

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

2961 HSA HB 362 - HB 374

2961

and objectivity are the prime requisites of the agency responsible for this task. Therefore the choice by many states of legislative committees to perform these functions¹⁶¹ could hardly have been expected to produce satisfactory results.¹⁶² Regularized intramural enforcement of statutory restrictions would suffer from the same inadequacies as do intramural sanctions on an *ad hoc* basis. Just as the criminal provisions to check the legislature place the initiative in the hands of the executive and the remedy in those of the judiciary, the implementing mechanism of the code of ethics should be located outside the legislature. No existing institution seems satisfactory, however, for executing the subtle mandates of such a code. Perhaps a special government agency, such as a Legislative Ethics Commission, should be established by the legislature and then severed from further control.¹⁶³ Appointment of members should be on a nonpartisan, nonrepresentative basis, but it would seem desirable that the attorney general be a member *ex officio* and that the governor have an appointee. Other appointing parties might include the legislative majority and minority leaders, the state bar association, the judicial conference, deans of law schools, presidents of universities, the labor council, and the chamber of commerce. Insofar as possible the appointees should be persons with sufficient independence and prestige in the community to make decisions without regard to the identity or power of those affected.¹⁶⁴ In addition the attorney general might institute the practice of giving formal opinions at the request of a legislator applying the code standards to actual or hypothetical facts. While the contents of such opinions should be made public, the identity of the addressee could be kept confidential on request. The Commission then could undertake promulgation of a general regulation or of a specific opinion based on its investigation of the topic to supplement or modify the opinion of the attorney general. It might also institute a

¹⁶¹ E.g., MICH. STAT. § 3.89 (1961); N.Y. SEN. RES. 131, March 20, 1954.

¹⁶² Compare the results in Massachusetts and New York, both states with legislature-enforced codes, pp. 1212-13 *supra*.

¹⁶³ It follows from the discussion of the absence of restraints on judicial powers, pp. 1214-15 *supra*, that there is no insuperable constitutional objection to the legislature's investing power in nonlegislative agencies to control the relationship between each member's official and private activities. The legislative committee which considered the problem in New York assumed that "disciplinary action or even review or referring would necessarily involve the question of 'qualification.'" N.Y. REPORT, *op. cit. supra* note 98, at 16. The Texas attorney general was of the opposite opinion, suggesting an independent agency to receive complaints, hold hearings, and refer conclusions to the legislature for final action to be taken within thirty days, after which the complaint and evaluation would be made public. TEX. LEGISLATIVE COUNCIL, *op. cit. supra* note 73, at 53. The Legislative Council's report, while noting the New York position at length, concluded only that "the possibility that the validity of such an agency might be questioned on constitutional grounds does exist." *Id.* at 54. It is noteworthy that a comprehensive statute with an independent agency has been introduced in Minnesota, which has had a legislative ethics committee since 1961. A Bill for an Act Relating to Public Service Ethics, in Letter From Minn. Assistant Attorney General to the *Harvard Law Review*, March 9, 1962. Moreover, in New Jersey a bill with an independent agency has passed the assembly at least twice. Assembly No. 2 (1960), Assembly No. 1 (1961).

¹⁶⁴ Compare Massachusetts special commission (Mass. Acts and Resolves 1961, ch. 610, § 2); proposed Louisiana commission (La. Legislative Council, Joint Resolution to Amend Article XIX, at 11-15, in Letter From La. Reorganizational Study Commission to the *Harvard Law Review*, Feb. 12, 1962); proposed Minnesota commission (*supra* note 163).

general study of a range of problems and publish general regulations when needed. The final duty of the Commission would be to assess asserted violations of the code and to invoke sanctions against violators. If the Commission had sufficient prestige, if its pronouncements were adequately publicized, and if its decisions did not adopt unrealistic standards, then the mere publication of a finding that a particular legislator had committed, or continued to commit, a violation might be enough of a sanction to deter offenders. An additional sanction would lie in the Commission's implied power to make recommendations of suitable action in the legislature — disqualification, censure, or removal. In some cases it might be necessary or desirable to give the Commission the power to issue orders enforceable by injunction in the courts. In cases of particularly pernicious conflicts — not susceptible of remedy by publicity or injunction — a more potent sanction might be necessary. By analogy to the device employed by certain other governmental agencies¹⁶⁵ the Commission might be empowered to promulgate specific regulations which would become assimilated into the criminal provisions of the act. The criminal sanctions could be designed to take effect after a specified time absent disapproving action by a two-thirds vote of the legislature.¹⁶⁶ Thus, for example, if the Commission found that the sale by legislators of insurance to contractors on state highway projects was not otherwise proscribed but that such sales invariably tended to invite serious abuses and to produce an unsavory public appearance then it might prohibit such sales generally by placing them in the special category. After the failure of the legislature to veto the criminality recommendation, any violator would be subject to the statutory penalties for any such sale.

The suggested commission is merely one possible method of formally placing the initiative and responsibility for policing legislative ethics outside the legislature. It would take advantage of a temporary peak in the legislature's reforming spirit by permanently entrusting this spirit to a body less likely to let it die. It would allow the legislators themselves to set out the basic topics of concern, and the nonlegislators to apply them flexibly and usefully, providing a clearer guide to behavior and a deterrent to misbehavior. It may be that no legislature would institute such a system without provocation, but such provocation in state politics is not unknown.¹⁶⁷

¹⁶⁵ See Securities Act of 1933, 48 Stat. 85 (1933), as amended, 15 U.S.C. § 77a (1958); 48 Stat. 87 (1933), as amended, 15 U.S.C. § 77 yyy (1958).

¹⁶⁶ Compare 28 U.S.C. § 2072 (1958) (method of adopting rules of procedure in federal courts).

¹⁶⁷ For example, passage of the Massachusetts conflict-of-interest law, covering both state and local legislators, was attributed to "a clamor in the towns for a cleanup of corruption and conflict of interest." Boston Herald, Feb. 1, 1963, p. 7, col. 7.

*Marriage is a
wise, they h
not leape into*

The well of it
nearly a million
from it.¹ Now th
but in being able
as to the ground
without creating
children, and to
In administeri
institution nor la
distinction. Here
shortcomings, fe
transparent ficti
scandal of divo
rank commercial
accurately, wide
comprehensible r
parte divorce, a
to rationalize it
investigation of
its wake.

I. E

The ex parte
sonal jurisdiction
decades ago in
that Nevada de
left their resp
married were e
therefore consti
cohabitation. I
Haddock,⁵ in

¹ An estimated
MERCZ, STATISTIC
600,000 marriages

² See Gentleme
1962, p. 8; N.Y.
Rockefeller's Nev
monial Litigation
Alabama Experier

³ 317 U.S. 287

⁴ U.S. CONST.

⁵ 201 U.S. 562

L. REV. 930 (1941)
Uma II, 54 YALE I



National Conference of State Legislatures

Headquarters
Office
(303) 292-6600

1125
Seventeenth
Street
Suite 1500
Denver,
Colorado
80202

President
William F. Passannante
Speaker Pro Tem
New York State Assembly

Executive Director
Earl S. Mackey

MEMORANDUM

TO: Alaska Legislature--Special Joint Committee on Legislative Reform

FROM: Ken Wonstolen, Esq., consultant to NCSL
Candace Romig, Staff Associate, NCSL

DATE: March 15, 1983

RE: Legislative Ethics

This memorandum is organized as follows:

- I. Background
 - NCSL assistance
 - purpose of memo
- II. Introduction and Overview
 - public trust doctrine
 - appearance of impropriety
 - practical code of ethics
 - public pressure/Attorney General's Opinion
 - policy rationale
 - Alaska situation
- III. Control Mechanisms
 - elective process
 - public exposure
 - partisanship
 - executive branch
 - judiciary
 - legislative commission
 - intramural
 - independent
- IV. Selected Issues
 - personal gain
 - conflict of interest
 - nature of duty
 - disclosure and abstinence
 - disclosure and excuse
 - voting/vested interest
 - state loans

- state contracts
- agency appearances

V. Legislative Guidance

- courses of action
 - legislative ethics bill
 - comprehensive legislation
 - interim study
- policy questions

I. Background

NCSL has been commissioned to assist the Committee in its deliberations. Three general areas have been identified for study: Legislative rules and procedures; the legislative budget process; and legislative ethics. Ethics have been identified as the area of most immediate and pressing concern, and this memo is part of NCSL's response. The purpose of this memo is to stimulate the thinking of interested legislators and staff and provide a vehicle for discussion by and guidance from the committee. NCSL is also preparing a detailed analysis that reviews current legislative initiatives on ethics vis-a-vis other state and model codes. In addition, NCSL staff will visit Alaska during the week of March 21 to communicate directly with the Committee, as well as other interested legislators and staff. The Committee's discussion of this memorandum on March 21 and a subsequent working session with Alaska legislative staff on March 22 are designed to result in a specific ethics proposal.

II. Introduction and Overview

Both the American political tradition and Alaska's statutes hold that "public office is a public trust" (see footnote #1) in which independent judgement must be exercised to further the public welfare. The United States Supreme Court has recognized as fundamental the right to be governed by representatives whose judgements are untrammelled by considerations of personal gain. (See footnote #2)

This trust responsibility is imposed on legislators not just to safeguard the public welfare, but also to maintain public confidence in the system of government. Instances of corruption, influence peddling and personal gain-seeking undermine public faith in institutions. This means that even the appearance of impropriety and the "danger of conflict of interest" (see footnote #3) must be avoided. Legislators are held to a high standard, commensurate with their positions of influence and responsibility.

Recognizing these basic tenets, the next step is to devise and implement a practical code of ethics to govern day-to-day legislative affairs. This is a difficult and complex task. The goal should be to develop a set of guiding principles, supplemented by specific rules for recurring, clearly-defined situations. This must be coupled with a process whereby these principles and rules may be extended to novel situations. Finally, provision must be made for enforcement.

The Alaska legislature has engaged this challenge. Cases of actual or perceived misconduct have led to public pressure for reform. The

Attorney General has issued an opinion indicating the applicability of common law standards absent statutory controls. Since the common law is not well settled on the majority of ethical issues, confusion and uncertainty persist. The common law does have a role to play in guiding the practical application of statutory ethics, however. Almost all statutes acquire a judicial gloss over time, whereby the common law is created or supplemented. The advisory opinions of an enforcement body would be a valuable "common law" adjunct to an ethical statute.

Nevertheless, legislative enactment of an ethical code is a worthy goal. It would provide more definitive guidance than the common law. Public desires for reform would be accommodated. Most importantly, a process would be established for applying, extending and enforcing ethical provisions.

Alaska's special situation must be kept in mind in developing such legislation. That is, the state has a relatively small population and pool of potential legislators. The legislature itself is a compact body. Further, members are part-time legislators, retaining their varied outside business interests. Finally, state government is heavily involved in Alaska's economy. These factors call for sensitivity to the possibility of discouraging the pursuit of political office by capable, commercially active citizens.

III. Control Mechanisms

The fundamental control over legislative conduct is, of course, the elective process. Ironically, the elective process may also generate those personal obligations which tend to create potential conflicts. In addition, state legislative elections are more likely to turn on local issues or party affiliation than on subtle questions of ethics. Therefore, the elective process is an unreliable and unpredictable control mechanism.

Associated with the elective process is the effect of the light of publicity. Its power is dependent on open processes, active media and interested citizens. Alaska has disclosure requirements for certain public officials, including legislators (see footnote #4). It has also made provision for public notice and participation in its legislative processes. Any ethical control method adopted by the legislature must balance individual rights to privacy against the public right to know.

It has also been suggested that partisan considerations may operate as a control over legislative ethics. While it is true that disclosure of ethical violations might occur due to partisan motives, there are objections to relying on partisanship as an ethical control. First, there may be a temptation to use knowledge of a violation for partisan advantage, rather than disclosing the problem. Second, considerations of comity dictate against reliance on a mechanism which would tend to exacerbate partisan divisions. Finally, public accountability is minimal.

The executive branch may also exert some control over legislative ethics. The Attorney General is currently occupying the field. He asserts the right to advise on ethical issues and bring legal actions for ethical violations. The Governor might, by executive order, establish

ethical parameters for agency actions, including dealings with legislators. Conversely, the legislature may exert its authority over executive branch ethics by enacting a statute.

Courts are probably the ultimate arbiters of legislative ethics. For constitutional reasons (see footnote #5) plus a disinclination to deal with "political questions", courts play this role with reluctance. However, legal precedent indicates that legislative authority over intramural affairs may be limited by the public trust doctrine. (See footnote #6.) Nevertheless, statutory guidance is important to the judicial process as well.

Courts are less likely to assert jurisdiction over legislative ethics in the presence of some formal control mechanism established by statute. There is a natural desire to preserve legislative autonomy in this regard. The legislature has the constitutional authority to judge its members, and peer review is an accepted means of establishing ethical standards in many professions. An internal policing body may be taken more seriously by legislative members and has certain advantages in the advisory or consultative process involved in ambiguous or unclear ethical situations. However, exercising this prerogative is unlikely to assuage judicial or public concerns over legislative ethics. Practical difficulties are raised as to majority, minority and factional representation, as well as the small pool of legislators available. Partisanship would be a troubling element. Finally, the record of such intramural bodies is mixed. (See footnote #7.)

An independent legislative ethics commission is a concept worthy of consideration. It would have enhanced credibility vis-a-vis the other branches of government, the media and the public. It would minimize the practical and partisan concerns raised by intramural bodies. And, it would isolate the ethical arena from the vagaries of legislative attention. Members of such an independent commission might include former legislators, retired judges, university deans and corporate directors. The Attorney General might be an ex-officio member. Appointments might be made by the majority and minority leadership of each house, as well as the Governor, State Bar Association and Chamber of Commerce.

IV. Selected Issues

Whatever the control mechanism adopted, substantive statutory guidance will be essential. Several major issues will be considered here. Additional points will be covered in NCSL's detailed comparative analysis.

Ethical concerns may, perhaps, be summed up by two basic proscriptions. First, public office should not be used for personal gain. This includes such violations as accepting bribes or kickbacks, exerting improper influence, using or disclosing confidential information, and using state property for personal purposes. Second, office holders should not conduct outside business which conflicts with the conscientious performance of duties or the independent exercise of judgment. Conflict of interest implies an interest which is present and personal, and not shared by the general community. It includes the notion of vested interest, as well as the notion of division of loyalty.

Disclosure and abstinence are the proper courses of action regarding conflicts of interest. A higher duty is imposed, however. Legislators are elected to exercise their judgment on matters of public concern and should strive to conduct their outside business so as to minimize conflict situations (see footnote #8). Indeed, a legislator may not receive a personal benefit by declaring a conflict, abstaining and letting a "disinterested colleague" make the decision. (See footnote #9.)

This raises a concern relating to the current Alaska practice of allowing a single vote to prevent a legislator from abstaining on a decision after declaring a conflict. The possibilities for collusion and abuse are apparent. It is unlikely that the common law would excuse an ethical violation on this basis. Similarly, full disclosure and a sworn statement that independent judgment will be exercised may be insufficient to excuse a conflict. Quorum considerations are the only justification for such practices. They should be used with restraint and should be specifically covered in a statute.

