, p. 230, changed the name of the committee from "Joint Committee on the Operations of the General Assembly" to "Legislative Services Committee."
Acts 1976, pp. 176, 177, entirely superseded the former section.

Government. The fiscal officer shall have such other duties as shall be prescribed by the committee.

The Legislative Services Committee is hereby authorized to employ a legislative budget analyst to assist the General Assembly and its committees in connection with the appropriations and budgetary matters. The legislative budget analyst shall render assistance and give advice to the Appropriations Committees of the Senate and the House of Representatives. He is hereby authorized to request information and material from all State departments, boards, bureaus, commissions, committees, authorities and agencies in connection with his duties, and all such departments, boards, bureaus, commissions, committees, authorities and agencies are hereby directed to furnish such information and material as he shall request. The legislative budget analyst shall perform such other duties as the General Assembly, the Legislative Services Committee and the Appropriations Committees shall prescribe.

(Acts 1959, pp. 152, 155; 1961, p. 230; 1969, p. 323; 1971, pp. 67, 68; 1976, pp. 176, 179, eff. Feb. 13, 1976.)

Editorial Note

Acts 1971, pp. 67, 68, struck a former second paragraph relating to the employment of a fiscal officer, and added the present second and third paragraphs relating to the employment of a legislative fiscal officer and a legislative budget analyst.

Acts 1976, pp. 176, 179, rewrote the first paragraph of this section.

47-1206 Merit system and retirement for employees; payment of contributions

The committee is hereby authorized to promulgate a merit system of employment under which personnel shall be selected on a basis of merit. All personnel and the Legislative Counsel are hereby authorized to be members of the Employees Retirement System of Georgia, as established by Chapter 40-25. All rights, credits and funds in said retirement system which are possessed by any personnel of the office of Legislative Counsel, including the Legislative Counsel, at the time of employment in said office are hereby continued, and it is the intention of the General Assembly that any such personnel and the Legislative Counsel shall not lose any rights, credits or funds to which they were entitled prior to being employed in the office of Legislative Counsel. There shall be paid from the funds appropriated for the operation of the legislative branch of the Government all contributions required by the Retirement Act (Chapter 40-25) and all such payments shall be in addition to the regular compensation authorized to the Legislative Counsel and other personnel in said office.

(Acts 1959, pp. 152, 155.)

Cross References

Merit system for departments, see Chapter 40-22.

47-1207 Funds for operation of Chapter

The funds necessary to carry out the provisions of this Chapter shall be paid from the funds provided for the Legislative Branch of Government.

(Acts 1959, pp. 152, 155; 1976, pp. 176, 180, eff. Feb. 3, 1976.)

Editorial Note

Acts 1976, pp. 176, 180, entirely superseded the former section.

47-1208 Attorney General as advisor to Legislative Counsel; compensation

The Attorney General, having served as the Director of the Bill Drafting

Unit since its creation, shall serve as an advisor to the Legislative Counsel and for such service shall be compensated in the same amount, from the same appropriation, he received for his services as Director of the Bill Drafting Unit.

(Acts 1959, pp. 152, 155.)

Cross References

Bill Drafting Unit, see Editorial Note at beginning of this Chapter.

Editorial Note

According to Acts 1951, p. 351 (former § 40-1621), the Attorney General received \$200 per month for his services as Director of the Bill Drafting Unit. But see § 89-723.

47-1209 Authority of Legislative Counsel relative to statutory and Code revision

The Legislative Counsel, with the approval of the committee, is hereby authorized to provide for advisory committees relative to statutory and Code revision. He is authorized to seek the advice and assistance of the State Bar of Georgia, law schools and individuals and organization knowledgeable in this field.

(Acts 1966, p. 686; 1969, p. 635; 1976, pp. 176, 180, eff. Feb. 3, 1976.)

Editorial Note

Acts 1976, pp. 176, 180, entirely superseded the former section.

CHAPTER 47-13. BILLS RELATIVE TO RETIREMENT, PENSION, OR EMERITUS SYSTEMS, AND EXPENDITURE OF STATE FUNDS

Sec.	
47-1301	Georgia Fiscal Note Act, short title
47-1302	Same; "retirement bill" defined
47-1303	Same; time of introduction of retirement bills and bills having significant impact on anticipated revenues or expenditures; fiscal notes
47-1304	Same; actuarial investigations with regard to retirement bills
47-1304.1	Same; distribution of fiscal notes
47-1304.2	Same; personnel
47-1305	Bills changing compensation of State officials to be introduced during first 10 days of session
47-1306	Fiscal notes to be prepared and furnished for bills changing compensation of State officials

47-1301 Georgia Fiscal Note Act; short title

This law [§§ 47-1301 through 47-1304.2] shall be known and may be cited as the "Georgia Fiscal Note Act."

(Acts 1976, p. 1668.)

Editorial Note

Acts 1976, p. 1668, which enacted §§ 47-1301 through 47-1304.2, repealed former §§ 47-1301, 47-1302, 47-1302.1, 47-1303, and 47-1304, which were based upon Acts 1966, p. 673, 1967, p. 711; 1969, pp. 670, 671; 1974, p. 1414.

47-1302 Same; "retirement bill" defined

As used in this law [§§ 47-1301 through 47-1304.2], "retirement bill" means any bill relative to any retirement, pension or emeritus system or any other similar system by whatever name called, whether such system provides for membership therein for State, county, municipal or any other political subdivision officials or employees or any other persons.

(Acts 1976, p. 1668.)