The Attorney General's opinion raises three specific issues. One relates to the notion of vested interest. That is, a legislator may vote on a bill by which he benefits, as long as the benefit is not peculiarly personal. If the legislator is one of a small class of beneficiaries or if the bill affects a venture with which he is commercially connected, he must abstain.

A second issue relates to state loans to legislators. Here the relevant factors involve the size, availability and discretionary aspect of the loan in question. Loans with standard criteria as to qualification, amount, security and repayment, and general availability, are acceptable. Large commercial loans involving discretion in determining creditworthiness, terms and administration, and which are of limited availability, are more problematic.

A third issue relates to legislators contracting with the state. The Attorney General finds the common law to prohibit such contracts, with limited exceptions (see footnote #10). Some states allow legislator/state contracts which are "de minimus" (small in value or legislator has fractional interest). Others allow competitive contracting. The latter exception is problematic, raising concerns over improper influence, use of confidential information and discretion in the awarding and administration of such contracts. The course of action most consistent with the duty of legislators to avoid even the appearance of conflict would be a prohibition.

A final issue, not raised by the Attorney General's opinion, relates to legislator appearances before state agencies. While it is a traditional legislative function to intercede with state bureaucracies on behalf of constituents, this must be distinguished from appearing as a principal or in a representative capacity. Some states allow appearance as a principal to maintain the status quo regarding a business interest, but not to obtain a new franchise. Some allow representation of a client, even for compensation, if such compensation is disclosed and is not contingent on the agency action. Public perceptions should be considered in this regard.

V. Legislative Guidance

Three courses of action are suggested for legislative consideration:

- Enact a legislative ethics bill during the 1983 session. NCSL assistance, including this memo and a detailed comparative analysis, as well as on-site consultation is being provided under NCSL's contract with the Committee. Senator Fischer has prepared a working draft which could form the basis of a bill.
- Enact a companion bill for other state officers and employees, or a comprehensive statute covering all public officials. HB 20 (by Rep. Miller, et al) could serve as the basis for a comprehensive approach.
- Defer action on one or both of the above areas (legislators/other public officials) until the next session and conduct additional study during the interim. Such an interim study could be organized and staffed by NCSL as a follow-on to its existing contract, consistent with its commission to assist the enhancement of Alaska's legislative process.

If immediate action is chosen as a course of action, legislative guidance would be useful on a number of specific policy areas:

- What kind of control mechanism or policing body is preferred?
 - intramural/independent
 - publicity of proceedings, remedies
 - advisory/enforcement function
- How broadly or narrowly should conflict of interest be construed?
 - nature of duty
 - role of disclosure
 - excuses: collegial; sworn statement; quorum issues
 - vested interests: peculiar benefit; degree of connection
- How should state loans be dealt with in legislation?
 - specific consideration of existing programs
 - general principles/advisory opinions
- How should legislator contracts with the state be handled?
 - prohibition/allowance
 - exceptions: de minimus; only source; common goods
 - competitive processes: role of disclosure
- To what extent should legislator appearances before state agencies be regulated?
 - for constituents

--as principal
--as client

- What additional or related ethical issues should be addressed?
 - lobbyist controls
 - open meetings
 - campaign finance

These areas all call for the exercise of legislative policy judgment, in the light of the ethical principles and concerns raised in this memo. Specific guidance will be essential to staff in drafting legislation.

FOOTNOTES

1. AS 39.50.010 (b)(1)
2. Tool Co. v. Norris, 69 U.S. 45, 54-55 (1865)
3. AS 39.50.010 (b)(1)
4. AS 39.50.030
5. Alaska Constitution Article II, Section 12
6. U.S. v. Ballin, 144 U.S. 1, 5 (1892); ct. U.S. v. Smith 286 U.S. 6 (1932)
7. See 76 Harv. Law Rev. 1209 (1963)
8. See AG Opinion pp. 37-38
9. See AG Opinion p.2
10. See footnote 14, p. 26 of AG Opinion

OUTLINE OF MAIN FEATURES AND POLICY CONSIDERATIONS FOR
PROPOSED CONFLICT OF INTEREST/ETHICS LEGISLATION

1. Prohibited Conduct
2. Disclosure
- Ethics Agency

1. PROHIBITED CONDUCT

In general, a conflict of interest exists if a public official must take official action which would beneficially or detrimentally affect a business, property, contract, venture, or transaction in which the public official has a financial interest, or for which he acts as legal counsel, advisor, consultant, agent, or representative. Financial interests which create a conflict of interests are prohibited, unless the financial interest is so small or so removed from the impact of official action that a reasonable person's official action could not be influenced by the financial interest.

WHAT IS SPECIFICALLY PROHIBITED? (Amend AS 39.50.090)

1. Contracts with state (or local) gov't involving an agency that could be influenced by person, including sole source contracts and including contracts w/in twelve months of termination
2. Representation for compensation before gov't agencies
Exception for representation in courts (or quasi-judicial agencies) where the opposing party is not a gov't agency
3. Assisting a person or business for compensation, within twelve months of termination, on any matter upon which the public official took action.
4. Receiving state loans
Except land lottery, student loans, housing loans
5. Use of gov't property, equipment, or services for non-gov't purposes unless reimbursement system established (i.e. xerox copies)
6. Receipt (or solicitation) of gifts from persons who deal with the state, including discounts or other benefits which could be used to advantage by the state.
7. Substantial financial dealings between employees and supervisors, between representatives from different branches of gov't,
8. Use of confidential information for non-gov't purposes
9. Nepotism
10. Financial interest in a business or industry regulated or influenced by the public official
11. Action that may affect any investment, property or other financial matter

2. DISCLOSURE

a. DISCLOSURE OF CONFLICT

Disclosure must be made to: supervisor, legislature, court, or municipal assembly, as appropriate, and either (1) immediately eliminate the conflict (i.e. divest interest), or (2) refrain from taking any action that creates an appearance of conflict, including delegating responsibility for the decision, and immediately seek advisory opinion from ethics agency.

b. FINANCIAL DISCLOSURE

WHO DOES IT APPLY TO? (Amend AS 39.50.020 and 200)

In addition to the persons covered by AS 39.50, consideration should be given to requiring the following persons to file disclosure statements with the appropriate ethics agency:

Ethics Agency

APOC

Executive Branch:

All employees above Salary Range _____
plus other employee classifications by regulation
plus all nominees for appointed positions to boards,
commissions, department and division heads

APOC or
Legislative
Ethics
Committee

Legislative Branch:

Employees of an agency of the Legislature above
Range _____
plus individual and committee Legislative staff above
Range _____
plus other employees by regulation or rule

APOC or
Supreme Court/
Judicial
Council or
Judicial Qual. Comm.

Judicial Branch:

Administrative personnel above Range _____
plus other employees by regulation or rule

APOC or
Municipal
Assembly

Municipal Bodies: Lower ranking employees

HOW COMPLETE MUST FINANCIAL DISCLOSURE BE? (Amend AS 39.50.030)

In addition to the information required by AS 39.50.030, consideration should be given to requiring disclosure of the following information which is required to be disclosed in some states:

Federal Income Tax Returns
Any gift received or given greater than \$100
All trusts of which person is a trustee
Transactions with employees or supervisors

3. ETHICS AGENCY

All public employees are answerable to an ethics agency, even if they were not required to file financial disclosure statements.

WHAT IS THE FUNCTION OF THE ETHICS AGENCY?

Advisory opinions - to public officials, employees and to members of the public

Handle complaints - from public officials, employees and from members of the public

Preliminary Inquiry: preliminary factual determination by staff of the agency as to whether there is any reasonable possibility to believe the facts may be true
-and- a preliminary legal determination as to whether the alleged facts, if true, would constitute a violation.
-if either can be answered in the negative, the matter will remain confidential
-if both can be answered yes:

Investigation: as extensive as necessary to allow the committee to determine whether further agency action is needed.

Hearing: to determine facts, make legal conclusions and, if necessary, impose sanctions under an appropriate standard of proof, and through defined procedures.

WHAT ARE THE POWERS OF THE ETHICS AGENCY?

Investigative powers: - subpoena
- contempt sanctions
- note: legislative immunity problems may exist unless the ethics agency is within the legislature
- note: testimonial immunity problems exist

Sanctions available: - contracts voidable
- private or public reprimand
- legislative censure (take away privileges)
- legislative expulsion
- termination of employment
- levy fines
- forfeiture of gifts to the state
- order restitution, enforceable in court
- suspend sanctions on certain conditions
- recommend prosecution
- recommend sanction to employer/legislature/court

H

TO: Joint Special Committee on Legislative Reform
FROM: Connie Halford, Concerned Citizen
SUBJECT: Make-up of proposed committee
DATE: March 28, 1983

The legislature has the opportunity to show some leadership and help to alleviate the conflict of interest problem that exists, not just for legislators themselves, but for the administration and whomever else may be affected by such conflict questions. Having everyone police their own will look like a whitewash to the public and shows that the legislature will only respond as far as it is forced to in dealing with this question. A committee made up of legislators and two commissioners will not have the public trust. Commissioners must be confirmed by the legislature, present their budgets, and are subject to conflict of interest charges themselves, as we have seen lately when the Commissioner of Commerce, the Commissioner of Natural Resources, as well as the Attorney General and the Governor themselves have come under scrutiny. Who will rule on the Governor, AG, & Commissioner of Natural Resources, who are involved in the same incident? The AG ruled on the Commissioner of Commerce--can the AG rule credibly on possible conflicts of other members of his boss' cabinet?

I see the best solution as one: "Conflict of Interest Board" that would deal with everyone. It would need to draw from a wide spectrum of viewpoints in order to have maximum credibility. It is essential that the officials themselves, as well as the public, be able to have confidence in the rulings of the Board. The Board would decide whether conflicts did exist and whether conflicts would exist, the latter in response to a request from someone prior to undertaking certain action. If a determination of nonconflict was gained from the Board, the individual must be able to have confidence that he will not later be prosecuted or persecuted for following that determination. That can only be the case if the Board has the credibility that would be gained from careful structuring. If a credible Board is established, the legislation should provide that an individual following the determination of the Board can't get in trouble for it as long as no evidence was misrepresented by him before the Board.

Possible make-up of the Board might be a member from the Attorney General's office, a member from APOC, a few legislators, some members of the public (chosen some way other than appointment by legislative leadership or the Governor).



REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

ASSISTANT MINORITY LEADER

1527 H STREET
ANCHORAGE, ALASKA 99501
(907) 278-4188

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

TO: Members, Special Committee on Legislative Reform

FROM: Rep. Don Clocksin

DATE: April 4, 1983

Thank you for the opportunity to testify before you on Thursday, March 31, 1983, regarding the "Speech and Debate Clause" of the Alaska Constitution. I have now received the legal opinion I requested on the immunity of a legislator from punishment for his or her activities during a legislative session.

That opinion, which is attached, appears to indicate it is difficult to hold legislators responsible for actions taken during a session, even if they are unethical. This is consistent with the recent ruling in State v. Dankworth, also attached.

I encourage you to carefully review this problem. If it is not addressed, we run the risk of passing legislation which exceeds our authority and which may be viewed by the public as a facade.

Several specific points should be addressed regarding our "speech and debate clause". That provision provides as follows:

Legislators may not be held to answer before any tribunal for any statement made in the exercise of their legislative duties while the legislature is in session....

First, does the language "may not be held to answer" prohibit even an investigation with subpoena powers? The Dankworth opinion addresses this on page 9.

Second, does the language "before any other tribunal" allow a legislative committee to investigate a legislator? What if some members of that committee were not legislators?

Third, does the language "for any statement made in the exercise of their legislative duties" protect actions taken in committees or in the budget process? See the discussion in the Dankworth opinion at pp. 6-8.

Fourth and most important, can the Legislature waive the constitutional immunity? It would seem that a waiver may not be possible. See the Dankworth opinion, at pp. 9-13. Even if it is, substantial policy reasons exist for protecting legislators from politically motivated harassment which interferes with their ability to represent their constituents. The issue is where the line is drawn between the public's right to expect honest legislators and the voters' right to have their legislator free to act in their interests. The history of this constitutional immunity, and the federal counterpart, is replete with examples of politically motivated interference with honest legislators and illegal actions by dishonest legislators.

Good luck with your work!

enclosures:



**National
Conference
of State
Legislatures**

Headquarters
Office
(303) 292-6600

1125
Seventeenth
Street
Suite 1500
Denver,
Colorado
80202

I
President
William F. Passannante
Speaker Pro Tem
New York State Assembly

Executive Director
Earl S. Mackey

TO: Special Joint Committee on Legislative Reform
FROM: The National Conference of State Legislatures
RE: Preliminary Report on Work on Conflict of Interest Legislation
DATE: April 1, 1983

As required under the contractual agreement between the Alaska Legislature and the National Conference of State Legislatures, this report is submitted to the Joint Special Committee on Legislative Reform and will recap the work and findings to date in the NCSL's work on the issue of conflict of interest.

SUMMARY OF ACTIVITIES TO DATE

Following an initial on-site visit by NCSL staff to Juneau to determine the priorities and parameters of the overall project, the NCSL staff has devoted most of its efforts to the immediate concern over the development of conflict of interest legislation during the 1983 legislative session. To assist the Joint Special Committee on Legislative Reform in its deliberations on this issue, the NCSL staff has completed the following tasks:

- o a detailed search and analysis of statutory provisions dealing with conflict of interest and related legislative ethics issues in the other 49 states;
- o a review and analysis of legislative rules provisions dealing with voting procedures and conflict of interest in the other 49 state legislatures;
- o in-depth telephone interviews with legislative staff and ethics authorities in four states where similar legislative characteristics or ethics problems have been addressed;
- o analyses of current Alaska ethics statutes and four legislative proposals currently pending before the Alaska Legislature;
- o on-site interviews with legislators, legislative staff and others;
- o presentations before the Joint Special Committee on Legislative Reform on fundamental ethics questions, and
- o participation in a decision-making workshop designed to facilitate the committee's consideration of ethics legislation.

Attached are the background documents, bill analyses and research memoranda prepared by the NCSL staff for the committee.

DISCUSSION OF THE PROJECT TO DATE

Ethics issues are complex, requiring great balance between personal liberties, public service obligations and institutional legislative needs. The job of drafting appropriate legislation on this issue currently is complicated in Alaska by pressures of time in the current legislative session.

The NCSL staff has attempted to provide the Joint Special Committee on Legislative Reform with information which will further the understanding and discussion of legislative ethics issues. In addition, the NCSL staff has tried to help facilitate the process by identifying the major policy decisions which must be addressed in legislation. (The attached workshop summary from March 22, 1983, reflects the outline of decisions facing the committee.) In terms of these major policy decisions, the NCSL staff offers the following comments and findings on the process of developing a legislative ethics bill thus far.

Scope of Coverage

The legislature has before it proposals which would deal with only legislators and ones which would cover all public officials. There is no consensus on this issue.

Comment: Given the constraints of the legislative session, a bill covering only legislators and legislative staff persons is probably more realistic and feasible at this time. Conflict of interest statutes covering only legislators and legislative staff persons are in force in 33 states, and the separation of powers doctrine makes it appropriate for the legislature to deal with ethics issues for itself, independent of other government officials.

Control Mechanism/Policing Body

1. There seems to be a consensus that a legislative committee with public citizen members should be established to oversee and enforce provisions of a legislative conflict of interest or ethics bill.

Comment: The separation of powers doctrine and constitutional bases give credence to the concept of an internal legislative ethics committee. At the same time, the involvement of independent citizen members mitigates some of the difficult dynamics which legislative members face when judging and penalizing their peers. A selection process controlled by the presiding legislative officers is appropriate with safeguards for minority representation. To insure a balance of independence, citizen members probably should be appointed by some independent process, e.g., selection by the state judiciary or nominees by the state judiciary or the governor and selection by lottery.

2. The staffing of an ethics committee must be adequate to the powers assigned to do it.

Comment: If the powers of an ethics committee are primarily advisory and the principal enforcement strategy is for full and early disclosure, a limited legal and administrative staff may be adequate to serve the

committee. If, however, an ethics committee is vested with investigatory responsibilities, then a more substantial staff is required.

3. There seems to be a consensus that the proceedings of an ethics committee should be confidential until such time as findings and rulings are concluded and published.

Comment: Confidentiality in the preliminary stages of an investigation and in an advisory process is appropriate.

Conflict of Interest

1. There seems to be a consensus that early disclosure of potential conflicts of interest is essential, and that a legislator is obliged to report a potential conflict as soon as he or she is aware of such a conflict.

Comment: This approach is fundamental and appropriate.

2. A legislator must represent constituents and vote on matters before the legislative body.

Comment: Most state legislative rules prohibit members from voting on matters in which they have a direct personal or pecuniary interest, and the most common practice is to allow the member to state the reasons for not voting and then, without debate, to have the rest of the membership vote by simple majority to excuse the member. It is valid to balance quorum considerations with the process of minimizing potential conflicts of interests, however, Alaska's rules which require unanimous consent of the body to excuse a member from voting are among the most stringent. Only three other legislative bodies require unanimous consent to excuse a member. In a small legislative body, abstaining from a vote and legislative action may contribute to the conflict of interest. Consequently, the most equitable method to resolve these situations is by early and full disclosure of the potential conflict. Particularly in light of the unanimous consent provision, the NCSL staff suggests that disclosure include a sworn statement that independent judgment will be exercised.

Loans

1. Legislators should be eligible for non-discretionary state loans.

Comment: This is appropriate and reflects a consensus among the legislators.

2. There is no consensus on the question of whether state legislators should be eligible for discretionary loans.

Comment: Alaska represents a unique situation for which there is no parallel in other states. The dominant role of the state in the commercial loan market is not evident in other jurisdictions. At a minimum, a conflict of interest statute dealing with state loans should require full and early public disclosure of loans and loan applications by public officials.

Contracts

1. There seems to be consensus that legislators should be eligible for contracts with the state under competitive bidding procedures.

Comment: In 31 states, public officials face some restrictions on entering into public leases or contracts. Fourteen states allow public officials to enter into contracts through a competitive bidding process. Again, as a minimum standard, the NCSL suggests that early and full disclosure be required of legislator bids on contracts and contract awards to lawmakers.

Appearances

1. There seems to be consensus that some restrictions would be appropriate on legislators representing constituents or themselves for compensation before state agencies.

Comment: Nineteen states require disclosure of compensation received by public officials who represent clients or constituents before state agencies, and 28 states restrict appearances by public officials. Disclosure is imperative in these instances, and public perceptions of undue influence may require more stringent safeguards.

CONCLUSION

To date, no specific piece of legislation before the legislature reflects a consensus view on conflict of interest. Opinions remain divided on major policy questions. Fundamental decisions must be addressed by the Joint Special Committee on Legislative Reform and by the legislature as a whole on this question. Given the time constraints of the legislative session, resolution at this time may not be possible, however, inaction on the part of the legislature must be balanced with public perceptions of the immediacy of this question.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Scope of Statutes	<p>The statute covers:</p> <ul style="list-style-type: none"> • All legislators • Judicial officials • All candidates for state and municipal elective offices • The governor, lieutenant governor, and selected state agency officers. 	<p>The legislation would cover:</p> <ul style="list-style-type: none"> • All legislators and legislative employers • All municipal officers and employers • The governor and lieutenant governor. 	<p>Legislation would apply to:</p> <ul style="list-style-type: none"> • All legislators • Legislative staff working with committees and legislators • Legislative members-elect • Former legislative members. 	<ul style="list-style-type: none"> • Idaho, Vermont, and West Virginia have no disclosure laws or restricted activities • Public officials, including legislators (14 states) • Specific legislation for legislators (33 states)
Disclosure Requirements	<p>Requires disclosure of:</p> <ul style="list-style-type: none"> • All income over \$100 by official or family • Business interests and ownership • Real property • Trusts • Loans or loan guarantees, and • Contracts or offers to contract with the state. <p>Assets or liabilities under \$500 need not be disclosed</p> <p>Disclosure statement filed annually; sworn statements required of some officials.</p> <p>Blind trusts are acceptable but must be reported.</p>	<p>Requires disclosure of:</p> <ul style="list-style-type: none"> • All items required under AS 39.50.020 • Specific conflicts require preparation of a separate statement by certain state executive officials and municipal officers • Other public officials required to state a conflict at the time of official action. 	<p>Legislation would require disclosure of the following:</p> <ul style="list-style-type: none"> • Direct interest in an enterprise affected by a vote on proposed legislation • Financial benefit derived from a close economic association with an individual with direct interest in an enterprise affected by a vote on proposed legislation • Financial benefit derived from a close economic association with a person lobbying, or who hires a lobbyist, to propose legislation or to influence legislators' votes • Gifts, loans, or payments in the aggregate amount of \$100 or more from anyone with an interest in an enterprise affected by a vote on proposed legislation • Fees and honorariums received in excess of \$100 • Financial transactions involving legislators and staff in excess of \$1000 • All contracts with the state 	<p>States require disclosure for:</p> <ul style="list-style-type: none"> • Source of income (34) • Income of business if partnership or shareholder (23) • Investments (29) • Real estate interests (33) • Offices and/or directorships (31) • Creditor indebtedness (24) • Leases or contracts with public agencies (14) • Gifts (19) • Compensated representation before state agencies (19) • Fees or honorariums (23) • Reimbursement of travel expenses by private sources (10) • Professional or occupational licenses held (8) • Deposits in financial institutions (10) • Retainers (4) • Cash surrender value of insurance (5) • Nature of outside employment (22)

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Disclosure Requirements (continued)			<p>Recommended procedures for disclosure:</p> <ul style="list-style-type: none"> Legislator declares conflict of interest on the floor of the legislative body and requests to be disqualified from voting A written statement submitted to the committee describing conflict bars legislator or staff from further action on the legislation in question, unless the statement asserts to the satisfaction of the committee the objective ability of the party to participate in the legislative action. 	<ul style="list-style-type: none"> Professional services rendered (11) Identification of trusts by trustee (11) Identification of trusts by beneficiary (10) Financial interests of official's spouse and dependents (33) <p>Reports and statements are generally required to be filed within a specified time period.</p>
Conflicts of Interest: General	<p>The statutes prohibit public officials from:</p> <ul style="list-style-type: none"> Using his office for financial gain to himself, business or family Soliciting money for legislative advice or other assistance relating to his public employment Representing a client before a state agency for a fee (Municipal officers similarly are barred from representing a client before their municipal body.). 	<p>The bill would prohibit public officials from:</p> <ul style="list-style-type: none"> Soliciting gifts to influence or reward an official action Using public office to seek employment, contracts or compensation benefitting the official or his household Using public time, equipment or facilities for private or political purposes Soliciting financial transactions in businesses an official supervises Using confidential information for personal gain Participating in actions affecting a business or property in which a public official has a personal financial interest Representing a person before a state agency for compensation (legislators and staff) 	<p>Legislation would proscribe the following as conflicts of interest:</p> <ul style="list-style-type: none"> Undue influence exerted as a result of public office Participation in outside business or professional activity inconsistent or in conflict with official duties Misuse of state property or funds Owning capital stock in a corporation in excess of \$1000 Acting as an officer, director, or agent of a corporation Representation for pay of a client before any state or local agency Nepotism, excepting unpaid relatives Confidential information not available to general public and obtained in the course of official duties used for personal benefit. 	<p>States have restrictions on the following:</p> <ul style="list-style-type: none"> Use of public position to obtain personal benefits (40) Giving benefits to influence public officials and/or public employees (3) Use of confidential information (37) Post-governmental employment (22) Receipt of gifts (31) Public officials representing clients before public bodies (20) Receipt of fees and honorariums (23) Nepotism (15) Public official's outside employment or business activity (20)

DIVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Conflicts of Interest: General (continued)		<ul style="list-style-type: none"> Assisting persons for compensation to pass or defeat legislation or secure a contract, claim or transaction before the legislature, a state or municipal agency. <p>Former officials would be prohibited from:</p> <ul style="list-style-type: none"> Using confidential information for personal gain Representing persons in transactions in which the official was involved. (12 mos. time period) 		
Conflicts of Interest: Contracts and Loans	The statutes do <u>not</u> prohibit public officials from receiving state loans or contracts.	The bill would <u>not</u> prohibit public officials from receiving state loans or contracts. The bill would prohibit public officials from assisting for compensation other persons who are seeking to obtain contracts, claims, etc.	<p>Legislation would proscribe the following activities with regard to contracts and loans:</p> <ul style="list-style-type: none"> Contracts made with state and local government without public competitive bid process; non-bid contracts may be awarded at the discretion of the committee provided no undue influence is exerted to obtain the contract and it does not conflict with the conscientious performance of official duties Discretionary state benefits not available to the general public such as loans and land disposals in which the decision-making process does not safeguard against the appearance of improper influence. 	<p>Specific restrictions pertaining to contracts and loans:</p> <ul style="list-style-type: none"> Public officials entering into public leases or contracts (3) Competitive bidding (14)
Activities Not Restricted	No unrestricted activities are specifically identified.	No unrestricted activities are specifically identified.	<p>Proposed legislation specifically allows:</p> <ul style="list-style-type: none"> Outside employment and business opportunities, provided an advisory opinion of the committee is sought in cases of potential conflict 	<ul style="list-style-type: none"> Kansas, Maine, and Missouri are three states which allow a state officer to contract with the state in a process of competitive bidding or for which the price or rate is fixed by law

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Activities Not Restricted (continued)			<ul style="list-style-type: none"> • Former legislators and staff may lobby or work for state agencies immediately upon leaving the legislature subject to the constitutional ban on legislators taking a position with a salary increase created while the legislator was a member. 	<ul style="list-style-type: none"> • In Maine, legislators may serve on public boards, commissions or other authority created by the legislature provided no consideration is paid.
Control Authority	<p>The statute is administered by the Alaska Public Offices Commission, an independent commission within the Department of Administration.</p> <p>The commission duties and powers include a provision to:</p> <ul style="list-style-type: none"> • Maintain records, reports and disclosure statements and establish reporting procedures <p>The commission is <u>not</u> authorized to initiate or conduct investigations relative to violations. All disclosure statements and reports are public records.</p>	<p>The bill would assign new duties to the already existing Alaska Public Offices Commission, an independent commission within the Department of Administration.</p> <p>The commission duties and powers would include to:</p> <ul style="list-style-type: none"> • Issue advisory opinions and publish edited versions of opinions to maintain confidentiality • Accept, initiate and investigate complaints • Subpoena witnesses, take testimony and hold hearings on complaints • Maintain necessary records, reports, forms and establish reporting procedures • Make determinations of appropriate action • Assess civil penalties for violations • Refer impeachable offenses to other state officials for subsequent action • Refer determinations warranting removal to the appropriate appointing authority. <p>Advisory opinions may be edited for confidentiality. Complaints and a determination by the commission are public record.</p>	<p>Proposed legislation provides:</p> <ul style="list-style-type: none"> • Creation of a standing ethics committee in each house • Duties <ul style="list-style-type: none"> --investigate complaints of ethics violations --issue findings --issue advisory opinions and statements of policy --make reports to the legislature and the public • Powers <ul style="list-style-type: none"> --initiate complaint alleging ethics violation --hold hearings --subpoena witnesses and documents --take testimony under oath --appoint special investigator when needed --issue a private reprimand --make recommendations to the legislative body for remedies. <p>Advisory opinions may be made public at any time by agreement of the committee and the person requesting the opinion.</p>	<ul style="list-style-type: none"> • 0 states have standing legislative ethics committees • No state has a joint legislative ethics committee • 28 states have external commissions, agencies or boards with responsibility for conflict of interest. It is uncertain what jurisdiction over the legislature all of the agencies have • All external agencies but three were created by statute.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Penalties	<p>Penalties for violation of reporting requirements include:</p> <ul style="list-style-type: none"> • Fines, imprisonment or both for false or misleading reports • Fines for late filings • Removal from office for failure to file • Barring a candidate from assuming office for failure to file. <p>Penalties for violation of conflict of interest requirements include:</p> <ul style="list-style-type: none"> • A misdemeanor punishable by fine and/or imprisonment. 	<p>Penalties would include:</p> <ul style="list-style-type: none"> • Impeachment • Removal from office • Fines not to exceed twice the economic benefit derived by the official or a fine of not more than \$2000 where no benefit is received • Contracts entered into in violation of these provisions are voidable by the state or a municipality. 	<p>Legislation provides the following penalties:</p> <ul style="list-style-type: none"> • Violations are subject to private written reprimand from the committee • Upon the recommendation from the committee the legislative body may act to censure or expel the member or may recommend that the attorney general prosecute under criminal statutes • Attorney general may bring a civil action to recover compensation for damages • Members of the committee or their staff found guilty of disclosing the identity of anyone requesting an advisory opinion may have a civil action brought against them for damages • Staff found guilty of violating these provisions are terminated from employment • Any agreement contracted illegally is voidable • It is a violation of law to take any punitive or retaliatory action against a person who has initiated or assisted in the investigation of an ethics violation subject to the specified penalties of this legislation. 	<p>Information is not available for all states, however:</p> <ul style="list-style-type: none"> • Maine provides that anyone convicted of filing a false charge of conflict of interest with the commission will be guilty of a Class E crime. • Maryland provides that the legislature may, by resolution, require compliance, issue a reprimand, or censure the guilty member • Wisconsin provides that the ethics board can make a recommendation to the district attorney in whose jurisdiction the violation occurred to commence criminal prosecution.
Other	<p>The statute allows a "qualified Alaska voter" to bring a civil action to enforce the provision.</p>	<p>The bill would allow legislators and other public officials to participate in an action or decision even in the case of a conflict if:</p> <ul style="list-style-type: none"> • Participation is necessary to constitute a quorum • The official has filed a disclosure statement 	<p>Other features of the proposed legislation are:</p> <ul style="list-style-type: none"> • Transferrable promotional benefits resulting from official business become the property of the state • When circumstances prevent the divestiture of property or contracts to meet the requirements of law, disclosure must be made and an advisory opinion requested of the committee 	<ul style="list-style-type: none"> • California defines financial interest as having an investment or interest of over \$1000, having any source of income over \$250 within 12 months or being employed as management in a business entity.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Other (continued)		<ul style="list-style-type: none"> The official announces the nature of the conflict when action is taken. <p>The attorney general is counsel to the commission, but the chief justice of the supreme court may appoint a special counsel if requested by the commission.</p>	<ul style="list-style-type: none"> Meetings of the committee are covered by the open meetings law, but any meeting which may tend to prejudice the reputation and character of any person may be closed. Privacy of anyone mentioned in a committee opinion will be protected. Specific definitions prescribed: household, business associate, compensation, personal financial interest. 	<ul style="list-style-type: none"> Kansas provides that legislators cannot be litigants in legal proceedings involving constitutionality of law enacted while he or she was a legislator. In Maryland legislators may participate in legislative action provided their vote is needed to obtain a quorum and they have submitted a signed statement identifying conflict; the commission is required to compile a list of business entities doing business with the states. Missouri and Oklahoma restrict the sale, rent or lease of property to the state. Montana legislators are prohibited from participating on legislation affecting a business competitive with their own. Nevada legislators are prohibited from suppressing documents and disclosing confidential information for money. All New York legislators must receive, read, and understand the ethics code.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Other (continued)				<ul style="list-style-type: none"> • South Carolina legislators must put assets in a blind trust to avoid conflicts of interest and may not appear before a board on rate- or price-fixing matters; statement declaring a conflict of interest delivered to presiding officer within 24 hours of action or decision is in compliance with the law. • The Wisconsin ethics board must report the identity of person seeking information from a statement of economic interests to the person who filed the information; no orders become effective until 20 days after it is issued.

Called Barber
2-24-83

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
MILTON EDWARD DANKWORTH,)
)
Defendant.) No. 1JU-S82-1705 CR
(C))

MEMORANDUM OF DECISION
AND ORDER RE MOTION TO
DISMISS INDICTMENT

Defendant has moved to dismiss both counts of a two count misdemeanor ^{1/} indictment on the grounds that neither count is supported by sufficient evidence as required by Crim. R. 6(q). Defendant's motion regarding Count II is combined with an attack on the admissibility of most if not all of the evidence presented to the grand jury in support of Count II. For the reasons set out below, ^{2/} the motion to dismiss as to Count I will be denied and the motion to dismiss as to Count II will be granted.

1. The State notes in passing that "the defendant is probably not entitled to a judicial review of the evidence presented to a grand jury which returned an indictment for misdemeanor offenses," State's Memorandum in Opposition to Motion to Dismiss Indictment [hereinafter "Opposition Memo"] 37. Nonetheless, it declines to rely on that point. Id.

2. Especially as to Count I, the reasons for the court's decision are not set out in great detail. There has been insufficient time to do so. Oral argument was held on February 4, 1983 and, at the request of counsel (who need to know whether to prepare for an estimated three-week trial with more than 50 witnesses), a decision was promised by February 11. In fact, this decision will issue on February 14. Every court day between argument and decision has been entirely consumed by other matters. Hence, review of the memoranda, authorities cited by counsel, transcript and exhibits has been relegated to other times, and the time remaining for the written decision necessarily has been quite brief.

1 (4) by participating in the subsequent purchase of the
2 camp for \$900,000, knowing at the time that the camp was still
3 available for purchase by the State directly from Alyeska; and

4 (5) by further promoting the sale of the camp to the State
5 for approximately \$3,000,000.

6 Defendant concedes that he was a public official at the
7 time in question and that his activities concerning his purchase
8 of and attempted sale of Isabel Camp were undertaken primarily
9 to obtain financial gain for himself. He vigorously disputes,
10 however, that he used his office in any way in undertaking these
11 activities. He analyzes, in close detail, each of the allegations
12 of use of office. The State responds with a similar analysis.

13 This court has reviewed the evidence. Drawing all reason-
14 able inferences in a light most favorable to the State, the
15 evidence would be adequate to persuade a reasonable minded person
16 that, if unexplained or uncontradicted, it would warrant a con-
17 viction of the defendant. That of course is not to say that there
18 are not other, reasonable inferences which might be drawn which
19 would be favorable to the defendant. Indeed, counsel for the
20 defendant have drawn such inferences and presented them in their
21 memoranda. But it is not for this court to decide which view of
22 the evidence is correct. It can only determine if, at this stage,
23 the evidence is sufficient to go forward. ^{4/} In the view of
24 this court, it is.

25
26
27
28
29 4. Specific examples of relevant and probative evidence
30 which support this conclusion are not provided, for the reason
31 that the trier of fact should not be potentially exposed to the
32 court's specific drawing of inferences -- this case has received
intensive pretrial publicity -- nor does the exposure of the
court's weighing process to counsel serve any apparently useful
purpose. Generally, the evidence and inference urged by the
State (Opposition Memo 5-21, 51-54) appear sufficient to defeat
the motion to dismiss.

1 Requirement of Consciousness of Wrongdoing

2 In his Reply to State's Opposition to Motion to Dismiss
3 [hereinafter Reply Memo], defendant raises the issue whether a
4 person, to be convicted, must be shown to have committed acts
5 proscribed by law with some consciousness of wrongdoing. (Reply
6 Memo 4) He argues forcefully that unless such a scienter re-
7 quirement is an element of the crime of conflict of interest, the
8 statute would be unconstitutionally void for vagueness.

9 The argument appears well-founded, and the State at oral
10 argument, in arguing that the record contained much evidence from
11 which the defendant's consciousness of guilt could be inferred,
12 appears to have accepted the defendant's thesis that a con-
13 sciousness of guilt must be shown. (Additionally, the State
14 argues that this scienter requirement is satisfied by a showing
15 that a conflict of interest defendant used his office for the
16 primary purpose of realizing personal gain.) At any event,
17 taking all reasonable inferences arising from the evidence in a
18 light most favorable to the State, there is sufficient evidence
19 to conclude that the defendant acted with a consciousness of
20 wrongdoing. Again, this conclusion merely tests the sufficiency
21 of the evidence, not its final effect on the trier of fact.

22 COUNT II

23 Defendant has moved for dismissal of Count II of the
24 indictment on alternate grounds. He argues first that the
25 evidence presented to the grand jury was insufficient as a
26 matter of law to support the indictment. Alternatively, he
27 contends that "the very allegations of Count (II) of the indict-
28 ment, together with all of the evidence put forth to prove
29 these allegations(,) are barred by the speech (or) debate clause".
30 (Defendant's Memo 58, emphasis in original) For the reasons
31 discussed below, this court concludes that what both parties
32 refer to as the "speech or debate clause" of the Alaska

1 Constitution prohibits prosecution of Count II. For this reason,
2 Count II must be dismissed.

3 Legislator Immunity Under Art. II, § 6

4 Art. II, § 6 of the Alaska Constitution reads in relevant
5 part as follows:

6 Legislators may not be held to answer
7 before any other tribunal for any statement
8 made in the exercise of their legislative
duties while the legislature is in session.

9 The parties agree that this is a case of first impression ^{5/} in
10 Alaska. (Defendant's Memo 40, Opposition Memo 63) They there-
11 fore frame their arguments around federal decisions outlining
12 the contours of the federal constitution's "speech or debate
13 clause" -- the defendant arguing that the immunity resulting
14 from the Alaska Constitution should be identical to the immunity
15 provided by the federal constitution, while the state argues
16 that the Alaska Constitution provides a much narrower grant of
17 immunity.

18 The federal constitutional provision is similar but by no
19 means identical to the Alaska provision set out above. It reads:

20 [F]or any speech or debate in either house,
21 [members of Congress] shall not be questioned
in any other place.

22 U. S. Const., Art. I, § 7. The most striking difference between
23 the two provisions is the activity which is protected: Alaska
24 protects "any statement made in the exercise of . . .

25
26
27 5. The term "first impression" is used in the sense that
28 the Alaska Supreme Court has not had the application of Art. II,
29 § 6 before it in the context of a criminal case. The only
30 prior judicial expression on Art II, § 6 located by the parties
31 was the set of instructions to the grand jury in State v.
32 Hohman, No. 1JU-61-464 CR, given by Judge Thomas B. Stewart. The
parties vigorously dispute the proper interpretation of those
instructions and their application to this case. No appellate
decision, much less a trial court decision, concerning Art. II,
§ 6 has been brought to this court's attention.

1 legislative duties," while the federal provision, textually at
2 least, ^{6/} covers only "speech or debate in either house."

3 Although the parties have not argued it, this difference
4 appears to be important. The development of federal law under
5 the federal speech or debate clause has largely been the process
6 of defining the concept of "legislative acts" so as to accommodate
7 the Supreme Court's concern that the literal statement of the
8 immunity found in the text was too narrow to serve the great
9 historical purposes of the framers. While that development may
10 well support the result reached herein (see the defendant's
11 arguments at Defendant's Memo 31-40, Reply Memo 18-19 and the
12 analysis below at 15-19), it is not strictly necessary to the
13 interpretation of the Alaska constitutional provision which
14 protects "any statement made in the exercise of . . . legislative
15 duties." It seems beyond question that the proper function of
16 this court is to examine the acts charged in the indictment and
17 the evidence of those acts, and determine if the defendant is,
18 by virtue of this prosecution, being held to answer for any
19 statement made in the exercise of his legislative duties. If
20 the answer is in the affirmative, Count II cannot stand.

21 The indictment charges, in Count II, that the defendant
22 used his position for the primary purpose of obtaining financial
23 gain for himself "by taking action to assure that an appropria-
24 tion source was enacted during the 1982 session of the Alaska
25 State Legislature" from which a pipeline camp owned by defendant
26 could be purchased by the State of Alaska. That is, the action
27 which is the subject of the indictment is that of taking steps
28

29
30 6. It is true that the federal cases have expanded the
31 immunity to cover acts necessary to the legislative function.
32 But, as the U.S. Supreme Court has noted, and as the State
emphasizes, "The heart of the Clause is speech or debate in
either House." Hutchinson v. Proxmire, 443 U.S. 111, 126, 61
L. Ed. 2d 411, 426 (1979), quoting Gravel v. United States, 408
U.S. 606, 625, 33 L. Ed. 2d 583, 602 (1972).

1 to create a legislative appropriation (for a particular, and
2 allegedly unlawful, purpose).

3 The evidence of those acts largely consisted of telephone
4 calls. One was made by the defendant to Jerry Reinwand, executive
5 assistant to the governor, concerning language in the governor's
6 budget. The others were with William Hudson, Commissioner of
7 the Department of Administration, concerning language in the
8 budget allowing for the purchase of a pipeline camp and con-
9 cerning alternate sources of funding for other Department of
10 Administration expenses (which sources might free other
11 Department of Administration appropriations to purchase a pipe-
12 line camp).

13 In comparing the indictment and the evidence under it with
14 the provisions of Art. II, § 6, the first inquiry is whether
15 the act of assuring (or creating) a funding source is a legis-
16 lative duty. The answer is yes. Art. IX, § 13 of the Alaska
17 Constitution provides in relevant part:

18 No money shall be withdrawn from the
19 treasury except in accordance with ap-
20 propriations made by law.

21 It has been said that the power to control the expenditure of
22 state monies is the supreme legislative power. A classic state-
23 ment is found in Colbert v. State, 39 So. 65, 66 (Miss. 1905):

24 Under all constitutional governments recog-
25 nizing three distinct and independent
26 magistracies, the control of the purse
27 strings of government is a legislative
28 function. Indeed, it is the supreme
29 legislative prerogative, indispensable to
30 the independence and integrity of the
31 Legislature, and not to be surrendered or
32 bridged, save by the Constitution itself,
without disturbing the balance of this
system and endangering the liberties of the
people. The right of the Legislature to
. . . determine . . . the objects upon
which [public revenue] shall be expended
. . . is firmly and inexpugnably estab-
lished in our political system.

1 No one could seriously contend that activity related to the
2 creation of the budget is not legislative activity.

3 Not only was the formulation of the budget clearly legis-
4 lative business, but the defendant's role in the process was
5 central: He was co-chair of the Finance Committee in the Senate.
6 While his role as Finance co-chair is not critical to this
7 analysis, it serves to reinforce the conclusion that his par-
8 ticipation in putting together the budget was a part of his
9 legislative duties.

10 The next inquiry is whether any statements of the defendant
11 which were made in the performance of these duties are at
12 issue. There is no question of this. At oral argument counsel
13 for the State was asked what evidence would remain under Count
14 II if the defendant's interpretation of the Alaska "speech or
15 debate clause" were applied. In a supplemental pleading filed
16 after the argument, the State has conceded that "if . . .
17 evidence of the defendant's phone conversations with Jerry
18 Reinwand and William Hudson is suppressed, there will not be
19 sufficient evidence to uphold Count II of the indictment."
20 (State Supplemental 3, emphasis in original)

21 The next inquiry is whether this prosecution is tantamount
22 to holding legislators "to answer before any other tribunal".
23 The answer is clearly yes. A grand jury and a court are "other
24 tribunal[s]" as the Alaska Constitution uses that term. Every
25 U.S. Supreme Court case construing similar language in the federal
26 speech or debate clause, ("[members of Congress] shall not be
27 questioned in any other place") has dealt either with a grand
28 jury proceeding, e.g., Gravel v. United States, *supra*, 408 U.S.
29 at 615, 33 L. Ed. 2d at 597, [grand jury subpoena at issue, held:
30 Senator protected from criminal or civil liability or from
31 questioning "elsewhere than in the Senate"], or a trial, e.g.,
32 United States v. Johnson, 393 U.S. 169, 173, 15 L. Ed. 2d 661,

1 684 (1966) [conviction at issue, held: certain evidence utilized
2 at trial barred by speech or debate clause]. Likewise, it is
3 clear that the defendant legislator is "held to answer" by the
4 instigation of charges (and perhaps by the mere investigation by
5 the grand jury), and that there need not literally be the putting
6 of questions to him or her.

7
8 The final inquiry is whether the constitutional injunction
9 against holding legislators to answer in any other tribunal may
10 have been (or may be) waived in this case. The State offers two
11 theories of waiver. Neither is persuasive.

12 The State first argues that AS 39.50.090(a) waives legis-
13 lative immunity. The argument is based on a similar argument
14 made by the government in United States v. Helstoski, 442 U.S.
15 477, 61 L. Ed. 2d 12 (1979). The defendant there was a congress-
16 man accused of bribery, a violation of 18 U.S.C. § 201. The
17 Court set out, and dispatched, the government's argument as
18 follows:

19 The Government also argues that there
20 has been a sort of institutional waiver by
21 Congress in enacting § 201. According to
22 the Government, § 201 represents a collective
23 decision to enlist the aid of the Executive
24 Branch and the courts in the exercise of
25 Congress' powers under Art. I, § 5 to discipline
26 its Members. This Court has twice declined
27 to decide whether a Congressman could, con-
28 sistent with the Clause, be prosecuted for a
29 legislative act as such, provided the prosecution
30 were "founded upon a narrowly drawn statute
31 passed by Congress in the exercise of its
32 legislative power to regulate the conduct of
33 its members." Johnson, supra, at 185, 15 L
34 Ed 2d 681, 86 S Ct 749. United States v.
35 Brewster, 408 US, at 529 n 18, 33 L Ed 2d 507,
36 92 S Ct 2531. We see no occasion to resolve
37 that important question. We hold only that
38 § 201 does not amount to a congressional
39 waiver of the protection of the Clause for
40 individual Members.

41 Id. at 492, 61 L. Ed. 2d at 25. Significantly, the Court noted
42 that there was a question whether the Congress had the power at
all, even if acting through a "narrowly drawn statute", to strip

1 members of the protection of the speech or debate clause. It
2 quoted from Coffin v. Coffin, 4 Mass. 1, 27 (1808), to the effect
3 that "the privilege . . . is not so much the privilege of the
4 house . . . as of each individual member composing it, who is
5 entitled to this privilege even against the declared will of the
6 house." Id. The Court concluded that even "[a]ssuming [for the
7 purpose of argument] that the Congress could constitutionally
8 waive the protection of the Clause for individual Members, such
9 waiver could be shown only by an explicit and unequivocal
10 expression." Id. at 493, 61 L. Ed. 2d at 26 (emphasis added).
11 The statute in the instant case is no stronger for the prosecution
12 here than were the federal statutes involved in Helstoski,
13 Brewster and Johnson. AS 39.50.090(a) contains no explicit and
14 unequivocal waiver of Art. II, § 6 of the Alaska Constitution
15 (again assuming for the sake of argument that the Legislature
16 had the power to do that). Indeed, it contains no waiver
17 language whatsoever. It is clearly insufficient to accomplish
18 the "institutional waiver" which the State urges this court to
19 find. ^{7/}

20 The State next argues that the defendant waived his pro-
21 tection under the Alaska speech or debate clause by voluntarily
22 testifying before the grand jury. ^{8/} The defendant responds
23

24
25 7. The State's primary argument in regard to its theory
26 that AS 39.50.090(a) waives speech or debate clause protection
27 is based on its perception of what is good policy. (Opposition
28 Memo 73-78) Thus, the State argues extensively that there are
29 sound reasons not to apply legislative immunity to criminal
30 cases, that at the least the level of immunity protection should
31 be less in criminal than in civil cases, that the need for
32 honest government requires that speech or debate immunity be
33 limited, etc. While these arguments may have merit, this court
34 is not free to construe the Alaska Constitution according to what
35 it believes to be good policy. It must read and apply the
36 words of that document in an attempt to carry out the intent
37 of its authors.

38 8. The State contends that this waiver makes admissible
39 the defendant's grand jury testimony and any other testimony
40 concerning it, though the State concedes that the waiver would
41 not extend to trial.

1 that, under the applicable law, no waiver occurred here.

2 The facts in this regard were as follows: The defendant
3 voluntarily appeared before the grand jury, was given a "target
4 warning", ^{9/} and was represented by counsel. He was not

5
6 9. The warning read as follows:

7 GRAND JURY TARGET WARNING

8 To: M. E. Dankworth

9 1. You are and have been the subject
10 of an investigation conducted by the State
11 of Alaska and by a grand jury sitting in
12 Juneau, Alaska, investigating allegations
13 of criminal misconduct in connection with
14 the acquisition of the Isabel Pass Pipeline
15 Camp by a business entity in which you are
16 a principal and efforts to sell the camp
17 to the State of Alaska. There is at this
18 time probable cause to believe that your
19 role in the acquisition of the camp and
20 in efforts to sell it to the State of
21 Alaska constituted a criminal offense
22 and there exists the possibility at the
23 conclusion of the Grand Jury proceedings
24 that sufficient evidence may have been
25 presented upon which criminal charges
26 could be returned.

27 2. In addition, in accordance with
28 prior communications made to your attorney,
29 you should be aware that the Grand Jury
30 may consider charges other than that in-
31 cluded within the conflict of interest
32 provision contained in AS 39.50.090(a).
Evidence before the Grand Jury may support
other criminal charges, including felony
offenses.

3. You have agreed to appear and
testify before the Grand Jury without a
subpoena upon the conditions that you are
afforded an opportunity at the conclusion
of your testimony to give a brief statement
to the Grand Jury and that your attorney
be afforded an opportunity after the
presentation of evidence to review that
evidence with prosecuting attorneys and to
set forth reasons why an indictment should
not be returned prior to the final presentation
of this matter to the Grand Jury.

4. You have the right to refuse to
answer any question put to you before the
grand jury that might incriminate you.
(continued)

1 advised of his privilege under the speech or debate clause, and
2 he did not make any statement waiving the protection of that
3 provision. Under these facts no waiver has been shown.

4 As noted by the defendant, the situation in United States
5 v. Helstoski, supra, was much stronger for the government, yet
6 the court there rejected the government's claim of waiver. In
7 Helstoski the defendant congressman had appeared voluntarily ten
8 times before the grand jury, each time being warned of his
9 fifth amendment privilege against self-incrimination. At his
10 ninth appearance, the congressman for the first time mentioned
11 his speech or debate clause privilege and declined to answer a
12

13 9. (continued)

14 5. You have the right to be represented
15 by an attorney before the grand jury, and
16 while an attorney may not enter the grand
17 jury room with you, he may be present im-
18 mediately outside the grand jury room and
19 you have the right to interrupt the pro-
20 ceedings at any point in time to confer
21 with your attorney and obtain his advice.

22 6. If you cannot afford an attorney
23 to represent you, you may apply to the
24 Superior Court of the State of Alaska to
25 request the court to appoint an attorney
26 to represent you. If the court finds you
27 cannot afford an attorney it will appoint
28 an attorney for you.

29 I have read the above Grand Jury
30 Target Warning and understand the rights
31 set out therein.

32 DATED at Juneau, Alaska, this 26th day
of October, 1982.

/s/ M. E. Dankworth

/s/ Arvum W. Cross
Witness
Attorney for M. E. Dankworth
Oct. 26, 1982

1 question on the basis of it. The trial court found, however,
2 that he was aware of the privilege from before his first
3 appearance: He had recently concluded litigation in which he had
4 relied on the speech or debate clause, and the attorney who
5 represented him in that case was the same attorney who represented
6 him before the grand jury. Nonetheless, the Supreme Court held
7 that "waiver can be found only after explicit and unequivocal
8 renunciation of the protection." ^{10/} 442 U.S. at 491, 61 L. Ed.
9 24 at 24. Finding no such renunciation, it rejected the waiver
10 theory. In the instant case, the defendant did not even talk
11 about his speech or debate privilege, and there is no showing
12 that he was even aware of it. Certainly there was no "explicit
13 and unequivocal renunciation" of it. Under these circumstances,
14 there can be no finding that the defendant waived his protection
15 under the Alaska Constitution.

16 The conclusion of this analysis of the scope and effect of
17 Art. II, § 6 of the Alaska Constitution is that it bars prose-
18 cution of Count II of the indictment, both because the indictment
19 itself attempts to hold the defendant to answer before a court
20 for statements made in the exercise of his legislative duties
21 and because the evidence presented to the grand jury in support
22 of the indictment is barred by Art. II, § 6. Because the
23 constitutional language seems clear on its face, it is not
24 strictly necessary to address the following issues. However,
25 both because the parties disputed them at length and because they
26 serve to lend additional support to this court's conclusion,
27

28
29 10. Significantly, the Court found that the standard for
30 waiver of speech or debate clause protection is even higher than
31 the ordinary standard for determining waiver of a constitutional
32 right set out in Johnson v. Zerbst, 304 U.S. 458, 464, 82 L. Ed.
2d 1461, 1464 (1938): "intentional relinquishment or abandonment
of a known right or privilege." 442 U.S. at 491, 61 L. Ed. 2d at
24. This is of significance because this court does not believe
even the Johnson v. Zerbst standard could be satisfied on the
facts of this case.

1 they are considered here, at least briefly. They include: (1)
2 the significance of drafting changes made at the Constitutional
3 Convention concerning Art. II, § 6 and comments by the convention
4 delegates concerning that section; (2) the instructions given to
5 the grand jury in State v. Hohman, 1JU-81-464 CR; and (3) federal
6 case law developed under the speech or debate clause of the
7 federal constitution.

8 The Alaska Constitutional Convention. The State places great
9 significance on the fact that Art. II, § 6 originally provided
10 that no legislator should be held to answer "for any statement
11 made or action taken" in the exercise of his legislative
12 functions. The underlined language was later deleted, and the
13 State urges that this deletion suggests a narrowing of the pro-
14 tection. Whether such an inference is properly drawn, it is not
15 important in the context of this case. The defendant does not
16 seek immunity for "actions" he has taken, but for statements
17 which he has made.

18 The State also argues that the Alaska provision "is narrower
19 because its protection applies only 'while the legislature is in
20 session.'" (Opposition Memo 62) Again, even if the inference
21 is warranted, it is not relevant here: All of the statements of
22 the defendant which concern Count II occurred while the legis-
23 lature was in session.

24 The State relies on a statement made by Delegate McCutcheon,
25 who was the chair of the Committee on the Legislative Branch.
26 Delegate McCutcheon said:

27 There is also an immunity clause which provides
28 a legislator will not be held liable for any-
29 thing he says during a session.

30 Alaska Constitutional Convention Proceedings 1099. The State
31 reads this comment (and one made concerning the privilege from
32 arrest, which is not relevant to this case) as suggesting that
"the protection in Alaska was intended to apply only to the type

1 of conduct that the United States Supreme Court refers to as
2 'pure speech or debate.'" (Opposition Memo 61) This court can
3 draw no such conclusion from the discussion referred to. "[A]ny-
4 thing [a legislator] says" is clearly broader than "pure speech
5 or debate". There is simply no basis for concluding, as the
6 State attempts to do, that the history of the Alaska Constitutional
7 Convention supports the conclusion that the Alaska constitutional
8 protection for legislators is as narrow as the State would find
9 it.

10 Instructions Given in State v. Hohman. The State contends
11 that the instructions given by Judge Thomas B. Stewart in
12 State v. Hohman, supra, support its view of the proper scope
13 and effect to be given to Art. II, § 6 of the Alaska Constitution
14 This court cannot agree, and adopts the analysis of the defendant
15 concerning the Hohman instructions, which is found at Reply 22-23

16 Federal Cases Interpreting the Federal Constitution. At
17 the outset, it should be remembered that there are relatively
18 few United States Supreme Court cases interpreting the speech or
19 debate clause of the federal constitution. ("The Speech or
20 Debate Clause has been directly passed on by the Court relatively
21 few times in 190 years." Hutchinson v. Proxmire, supra n.6, 443
22 U.S. at 124, 61 L. Ed. 2d at 424.) There are, of course, an
23 almost limitless number of factual situations in which the speech
24 or debate clause could be implicated. Therefore, there is a
25 substantial amount of extrapolation required in attempting to
26 find guidance from the federal cases. With this caveat in mind,
27 certain general principles can be drawn from the cases.

28 The first is that, contrary to the State's assertion that
29 the clause properly has more to do with protecting legislators
30 against civ: liabilities, the great historical purpose of the
31 speech or debate clause was to protect legislators against the
32 executive and the judiciary:

1 There is little doubt that the instigation
2 of criminal charges against critical or
3 disfavored legislators by the executive in
4 a judicial forum was the chief fear prompting
5 the long struggle for parliamentary privilege
6 in England and, in the context of the American
7 system of separation of powers, is the pre-
8 dominate thrust of the Speech or Debate Clause.

9 United States v. Johnson, 383 U.S. 169, 182, 15 L. Ed. 2d 681,
10 689 (1966). It is true that the Court retreated slightly from
11 this position in United States v. Brewster, 408 U.S. 501, 508,
12 33 L. Ed. 2d 507, 515-16 (1972), when it noted that "the English
13 system differs from ours in that the Parliament is the supreme
14 authority not a coordinate branch", and suggesting that "our
15 history does not reflect a catalog of abuses at the hand of the
16 Executive that gave rise to the privilege in England." None-
17 theless, it cannot be denied that the primary purpose of the
18 clause was "to prevent intimidation by the executive and account-
19 ability before a possibly hostile judiciary". Johnson, supra,
20 383 U.S. at 181.

21 From the earliest decisions, the scope of the privilege has
22 been found to be broader than speech or debate on the floor of
23 the Congress. Kilbourn v. Thompson, 13 Otto. 168, 26 L. Ed. 377
24 (1881), quoted approvingly from Coffin v. Coffin, 4 Mass. 1 (1808),
25 which it referred to as "the most authoritative case in this
26 country on the construction of the provision". 26 L. Ed. at 391.
27 In Coffin, Chief Justice Parsons stated:

28 [T]he article ought not to be construed
29 strictly, but liberally, that the full
30 design of it may be answered. I will not
31 confine it to delivering an opinion, uttering
32 a speech, or haranguing in debate, but will
33 extend it to the giving of a vote, to the
34 making of a written report, and to every other
35 act resulting from the nature and the
36 execution of the office. And I would define
37 the article as securing to every member
38 exemption from prosecution for everything
39 said or done by him as a representative
40 in the exercise of the functions of that
41 office, without inquiring whether the
42 exercise was regular, according to the
43 rules of the House, or irregular and against

1 those rules.
2 4 Mass. 1, 27 (emphasis added). After quoting extensively from
3 Coffin, the Supreme Court in Kilbourn concluded that "[i]t would
4 be a narrow view of the constitutional provision to limit it to
5 words spoken in debate. The reason of the rule is as forceable
6 in its application to [various actions]. In short, to things
7 generally done in a session of the House by one of its members
8 in relation to the business before it." 26 L. Ed. at 391-92.

9 Later cases have refined the standard, but have not retreated
10 from it. Thus, in Tenney v. Brandhove, 341 U.S. 367, 95 L. Ed.
11 1019 (1950) the Court said, against the argument that the state
12 legislative committee involved was acting improperly, that "[t]he
13 claim of an unworthy purpose does not destroy the privilege."
14 341 U.S. at 377, 95 L. Ed. at 1027. The Court in Tenney
15 emphasized that a court may not "inquire into the motives of
16 legislators", a holding which has remained unquestioned in this
17 country from earliest times.

18 In United States v. Johnson, supra, the Court affirmed the
19 reversal of a conspiracy conviction of a member of Congress,
20 because the prosecution had inquired into the defendant's motive
21 in making a particular speech:

22 The essence of such a charge in this context
23 is that the Congressman's conduct was im-
24 properly motivated, and as will appear that
25 is precisely what the Speech or Debate Clause
26 generally forecloses from executive and
27 judicial inquiry.

28 Id. at 180, 15 L. Ed. 2d at 688.

29 In United States v. Brewster, supra, the Court denied a
30 speech or debate clause challenge to a bribery indictment. Its
31 reasoning, while perhaps not totally consonant with its earlier
32 decisions, lends no support to the State's position here. The
33 Court distinguished Johnson on the ground that it held that the
34 privilege "protected Members from inquiry into legislative acts

1 or the motivation for actual performance of legislative acts",
2 408 U.S. at 509, 33 L. Ed. 2d at 516, whereas the taking (or
3 agreeing to take) money for a promise to act in a certain way is
4 not a legislative act. Moreover, since the illegal conduct is
5 shown by proof of taking or agreeing to take money for a promise
6 to act in a certain way, there is no need for the government to
7 show that the defendant actually fulfilled the alleged illegal
8 bargain. Thus, there is no need to inquire into any legislative
9 act or the motivation for any legislative act. While the
10 exception carved out by Brewster was vigorously disputed by the
11 three dissenters in that case, it does not affect the analysis
12 here. The case does, however, provide another definition for
13 "legislative act", which is of assistance in the instant case:

14 A legislative act has consistently been
15 defined as an act generally done in Congress
16 in relation to the business before it. In
17 sum the Speech or Debate Clause prohibits
18 inquiry only into those things generally
19 said or done in the house or the senate in
20 the performance of official duties and into
21 the motivation for those acts.

22 408 U.S. at 512, 33 L. Ed. 2d at 517-18.

23 Gravel v. United States, 408 U.S. 606, 33 L. Ed. 2d 583
24 (1972) was decided the same day as Brewster. It concerns
25 primarily whether a legislative aide is protected by the speech
26 or debate clause. However, it contains the following language
27 describing legislative acts:

28 Legislative acts are not all-encompassing.
29 The heart of the Clause is speech or debate
30 in either House. Insofar as the Clause is
31 construed to reach other matters, they
32 must be an integral part of the deliberative
33 and communicative processes by which Members
34 participate in committee and House proceedings
35 with respect to the consideration and passage
36 or rejection of proposed legislation or with
37 respect to other matters which the Constitution
38 places within the jurisdiction of either House.

39 408 U.S. at 625, 33 L. Ed. at 602.

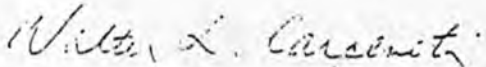
40 As noted above, this court views the Alaska "speech or debate

1 clause" as being different from and, in regard to the scope of
2 the acts protected, broader than its federal counterpart. None-
3 theless, review of the approach which the United States Supreme
4 Court has taken to interpreting the federal speech or debate
5 clause is instructive. Under that general approach, and under
6 the specific definitions of "legislative acts" which the Court
7 has established, it appears that the actions of the defendant in
8 the instant case would be protected.

9 CONCLUSION

10 For the reasons discussed above, defendant's motion to
11 dismiss Count I is denied, and defendant's motion to dismiss
12 Count II is granted.

13 DONE at Juneau, Alaska, this 14th day of February, 1983.

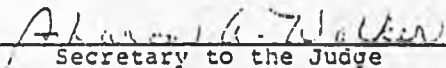
14
15 

16 Walter L. Carpeneti
17 Walter L. Carpeneti
18 Superior Court Judge

19 CERTIFICATE

20 This is to certify that on the above date I provided a copy
21 of the above Memorandum of Decision and Order to:

22 Daniel W. Hickey, Esq.
23 Patrick J. Gullufsen, Esq.
24 Dean J. Guaneli, Esq.
25 Avrum M. Gross, Esq.
26 Susan A. Burke, Esq.
27 Clifford J. Groh, Esq.

28
29 
30 Alexander A. Walker
31 Secretary to the Judge
32

STATE OF ALASKA
THE LEGISLATURE

POUCH 7 - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-5600


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1983

SUBJECT: Waiver of rights under the Speech and Debate Clause, Article II, section 6, Alaska Constitution (Work Order No. 13-0981)

TO: Representative Don Clocksin

FROM: Richard A. Bradley 
Legislative Counsel

You have requested an analysis of Judge Carpeneti's February 14, 1983, decision in State v. Dankworth. Your request suggests that Judge Carpeneti ruled that a legislator is immune from prosecution under the conflict of interest statute. You suggest that Judge Carpeneti implied that a narrowly defined waiver might be permissible.

You ask that I draft such a waiver and predict its constitutionality. A bill is enclosed that is responsive to this request.

The area of the opinion that concerns you is apparently derived from that portion of the opinion, at page 9, that addresses the question whether AS 39.50.090(a) waives legislative immunity under the state equivalent of the Speech and Debate Clause of the United States Constitution: Article II, section 6 of the Alaska Constitution:

Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. * * *

That argument was made by the state in the Dankworth case and is based on a similar consideration argued in United States v. Helstoski, 442 U.S. 477 (1979).

In the Helstoski case, the argument was made that a "narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members" could

March 31, 1983

constitute a waiver by Congress of the immunity of a member of the Congress from being held to answer in any other tribunal.

The Helstoski case accordingly merits analysis. Mr. Helstoski was a member of Congress. He was investigated by a grand jury on his introduction of numerous private immigration bills, allegedly for compensation. During the investigation, he voluntarily cooperated with the grand jury, appearing before it on ten occasions. Initially, he made no claim of privilege under the Fifth Amendment but eventually claimed the privileges of it and of the Speech and Debate Clause.

Congressman Helstoski was indicted on the charge of accepting money for the performance of official acts; he sought dismissal of the indictment on the ground that it violated the Speech and Debate Clause.

The District Court denied the motion to dismiss but held that the Government was precluded from introducing "evidence of a past legislative act" in any form.

In taking its appeal to the Court of Appeals, the Government argued that the Speech and Debate Clause does not prohibit the introduction of all evidence relating to legislative acts. It conceded that, absent a waiver, it could not introduce evidence of the bills or Acts themselves. And it used several theories to rationalize its requested use of evidence of discussions and correspondence which relate or describe legislative acts if the discussions or correspondence did not themselves occur during the legislative process (none of which the court accepted).

But it is also argued that "by enacting 18 U.S.C. 201 (1966), Congress has shared its authority with the Executive and the Judiciary by express delegation authorizing the indictment and trial of Members who violate that section -- in short an institutional decision to waive the privilege of the Clause." 47 U.S.L.W. 4713.

The U. S. Court of Appeals affirmed the evidentiary holding, stating that legislative acts could not be introduced to show motive, since otherwise the protection of the Speech and Debate Clause would be negated and that Mr. Helstoski has not waived the protection of the Clause during the grand

jury proceedings. United States v. Helstoski, 576 F.2d 511 (3d Cir. 1978).

The United States Supreme Court affirmed. United States v. Helstoski, 442 U.S. 478, 47 U.S.L.W. 4710 (1979).

The Court stated that its holdings in United States v. Johnson, 383 U.S. 169 (1966) and United States v. Brewster, 408 U.S. 501 (1972) "leave no doubt that evidence of a legislative act of a Member may not be introduced by the Government in a prosecution under sec. 201." 47 U.S.L.W. 4713. It explained its decision in the Brewster case:

Johnson thus stands as a unanimous holding that a Member of Congress may be prosecuted under a criminal statute provided that the Government's case does not rely on legislative acts or the motivation for legislative acts. A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it. In sum, the Speech and Debate Clause prohibits inquiry only into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts. 408 U.S., at 512.

The Government argued that the interpretation of the Court of Appeals would make the prosecution of members of Congress more difficult; the Court agreed. "Indeed, the Speech and Debate Clause was designed to preclude prosecution of Members for legislative acts." 47 U.S.L.W. 4713. But, the Court said, "Promises by a Member to perform an act in the future are not legislative acts. Brewster makes clear that the compact may be shown without impinging on the legislative function." 47 U.S.L.W. at 4713.

With this as background, it is possible to reach your question: Can a narrowly drafted statute constitute "a sort of institutional waiver" by the legislative branch of the immunity of an individual member of the legislature?

In my view, the portion of Helstoski not quoted by Judge Carpeneti forces a negative response to your question; Judge Carpeneti reaches these issues at page 10 of his opinion with intimations of a similar conclusion.

Some measurable quotes from the Helstoski opinion are necessary to make these points.

March 31, 1983

In both the Johnson and the Brewster opinions, the Court declined an invitation to decide whether "a Congressman could, consistent with the [Speech and Debate] Clause, be prosecuted for a legislative act as such, provided the prosecution were 'founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members'. * * * We see no occasion to resolve that important question. We hold only that sec. 201 does not amount to a congressional waiver of the protection of the Clause for individual members."

But the Court then went on, presumably in dicta, to suggest its views on that question.

"We recognize that an argument can be made from precedent and history that Congress, as a body, should not be free to strip individual Members of the protection guaranteed by the Clause from being 'questioned' by the executive in the courts. The controversy over the Alien and Sedition Acts reminds us how one political party in control of both the Legislative and Executive Branches sought to use the courts to destroy political opponents.

"The Supreme Judicial Court of Massachusetts noted in Coffin, 'the privilege secured . . . is not so much the privilege of the House as an organized body, as of each individual member composing it, who is entitled to this privilege, even against the declared will of the house.' 4 Mass., at 27 (emphasis added [in original]). In a similar vein in Brewster we stated:

"The immunities of the Speech or Debate Clause were not written into the Constitution simply for the private or personal benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators.' 408 U.S., at 507 (emphasis added [in original]).

"See also id., at 524. We perceive no reason to undertake, in this case, consideration of the Clause in terms of separating the Members' rights from the rights of the body.

"Assuming, arguendo, that the Congress could constitutionally waive the protection of the Clause for individual members, such waiver could be shown only by an

explicit and unequivocal expression. There is no evidence of such a waiver in the language or the legislative history of sec. 201 or any of its predecessors. [Bracketed materials added]."

As I suggested, these quotes would undoubtedly be characterized as dicta either by the Court or a commentator. But even agreeing that it is dicta and therefore not controlling in future cases before the Court, it seems that the Court has signalled adequate reasons founded in constitutional policy for concluding that such a waiver by a legislature would probably violate the privileges of an individual member of that legislature to be free from the pressures of a legislative majority or of executive pressures exerted through the courts.

I take the Court's emphasis on "explicit and unequivocal language" to mean simply that in any such statute, the statute itself must state that the legislature does not intend that the Speech and Debate Clause be a defense to a charge under the statute and, perhaps, that the legislature intends the statute to stand as a waiver by the legislature of those rights.

But, as suggested, even in such premises, I believe that the privileges of the individual members of the legislature would be protected.

You will find a bill attached to this memorandum.

Because the language of AS 39.50.090 is so awkward and also because it will need revision the next time AS 39 is printed because of the policies stated in Chapter 58, SLA 1982, I considered it appropriate to put these changes before the legislature for its ratification, particularly because the provisions of this section affect members of the legislature so intimately. Except for the change to the penalty provisions in moving to the more standard penalty style (the imprisonment possible is unchanged; the fine moves from a maximum \$2,000 to a maximum \$5,000), the provisions of sec. 90 are substantively unchanged. And these provisions may be deleted if you believe that they confuse the basic thrust of your bill.

The material responsive to your request appears in new sec. 39.50.091.

Representative Don Clocksin

Page 6

March 31, 1983

If I may be of further assistance, please advise.

RAB:ljb

Enclosure

12/045

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

BILL SHEFFIELD, GOVERNOR

REPLY TO:

- 610 C STREET, SUITE 211
ANCHORAGE, ALASKA 99501-3598
(907) 276-4176
- JUNEAU BRANCH OFFICE
POUCH CO
JUNEAU, ALASKA 99811-0222
(907) 465-4864

April 24, 1983

The Honorable Vic Fischer, Chairman
Alaska State Senate
State Affairs Committee
Pouch V
Juneau, AK 99811

Dear Senator Fischer:

As I indicated Wednesday evening at the teleconference, I expect that the Commission's comments on SB 257 will be largely confined to those specific sections which involve the APOC; I understand you discussed Section 24.60.050 on disclosure of loan applications in committee on Thursday and indications were that you anticipated the APOC would develop an appropriate form for deleting confidential information and monetary amounts from the loan applications prior to including them in the AS 39.50 files. That perspective on intent started a small chain reaction as you'll see below.

While I appreciate the expression of confidence in our ability to develop a "good" form, I would hope for a good understanding of Legislative intent about the items to be deleted if the Commission is to do the deleting. In addition, I tried to do a little research on Friday and was told that there are over 100 loan programs involving state funds (that for \$250 one can buy a private publication which summarizes those programs!) and that pinpointing whether a given program is "other than those described in (a) of this section...." may be moot because lending laws include the concept of "prudent lending" in which eligibility standards and criteria are always necessary. It appears that the lending agencies will decide which applications must be sent to the Commission, but the Commission may find itself receiving records (subject to provisions of confidentiality) for which it has no need and which may require special handling -- unlike all the existing disclosure material.

Loans or loan guarantees are already required to be included on Conflict of Interest Statements by AS 39.50.030(6), but in cases where banks are administering a program of loans based on state funding, often only the name of the bank appears. If your desire is to make that requirement include specific reference to the state funding in the case of other than subsection (a) loans that should be easy enough. Beyond that, if the summary of Thursday's Committee meeting I had was adequate, it sounded like you would not wish to include the purpose of the loan, the amount, and the interest rate as well. (Bill White of the Anchorage Times did an article last fall on legislative loan-holders which you may recall, listing that kind of information based on a study by the House Research Agency.)

Application to a state loan program appears to be the only additional information that SB 257 would include in a AS 39.50 file. Since the present requirement in AS 39.50.030(6) specifies only any loan or loan guarantee made to the reporting official, "...his spouse or dependent child of his or nondependent child of his who is living with him...", loans to businesses other than sole proprietorships are not required to be listed and it appears that Sec. 24.60.050 does not change that situation.

Those items seem to me to cover the "disclosure" aspect of section 24.60.050; my apologies if these are things you've already taken into account or that were discussed by the Joint Committee.

Finally, as I indicated on the teleconference, I am pursuing some analysis of the SB 257 language even though the APOC's mention in it is peripheral because of my feeling that it will be helpful in reviewing any subsequent proposals in the ethics arena which might involve the APOC. (As you recall from previous years some ethics bills have created entirely separate commissions while others proposed the APOC as the administering agency.) As you expressed interest in the outcome of that effort, enclosed is the material which has been prepared by Mark Higgins as background for the Commission. While the document doesn't represent recommendations to the committee, you are, of course, more than welcome to use it if you feel it might be helpful. I expect to present it to the Commission members at their regular meeting next Thursday and will convey whatever remarks they wish to make about the filing of loan applications to you or other committees if you have moved the bill by then.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

THEDA S. PITTMAN
Executive Director

cc: APOC Members
Rebecca Burch, Dept. of Administration

AKOOD



April 29, 1983

MEMORANDUM

TO: All Senators
FROM: Vic Fischer, Chairman
RE: SB 257, Legislative Standards of Conduct
FOR YOUR INFORMATION

Attached is the State Affairs committee substitute for SB 257 and a sectional analysis of the bill.

We are distributing this bill to you now to inform all members of the progress of this important legislation and to permit your review of the bill pending further committee consideration in the Senate next week.

The State Affairs CS provides for a legislative ethics commission as recommended by the Joint Legislative Reform Committee. Also attached is alternative language providing for separate ethics committees within each house of the legislature with only legislative members.

SECTIONAL ANALYSIS OF SB 257

Sec. 010 FINDINGS

Refers to Constitutional basis for legislative enforcement of legislative ethics. States that legislators and staff should avoid conduct that even appears to violate the public trust.

Sec. 020 APPLICABILITY

The bill applies to legislators (once sworn in), legislative staff Range 18A and over, and former legislators in limited cases. Employees under Range 18 should be covered in the general ethics bill expected from the Attorney General next week. This bill specifically supersedes the common law in this area.

Sec. 030 CONFLICTS OF INTEREST

A conflict is defined as when a person takes or withholds official action or exerts influence which could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest. Situations are defined where no conflict exists because of the person's distance from either benefits or influence.

Sec. 040 CONTRACTS

Persons covered by this bill may not be a party to a contract or lease with the state not let by competitive bid unless the contract is for \$1,000 or less. Legislators may not have an interest in a non-competitive contract with the state (interest defined by percentage of ownership and size of company) and staff may not be a party to a non-competitive contract. The ethics commission may allow exceptions to this provision if it is satisfied that no misuse of influence has occurred. The existence of all contracts between people covered by this bill and state and local governments is published in the Journal.

Sec. 050 STATE LOANS

Legislators and staff are not prohibited from receiving state loans if the program is widely available and minimal discretion is exercised. Examples of these kinds of loans are student and AHFC home loans.

For other types of loans extensive provisions are made for special review of loans to people covered by this bill. The existence and status of all state loans held by people covered by this bill will be published in the Journal yearly.

Sec. 060 CONFIDENTIAL INFORMATION

Confidential information acquired in the course of official duties may not be knowingly disclosed or willfully used for personal gain of the gain of another.

Sec. 070 INTERESTS BETWEEN PUBLIC OFFICIALS

People covered by the bill must disclose to the commission any economic associations valued at over \$1,000 between legislators, supervisors and employees, and public officials in another branch who are required to file APOC statements. Economic associations may not be formed with lobbyists.

Sec. 080 GIFTS

Persons covered may not solicit or receive gifts with a cumulative annual value of over \$100 from one source under circumstances in which it may be reasonably inferred that the gift is intended to influence the person in the performance of official duties. Specifically excluded is hospitality within the state, including meals, lodging or transportation and invitations to meals or social events.

Sec. 090 NEPOTISM

People related to members of the legislature may not be employed in the house in which the legislator is a member or by a legislative agency. Relatives may be employed in the other house during the session only. Employees may not supervise relatives. Employees who are not on state payroll are exempt from these limitations.

Sec. 100 REPRESENTATION BY LEGISLATORS

Legislators and employees may not represent another person for compensation before any court or agency of the state. Lawyer-legislators may represent clients before state courts in criminal actions and in civil cases where the state is not a party. The ethics commission may waive these restrictions if it determines that the representation will not involve improper influences..

Sec. 110 ACTION ON A CONFLICT OF INTEREST

If a legislator knows or has been notified that a conflict exists shall immediately resign the position, divest the interest, or disclose the conflict for inclusion in the Journal.

Sec. 120 RETALIATION

Retaliation for filing an ethics complaint or providing truthful testimony to the commission is, in itself, a violation of legislative ethics.

Sec. 130 EMPLOYMENT OF FORMER MEMBERS AND EMPLOYEES

To the extent not prohibited by the Constitution, former members may accept employment with state agencies upon leaving office. Former members may lobby upon leaving office. Neither former members nor former employees may use confidential information obtained in the course of official duties except for the benefit of the state.

Sec. 140 STATE PROPERTY AND FUNDS

State property and funds may not be used for private gain.

Sec. 150 LEGISLATIVE ETHICS COMMISSION

The seven-member Commission is established within the legislative branch. The presiding officers of of the house and senate

each appoint one of their members with the concurrence of three-fourths of the full membership of the respective house. Each presiding officer also appoints two public members who are confirmed by the same method. The other members of the Commission then appoint the seventh member who must be a former legislator. Not more than four members of the Commission may be members of the same political party or reside in the same borough or the unorganized borough. Public members serve staggered three-year terms. The Commission may hire or contract for staff. Commission members receive no compensation beyond expenses and per diem.

Sec. 160 DUTIES OF THE COMMISSION

The Commission may recommend additional legislation and, with the concurrence of the president or the speaker subpoena witnesses and documents. The Commission shall adopt formal procedures and publish annual reports.

Sec. 170 ADVISORY OPINIONS

Summarized below.

Sec. 180 COMPLAINTS

Summarized below.

EFFECTIVE DATES

The Commission comes into effect upon passage. The rules of ethics and other enforcement and notice sections take effect in the normal 90 days.

SB 257: THE PROCESS OF ADJUDICATION

NOTE: SB 257 uses some labels for the different documents in this process that are confusing. Legal Services is in the process of clarifying the adjudication section of this bill and it is likely that new labels will be used for the different steps.

ADVISORY OPINION

- requested by person covered by bill
- must be issued in 30-days unless Commission extends time
- must be in writing and sworn
- if complete disclosure made is binding on Commission for further action under this section
- is confidential if publication not requested by person requesting. Summary of opinion published yearly
- if the terms of the advisory opinion complied with
==NO FURTHER ACTION==
- if advisory opinion not followed complaint may be filed

COMPLAINT

- may come from anyone, must be in writing signed under oath
- allegations must have occurred within four years or within one year of termination of state service unless discovery prevented by fraud
- no complaints may be received within 60 days of an election unless initiated by five or more members of the Commission
- commission determines if all allegations, when taken as true, constitute a violation of complaint. If not ==DISMISS==
- person against whom made is notified and afforded an opportunity to explain
- commission defines nature and scope of investigation
- commission makes confidential investigation, may subpoena witnesses, take oaths, and require production of books and papers. Subpoena powers derived through legislature.
- if no violation is found
==NO FURTHER ACTION, OPINION MAY BE MADE PUBLIC==

"COMMISSION" ADVISORY OPINION (P13 L4)

- if a violation is found, the person may be offered a recommended course of action; person may comply with the recommendation of the preliminary opinion or may request a FORMAL OPINION.
- if a majority of the members determine there is probable cause for belief that there has been a violation of the chapter the commission shall file a complaint against the person charged

CHARGES (a complaint)

- must be personally served on person
- person has 20 days to respond in writing to the commission
- commission sets time and place for hearing

- person charged has right to be heard, subpoena witnesses and documents, be represented by counsel and have the right to cross examine witnesses testifying under oath.
- hearings closed to public unless requested by person accused
- no formal rules of evidence, evidence must be competent and substantial, Commission evidence rules will be set out in Commission Procedures
- testimony only available to commission and staff and person charged; is recorded and preserved. Transcripts available to person charged

DECISION

- shall be in writing and signed by four or more members
- accompanied by a written (summary) order which is made public at once
- decision is referred to the presiding officer of person's body
- contains statement of the facts making up the violation and recommendations concerning penalties
- penalties for legislators may include
 - fine up to \$25,000
 - required divestiture
 - repaying profits
 - censure
 - removal from committee assignments
 - termination of legislative privileges
 - expulsion from the legislature
- Penalties for staff may include
 - suspension
 - demotion
 - dismissal
- made public 30 days after referral. Days in which the legislature is not in session are not counted

ALTERNATIVE LANGUAGE SETTING UP SEPARATE ETHICS COMMITTEES

ARTICLE . ETHICS COMMITTEES.

Sec. 24.60.200. ETHICS COMMITTEES ESTABLISHED.

(a) An ethics committee of the senate and an ethics committee of the house of representatives are established as permanent committees of the legislature.

(b) Each ethics committee shall provide the particular house of the legislature and its members with guidance on legislative standards of conduct through the establishment of substantive and procedural guidelines,

the issuance of advisory opinions, and the investigation of complaints of violations of legislative standards of conduct by members of the legislature and by persons employed by a member of the legislature.

+ (c) Nothing in this chapter authorizes the referral by the presiding officer of legislation to an ethics committee at a regular or special session of the legislature.

Sec. 24.60.210. MEMBERSHIP. The ethics committee of the senate is composed of three members of the senate appointed by the president of the senate and the ethics committee of the house of representatives is composed of five members of the house of representatives appointed by the speaker of the house. The membership of each committee shall include at least one member from each of the two major political parties represented in that house. The appointing authority in each house shall announce the appointment of members of each committee within 15 days after the convening of the first regular session of each legislature.

+ Sec. 24.60.220. TERM OF MEMBERSHIP. A member serves for the duration of the legislature in which the member is appointed and a member reelected to office or serving a term of office extending into the next succeeding legislature may continue to serve until a successor is appointed.

Sec. 24.60.230. VACANCIES. If a vacancy occurs in the membership of an ethics committee the presiding officer shall fill the vacancy within 30 days. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy occurs among the appointed member of a committee, the remaining committee members shall appoint a new member. A member of the legislature appointed to fill a vacancy shall be a member of the same political party as the member vacating the seat, if possible.

Sec. 24.60.240. STAFF. (a) Each ethics committee may hire and determine the compensation of staff of the committee. Staff members serve at the direction and at the pleasure of the ethics committee.

+ (b) Staff shall maintain the integrity of the functions and services of each ethics committee by refraining from joining or supporting any partisan political organization, faction or activity that would tend to undermine the essential nonpartisan nature of their functions and services. The provisions of this section dc

not restrict staff from expressing private opinion, registering or voting.

Sec. 24.60.250. MEETING OF THE ETHICS COMMITTEE. Each ethics committee shall meet as necessary during a legislative session and during the interim and it may meet at the request of its chair or of three members of the committee.

Sec. 24.60.260. QUORUM. A quorum of the ethics committee consists of three members and the vote of three members is required to adopt a motion, determination, or advisory opinion of the ethics committee.

ARTICLE . DEFINITIONS.

Sec. 24.60.900. DEFINITIONS. In this chapter,
(2) "ethics committee" means the ethics committee of the house of the legislature to which the member of the legislature or the member employing a person belongs.

+

COMPONENTS OF A MODEL ETHICS LAW

The following is an overview of the essential components of an enforceable ethics law.

1) LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE:

This section emphasizes the necessity for the avoidance of conflicts between the private financial interests of public officials and employees and their responsibilities to the public and to the government that employs them.

2) APPLICABILITY SECTION:

This section names the official positions to which the law applies.

3) DEFINITION OF TERMS:

A careful definition of terms used in the law is crucial to a good and legally enforceable ethics statute. Sections containing undefined ambiguities are often subject to unfavorable judicial interpretation.

4) ESTABLISHMENT OF A STATE ETHICS COMMISSION:

a) Members' Staff: Outlines whether the commission is to be composed of citizens, legislators or a combination of citizens and public officials.

b) Powers and Duties: This section authorizes the Commission to carry out its routine housekeeping functions. It also grants the Commission authority to make rules consistent with the law, and it provides the Commission with the necessary powers to conduct investigations, hold hearings and determine cases.

c) Complaints; Hearings: Outlines procedures for the Commission to follow when investigating complaints and when holding hearings. This provision is designed not only to ensure prompt action by the Commission, but also to make sure that cases will be dealt with impartially and not buried or delayed for political reasons.

d) Advisory Opinions: The power of the Commission to issue advisory opinions is intended to provide protection to persons who seek advance determination as to whether particular activities will violate the law. If a person submits a true and complete statement of facts to the Commission, and if the person follows the Commission's opinion in good faith, then the person will be protected against civil and criminal penalties.

5) CONFLICTS OF INTEREST:

- a) Gifts: This section commonly prohibits public officials from soliciting or accepting anything of value which might reasonably be assumed to impair the officials' impartial judgement. Sometimes dollar limits are stated, under which a gift is acceptable (usually \$100). This provision does not include gifts from family.
- b) Confidential Information: This section prohibits the use of confidential information gained in the course of official action or position. Such information cannot be used for the financial gain of the public official or anyone or organization financially associated with the official.
- c) Representation Before State Agencies: This section puts restrictions on appearances before State agencies by public officials on behalf of any individual or private organization if the appearance is for a fee or other compensation. Restrictions are usually limited to agencies over which the official has influence.
- d) Post Employment: This section addresses the so-called "revolving door" problem where State officials and employees leave public office to work in the private sector and then use confidential information and close contacts gained during public employment for the advantage of their private employers' customers or clients. Usually the prohibition lasts between 1 and 2 years and is limited to matters with which the former State official or employee had any direct influence or contact.
- e) Contracts: The intent behind restricting public officials' participation in State contracts is to prevent self-dealing on the part of the official while still allowing the State to take advantage of business opportunities with public officials, if they are in the best interest of the State. The normal requirement is that any contract involving a public official and involving more than \$1,000 must be let through a competitive bidding process.
- f) State Loans: The intent is the same as in contract restrictions - to prevent self-dealing by public officials. Guidelines vary from state to state, but the usual practice is to require that any loan involving discretion as to requirements be carefully scrutinized.
- g) Nepotism: This section prohibits the employment of close relatives within the same agency or department if their official responsibilities overlap. In the legislative branch relatives are prohibited from working in the same body during session.

- h) Financial Dealings Between Public Officials: This section either prohibits or closely monitors financial associations between public officials themselves and between lobbyists and public officials.
- i) Honorariums and Fees: Requires that any compensation paid to public officials for official engagements which resulted from the officials' position with the State, be turned over to the State.

6) PENALTIES:

- a) Criminal Prosecution: Matters may be referred to the Attorney General for criminal prosecution if it is determined that there was a knowing and willful violation of a conflict of interest law. Commonly such violations are classified as misdemeanors subject to varying fines and imprisonments, usually not exceeding one year per offense.
- b) Civil Action; Injunctions; Civil Penalties: This section authorizes the Commission to bring civil action for two purposes. First, to serve injunctions against violation of the Act, or to compel compliance with its provisions and, second to sue for the collection of civil penalties under the Act.

Civil action and civil penalties imposed at the Commission level is preferred approach to ethics legislation enforcement. This is because it is usually much easier to arrive at a Commission decision and imposition of civil penalty than it is to get an Attorney General action leading to a conviction on criminal charges.

Alaska State Legislature

IN SESSION:
FOUCH V
JUNEAU, ALASKA 99811
(907) 465-4949



BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips
HOUSE DISTRICT 15

MEMORANDUM

TO: REPRESENTATIVE MITCH ABOOD
CHAIRMAN, HOUSE STATE AFFAIRS

FROM: REPRESENTATIVE RANDY PHILLIPS

DATE: APRIL 22, 1983

RE: HOUSE BILL 362

Your office has requested backup documentation regarding House Bill 362. While most of the "documentation" is contained in discussions held before the Joint Special Committee on Legislative Reform, I am sending to you the following for your committee's consideration:

1. December 3, 1982 letter from the Attorney General to Governor Jay Hammond. Letter deals with conflict of interest.
2. Memorandum dated December 28, 1982, from the Attorney General to Governor Bill Sheffield. Memorandum is entitled, "Implementation of Conflict of Interests Opinion."
3. Harvard Law Review article entitled "Conflicts of Interest of State Legislators."
4. Iowa Law Review article entitled "Conflicts of Interest of State and Local Legislators." (NOTE: Items 3 and 4 were forwarded to the Special Committee by Rep. Joe Flood under lated dated Feb. 28, 1983.)

Representative Mitch Abood
April 22, 1983
Page Two

5. Memorandum from NCSL dated March 15, 1983.
6. Undated, unsigned memorandum entitled "Outline of Main Features and Policy Considerations for Proposed Conflict of Interest/Ethics Legislation." This was presented to the Special Committee by the Department of Law and was submitted in March of 1983. It is my recollection that Assistant Attorney Generals Dean Guaneli (Criminal Division, 465-3460) and Dianne Colvin (Civil Division, 465-3600) presented this to the Special Committee.
7. March 28 Memorandum from Connie Halford concerning makeup of the committee.
8. April 1, 1983, NCSL "Preliminary Report on Work on Conflict of Interest Legislation."
9. April 4, 1983 Memorandum from Rep. Don Clocksin

I realize this is quite a group of material for the committee to review in a relatively short time. I do plan on being at your committee meetings when this bill is considered and I will be happy to answer any questions you might have. In addition, Representative Mike Miller was a member of the Special Committee and is also a member of the State Affairs Committee.

Thank you for your consideration and assistance.

RP:jss
Enclosures: As Above

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB No. 362
 Title An act relating to standards of conduct of legislators and legislative
~~REQUESTED BY~~ employees and establishing a Legislative Ethics Commission
 Requested by: House State Affairs Date: April 19, 1983

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency
 Program Category Affected General Government
 BRU, Program, Or Subprogram(s) Affected Legislative Affairs Agency
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		-0-				
200 TRAVEL		44.1				
300 CONTRACTUAL		50.0				
400 COMMODITIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS, ETC.		-0-				
TOTAL		94.1				

FUNDING. (Thousands of Dollars)

GENERAL FUND		94.1				
FEDERAL FUNDS		-0-				
OTHER (Specify Source)		-0-				

POSITIONS

None

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

SEE ATTACHMENT

IV. DATE April 20, 1983 PREPARED BY Wally Harrison, Director, Admin. Svcs.
 AGENCY Legislative Affairs Agency
 Original: Legislative Finance PHONE 465-3850
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)

Fiscal Note for House Bill No. 362:

III ANALYSIS:

There are no guidelines in the bill for amount or level of staff or for amounts of travel and per diem. It is necessary, therefore, to establish a set of assumptions on which to build a fiscal note.

Using input from various legislators who worked on the bill, I have made the following assumptions:

Assumption 1: There will be no permanent staff at this time. Personal services and professional services will be contracted as needed; therefore, no office space or equipment will be needed. The commission will determine how the central files are to be kept.

Personal Services Contracts	20.0
Professional Services Contracts	20.0
Other Contractual Services	10.0
	<u>50.0</u>

Assumption 2: To establish a good average for travel costs, I have hypothetically assumed that the Commission is to be made up of members living in Nome, Bethel, Fairbanks, Anchorage, Kodiak, Juneau, Ketchikan, and will travel coach fare: 3 roundtrips to Juneau; 4 roundtrips to Anchorage; and 5 roundtrips to Fairbanks for meetings. There will be no more than an average of three days per month of travel and per diem for meetings. There be no more than an average of one meeting per month.

Per Diem -----	\$18,720
Travel -----	\$25,385
TOTAL Trvl/PD	<u>\$44,105</u>

Assumption 3: Additional costs, if any, for reports or copies made by other agencies for the Commission will be absorbed in that agency's operation budget.

Assumption 4: The Legislative Affairs Agency print shop can print the semi-annual summaries of decisions and advisory opinions.

H

B

3

6

9



Official Business

Alaska State Legislature

House of Representatives

Al Adams
Chairman
Committee on Finance

April 28, 1983

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

MEMORANDUM

TO: House State Affairs Committee Members

FROM: Al Adams, Prime Sponsor *APA*

SUBJ: HB 369, An Act relating to credited service under the Public Employees' Retirement System; and providing for an effective date.

Introduction

Last year the legislature passed legislation allowing BIA school teachers to participate in the state teachers' retirement system. HB 369 would provide a similar option to other school staff of BIA schools that are being transferred to the state. These employees would be able to participate in the state public employees' retirement system.

Sectional Analysis

SECTION 1 adds a new classification to the kinds of previous employment that can be used to calculate retirement benefits under the state's Public Employees Retirement System. After completing three years of service, an employee could then apply any years of earlier service as a noncertificated BIA employee towards PERS benefits. A noncertificated BIA employee is a non-teaching employee of a BIA day schools. The rate of the employee's contributions may not be less than the rate in effect on January 1, 1961. Interest on contributions begins to accrue on the date the employee first claims service with the BIA day school. Benefits will be reduced by an amount equal to any retirement paid to the employee by the US government for the same service.

SECTION 2 provides for an immediate effective date.

Fiscal Impact

As of today, the Division of Retirement Benefits has not yet determined the fiscal impact of passage of this bill. However, I understand that a fiscal note will be presented to you at the hearing on April 29th.

P.O. Box 264
Kotzebue High School
Kotzebue, AK 99752
February 22, 1983

Representative Al Adams
Alaska State Legislature
Pouch V
State Capital
Juneau, AK 99811

Dear Al:

My primary concern in regards to retirement deals with our instructional aides. A number of the aides are working toward teacher certification. Once accomplished and the aide makes the transition to a teaching position, that aide will also transfer retirement systems from PERS to TRS. At this transfer time, I believe that a person should be allowed to bring in a significant portion of their classroom years (including Alaskan B.I.A.) into TRS that would be counted as membership years for retirement purposes.

I realize we have to look closely at cost on any type of retirement legislation. I don't believe it would be that significant, especially if we look at the long range benefits for the children. This approach would provide incentives for our aides and local young people to become classroom teachers. At time of transfer, they could have the option of arrearage indebtedness like teachers have presently, or possibly a system where a PERS/TRS rollover could take place.

I have discussed this concept with NEA-Alaska, and they have been receptive. They also let me know how much they appreciated your leadership in raising the shortfall funding levels recently; the teachers appreciate your efforts.

If I can help you more on the retirement, please let me know.

Sincerely,

NORTHWEST ARCTIC EDUCATION ASSOCIATION

Dennis

Dennis Johnson, President

enclosure

Alaska State Legislature
House of Representatives



Official Business

Al Adams
Chairman
Committee on Finance

February 8, 1983

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 463-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320
1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

Dennis Johnson
Post Office Box 635
Kotzebue, Alaska 99752

Dear Dennis:

I wanted to follow-up on our conversation we had last year concerning retirement credit for BIA service for non-teaching positions. I'm still interested in introducing legislation but if my memory serves me, you were going to put together some ideas.

Let me know if you've been able to come up with a proposal, or if you have thought of another approach.

Thanks.

Sincerely,

A handwritten signature in cursive script, appearing to read "Al Adams".

Al Adams
Representative

AA/cf

§ 39.35.360 PUBLIC OFFICER

from the date of the refund until the date of the refund whichever occurs first. Payments shall be made first to interest and then to principal.

(c) Any outstanding indebtedness of an employee is appointed to retirement shall be adjusted to the benefits payable under this section. (§ 16 ch 143 SLA 1975; ch 31 SLA 1976; am § 30 ch 128 SLA 1981; am § 47 ch 137 SLA 1982)

Effect of amendments. — The first 1982 amendment, effective May 28, 1982, inserted "credited" in subsection (a).

See also AS 39.35.360 out in the main pamphlet.

The second 1982 amendment, effective

Sec. 39.35.360. Earlier service. (a) An employee employed before January 1, 1980, who completes three years of credited service with the state after January 1, 1961, for which the employee makes contributions required by this chapter is entitled to credited service for service rendered (1) before January 1, 1961, as an employee of the state and former Territory of Alaska; (2) before January 1, 1961, as an employee of the United States government in Alaska, excluding service in the armed forces of the United States; or (3) after January 1, 1961, as a peace officer, correctional officer, or fireman of a participating political subdivision of the state if the employee is vested and is an active peace officer, correctional officer, or fireman in the system as of July 1, 1980. The retirement benefits payable to an employee under this section shall be reduced by the amount of the retirement pension benefits paid to the employer by the United States government for the same period of service.

(b) An employee who, under (a) of this section, is entitled to credited service for employment before January 1, 1961, is not required to make retroactive contributions under this chapter.

(c) Repealed by § 41 ch 146 SLA 1980.

(d) Repealed by § 2 ch 26 SLA 1974.

(e) An employee of a detention facility provided by a local government unit to the territorial or state government under AS 33.30.060, who continues in state employment upon transfer of the facility to the state, is entitled to credited service for his prior service with the facility if the employee remains in continuous employment with the state until July 1, 1976. To obtain credited service the employee is required to make retroactive contributions for the period of service between January 1, 1961 and the effective date of the transfer of the facility to the state.

(f) A surviving spouse receiving or entitled to receive a surviving spouse's pension under AS 39.35.440 or benefits under a joint and survivor option filed under AS 39.35.450 is eligible for increased bene-

fits for any service credit authorized under (a) of this section, but not claimed or authorized by law before the employee's death.

(g) An employee is eligible to receive up to 10 years of credited service for service rendered before July 1, 1979, as a temporary employee of the legislature of the state or territory during legislative sessions. To receive retroactive credited service under this subsection, an employee must claim the service before July 1, 1980. When the employee claims the service, an indebtedness of the employee to the system shall be established. The amount of this indebtedness is equal to the contributions the employee would have made if he had been eligible for membership in the system. The rate used to calculate these contributions may not be less than the rate in effect on January 1, 1961. Interest as prescribed by regulation accrues on this indebtedness beginning July 1, 1980. Any outstanding indebtedness which exists at the time the employee retires will require an actuarial adjustment to the benefits which are based upon retroactive credited service under this subsection.

(h) An employee of the state is eligible to receive credited service as provided under AS 39.35.300(b) for service rendered as a permanent part-time employee before January 1, 1976. To receive retroactive credited service under this subsection, the employee must claim the service before July 1, 1981. When the employee claims retroactive credited service, an indebtedness of the employee to the system shall be established. The amount of this indebtedness is equal to the contributions the employee would have made if he had been eligible for membership in the system. The rate used to calculate the contributions may not be less than the rate in effect on January 1, 1961. Interest as prescribed by regulation accrues on the indebtedness beginning July 1, 1981. Any outstanding indebtedness which exists at the time the employee retires will require an actuarial adjustment to the benefits which are based on retroactive credited service under this subsection. (§ 17 ch 143 SLA 1960; am § 4 ch 80 SLA 1964; am §§ 5, 6 ch 155 SLA 1966; am § 4 ch 235 SLA 1968; am § 1 ch 55 SLA 1973; am §§ 1, 2 ch 26 SLA 1974; am §§ 1, 2 ch 245 SLA 1976; am §§ 31 — 33 ch 128 SLA 1977; am §§ 1, 7 ch 174 SLA 1978; am § 3 ch 81 SLA 1979; am § 10 ch 82 SLA 1979; am §§ 31, 32, 41 ch 146 SLA 1980; am §§ 48, 49 ch 137 SLA 1982)

Effect of amendments. — The 1982 amendment, effective July 1, 1982, in the first sentence of item (3) of subsection (a), deleted "or" preceding "correctional officer" and inserted "or fireman" preceding "of a participating political subdivision" and "correctional officer, or fireman" preceding "in the system." In subsection

(b), the amendment inserted "under (a) of this section."

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982

Vested benefits. Public Employees' Ret in the nature of debt and the right to such t diately upon an empic that system. Hammor Ct. Op. No. 2345 (File 1052 (1981).

The vested benefits Const., art. XII, § 7, not only the dollar an payable, but the requ ity as well. Hammond

Section

- 385. Conditional benefits
- 420. Nonoccupation
- 430. Occupational
- 440. Death after o
- 460. Level income
- 470. [Repealed]
- 475. Post-retireme
- 485. Minimum ber
- 490. Designation o

Sec. 39.35.38
employee is elig
least two years
normal retirem
14.25).

(b) An emplo
with at least tw
ble for an early
tem (AS 14.25)

(c) Credited
creditable und
been repaid. F
former membe
order to pay r
prescribed by
ness from the

(d) The mor
shall be calcu
dance with AS

STATE OF ALASKA
FISCAL NOTE

Revision Date 1983

I. REQUEST

Bill/Resolution No.: HB 369
 Title: An Act Allowing BIA Service in PERS
 Sponsor: Representative Adams
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: None
 Program Category Affected: _____
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		2301.7	2301.7	2301.7	2301.7	2301.7
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		2301.7	2301.7	2301.7	2301.7	2301.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		2080.7	2080.7	2080.7	2080.7	2080.7
FEDERAL FUNDS		105.9	105.9	105.9	105.9	105.9
* OTHER (Specify Source)		115.1	115.1	115.1	115.1	115.1

*4% Veterans; 12% Fish & Game; 26% Highway; 58% Airport

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: J.K. Humphreys, Director Phone: 465-4460
 Division: Retirement & Benefits Date: 4-29-83

Approved by Commissioner: Lisa Rudd Date: 4-29-83
 Department: Administration

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

State of Alaska

Fiscal Note

HB 369

IV Analysis:

The cost of this bill will be borne by all PERS employers, Political Subdivisions as well as the State. The individual employer contribution will increase on an average of .53%. The total cost to the Political Subdivision employers will be as follows:

<u>FY 84</u>	<u>FY 85</u>	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>
1693.9	1693.9	1693.9	1693.9	1693.9

The total present value of the costs of this bill to all employers is \$44.4 million.

This bill would reduce the PERS funding ratio by 4.3%.

H B

3 7 4 1

Offered: 5/10/83
Referred: State Affairs
and Judiciary

Original sponsor: Shultz

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 374 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the establishment of maximum
7 security prison facilities at Anderson and Palmer/
8 Sutton."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 33.30.020 is amended to read:

11 Sec. 33.30.020. COMMISSIONER TO ESTABLISH AND ADMINISTER PRISON
12 FACILITIES. Subject to the provisions of AS 33.30.025, the [THE]
13 commissioner shall establish prison facilities and classify the pris-
14 oners in prison facilities. The commissioner shall provide for the
15 safety, subsistence, proper government, and discipline of prisoners.
16 The commissioner shall establish programs for the treatment, care,
17 rehabilitation and reformation of prisoners.

18 * Sec. 2. AS 33.30 is amended by adding a new section to read:

19 Sec. 33.30.025. LOCATION OF FACILITIES. After July 1, 1983, the
20 commissioner shall locate within the vicinity of Anderson and Palmer/
21 Sutton ^{the next} ~~all new~~ maximum security prison facilities that contain 200 or
22 more beds.

*Hess wants it -
typo! on revisor*

White Paper

+ + + + +

A Consideration
For Location of
Maximum Security
Prison
In
Anderson

Developed In Cooperation With
GARY COPUS, Ph.D
Criminal Justice Division
University of Alaska
Fairbanks

Credentials Brief

GARY COPUS, PH.D

Currently serving the Thirteenth Alaska Legislature as a consultant in Corrections, Dr. Copus has also assisted the Mayor and Council of the City of Anderson in determining its viability for siting a Maximum Security Prison.

He received his Doctorate in Sociology at the University of Missouri-Columbia.

From 1970 until 1979, he was instructor in Criminal Justice in the graduate school at Sam Houston University, Huntsville, Texas.

From 1980 to the present he served in the Criminal Justice program in which he has published and lectured in all areas of corrections and its alternates.

We are very proud to have the assistance of Dr. Copus in developing our position.

THE SMALLER THE BETTER

Testimony given before the Senate H.E.S.S. Committee
on prison facility construction, April 21, 1983
Given by : Gary D. Dopus, Ph.D.

The State of Alaska faces the need of building additional prison facilities in the immediate future. Each of the state's units are at or above capacity with expectation by 1987 the population count will reach 2000.¹ Among the types of facilities needed is a maximum security unit. This paper specifically addresses the issue of the maximum desirable size of any one max unit. The issue is examined by citing disadvantages and advantages of building two 200-bed units versus one 400-bed unit.

Disadvantage of Two Small Units: The only disadvantage is one of economics. Although no cost figures were readily available for comparing the two-prison model against the single unit model, various professional opinions were solicited regarding capital cost and operational cost differences. Jim Austin of the National Council on Crime and Delinquency, administrators of the Fairbanks Correctional Facility, and Stuart Shadbolt, Administrator of the North Carolina Department of Corrections each contributed to the question of cost differentials. All agreed on two points. First, it was inevitable that the two-unit model would be more expensive both for initial construction and for continued operational costs;

¹Adult Corrections In Alaska: Current Issues In Administration and Management, pp.1 and 14, House Research Agency Report 82-E, 1983.